

1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

2 MARSHALL DIVISION

3 VERSATA SOFTWARE, INC. * Civil Docket No.
* 2:07-CV-153

4 VS. * Marshall, Texas
*

5 * August 19, 2009

SAP AMERICA INC., ET AL * 8:30 A.M.

6

7 TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE CHAD EVERINGHAM
UNITED STATES MAGISTRATE JUDGE
8 AND A JURY

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(Proceedings recorded by mechanical stenography,

1 that's occurring away from Trilogy, and towards SAP as

2 SAP added hierarchy accesses in October of 1998.

3 Q. All right. I want to shift gears now from the

4 Trilogy mindset in the negotiation over to the SAP

5 mindset, okay?

6 Did you do any investigation into the facts in

7 this case in order to inform yourself about what things

8 SAP would be thinking about during the negotiation?

9 A. I did.

10 Q. Okay. And did you see any evidence in SAP's

11 mindset about the importance of the patented technology

12 back around the time of the hypothetical negotiation and

13 before?

14 A. Yes, sir, I did.

15 Q. Okay.

16 MR. COLE: If we could bring up the next

17 slide, which is Plaintiffs' Exhibit 150.

18 Q. (By Mr. Cole) Can you tell us what this is?

19 A. Well, this is an internal SAP e-mail from May

20 of 1997 from Bernard Neumann, who is a senior technical

21 executive within SAP, to his colleague.

22 Q. Okay. And what's the subject of this e-mail?

23 It appears that Whirlpool is mentioned.

24 Is that a company we've heard something about?

25 A. We have. We've heard testimony about that

1 previously.

2 Q. Okay. And they announced some -- they said
3 something about having plans having a -- excuse me -- we
4 plan to have a SAP pricing engine.

5 Does that indicate that was in existence at
6 the time in 1997 or still on the horizon?

7 A. This is May 1997, and it says -- SAP is saying
8 we plan to have an SAP pricing engine, so it's clear
9 it's not there yet.

10 Q. Okay. What -- what significance is it that
11 SAP is informing Whirlpool of a plan in the future about
12 adding functionality just like Trilogy's SC Pricer?

13 A. Well, they're telling Whirlpool that, look, we
14 may not have this feature now, but we plan to have it.
15 Just wait, and we'll put it into our products.

16 Q. Does that have an impact on demand in sales in
17 the market for a company like Trilogy?

18 A. Oh, absolutely. We've heard testimony about
19 that before as well from Mr. Carter and Mr. Dholakia.

20 MR. COLE: Mr. Diaz, if we could go to
21 the next slide, which is Plaintiffs' Exhibit 1088.

22 Q. (By Mr. Cole) I think this is another internal
23 SAP document.

24 Can you tell us what this one is?

25 A. This is an e-mail from August 1997 from

1 Mr. Neumann again to his colleague, another senior --
2 very senior executive within SAP, named Peter Zencke.
3 And in this e-mail, Mr. Neumann says that Trilogy is
4 raking in the cash among the SAP customers with their
5 SAP price.

6 Q. Okay. And it mentions two customers
7 specifically. Are those customers that we've heard
8 testimony about being customers who bought Trilogy's
9 Pricer product?

10 A. Yes, sir.

11 Q. Okay. And what's Mr. Neumann's final
12 statement there?

13 A. Mr. Neumann says: It bothers me that Trilogy
14 is always one step ahead.

15 Q. What does that indicate to you about the
16 mindset SAP would have in the hypothetical negotiation
17 in order to obtain the right to use the Trilogy pricing
18 technology in their products?

19 A. Well, clearly it's evidence that it's
20 important to SAP, because SAP is bothered that Trilogy
21 is one step ahead.

22 MR. COLE: Mr. Diaz, if we could go to
23 the next exhibit, Plaintiffs' Exhibit 7.

24 Q. (By Mr. Cole) It looks like the subject of
25 this internal SAP e-mail is Goodyear.

1 Is that another customer we've heard about
2 that -- that was a Trilogy Pricer customer?

3 A. Yes, sir.

4 Q. Okay. And can you tell us what's going on in
5 this e-mail?

6 A. Well, this is a November '97 e-mail saying
7 that SAP perceives an urgent situation at Goodyear Tire.
8 Trilogy is in at an executive level with their pricing
9 offering, positioned as part of their Selling Chain.

10 Q. And it says something about seats at risk. Do
11 you see that?

12 A. Yes.

13 Q. What's the significance of that to your
14 opinions?

15 A. Well, we talked about that a little bit
16 previously, about how the business model in this field
17 is based upon seats. And seats being at risk means lost
18 revenues for somebody.

19 Q. Okay. And does this impact your opinions
20 about whether the Trilogy pricing technology was driving
21 demand for SAP's own products?

22 A. Yes, sir. This is further evidence of that.

23 Q. And the 2000 seats that are referenced in this
24 e-mail, are those SAP seats or Trilogy seats?

25 A. Those are SAP seats at risk.

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