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22 UNITED STATES DISTRICT COURT  
 23 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

23 ORACLE USA, INC., *et al.*,

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)  
**DECLARATION OF HOLLY A. HOUSE IN  
 SUPPORT OF MOTION NO. 1: TO EXCLUDE  
 TESTIMONY OF DEFENDANTS' EXPERT  
 STEPHEN CLARKE**

Date: September 30, 2010

Time: 9 a.m.

Place: Courtroom 3

Judge: Hon. Phyllis J. Hamilton

**FILED PURSUANT TO DKT. NO. 915**

Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF HOLLY A. HOUSE IN SUPPORT OF MOT. NO. 1: TO EXCLUDE TESTIMONY OF  
 DEFENDANTS' EXPERT STEPHEN CLARKE

1 I, Holly A. House, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and before  
3 this Court, and a partner at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle  
4 USA, Inc. (predecessor to Oracle America, Inc.), Oracle International Corporation, Oracle  
5 EMEA Ltd., and Siebel Systems, Inc. (collectively, "Oracle" or "Plaintiffs"). I have personal  
6 knowledge of the facts stated below by virtue of my representation of Oracle in this action if  
7 called as a witness could competently testify as to them. I make this declaration in support of  
8 Oracle's Motion No. 1: To Exclude Testimony of Defendants' Expert Stephen Clarke ("Clarke  
9 Motion").

10 *Index of Attached Exhibits*

11	Exhibit	Description	Date
12	A	Excerpts of the Supplemental Expert Report of Stephen K. Clarke	May 7, 2010
13	B	Excerpts of the transcripts of the deposition of Clarke	June 8-10, 2010
14	C	Excerpts of the transcript of the deposition of Thomas Bamberger	January 29, 2009
15	D	Excerpts of the transcript of the deposition of Werner Brandt	October 20, 2009
16	E	Excerpts of the transcript of the deposition of Defendants' expert Stephen Gray	June 8, 2010
17	F	Excerpts of the transcript of the Rule 30(b)(6) deposition of Thomas Hurst	April 30, 2008
18	G	Excerpts of the transcript of the deposition of Andrew Nelson	February 26, 2009
19	H	Excerpts of the transcript of the deposition of Defendants' expert Brian Sommer	June 25, 2010
21	I	Excerpts of the Expert Report of Bruce D. Spencer, served by Defendants	March 26, 2010
22	J	Excerpts of the transcript of the deposition of William Thomas	February 26, 2009
23	K	Excerpts of the transcript of the deposition of Thomas Ziemer	September 30, 2008
24	L	Excerpts of Defendants' Deposition Exhibit 31, a document entitled "Oracle Corporation, Form 10-K	
25	M	Excerpts of Plaintiffs' Deposition Exhibit 450, a document produced by Defendants entitled "TomorrowNow Acquisition Monitoring, Status Update."	
26	N	Excerpts of Plaintiffs' Deposition Exhibit 454, an email produced by Defendants	
27			
28			

1		entitled "FW: Q1 Oracle Disruption Plan."	
2	O	Plaintiffs' Deposition Exhibit 782, an email produced by Defendants entitled "Tnow: cash situation and three-year FC."	
3			
4	P	Plaintiffs' Deposition Exhibit 3204, a document entitled "Scope of license."	
5	Q	Email from Ms. MacDonald to Mr. McDonnell, with an objection to the Standard Register Co. statement.	April 9, 2010
6	R	Meet and confer email from Elaine Wallace, counsel for SAP.	December 7, 2009
7			

8 **INDEX OF ATTACHED EXHIBITS**

9 2. For ease of use and reference and to the extent possible without losing context,  
10 for all exhibits attached to this Declaration, including deposition transcripts, only the relevant  
11 pages and information have been provided. Unless otherwise noted below for a particular  
12 document, we have provided all highlighting and/or circling in these Exhibits to further assist in  
13 identifying the information relevant to Oracle's Clarke Motion.

14 **DAMAGES REPORTS AND CLARKE'S DEPOSITION**

15 3. On November 16, 2009, the date affirmative expert reports were due under the  
16 Parties' case management schedule, Oracle provided Defendants' counsel with the initial expert  
17 report of Oracle's damages expert, Paul Meyer, detailing his opinions regarding Oracle's  
18 alternate available copyright damages approaches and amounts as well as Oracle's other  
19 damages approaches and amounts under its state law claims (some of which overlap). Because  
20 discovery was ongoing and to incorporate errata, Meyer provided supplemental reports on  
21 December 4, 2009 and February 23, 2010.

22 4. On March 26, 2010, Defendants' provided Oracle's counsel with the expert  
23 report of Stephen K. Clarke, the date rebuttal reports were due under the Parties' case  
24 management schedule. Defendants later produced supplements to Clarke's report on May 7,  
25 2010, June 4, 2010, and August 4, 2010.

26 5. After receiving Clarke's initial report and his first supplemental report, Meyer  
27 provided certain supplemented schedules to his report on May 9, 2010.

1           6.       Attached as **Exhibit A** is a true and correct copy of relevant excerpts of the May  
2 7, 2010 Supplemental Expert Report of Stephen K. Clarke (“Supplemental Clarke Report”).  
3 The Supplemental Clarke Report was the version of the Clarke report that was primarily used  
4 during the June 8-10, 2010 deposition of Clarke, which I attended.

5           7.       Attached as **Exhibit B** is a true and correct copy of excerpts of the transcript of  
6 the June 8-10, 2010 deposition of Clarke.

7 **I.       NON-DAMAGES DEPOSITIONS**

8           8.       Attached as **Exhibit C** is a true and correct copy of an excerpt of the transcript  
9 of the January 29, 2009 deposition of Thomas Bamberger.

10          9.       Attached as **Exhibit D** is a true and correct copy of an excerpt of the transcript  
11 of the October 20, 2009 deposition of Werner Brandt.

12          10.      Attached as **Exhibit E** is a true and correct copy of excerpts of the transcript of  
13 the June 8, 2010 deposition of Defendant expert Stephen Gray.

14          11.      Attached as **Exhibit F** is a true and correct copy of excerpts of the transcript of  
15 the April 30, 2008 Rule 30(b)(6) deposition of Thomas Hurst.

16          12.      Attached as **Exhibit G** is a true and correct copy of an excerpt of the transcript  
17 of the February 26, 2009 deposition of Andrew Nelson.

18          13.      Attached as **Exhibit H** is a true and correct copy of excerpts of the transcript of  
19 the June 25, 2010 deposition of Defendant expert Brian Sommer.

20          14.      Attached as **Exhibit I** is a true and correct copy of an excerpt of the Expert  
21 Report of Bruce D. Spencer, served by Defendants on March 26, 2010.

22          15.      Attached as **Exhibit J** is a true and correct copy of an excerpt of the transcript of  
23 the February 26, 2009 deposition of William Thomas. The parties have stipulated that “The  
24 individual testimony of John Baugh and William Thomas on December 3 and 4, 2010,  
25 respectively, may be considered as corporate Rule 30(b)(6) testimony with respect to  
26 Defendants copying and use of Oracle’s Database products.” Dkt. 745 at 74:8-12.

27          16.      Attached as **Exhibit K** is a true and correct of excerpts of the transcript of the  
28 September 30, 2008 deposition of Thomas Ziemen.

1    **II.    DEPOSITION EXHIBITS**

2           17.    Attached as **Exhibit L** is a true and correct copy of an excerpt of Defendants’  
3    Deposition Exhibit 31, a document entitled “Oracle Corporation, Form 10-K.”

4           18.    Attached as **Exhibit M** is a true and correct copy of an excerpt of Plaintiffs’  
5    Deposition Exhibit 450, a document produced by Defendants entitled “TomorrowNow  
6    Acquisition Monitoring, Status Update.” We have provided the circling.

7           19.    Attached as **Exhibit N** is a true and correct copy of an excerpt of Plaintiffs’  
8    Deposition Exhibit 454, an email produced by Defendants entitled “FW: Q1 Oracle Disruption  
9    Plan.” We have provided the circling.

10          20.    Attached as **Exhibit O** is a true and correct copy of Plaintiffs’ Deposition  
11    Exhibit 782, an email produced by Defendants entitled “Tnow: cash situation and three-year  
12    FC.”.

13          21.    Attached as **Exhibit P** is a true and correct copy of Plaintiffs’ Deposition Exhibit  
14    3204, a document entitled “Scope of license.” provided to Defendants as part of Oracle’s  
15    damages expert, Paul Meyer’s notes on the Supplemental Clarke Report.

16    **III.    SAP TN CUSTOMER LIST AND LATE CUSTOMER**  
17    **DECLARATIONS**

18          22.    SAP TN’s first set of Requests for Production to Oracle, dated July 26, 2007,  
19    attached an "Exhibit 1" that listed all of SAP TN's customers (i.e., ones that PeopleSoft or  
20    Oracle had lost) that had been identified at that time. In the two and a half years since then, the  
21    parties continually referred to and incorporated Exhibit 1 in their discovery requests and  
22    responses as the operative list of SAP TN' s customers. They also used the list to identify  
23    customers to contact, get declarations from and depose within the allotted fact discovery period,  
24    which ended December 4, 2009.

25          23.    On April 6, 2010, Lucia MacDonald, an associate at my law firm, received an  
26    email from Kevin Braig that was sent “[a]s requested by counsel for SAP” with an attached  
27    Supplemental Statement of Richard L. Ball of Standard Register Co. Jason McDonell, counsel  
28    for SAP, was also a recipient of the email. On April 9, 2010, Ms. MacDonald emailed Mr.

