

# EXHIBIT 1

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.                        | ) |                          |
|                            | ) |                          |
| 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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FOR DEFENDANTS: JONES DAY  
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BY: JANE L. FROYD,  
THARAN GREGORY LANIER,  
ELAIN WALLACE, ATTORNEYS AT LAW

REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

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TEXT REMOVED - NOT RELEVANT TO MOTION

THE OTHER ISSUE THAT WAS ADDRESSED AT THAT MOTION WAS WHETHER THEY WERE ENTITLED TO USE SAVED ACQUISITION COSTS AS A WAY TO VALUE THE SO-CALLED FAIR MARKET LICENSE. THE COURT'S RULING DID NOT ADDRESS THAT.

**THE COURT:** I DIDN'T REACH THAT ISSUE AT ALL.

**MR. LANIER:** THAT'S CORRECT, YOUR HONOR. SO THAT'S WHY WE BROUGHT IT UP AGAIN THIS TIME, BECAUSE WE THINK IT SHOULD BE STRUCK. AND IT'S WORTH NOTING THAT WHAT MR. MEYER DOES IN HIS REPORT -- MR. MEYER'S THE EXPERT -- THERE'S SOME MENTION OF, AND IN OUR PAPERS SUBSTANTIALLY, 'CAUSE OUR MOTION FOCUSED ON DAMAGES -- MR. MEYER ACTUALLY COMES UP WITH FOUR DIFFERENT WAYS TO VALUE THE FAIR MARKET VALUE LICENSE.

NOW, WE HAVE LOTS OF PROBLEMS WITH ALL OF THEM. WE'LL BE TALKING TO THE COURT AT THE PRETRIAL ABOUT DAUBERT

1 ISSUES AND ALL OF THAT. BUT PUTTING ALL THAT ASIDE, ONE OF  
2 THOSE FOUR WAYS IS SAVED ACQUISITION COSTS.

3 THE QUESTION PRESENTED ON OUR MOTION IS NOT WHETHER  
4 HE DID A GOOD JOB USING SAVED ACQUISITION COSTS OR WHETHER  
5 THERE'S A PROBLEM WITH HIS OPINION. IT'S THE LEGAL AVAILABILITY  
6 OF THE REMEDY. THE ONLY AUTHORITY FOR THE AVAILABILITY OF SAVED  
7 ACQUISITION COSTS AS A COPYRIGHT REMEDY, WHETHER YOU CALL IT  
8 FAIR MARKET VALUE OR NOT, IS THIS DELTAK CASE FROM THE SEVENTH  
9 CIRCUIT. AND HERE, I'LL BE VERY BRIEF, 'CAUSE WE'VE ARGUED THIS  
10 BEFORE. THE COURT JUST DIDN'T HAVE TO REACH IT. IT'S ADDRESSED  
11 IN OUR PAPERS.

12 THAT DELTAK CASE IS NOT THE LAW OF THE NINTH CIRCUIT.  
13 IT HAS NEVER BEEN ADOPTED IN THE NINTH CIRCUIT, AND AS PATRY THE  
14 COMMENTATOR THAT WE BOTH CITED TO SAYS, DELTAK IS AN ABERRATION  
15 AND SHOULD REMAIN ONE. SO SAVED ACQUISITION COSTS SHOULD NOT BE  
16 AVAILABLE AS A REMEDY IN THE COPYRIGHT CASE AS WELL.

17 SO THAT'S OUR ARGUMENT IN A NUTSHELL ON THAT LARGEST  
18 DAMAGES ISSUE. WE'RE PREPARED TO ADDRESS ANY OF THE OTHER  
19 ISSUES ON OUR MOTION, IF THE COURT HAS QUESTIONS.

20 **THE COURT:** THE -- THOSE -- THAT WAS THE ONLY  
21 DIFFICULT ISSUE IN MY VIEW ON YOUR MOTION.

22 **MR. LANIER:** THANK YOU, YOUR HONOR.

23 **THE COURT:** ALL RIGHT.

24 **MR. PICKETT:** GOOD MORNING, YOUR HONOR.

25 I'M PREPARED TO ADDRESS A SINGLE ISSUE IN OPPOSITION

1 TO THE MOTION, WHICH IS THIS ISSUE REGARDING THE SAVED  
2 ACQUISITION OR SAVED DEVELOPMENT COSTS WITH RESPECT TO THE  
3 COPYRIGHT INFRINGEMENT. ALL OTHER ISSUES, HOLLY HOUSE IS  
4 PREPARED TO -- TO SPEAK TO.

5 THE REASON THAT I WANTED TO DO THAT WAS BECAUSE THERE  
6 IS A -- KIND OF A GROUND HOG DAY SENSE IN WHICH WE ARGUE THIS --  
7 MR. LANIER ARGUED THIS SAME POINT TO YOUR HONOR. YOU ASKED  
8 QUESTIONS OF HIM. WE ARGUED. YOU TOLD ME I DIDN'T NEED TO  
9 ARGUE IT BACK IN OCTOBER. I -- THERE'S NO QUESTION THAT THE  
10 SAME CASES, THE SAME AUTHORITIES, THE SAME ARGUMENTS ARE ALL  
11 BEFORE YOU.

12 MR. MEYER IN THE DECLARATION IN OPPOSITION -- OUR  
13 DAMAGES EXPERT IN OPPOSITION TO THEIR MOTION LAST TIME TOLD YOUR  
14 HONOR THAT HE WAS GOING TO CONSIDER THE R & D COSTS THAT WERE  
15 SAVED ON THE PART OF THE S&P (SIC) AS PART OF THIS HYPOTHETICAL  
16 NEGOTIATION, WHAT A WILLING BUYER AND WILLING SELLER WOULD COME  
17 TO A PRICE TO. HE WOULD RELY ON OPINION TESTIMONY OF OTHER  
18 EXPERTS REGARDING THOSE R & D COSTS.

19 AND YOUR HONOR, IN RESPONSE TO THEIR MOTION, WHICH  
20 VERY MUCH SO HAD TWO ISSUES, YOU DENIED THE MOTION. YOU DIDN'T  
21 SAY I DENY ONE PART OF IT AND I RESERVE JUDGMENT ON OTHER. YOU  
22 DENIED IT, AND YOU DID SO IN VERY SWEEPING LANGUAGE. YOU SAID  
23 ORACLE SHOULD BE PERMITTED TO PRESENT EVIDENCE REGARDING THE  
24 FAIR MARKET VALUE OF THE COPYRIGHTS THAT SAP ALLEGEDLY  
25 INFRINGED, INCLUDING EXPERT TESTIMONY BASED ON ESTABLISHED

1 VALUATION METHODOLOGY. AND THE VALUATION METHODOLOGY THAT WE  
2 HAD PRESENTED TO YOU IN THE FORM OF MR. MEYER'S DECLARATION WAS  
3 THAT ONE OF THE FACTORS HE WAS GOING TO CONSIDER WAS GOING TO BE  
4 THESE SAVED ACQUISITION COSTS.

5 NOW, THERE'S A DISPUTE AS TO WHETHER IN -- IN SO  
6 DENYING -- IN SO RULING, THAT DEALT WITH BOTH ISSUES OR NOT.  
7 BUT WHAT I'M HERE TO SAY --

8 **THE COURT:** THERE'S -- THERE'S NO DISPUTE -- I MEAN,  
9 I CAN CLARIFY. IT WAS NOT MY INTENTION TO REACH IT. YOU ALL  
10 ARGUED AT LENGTH THE DELTAK CASE. IT'S AN ISSUE THAT WE SPENT  
11 AN AWFUL LOT OF TIME LOOKING AT. I'M NOT ENTIRELY PERSUADED  
12 THAT I SHOULD FOLLOW THE SEVENTH CIRCUIT. I'LL MAKE AN ULTIMATE  
13 DETERMINATION ON THIS GO-ROUND. IT WAS SOMETHING THAT I  
14 INTENTIONALLY DID NOT REACH. AND TO THE EXTENT THAT ANY OF MY  
15 LANGUAGE HAS CAUSED YOU ANY CONFUSION, I'LL CLARIFY THAT IN  
16 THE -- IN THE ORDER THAT'S ISSUED ON THIS MOTION.

17 **MR. PICKETT:** EVEN IN THAT CASE, I WOULD SUBMIT THAT  
18 THE LOCAL RULE 7-9 WAS NOT FOLLOWED BECAUSE --

19 **THE COURT:** IT DIDN'T NEED TO BE FOLLOWED.

20 **MR. PICKETT:** ALL RIGHT.

21 **THE COURT:** I DON'T VIEW THIS AS A MOTION FOR  
22 RECONSIDERATION.

23 **MR. PICKETT:** OKAY. LET ME TURN, THEN, TO THE MERITS  
24 OF IT.

25 FIRST OF ALL, LET ME START WITH A KIND OF

1 COMMON-SENSE POINT, AND IT COMES FROM YOUR HONOR'S JANUARY 28TH  
2 ORDER OF THIS YEAR. YOU CITED THE POLAR BEAR CASE -- IN A  
3 DIFFERENT CONTEXT, BUT YOU CITED IT FOR THE PROPOSITION THAT  
4 THERE ARE TWO SIDES OF THE DAMAGES COIN IN PATENT -- COPYRIGHT  
5 INFRINGEMENT CASES. ONE LOOKED AT IT FROM THE ASPECT OF THE  
6 COPYRIGHT HOLDER'S LOSS, AND THE OTHER SIDE OF THE COIN WAS TO  
7 LOOK AT IT FROM THE INFRINGER'S GAIN.

8 AND, OF COURSE, THE SAVINGS OF RESEARCH AND  
9 DEVELOPMENT COSTS THAT ONE EXPERIENCES BY SIMPLY STEALING  
10 COPYRIGHTED MATERIAL IS A INFRINGER'S GAIN. AND CLEARLY FITS  
11 WITHIN THE DICHOTOMY THAT THE NINTH CIRCUIT SETS OUT IN POLAR  
12 BEAR, ALBEIT IN A DIFFERENT CONTEXT, BUT, CLEARLY HERE, IF  
13 YOU'RE THE VICTIM OF THEFT OF YOUR PROTECTED INTELLECTUAL  
14 PROPERTY, YOU CAN LOOK AT DAMAGES -- AND THIS IS -- WE HAD A  
15 LONG SESSION ON THIS BACK IN OCTOBER -- YOU ARE -- ARE ENTITLED  
16 AS THE VICTIM TO LOOK AT BOTH SIDES OF THAT DAMAGE COIN. YOU  
17 CAN LOOK AT YOUR LOSS, BUT YOU CAN ALSO LOOK AT THEIR GAIN,  
18 THE -- THE VIOLATORS' GAIN.

19 AND HERE, ONE OF THE GAINS IS THIS SAVED R & D COSTS.  
20 I DON'T HAVE TO GO OUT AND HIRE ENGINEERS. I DON'T HAVE TO DO  
21 ALL THAT WORK. I CAN JUST, YOU KNOW, TAKE IT. AND THAT'S  
22 RELEVANT TO THIS ISSUE OF DAMAGES.

23 IT'S RELEVANT IN ANOTHER WAY ALSO BECAUSE, AS YOUR  
24 HONOR SET OUT IN THE JANUARY 28TH RULING, VERY CLEARLY, AS TO  
25 THIS -- THIS -- WE HAVE A COUPLE OF CHOICES OF MEASURES OF

1 DAMAGES. ONE IS LOST PROFITS. THE OTHER, THOUGH, IS THIS FAIR  
2 MARKET VALUE, THE HYPOTHETICAL LICENSE.

3 AND AS PART OF THAT, WHAT A WILLING BUYER AND WILLING  
4 SELLER WOULD COME TO IN TERMS OF NEGOTIATED PRICE, WOULD BE,  
5 WELL, IF I'M GOING TO AVOID A BIG EXPENSE BY NOT HIRING  
6 ENGINEERS AND SO ON, THAT'S DIRECTLY RELEVANT. THAT'S JUST  
7 RIGHT ON POINT TO WHAT THAT NEGOTIATIONS IS GOING TO BE.

8 AND SO WHEN THE JURY HEARS FROM THE VARIOUS EXPERTS,  
9 WELL, WHAT WOULD THAT PRICE BE -- AND WE'LL HAVE SOME EXPERTS  
10 SAY, HERE'S THE FACTORS THAT WILL BE CONSIDERED THIS WAY. AND  
11 THEY WILL HAVE EXPERTS COME AND SAY THOSE WOULD BE FACTORS THAT  
12 WILL BE CONSIDERED THE OTHER WAY. THAT'S CLEARLY RIGHT UP THE  
13 FAIRWAY OF WHAT SOMEONE TRYING TO LICENSE THIS SOFTWARE WOULD  
14 CONSIDER, BOTH, MIND YOU, FROM THE BUYER'S STANDPOINT, I WOULD  
15 SAVE THOSE COSTS, AND ALSO FROM THE SELLER'S STANDPOINT, I KNOW  
16 THAT THERE WILL BE A LOT OF AVOIDED COSTS HERE TO DEVELOP, THAT  
17 IF I LICENSE THIS, THAT'S GOING TO BE SOMETHING THAT I'M GOING  
18 TO INSIST ON A CERTAIN AMOUNT OF COMPENSATION FOR.

19 AND YOU DON'T HAVE TO LOOK ANY FARTHER THAN THE SID &  
20 MARTY KROFFT CASE IN THE NINTH CIRCUIT TO SEE THAT THAT ALSO  
21 FOLLOWS ESTABLISHED NINTH CIRCUIT LAW, BECAUSE --

22 **THE COURT:** WHAT --

23 **MR. PICKETT:** -- IN THAT CASE --

24 **THE COURT:** WHAT CASE --

25 **MR. PICKETT:** THAT'S THE SID & AND MARTY KROFFT



1 TELEVISION PRODUCTIONS AGAINST MCDONALD'S CASE. IT'S 562 F.2D.  
2 1157 AT 1174.

3 **THE COURT:** DOES THAT PREDATE DELTAK?

4 **MR. PICKETT:** THAT DOES PREDATE, BUT THAT'S -- THAT'S  
5 HOW WE GET TO THE DELTAK RULE. THIS IS THE FOUNDATIONAL -- THIS  
6 IS HOW YOU GET THERE. THEY -- THE NINTH CIRCUIT SAID IN THAT  
7 CASE -- AND IT WAS THE FIRST TO CLEARLY IDENTIFY IT -- IT SAID  
8 THAT THE FAIR MARKET LICENSE APPROACH, THE APPROACH THAT YOUR  
9 HONOR HAS AUTHORIZED US TO PROCEED WITH IN YOUR JANUARY ORDER,  
10 ALLOWS THE JURY TO CONSIDER, QUOTE, THE VALUE, IF ANY, TO  
11 DEFENDANTS OF THE USE OF PLAINTIFFS' WORKS.

12 SO IT -- IT EMBRACES THE NOTION THAT THE VALUE OF USE  
13 BY THE DEFENDANT IS A RELEVANT FACTOR. AND OF COURSE, VALUE OF  
14 USE WOULD BE, WELL, I'M GOING TO SAVE, YOU KNOW, HUNDREDS AND  
15 HUNDREDS OF MILLIONS, IF NOT MORE, IN NOT DEVELOPING ALL THIS  
16 SOFTWARE.

17 SIMILARLY, THE NINTH CIRCUIT MODEL JURY INSTRUCTION  
18 DOESN'T LIMIT ANY CONSIDERATION OF THE BENEFITS THAT DEFENDANTS  
19 WOULD ENJOY FROM USING THE MATERIALS -- THE COPYRIGHTED  
20 MATERIALS. THERE'S NO LIMITATION IN IT. IT SIMPLY SAYS, YOU  
21 PUT UP THE EVIDENCE, AND THERE'S A -- THERE'S A DECISION THAT'S  
22 TO BE MADE WHAT A WILLING BUYER, WILLING SELLER WOULD -- WOULD  
23 REASONABLY REQUIRE TO PAY AT THE TIME OF INFRINGEMENT. AND THAT  
24 IS, AS I EARLIER TOLD, I THINK VERY CLEARLY, VERY LOGICALLY HOW  
25 MUCH COSTS YOU'D AVOID WOULD BE A RELEVANT PART OF THAT

1 DISCUSSION, SOMETHING THE JURY SHOULD BE ALLOWED TO CONSIDER.

2 THEN DELTAK IS A CASE IN WHICH THEY EXPRESSLY SAY,  
3 RIGHT, VALUE OF USE, CITING THE KROFFT CASE, CITING THE  
4 SID & MARTY KROFFT CASE, DELTAK RELIES ON NINTH CIRCUIT LAW AND  
5 SAYS, YEAH, OF COURSE, YOU CAN CONSIDER -- AS PART OF THE VALUE  
6 OF USE BY THE INFRINGER, YOU CAN CONSIDER AN AMOUNT EQUAL TO THE  
7 ACQUISITION COSTS SAVED BY THE INFRINGEMENT INSTEAD OF BY BUYING  
8 IT OR LICENSING IT.

9 THAT -- THAT -- THAT'S THE LOGICAL EXTENSION THEY GOT  
10 FROM THE NINTH CIRCUIT LAW.

11 NOW, THERE IS ONE CASES -- ONE CASE, THE BUSINESS  
12 TRENDS CASE THAT FOUR YEARS LATER IN THE SECOND CIRCUIT SAID, NO  
13 WE'RE GOING TO DISAGREE WITH THE SEVENTH CIRCUIT ON THAT. BUT  
14 THE KEY THERE IS A ON DAVIS CASE, WHICH CAME LATER AND WHICH  
15 YOUR HONOR CITED IN YOUR JANUARY RULING HERE.

16 THE ON DAVIS CASE EXPRESSLY REJECTS THE BUSINESS  
17 TRENDS CASE THAT PLAINTIFFS RELY ON. THEIR UNDERLYING ANALYSIS  
18 AND THE -- AND THE BUSINESS TRENDS CASE HAS NO VIABLE MEANING  
19 AFTER YOU READ ON DAVIS. WHAT THE PANEL IN THE ON DAVIS CASE  
20 DID WAS ESSENTIALLY REJECT IT.

21 SO NONE OF THE CASES SUPPORT PLAINTIFF, EXCEPT FOR  
22 THIS SUPERSEDED CASE.

23 AND AS FAR AS SOME OF THE OTHERS, THERE ARE -- THERE  
24 ARE NIMMER -- THESE COMMENTARIES -- NIMMER HIMSELF ACKNOWLEDGES  
25 THE RULE, THE "PALTRY (SIC) ON COPYRIGHT" CRITICIZES DELTAK AS

1 AN ABERRATION BUT FOR A VERY, VERY DIFFERENT POINT. IT'S AN  
2 IMPORTANT DISTINCTION, BECAUSE THEY'RE CITING THIS PALTRY  
3 TREATISE AS CRITICISM OF DELTAK AS AN ABERRATION, BUT THE  
4 ABERRATION IN THE TREATISE'S VIEWPOINT HAD NOTHING TO DO WITH  
5 THE ISSUE ON THIS MOTION, HAD NOTHING TO DO WITH WHETHER YOU  
6 CONSIDER AS PART OF THE VALUE OF DEFENDANTS' USING THE  
7 COPYRIGHTED MATERIAL, AS TO WHETHER THAT'S A RELEVANT FACTOR IN  
8 VALUING IT. BUT IT'S WHETHER THAT KIND OF CONSIDERATION WAS  
9 APPROPRIATE IN CONSIDERING THE PROFITS ISSUE, THE OTHER MEASURE  
10 OF DAMAGES, NOT THE FAIR MARKET VALUE HYPOTHETICAL NEGOTIATIONS,  
11 THE OTHER ONE. SO IT'S JUST -- IT'S JUST MISLEADING TO TALK  
12 ABOUT DELTAK AS AN ABERRATION IN THAT -- IN THAT CONTEXT.

13 SO IN SHORT, WE THINK THAT VALUE OF USE IS  
14 APPROPRIATE UNDER NINTH CIRCUIT LAW. WE THINK VALUE OF USE  
15 INCLUDES A CONSIDERATION OF THE METHODOLOGY THAT OUR EXPERT HAS  
16 PUT FORTH. WE THINK IT'S A LEGITIMATE QUESTION FOR THE JURY TO  
17 DECIDE, WHETHER A HYPOTHET- -- IN THAT HYPOTHETICAL NEGOTIATION,  
18 AVOIDED COST WOULD BE RELEVANT AND TO WHAT EXTENT THE JURY  
19 WOULD -- WOULD WEIGH THAT.

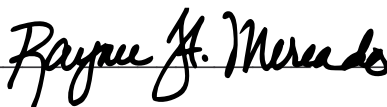
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21 **TEXT REMOVED - NOT RELEVANT TO MOTION**  
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**CERTIFICATE OF REPORTER**

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