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### Dow Jones Business News

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**HEADLINE:** UPDATE: SAP Asks For Gag Order In Oracle Case

**BODY:**

(Adds SAP comment in the third paragraph and additional background.)

By Jeanette Borzo  
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SAN FRANCISCO -(Dow Jones)- SAP AG (SAP, SAP.XE), which is preparing for a November intellectual-property trial against Oracle Corp. (ORCL), has asked the court for a gag order in the case.

Late on Friday, SAP filed an administrative motion for an order regarding counsels' extrajudicial communications, asking the court to prohibit the involved attorneys from making statements about the trial outside of court.

"Oracle's attorney first raised concerns about the issue of the lawyers involvement in publicity on the case at the end of the September 30th pretrial conference," said SAP spokesman Saswato Das. "We agreed with the position taken by their attorney and have documented our agreement with the filing of the motion."

Oracle declined to comment.

Oracle and SAP, rivals in the business-software market, have been involved in a legal battle since 2007, when Oracle alleged in a lawsuit that now-defunct SAP subsidiary, called TomorrowNow Inc., infringed on Oracle's intellectual property. The trial is scheduled to begin in federal court in Oakland, Calif., on Nov. 1.

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SAP said in an August legal filing it would accept responsibility for the copyright infringement and pay restitution to Oracle, of Redwood Shores, Calif. But Walldorf, Germany-based SAP refutes Oracle's claim that Oracle likely suffered more than \$1 billion in damages.

SAP's motion concerning extrajudicial communications in large part springs from a recent incident involving the New York Times in which Times reporter Joe Nocera sharply criticized Leo Apotheker, who was named CEO at PC maker Hewlett-Packard Co. (HPQ) on Sept. 30. Nocera implied that Apotheker, a longtime SAP executive who was briefly the German company's chief executive, would have known about TomorrowNow's copyright infringement while he was at SAP. It suggested that the Palo Alto, Calif.-based H-P should not be so critical of Mark Hurd --its former CEO--given the circumstances outlined in the lawsuit.

After the Times article ran, H-P's incoming chairman, Ray Lane, defended Apotheker in a widely circulate letter to the Times. Then it emerged that Nocera's fiance is the communications director at Boies, Schiller & Flexner, a law firm representing Oracle in the lawsuit.

"The episode involving the New York Times article--coupled with Oracle's counsel's refusal to eschew publicity efforts during trial despite recognizing that jurors may not heed a court instruction not to read press coverage--leads to this motion," SAP's motion says.

The circumstances call attention to a case of musical chairs among top executives at Oracle, H-P and SAP. Apotheker, who now runs H-P, used to run SAP. Lane used to be Oracle's president and chief operating officer, but now is on H-P's board. Last month, Oracle Chief Executive Larry Ellison hired Hurd, H-P's former CEO, to be a co-president at Oracle.

The filing also comes amid deterioration in the decades-old partnership between Oracle and H-P, two Silicon Valley powerhouses. Signs of strain first appeared last year when Oracle announced its acquisition of Sun Microsystems Inc., a maker of computer servers that compete with products from H-P.

But the trouble accelerated rapidly as Hurd left H-P amid questions over his personal conduct in August. At the time, Ellison said H-P had made "the worst personnel decision since the idiots on the Apple board fired Steve Jobs many years ago."

Ellison further antagonized H-P when he hired Hurd, prompting a lawsuit from H-P the following day. The suit has since settled.

Then when H-P hired Apotheker, Ellison wrote in an email to the Wall Street Journal that "HP had several good internal candidates... but instead they pick a guy who was recently fired because he did such a bad job of running SAP."

At that time, an H-P spokeswoman said Ellison's comments don't "deserve the dignity of a response."

On Friday, SAP shares closed up 1.2% to \$53.15. Oracle closed up 0.6% to \$28.99, while H-P was up 1.1% to \$42.87.

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