

\$1.3B award against SAP overturned in Oracle case

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The logo of the German professional software giant SAP is pictured at the company's headquarters in Walldorf, Germany. A US judge on Thursday tossed out a \$1.3 billion dollar award for damages that a jury ordered German business software giant SAP to pay US rival Oracle for copyright infringement.

A federal judge on Thursday threw out a "grossly excessive" \$1.3 billion verdict that Oracle won against SAP in a landmark intellectual property case, possibly setting the stage for another circus-like showdown between the two technology companies.

The decision was a surprising twist in a 4-year-old case that's been filled with them. There will be a new trial if Oracle Corp. formally rejects a lower \$272 million award, which it has indicated it will do.

While Thursday's ruling was a victory for SAP AG, a German maker of business software, it's not necessarily as much of a setback for Oracle,

which stands to humiliate SAP again even if it can't secure the higher award.

If the second trial is anything like last year's, expect more high-wire theatrics from Oracle's outspoken CEO, Larry Ellison, who has pilloried SAP for its amateurish theft of software and customer-support documents from password-protected Oracle websites. SAP has admitted that a now-shuttered subsidiary, TomorrowNow, committed the offense.

Oracle is the leading maker of database software, which helps companies organize their information. Its aggressive expansion into business applications has forced Oracle into a faceoff with SAP, the leader in that space.

Oracle argued that the stolen information helped SAP steal customers by offering similar services at cheaper prices. SAP argued that TomorrowNow wasn't that great at stealing customers with the information anyway and should have to pay only \$40 million for accounts that SAP did manage to lure away.

The jury ultimately awarded Oracle more than 30 times that amount after a three-week trial last November. It was one of the largest verdicts in a case involving software-related theft and showed how severely jurors were willing to punish corporations for intellectual-property theft from rivals.

Although the amount was less than what Oracle asked for, it was far more than what SAP had budgeted. SAP had set aside \$160 million to pay anticipated damages and had already spent \$120 million of that in payments to Oracle's lawyers. The punishment amounted to more than half of SAP's total profit in the prior year.

Thursday's decision by Judge Phyllis Hamilton in U.S. District Court

in Oakland, Calif., is a major victory for SAP. She said the size of the penalty was "contrary to the weight of the evidence, and was grossly excessive."

Oracle can now choose whether to accept the lower award of \$272 million or proceed with a new trial before a different jury. The \$272 million amount was based on an earlier estimate from an Oracle expert on what profit Oracle lost and SAP gained.

Whatever happens, Oracle has already scored repeated public relations wins because of the case.

The case gave Ellison a platform to taunt another foe, former SAP CEO Leo Apotheker, who is now CEO of Hewlett-Packard Co. Oracle is increasingly battling HP in the market for computer servers, straining a decades-long technology partnership.

Oracle, which is based in Redwood Shores, Calif., tried to summon Apotheker to testify at the trial, and the company pushed the image of a "Where's Waldo?"-type manhunt involving private investigators and a vanished executive. Apotheker wasn't spotted within the jurisdiction of the Oakland court in time, and he didn't appear.

HP, based in Palo Alto, continually skirted questions about Apotheker's whereabouts at the time, presumably because there was little to be gained in allowing him to testify. HP accused Oracle of harassing its new executive and said Oracle had ample time to question Apotheker in an earlier deposition.

SAP said it was very gratified with Thursday's decision.

"We believed the jury's verdict was wrong and are pleased at the significant reduction in damages," the company said in a statement. "We

hope the court's action will help drive this matter to a final resolution."

Oracle said it plans to fight for the full amount it was awarded.

"There was voluminous evidence regarding the massive scope of the theft, clear involvement of SAP management in the misconduct and the tremendous value of the (intellectual property) stolen," Oracle said. "We believe the jury got it right and we intend to pursue the full measure of damages that we believe are owed to Oracle."

Oracle's stock fell 23 cents, or 0.8 percent, to close Thursday at \$27.84. SAP's stock fell 75 cents, or 1.4 percent, to \$53.76.

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