

# EXHIBIT S

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE USA, INC., et al., )  
 )  
 Plaintiffs, )

v. )

SAP AG et al., )  
 )  
 Defendants. )

NO. 07-CV-01658 PJH

San Francisco, California  
Wednesday, November 26, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs

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Reported By:

**CHRISTINE TRISKA, CSR, RPR**  
Pro-Tem Reporter

1           Now -- so there's different ways this breach occurs.  
2 And in the Software B case, where the download is of -- in the  
3 first instance, in breach of the terms of use materials for  
4 which that customer is not licensed California law, code says  
5 that if in bad faith you know that you don't have that  
6 permission you are directly liable. You are liable as a  
7 principal. And that's exactly what he have alleged.

8           THE COURT: Okay. All right. And lastly, the unjust  
9 enrichment.

10           MR. LANIER: Your Honor, may I have one sentence on  
11 that breach of contract?

12           Look behind the word "use," because all of the  
13 things that Mr. Howard alleges are -- these are the other  
14 things that were then later the breach of contract are  
15 copying: cross-use is copying, providing it to someone else  
16 and using it for someone else -- it's a copy. This is  
17 software. It's copying.

18           The only non-preempted claims that could be subject  
19 to breach of contract are access claims for which there's a  
20 remedy, but nothing else, your Honor.

21           MR. HOWARD: That just isn't true, your Honor. We've  
22 alleged research, training --

23           THE COURT: I don't want to hear anymore.

24           All right. Unjust enrichment. I'm not so sure  
25 there's any real dispute. You both agree that unjust

