

Oracle vs. SAP: Court may order damages retrial

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The seven-year legal battle between business software rivals Oracle and SAP may have another round or two left.

A [federal appeals court](#) on Tuesday signaled that it may order a retrial to resolve the billion-dollar gulf in [damages](#) that stands in the way of resolving their copyright feud, with the judges appearing dissatisfied with both the Oracle and SAP versions of what the case is worth.

While it was unclear what path the judges would take to address the sticky legal issues, there appeared to be consensus that a new trial may be warranted.

The 9th U.S. Circuit Court of Appeals heard about 40 minutes of arguments in the latest chapter in the case, which centers on Oracle's bid to restore a \$1.3 billion 2010 jury verdict that is believed to be the largest of its kind in a copyright infringement case. SAP admitted before the trial that a now-defunct subsidiary had violated Oracle's copyright protections, leaving only the issue of what the German software giant should pay in damages for the jury to decide.

After the trial, U.S. District Judge Phyllis Hamilton determined that the \$1.3 billion judgment was excessive, primarily because she found much of it was based on what SAP would have had to pay Oracle to license the software. Given that Oracle acknowledged it would never have licensed its chief rival, the judge found Oracle was not entitled to "hypothetical" damages for such a license.

Oracle and SAP then agreed that SAP would pay Oracle \$306 million in damages, plus \$120 million in legal costs, to avoid a retrial. The deal permitted Oracle to then ask the 9th Circuit to restore the \$1.3 billion verdict, or order a retrial based on Oracle's licensing theory of damages.

At various points in Tuesday's arguments, Judges William Fletcher, Susan Graber and Richard Paez raised the prospect of retrying the damages question. Graber, in particular, appeared troubled by Oracle's valuation of the license, grilling Oracle lawyer Kathleen Sullivan, who kept citing expert estimates at the trial.

"All of this is fascinating, but none of it is answering my question," Graber said at one point.

But SAP lawyer Greg Lanier also found himself in the hot seat. When he argued that Oracle was not entitled to recover damages for a license it never would have issued, Fletcher shot back: "I don't read the case law as saying that."

In a case closely watched in Silicon Valley, SAP has conceded that employees at its TomorrowNow subsidiary illegally downloaded thousands of copies of Oracle software and used them for TomorrowNow customers without paying for a license. Those accusations led SAP to plead guilty to federal criminal [copyright infringement](#) charges in 2011.

The trial included testimony by Oracle CEO Larry Ellison, who told the jury that the software theft was worth \$4 billion, and SAP Co-CEO Bill McDermott, who valued the technology at about \$40 million.

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