

EXHIBIT 1

09:09:28 1 Q. Licensed to practice in the State of
09:09:29 2 California?
09:09:29 3 A. Yes.
09:09:31 4 Q. Have you ever participated in a deposition
09:09:32 5 as a lawyer?
09:09:34 6 A. No.
09:09:36 7 Q. By whom are you currently employed?
09:09:37 8 A. Oracle.
09:09:40 9 Q. There are, as I understand it, a variety of
09:09:43 10 different entities in the overall Oracle family.
09:09:46 11 Do you know by which specific entity you
09:09:47 12 are employed?
09:09:49 13 A. I believe I am an employee of Oracle USA,
09:09:50 14 Inc.
09:09:51 15 Q. How long have you been employed by Oracle
09:09:53 16 USA?
09:09:58 17 A. Since the end of February 2006, I think.

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09:41:03 8 MR. LANIER: Q. Mr. Adler, Exhibit 114 has
09:41:07 9 been put in front of you. Review it if you need to,
09:41:08 10 to answer this question.
09:41:15 11 Have you ever seen this before?
09:41:16 12 A. Yes.
09:41:18 13 Q. Do you understand that you're here
09:41:20 14 testifying today on behalf of Oracle International
09:41:23 15 Corporation pursuant to this deposition notice?
09:41:25 16 A. Yes.
09:41:30 17 Q. Starting on page 3 and continuing, there
09:41:34 18 are several topics listed under scope of testimony.
09:41:35 19 Do you see that section generally?
09:41:36 20 A. Yes.
09:41:38 21 Q. Do you have an understanding of which
09:41:41 22 topics you are designated to testify about?
09:41:42 23 A. Yes.
09:41:44 24 Q. And which topics are those?
 25 A. Topics 1, 2, 3, and 4.

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09:42:07 8 Q. Are there any aspects of Topic 1 that you
09:42:13 9 are not prepared to testify about today, whatever
09:42:14 10 the reason?
09:42:18 11 And we can figure out what it is once you
09:42:18 12 identify any.
09:42:30 13 A. No, not that I -- not that I think of right
09:42:31 14 now.
09:42:33 15 Q. Turning to Topic 2, which is at the top of
09:42:37 16 page 4, are there any aspects of Topic 2 that you
09:42:47 17 are not prepared to testify about today?
09:42:50 18 A. I'm prepared to the best of my knowledge on
09:42:51 19 these topics.
09:42:53 20 Q. Okay. Same question for Topic 3. Are
09:42:55 21 there any aspects of that that you're not prepared
09:43:00 22 to testify about today?
09:43:02 23 A. No.
09:43:05 24 Q. Finally, Question 4, or Topic 4 on page 5:
25 Are there any aspects of Topic 4 that you're not

09:43:14 1 prepared to testify about today?

09:43:16 2 A. I can testify to the best of my knowledge
09:43:18 3 on these topics.

09:43:21 4 Q. Are there any aspects of any of those
09:43:23 5 topics that you were not able to investigate
09:43:26 6 sufficiently, to your satisfaction, to be ready for
09:43:31 7 today's deposition?

09:43:35 8 A. I believe I investigated sufficiently to be
09:43:40 9 able to address these, but some of the topics deal
09:43:45 10 with companies which were acquired by Oracle and for
09:43:50 11 which there is some information that, despite our
09:43:53 12 best efforts, we haven't been able to find.

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11:40:27 1 in the complaint: Initial release of J.D. Edwards
11:40:38 2 World A8.1, April 26, 2007, TX 6-541-047.

11:40:40 3 Do you see that in the complaint?

11:40:41 4 A. Yes.

11:40:43 5 Q. Does it appear to correspond to the
11:40:44 6 materials that you have in front of you?

11:40:46 7 A. Yes.

11:40:53 8 Q. All right. I'm going to ask you questions
11:40:57 9 about policies and procedures relating to the
11:41:02 10 information that's reflected in here. I'm not --
11:41:04 11 well, I'll just stop there. I'm going to ask you
11:41:05 12 some questions about that.

11:41:06 13 So let's --

11:41:08 14 MR. HOWARD: You're not going to ask him
11:41:10 15 about work product that he was -- that -- work
11:41:13 16 product investigation that he may have been involved
11:41:15 17 in in the course of preparing this. Is that what
11:41:16 18 you were about to say?

11:41:18 19 MR. LANIER: I -- well, I think I'm not
11:41:20 20 going to. I don't want to try to precharacterize
11:41:22 21 whether you'll agree that my questions do that or
11:41:23 22 not do that.

11:41:26 23 Q. So what I am intending to ask you about are
11:41:28 24 policies and procedures. If Mr. Howard has some
25 issue with what I'm asking you about, I bet you

11:41:32 1 he'll tell me.

11:41:33 2 MR. HOWARD: Well, let me -- just for the
11:41:36 3 sake of efficiency, obviously, Mr. Adler is an
11:41:39 4 attorney. As an attorney and in his capacity as an
11:41:40 5 attorney, he was involved in the preparation of
11:41:43 6 various of these copyright applications and
11:41:46 7 registrations, and of course we consider his
11:41:49 8 activities in that regard work product and not the
11:41:51 9 proper subject of questioning.

11:41:53 10 I understand you're not saying that you're
11:41:56 11 trying to go there. So I just want Mr. Adler to
11:41:58 12 have that in mind as we begin this line of
11:42:00 13 questions, and we'll take it on a
11:42:03 14 question-by-question basis.

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11:44:58 16 Q. Okay. Apart from any -- I am not in this
11:45:01 17 question asking you for the thinking that led up to
11:45:05 18 picking particular registrations that were submitted
11:45:07 19 in connection with this litigation. I'm not asking
11:45:10 20 you about the thought process, why this piece of
11:45:14 21 software for this case. Okay?
11:45:15 22 I'm asking you about policies and
11:45:17 23 procedures.
11:45:20 24 What were -- what were Oracle's, generally,
 25 policies and procedures, since the time you've been

11:45:27 1 there, for determining whether to seek registration
11:45:32 2 on a particular piece of software?
11:45:36 3 A. Our general policy and procedure at Oracle
11:45:43 4 is to seek registration, copyright registration, as
11:45:51 5 needed. So as requested of our department.
11:45:53 6 Q. Have you finished your answer?
11:45:54 7 A. (Witness nods head.)
11:45:54 8 Q. Is that a yes?
11:45:55 9 A. Yes, sorry.
11:45:59 10 Q. Okay. Again, as a matter of policy or
11:46:02 11 procedure -- and I'm not asking about any particular
11:46:06 12 request for the moment -- what are the policies or
11:46:10 13 procedures that apply to the types of requests that
11:46:14 14 you get?
11:46:21 15 A. So in general, there could be requests to
11:46:28 16 register a copyright in anticipation of litigation.
11:46:37 17 There could be requests to register a copyright in a
11:46:40 18 particular product that's important or has some sort
11:46:43 19 of strategic value.
11:46:46 20 There could be other reasons as well, but
11:46:51 21 those are the two that I'm familiar with.
11:46:54 22 Q. In the second category, you mentioned a
11:46:55 23 product that's important or could have some
11:46:57 24 strategic value.
25 As a matter of policy or procedure, who

11:47:07 1 determines that importance or strategic value?

11:47:11 2 A. There isn't someone specifically
11:47:21 3 designated. It would be -- that would be decided on
11:47:26 4 by the legal department and the requester. So there
11:47:31 5 would just be an assessment done.

11:47:34 6 Q. Is there any policy or procedure that
11:47:38 7 guides that determination?

11:47:41 8 Again, policies or procedures. I'm not
11:47:43 9 asking you about a specific conversation between
11:47:46 10 legal and whoever might be requesting it.

11:47:49 11 A. It's done -- since I've been there, it's
11:47:55 12 been done on an ad hoc basis.

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11:55:24	23	Q. What were the policies and procedures that
11:55:27	24	assisted in determining what information to put in
	25	that line, the name of the author?

11:57:19 1 Question: As a matter of policy or
11:57:19 2 procedure, what are other factors that might
11:57:39 3 affect authorship?)

11:57:40 4 MR. LANIER: All right. I don't agree with
11:57:42 5 that instruction as to that question, but we'll try
11:57:45 6 it a different way and see if we can get to it or
11:57:51 7 not.

11:57:55 8 Q. As a matter of Oracle's policies or
11:58:00 9 procedures with respect to registrations that relate
11:58:06 10 to materials developed at an acquired company, as a
11:58:09 11 matter of policy or procedure, does Oracle consider
11:58:13 12 anything other than the company employing the person
11:58:18 13 or persons involved in the development?

11:58:29 14 A. We could consider whether nonemployees
11:58:33 15 assisted or had any part in the development of the
11:58:37 16 material which we were seeking to copyright or to
11:58:42 17 have a copyright registration for.

11:58:44 18 Q. Is there a policy or procedure with respect
11:58:47 19 to making that determination that you just
11:58:52 20 described?

11:59:01 21 A. Our policy is to investigate agreements,
11:59:08 22 standard agreements for contractors who might have
11:59:16 23 in some circumstances possibly have participated in
11:59:23 24 development.

25 Q. Is there any other aspects of the policy or

11:59:36 1 procedure with respect to considering that issue?

12:00:04 2 A. I -- that's all I can recall right now.

12:00:10 3 Q. As a matter of policy or procedure, would
12:00:12 4 Oracle consider the types of agreements that are set
12:00:15 5 forth on Exhibit 113 with respect to determining
12:00:23 6 authorship of copyright material -- copyrightable
12:00:25 7 materials obtained through acquisition of another
12:00:33 8 company?

12:00:40 9 A. We could investigate agreements like that
12:00:42 10 as part of the process.

12:00:44 11 Q. Is that contemplated by the policies or
12:00:48 12 procedures?

12:00:51 13 A. Part of the procedure would be to
12:00:56 14 investigate relevant agreements like assignments or
12:00:59 15 certificates of merger.

12:01:02 16 Q. So as I understand the policy, the
12:01:06 17 policy -- what the policies or procedures
12:01:08 18 contemplate investigating, based on what you've said
12:01:11 19 so far, it's the employment status of the
12:01:14 20 individuals involved --

12:01:18 21 A. I have to correct that. We would not
12:01:25 22 necessarily do an investigation of the individual
12:01:30 23 developers. Rather, of the standard agreements and
12:01:34 24 policies for employees or developers.

25 Q. Would you -- as a matter of policy or

12:01:40 1 procedure, would you attempt to determine the
12:01:43 2 individually named people -- you know, Developer A,
12:01:45 3 Developer B -- who were involved in a particular
12:01:46 4 software development?

12:01:48 5 A. That would not be part of our policies or
12:01:52 6 procedures.

12:01:54 7 Q. As a matter of policy or procedure, what
12:01:59 8 would be done to determine that a particular
12:02:02 9 acquired entity employed or contracted with
12:02:07 10 developers who came up with a piece of software?

12:02:09 11 A. Sorry, can you read that question back?

12:02:11 12 Q. Let me try it again. I'll break it down a
12:02:15 13 little bit.

12:02:18 14 There's a piece of software. A, I will
12:02:24 15 call it for lack of a more clever title. And for
12:02:27 16 whatever reason -- again, I'm not asking about these
12:02:30 17 litigation determinations -- the determination is
12:02:32 18 made to seek a registration on A.

12:02:35 19 Okay? With me so far?

12:02:35 20 A. Yes.

12:02:37 21 Q. Oracle's policies or procedures, as I
12:02:42 22 understand them, contemplate performing some level
12:02:45 23 of consideration and investigation regarding
12:02:47 24 authorship of A. Right?

25 A. Correct.

12:02:52 1 Q. What is done to determine -- what if
12:02:54 2 anything is done as a matter of policy or procedure
12:02:59 3 to determine the individual persons, whoever employs
12:03:04 4 them, that may have contributed to the authorship of
12:03:07 5 software A?

12:03:10 6 A. That wouldn't be part of our standard
12:03:15 7 policies and procedures. I'm not saying -- well, as
12:03:18 8 far as our policies and procedures go, that would
12:03:30 9 not be part of it.

12:03:35 10 Q. Okay. Under 2 -- as part of 2a on the same
12:03:37 11 registration that we're on, but under the line where
12:03:40 12 it says the name of the author, you see it asks the
12:03:44 13 question: Was this contribution to the work a "work
12:03:46 14 made for hire"?

12:03:47 15 Do you see that?

12:03:48 16 A. Yes.

12:03:49 17 Q. Here it happens to be checked "Yes." Do
12:03:50 18 you see that?

12:03:51 19 A. Yes.

12:03:53 20 Q. What are Oracle's policies or procedures
12:03:55 21 with respect to determining how to answer that
12:04:01 22 question where the underlying material were acquired
12:04:10 23 through acquisition of another company?

12:04:20 24 A. Our procedure is to investigate the
12:04:20 25 standard employee agreements and contractor

12:04:30 1 agreements to determine the status of the work that
12:04:35 2 we're seeking copyright registration for in relation
12:04:38 3 to that space on the form that talks about works
12:04:39 4 made for hire.

12:04:42 5 Q. Is there any step in the policies or
12:04:47 6 procedures that is designed to specifically verify
12:04:49 7 that the individual human beings who may have
12:04:51 8 contributed to authorship are subject to those
12:04:53 9 standards agreements -- standard agreements you just
12:04:59 10 mentioned?

12:05:01 11 A. That is not part of our general policies
12:05:07 12 and procedures, because we have looked at the
12:05:11 13 standard employee and contractor agreements.

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14:32:09 1 produced by Oracle, 213703 through -4, that's titled
14:32:13 2 "J.D. Edwards Employee Proprietary Information,
14:32:19 3 Inventions and Non-Solicitation Agreement."

14:32:20 4 (Deposition Exhibit 124 was marked for
14:32:35 5 identification.)

14:32:40 6 MR. LANIER: Q. Sir, you are younger than
14:32:42 7 I am, so the size of this type may not bother you as
14:32:44 8 much as it's starting to bother me.

14:32:47 9 But with that proviso, do you recognize
14:32:49 10 this?

14:32:49 11 A. Yes.

14:32:52 12 Q. What do you recognize it to be?

14:32:53 13 A. It's an Employee Proprietary Information,
14:32:59 14 Inventions and Non-Solicitation Agreement.

14:33:01 15 Q. And is this one of the agreements to which
14:33:05 16 you were referring when we talked generally about
14:33:09 17 employment agreements -- standard employment
14:33:10 18 agreements at JDE?

14:33:13 19 A. This is the -- when I believe we were
14:33:15 20 talking about types of agreements --

14:33:15 21 Q. Yes.

14:33:18 22 A. -- that we would investigate, this is the
14:33:20 23 type of agreement.

14:33:23 24 Q. Do you know whether this specifically is an
25 example of the agreement actually in force at some

14:33:28 1 period of time?

14:33:30 2 A. Yes, to the best of my knowledge, this was
14:33:36 3 the standard agreement for JDE for some point in
14:33:37 4 time.

14:33:39 5 Q. Down at the bottom, it has a copyright
14:33:43 6 notice, Copyright 2000, in really tiny type down at
14:33:44 7 the bottom left-hand side.

14:33:45 8 Do you see that?

14:33:45 9 A. Yes.

14:33:48 10 Q. Okay. Does that -- seeing that notice in
14:33:51 11 any way refresh your recollection or help you recall
14:33:53 12 what the period of time that was covered by this
14:33:55 13 agreement was?

14:33:59 14 A. I don't have specific knowledge from
14:34:02 15 outside this agreement as to when this agreement was
14:34:09 16 in force. So looking at what you just pointed out,
14:34:15 17 and at the small print on the other side, I think
14:34:19 18 it's a fair assumption to say this is from 2000.

14:34:22 19 Q. And by the small print on the other side
14:34:26 20 you mean the Rev. 6/00?

14:34:27 21 A. Yes.

14:34:29 22 Q. Do you know whether J.D. Edwards maintained
14:34:33 23 records of which of its employees had or had not
14:34:36 24 signed this agreement?

25 A. I don't know that.

14:34:42 1 Q. Okay. All right, I'm done with 124. I'm
14:34:44 2 going to show you something that looks a lot like
14:34:48 3 it.

14:34:49 4 I'll ask the court reporter to mark as the
14:35:00 5 next exhibit a document produced by Oracle. Bear
14:35:06 6 with me one second. I'll ask her to mark this one.

14:35:08 7 As Exhibit 125, a document bearing the
14:35:13 8 Bates numbers ORCL160518 through -9.

14:35:23 9 It looks very similar to what you just saw.
14:35:25 10 (Deposition Exhibit 125 was marked for
14:35:36 11 identification.)

14:35:39 12 MR. LANIER: Q. Sir, Exhibit 125 is in
14:35:43 13 front of you. Do you recognize it?

14:35:44 14 A. Yes.

14:35:48 15 Q. And what do you recognize it to be?

14:35:51 16 A. An Employee Proprietary Information,
14:35:54 17 Inventions and Non-Solicitation Agreement for
14:35:55 18 J.D. Edwards.

14:35:58 19 Q. Now, this has slightly different data down
14:36:02 20 in the bottom left and bottom right.

14:36:04 21 Does seeing that, does our previous
14:36:07 22 discussion, help you know in any way what the time
14:36:10 23 period was for this agreement's enforceability -- or
14:36:13 24 applicability?

25 A. As with the other agreement, I don't have

14:36:22 1 independent knowledge of the time. And so I see
14:36:29 2 here, though, that it does say copyright 2000
14:36:33 3 through -03, and in the lower right it says Rev.
14:36:34 4 4/03.

14:36:36 5 Q. But that -- independent of making
14:36:38 6 inferences from those things, you don't
14:36:40 7 independently know when this particular agreement
14:36:42 8 was in force?

14:36:42 9 A. That's correct.

14:36:44 10 Q. And without reviewing and comparing them,
14:36:46 11 because I'm not asking you to do that, do you know
14:36:48 12 anything about differences between the two versions
14:36:52 13 we just saw, 124 and 125?

14:36:55 14 A. No. I don't know what the differences, if
14:36:55 15 any, are.

14:36:57 16 Q. And do you know whether in the time period
14:36:59 17 of applicability of this particular agreement, 125,
14:37:02 18 whether JDE kept records of who signed it and who
14:37:04 19 didn't?

14:37:07 20 A. I don't know if they did.

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14:40:58 5 Q. Turning -- I'm done with this one.
14:41:00 6 Turning briefly back to the J.D. Edwards
14:41:04 7 agreements, you can look at them if you need to, but
14:41:10 8 does Oracle today have copies of J.D. Edwards
14:41:15 9 agreements signed prior to the acquisition?
14:41:16 10 A. I'm not sure about that.

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14:43:42 1 Q. Understood. Slightly different question,
14:43:44 2 so I'll try to be more precise.

14:43:48 3 Notwithstanding any policies in these
14:43:50 4 agreements of which you've seen form examples, in
14:43:53 5 your investigation were you able to determine or did
14:43:59 6 you learn whether in fact all JDE, PeopleSoft and/or
14:44:04 7 Oracle employees actually signed these agreements?

14:44:09 8 A. No, I did not. I relied on the stated
14:44:13 9 policies that all employees had to sign them.

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14:55:55 1 I declare under penalty of perjury that
14:55:55 2 the foregoing is true and correct. Subscribed at
14:55:55 3 _____, California, this ____ day of
14:55:55 4 _____ 2008.

14:55:55 5
14:55:55 6 _____
14:55:55 7 TODD ADLER

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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein state, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: _____

HOLLY THUMAN, CSR