

# BINGHAM

Geoffrey M. Howard  
 Direct Phone: 415.393.2485  
 Direct Fax: 415.262.9212  
 geoff.howard@bingham.com

August 23, 2010

**Via Electronic Delivery**

Magistrate Judge Elizabeth D. Laporte  
 United States District Court  
 Northern District of California  
 450 Golden Gate Avenue  
 Courtroom E, 15th Floor  
 San Francisco, CA 94102

**Re: *Oracle USA, Inc., et al. v. SAP AG, et al., Case No. 07-CV-1658***

Dear Judge Laporte,

The parties respectfully seek leave of Court to file certain motions on August 31, 2010, for hearing on October 5, 2010. The parties have been meeting and conferring regarding the subject of some of the motions now for several months, and may yet make further progress. However, with a trial date of November 1, 2010, the parties agree that if they cannot resolve their differences in the meantime, they will need to seek the Court's assistance. On the Oracle side, the motions will be for sanctions related to spoliation of evidence before and after the litigation, and the late production, beginning in March 2010, of instant messages and additional software files. Defendants' motions will be for spoliation of evidence both before and after the litigation and failure to disclose damages related to Oracle's trespass to chattels, CDAFA claims, and allegations relating to goodwill damages. For the purposes of judicial efficiency the parties agree that the motions should be heard at the same time, although the parties have reserved procedural (and all other) objections to the motions, including that any of the motions are not timely presented based on Local Rule 7-8.

Sincerely yours,

/s/ Geoffrey M. Howard  
 Geoffrey M. Howard

Boston  
 Frankfurt  
 Hartford  
 Hong Kong  
 London  
 Los Angeles  
 New York  
 Orange County  
 San Francisco  
 Santa Monica  
 Silicon Valley  
 Tokyo  
 Washington

Bingham McCutchen LLP  
 Three Embarcadero Center  
 San Francisco, CA  
 94111-4067

T +1.415.393.2000  
 F +1.415.393.2286  
 bingham.com

Magistrate Judge Elizabeth D. Laporte  
August 23, 2010  
Page 2

In accordance with General Order No. 45, Rule X, the above signatory attests that concurrence in the filing of this document has been obtained from the signatory below.

/s/ Scott W. Cowan  
Scott W. Cowan

cc: Joshua L. Fuchs, Esq.  
Jason McDonell, Esq.  
Scott Cowan, Esq.  
Greg Lanier, Esq.