

EXHIBIT R

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)	
)	
PLAINTIFFS,)	NO. C 07-01658 PJH (EDL)
)	
VS.)	CERTIFIED COPY
)	
SAP AG, ET AL.,)	PAGES 1 - 56
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	WEDNESDAY, MAY 5, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: BINGHAM MUCCUTCHEN LLP
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REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

1 SAID IF YOUR HONOR GRANTS THEIR MOTION, THIS RIGHT DISAPPEARS.
2 THE FACT IS IT DID.

3 ORACLE STRUCTURED ITS CORPORATE RELATIONSHIPS THE WAY
4 IT DID FOR WHATEVER REASONS IT HAD. THERE'S NO SUGGESTION
5 THERE'S ANYTHING WRONG WITH THAT, OR WHATEVER TRANSFERS THEY
6 DID. IT NEEDS TO LIVE WITH THE CONSEQUENCES OF THAT.

7 SO THE ABSOLUTE INEVITABLE RESULT OF THE COURT'S
8 ORDER GRANTING OUR MOTION TO DISMISS IS THAT OSC NEVER HAD THE
9 RIGHT TO SUE FOR PAST INFRINGEMENT, AND THE PURPORTED TRANSFER A
10 YEAR AND A HALF AFTER THE RULING AND FOUR YEARS OR MORE AFTER
11 THE ACQUISITION OF THAT RIGHT IS OF NO EFFECT, DELAWARE LAW NOT
12 TO THE CONTRARY.

13 THAT'S IT IN A NUTSHELL. AND GIVEN THE LIMITED TIME
14 THAT WE HAVE, WE'VE DONE THE REST ON THE PAPERS, UNLESS THE
15 COURT HAS ANY SPECIFIC QUESTIONS ON THAT ISSUE.

16 **THE COURT:** NO.

17 **MR. LANIER:** THANK YOU.

18 THE NEXT MAJOR ISSUE ON WHICH MR. HOWARD TOUCHED WAS
19 THIS QUESTION OF CONTRIBUTORY LIABILITY. AND REALLY WHAT
20 MR. HOWARD DID WAS MAKE AN ARGUMENT FOR VICARIOUS LIABILITY.
21 GOSH, THEY OWNED IT. THEY WANTED THE BUSINESS TO BE SUCCESSFUL.
22 THEY GAVE HIM SOME MONEY TO DO SOME BUSINESS. THEREFORE, THEY
23 MUST BE CONTRIBUTORILY LIABLE. AND THAT'S OBVIOUSLY NOT THE
24 CASE.

25 THERE'S A DIFFERENCE BETWEEN VICARIOUS LIABILITY, A

1 POINT ON WHICH FOR THE CONDUCT THAT'S AT ISSUE HERE, WE'VE
2 CONCEDED, AND CONTRIBUTORY LIABILITY. AND HERE -- AND I'LL ALSO
3 BRIEFLY ADDRESS THE CFAA AND DIRECT LIABILITY 'CAUSE THE
4 CONCEPTS ARE VERY SIMILAR. I THINK IT MIGHT BE HELPFUL.

5 AGAIN, IT'S IMPORTANT TO KNOWLEDGE WHAT IT WAS THAT
6 WE HAVE CONCEDED FOR PURPOSES OF THIS MOTION, THAT THE SPECIFIC
7 CONDUCT IN THE MOTION THAT IS WORKING WITH THE PEOPLESFT
8 SOFTWARE IN THESE PARTICULAR WAYS AND USE OF THE DATABASE
9 SOFTWARE TO SUPPORT TOMORROWNOW CUSTOMERS -- THAT CONDUCT BY
10 TOMORROWNOW WAS INFRINGEMENT OF THE REGISTRATION THEY PUT IN THE
11 MOTION.

12 SO WHAT THEY NEED TO PROVE TO MEET THEIR BURDEN TO
13 SHOW THAT THERE'S NO DISPUTE OF FACT AND THEY'RE ENTITLED TO
14 SUMMARY JUDGMENT OF THE CONTRIBUTORY LIABILITY IS THAT SAP AG OR
15 SAP AMERICA KNEW ABOUT THAT CONDUCT AND DIRECTED OR FACILITATED
16 THAT CONDUCT, AND THAT EVIDENCE ISN'T THERE. WE HEARD A LOT
17 ABOUT SAP -- OR ABOUT SAP ACKNOWLEDGING THE RISK THAT IT MIGHT
18 BE SUED, NOT SURPRISING GIVEN THE HISTORY BETWEEN THESE TWO
19 COMPETITORS.

20 WE HEARD ABOUT -- THE ONLY ACTUAL EVIDENCE THAT WE
21 HEAR THAT'S SPECIFIC TO SAP SAYING ANYTHING, DO THIS OR DON'T DO
22 THIS WHEN IT RELATES TO USE OF SOFTWARE IS ALL EVIDENCE THAT
23 SAYS DON'T DO SOMETHING. THAT'S, A, NOT WHAT'S AT ISSUE ON THIS
24 MOTION; AND, B, IT'S DON'T DO SOMETHING THAT THEY MAY LATER
25 CONTEND IS COPYRIGHT INFRINGEMENT.

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CERTIFICATE OF REPORTER

I, RAYNEE H. MERCADO, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH(EDL), ORACLE CORPORATION, ET AL. V. SAP AG, ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

MONDAY, MAY 10, 2010