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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 _____)
11 UNITED STATES OF AMERICA, et al.,) CASE NO. C 04-0807 VRW
12 Plaintiffs,) Filed June 8, 2004
13 v.) Hearing Date: June 10, 2004 at 2:00 PM
14 ORACLE CORPORATION) **PLAINTIFFS’ MEMORANDUM OF POINTS**
15 Defendant.) **AND AUTHORITIES IN OPPOSITION TO**
16) **DEFENDANT’S MOTION TO EXCLUDE**
17) **THE TESTIMONY OF PROFESSOR**
18) **MARCO IANSITI**
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18 **INTRODUCTION**

19 Oracle’s Motion to exclude the expert testimony of Professor Marco Iansiti should be
20 denied. Professor Iansiti’s expert testimony will be offered concerning the capabilities of
21 enterprise resource planning (“ERP”) software for human resources management (“HRM”) and
22 financial management systems (“FMS”) and their ability to satisfy the functional and
23 technological requirements of large commercial enterprises. Defendant seeks to have Professor
24 Iansiti’s testimony excluded under *Daubert* and its progeny based upon allegations that: 1) his
25 advanced degrees are in physics rather than computer science or information technology; 2) his
26 academic research has not “studied enterprise resource planning software in general—let alone

1 the specific field of HRM and FMS software;”¹ and 3) because his methodology does not reflect
2 any academic or professional discipline. Defendant misstates the legal standard to be applied by
3 the Court in assessing technical expert qualifications; misunderstands the depth and breadth of
4 Professor Iansiti’s experience, academic, and otherwise; and misconstrues the methodology that
5 he used to undertake his review.

6 Rule 702 allows a witness to be “qualified as an expert by knowledge, skill and
7 experience, training or education.” Fed. R. Evid. 702. *See Kumho Tire Co. v. Carmichael*, 526
8 U.S. 137, 152 (1999). As demonstrated below, Professor Iansiti’s knowledge, research, and
9 experience in software products—including enterprise software such as the products sold by
10 Oracle and PeopleSoft—make him particularly well situated to assist the Court. The structured
11 methodology used by Professor Iansiti to reach his expert conclusions is consistent with those that
12 he and his colleagues have applied to scholarly research projects used to evaluate the
13 relationships between technology and product development.

14 ARGUMENT

15 I. The *Daubert* Standard for Admissibility Is Applied Flexibly to Technical Experts

16 Rule 702 of the Federal Rules of Evidence provides for the admissibility of expert
17 testimony in the federal courts, setting the following parameters:

18 If scientific, technical, or other specialized knowledge will assist the trier of fact to
19 understand the evidence or to determine a fact in issue, a witness qualified as an expert
20 by knowledge, skill, experience, training, or education, may testify thereto in the form
21 of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data,
22 (2) the testimony is the product of reliable principles and methods, and (3) the witness
23 has applied the principles and methods reliably to the facts of the case.

24 Fed. R. Evid. 702; *see Reiffin v. Microsoft Corp.*, 270 F. Supp. 2d 1132, 1145 (N.D. Cal. 2003)
25 (Walker, J.).

26 Rule 702 affords a court wide latitude to admit expert testimony that is both relevant and

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28 ¹ Defendant Oracle Corporation’s Memorandum of Points and Authorities In Support of
Defendant Oracle Corporation’s Motion To Exclude Testimony of Marco Iansiti at 4 [Def.’s
Mem.].

1 reliable. See *Kumho Tire Co.*, 526 U.S. at 147 (expanding *Daubert*'s flexible application to
2 technical expert testimony); *Daubert*, 509 U.S. at 588; *Andrews v. Metro North Commuter R.R.*
3 *Co.*, 882 F.2d 705, 708 (2d Cir. 1989) ("For an expert's testimony to be admissible . . . it must be
4 directed to matters within the witness' scientific, technical, or specialized knowledge and not to
5 lay matters which a jury is capable of understanding and deciding without the expert's help.").
6 "If it satisfies these two requirements, then it is a matter for the finder of fact to decide what
7 weight to accord the expert's testimony." *Kennedy v. Collagen Corp.*, 161 F.3d 1226, 1230-31
8 (9th Cir. 1998) (reversing exclusion of scientific medical testimony when court improperly
9 ignored expert's reliance on scientific journals and when expert's conclusions were based on
10 reasoning and methodology "of the kind traditionally used by rheumatologists."). The standard is
11 applied even more flexibly in a bench trial, where unlike a jury trial, there is "little risk that the
12 expert testimony [will] be given undue weight." *In re Bay Area Material Handling, Inc.*, 1995
13 WL 729300, at *6 (N.D. Cal. Dec. 4, 1995) (Walker, J.); see *Volk v. United States*, 57 F. Supp.
14 2d 888, 896 n.5 (N.D. Cal. 1999) ("[I]t bears noting that the *Daubert* gatekeeping obligation is
15 less pressing in connection with a bench trial.").

16 Rule 702 provides a flexible standard for admitting technical or non-scientific expert
17 testimony. See *Daubert*, 509 U.S. at 588 (Federal Rules of Evidence have a "liberal thrust;"
18 including "general approach of relaxing the traditional barriers to 'opinion' testimony."); *Jinro*
19 *Am., Inc. v. Secure Investments, Inc.*, 266 F.3d 993, 1004 (9th Cir. 2000); 4 *Weinstein's Federal*
20 *Evidence* § 702.01[1] (Supp. 2002) ("Expert testimony is liberally admissible . . ."). In *Kumho*
21 *Tire*, the Supreme Court expanded *Daubert*'s flexible principles to "testimony based on
22 'technical' and 'other specialized' knowledge." 526 U.S. at 141. The same standard applies to
23 both the expert's qualifications and methodology. See *Elcock v. Kmart Corp.*, 233 F.3d 734, 741
24 (3d Cir. 2000) (liberal admissibility of expert testimony under *Daubert* extends to expert
25 qualifications); *Thomas v. Newton Int'l Enters.*, 42 F.3d 1266, 1269 (9th Cir. 1994) (Rule 702
26 "contemplates a broad conception of expert qualifications."). The Supreme Court observed in
27 *Kumho Tire* that *Daubert*'s listed criteria are only suggestions and may not be applicable to all
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1 expert fields. *See Kumho Tire Co.*, 526 U.S. at 1999 (“In other cases, relevant reliability
2 concerns may focus upon personal knowledge or experience.”).

3 “The focus, of course, must be solely on principles and methodology, not on conclusions
4 that they generate.” *Daubert*, 509 U.S. at 594-95; *Elsayed Mukhtar v. California State Univ.*,
5 299 F.3d 1053, 1063 (9th Cir. 2002) (“gatekeeper’s” role is to exclude “junk science”). The
6 Court must thus make a “preliminary assessment of whether the reasoning or methodology
7 underlying the testimony is scientifically valid and of whether that reasoning or methodology
8 properly can be applied to the facts in issue.” *Daubert*, 509 U.S. at 592-93. Still, “[v]igorous
9 cross examination, presentation of contrary evidence, and careful instruction on the burden of
10 proof are the traditional and appropriate means” for the opposing party to attack admissible
11 evidence. *Daubert* 509 U.S. at 596.

12 Here, Professor Iansiti will be proffered as a technical expert to aid the Court’s
13 understanding of the complex technology products at issue in this case. Expert testimony is
14 admissible if it provides the trier of fact a view of complex evidence above the understanding of
15 a lay person. *See 4 Weinstein’s Federal Evidence* § 702.03[1] (Supp. 2004); *see also Davis v.*
16 *Mason County*, 927 F.2d 1473, 1484-85 (9th Cir. 1991) (expert testimony regarding industry
17 standards assisted jury in determining whether Defendant’s conduct was negligent).

18 Expert opinion is especially helpful to the finder of fact when complex technology
19 products are at issue. *See Network, LLC v. Central Corp.*, 242 F.3d 1347, 1355 (Fed. Cir.
20 2001) (“Evidence concerning the technological aspects of a patented invention may be of
21 assistance to the court when dealing with complex technologies or those outside of the court’s
22 expertise.”); *Pickholtz v. Rainbow Techs., Inc.*, 260 F. Supp. 2d 980, 984 (N.D. Cal. 2003)
23 (relying on expert opinion regarding whether product at issue required connection to computer as
24 a peripheral device when undergoing product development).

25 **II. Professor Iansiti Is Highly Qualified to Offer Expert Testimony Regarding HRM and**
26 **FMS Products, Technological Capabilities, and Technological Potential**

1 Oracle contends that neither Professor Iansiti’s academic background nor his research,
2 and other expertise are relevant to analyzing the HRM and FMS software products. Each
3 contention lacks merit.

4 **A. Professor Iansiti’s Academic Background Qualifies Him to Testify in**
5 **this Case**

6 Professor Iansiti’s body of scholarly research and his specific research into software
7 product development, operations and management of enterprises and technology integration make
8 him highly qualified to testify as an expert in this case.

9 Professor Iansiti’s fifteen-year association with Harvard Business School has included
10 extensive academic research and writing on technology, product development, operations, and
11 management for enterprises large and small. Professor Iansiti has applied his scholarly research
12 to real world business problems in the course of his professional consultancies, membership on
13 boards of directors, advisory activities to companies, and as vice president of products and
14 strategy for a software applications company whose products needed to interface with the HRM
15 and FMS software at issue in this case. *See Bryant v. City of Chicago*, 200 F.3d 1092, 1098 (7th
16 Cir. 2000) (extensive academic and practical experience in an area of expertise is certainly
17 sufficient to qualify potential witness as expert); *United States v. Baker*, 930 F.2d 1408, 1411
18 (9th Cir. 1991) (finding trial court properly admitted expert testimony when expert educated as
19 civil engineer and experience in relevant job function).²

20 Defendant’s submission to the court presents only a portion Professor Iansiti’s academic
21 and professional qualifications.³ To correct any misapprehensions about Professor Iansiti’s

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23 ² Even in those instances where an expert’s opinions are susceptible to challenge,
24 “[d]isputes as to the strength of [an expert’s] credentials . . . methodology, or lack of textual
25 authority for his opinion go to the weight, not the admissibility, of his testimony.” *McCulloch v.*
26 *H.B. Fuller, Co.* 61 F. 3d 1038, 1044 (2d Cir. 1995), *citing Daubert v. Merrell Dow Pharm. Inc.*,
27 509 U.S. 579 (1993).

28 ³ Inexplicably, Defendant attached only excerpts of Professor Iansiti’s CV to the Daubert
brief, excluding pages 3, 6, and 7, and thereby excluding considerable information about his
qualifications. Additionally, Oracle has not attached a complete copy of Professor Iansiti’s Expert
Report, despite repeated citations to it. Oracle excluded portions of Professor Iansiti’s report
pertaining to his methodology in this case. His descriptions directly contradict Oracle’s

1 qualifications and methodologies occasioned by Defendant's selective approach a complete copy
2 of his CV and his report is provided. *See* Ex. D (complete copy served upon Defendant on April
3 26, 2004).

4 **B. Professor Iansiti's Academic Research and Experience Bears Directly Upon**
5 **the Disputed Issues of Fact in this Case**

6 Professor Iansiti's academic research and professional experience has focused on the
7 intersection of technology (enterprise software and hardware) and the operations of corporate
8 enterprises.⁴ Since joining the Harvard Business School faculty in 1989, with a PhD in Physics
9 from Harvard University, he has developed and taught courses concerning the development of
10 technology, software and hardware products and their relationship to the effective operation and
11 management of enterprises. Professor Iansiti has designed and taught courses to Harvard MBA
12 candidates and to company executives enrolled in the Harvard Business School's executive
13 business programs on technology, product development and operations management.⁵ In July
14 1998, Professor Iansiti co-designed the PhD program in Information Technology and Management
15 and co-chaired the program until January 2004. The PhD program, which is jointly offered by the
16 Division of Engineering and Applied Sciences ("DEAS") and the Harvard Business School,
17 "seeks to conduct systematic and innovative studies of technological aspects of business and,
18 conversely, business aspects of technology development."⁶

19 _____
20 contentions that the proposed testimony reflected in his report lacks "academic or professional
21 discipline." *See* Ex. A & B to Decl. of Carolyn Galbreath; Def.'s Mem. at 6.

22 ⁴ Deposition Transcript of Professor Marco Iansiti (Iansiti Dep. Tr.), May 28, 2004 at p.8.
23 "I am expert in the management of operations, in the management of technology for enterprises,
24 large and small. I'm also expert in product development and innovation and I've also had
25 expertise in—I've taught and researched on the strategy behind those – some operations and
26 technology management challenges if you like."

27 ⁵ The Harvard case method is world-renowned and has been duplicated by business
28 schools around the globe. Professor Iansiti has contributed a substantial body of Harvard case
studies and teaching notes involving software companies, such as J.P. Morgan (Bank Zero),
Microsoft Office Business, MultiMedia Publications and Microsoft Explorer, Desktop.com,
Motive Communications and Yahoo's mail system software, NetDynamics, Inktomi.

⁶ Harvard University, Division of Engineering and Applied Sciences, *Graduate Study: IT
and Management*, available at <http://www.das.harvard.edu/> (last visited 6/7/04).

1 Professor Iansiti has conducted extensive academic research into the development of
2 information technology software products. His research has been published in books and
3 scholarly publications over the past fifteen-years. For example, in *Technology Integration:
4 Making Critical Choices in a Turbulent World*, Professor Iansiti synthesized eight-years of
5 research about how organizations manage product research and development to bring technology
6 hardware and software products to market.⁷ Professor Iansiti extended his research to the effect
7 of the internet on software development, which included analysis of the software product
8 offerings of such companies as Microsoft, Yahoo, Netscape, and NetDynamics.⁸ In research
9 undertaken from 1995 to 2003, Professor Iansiti studied how companies such as CVS, Walgreens,
10 Schwab, Merrill, and Johnson&Johnson used software technology to extend their product
11 offerings and compete.⁹ That research forms the basis of his forthcoming book, to be published in
12 July, *The Keystone Advantage: What the New Dynamics of Business Ecosystems Mean for
13 Strategy, Innovation and Sustainability*.¹⁰

14 Software architecture and features, which map software functional capabilities to actual
15 business processes they must automate, is the core of ERP software and a key element of this
16 case. Defendant would have the Court reject Professor Iansiti's testimony because his academic
17 expertise allegedly has been "focused on product development issues rather than the software
18 needs of those firms."¹¹ The argument lacks merit for two reasons. First, his experience in
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20 ⁷*Id.*; Harvard Business School Press, Preface at xi (1998).

21 ⁸ Iansiti Dep. Tr. at pgs 32-33, referencing, Marco Iansiti & Alan MacCormack,
22 *Developing Products on Internet Time*, Harvard Business Review (75th Anniversary Issue)
23 (1997); MacCormack, Verganti & Iansiti, *Developing Products On Internet Time: The Anatomy
of a Flexible Development Process*, 1 Mgmt. Sci. 47 (Jan. 2001).

24 ⁹ Marco Iansiti & Roy Levien, *Strategy as Ecology*, 3 Harv. Bus. Rev. 84 (Mar. 2004);
25 Marco Iansiti, F. Warren McFarlan & George Westerman, *Leveraging the Incumbent's
26 Advantage*, 4 Sloan Mgmt. Rev. 44 (Summer 2003): 58-64; M.McGrath & Marco Iansiti,
Envisioning IT-Enabled Innovation, PTRM's Insight (Fall/Winter 1998).

27 ¹⁰ Co-authored with Roy Levien, forthcoming from Harvard Business School Press, July
28 2004.

¹¹ Def.'s Mem. at p. 4

1 software product development provides expertise to evaluate the software products at issue here.
2 Second, in developing software products to automate corporate functions, Professor Iansiti
3 necessarily needed to understand the business processes themselves. Professor Iansiti is well-
4 positioned to assess the factors that contribute to the HRM and FMS products of Oracle and
5 PeopleSoft and the ability of other products to meet the same business functionality
6 requirements.¹²

7 Indeed, Professor Iansiti has had direct experience developing software functions and
8 features to satisfy business requirements. While the vice president of products and strategy at
9 Model N, Inc., he applied his scholarly expertise to create pricing and contract management
10 business applications software to be used by firms in conjunction with the FMS ERP software.¹³
11 With responsibility for “product management, product marketing, and strategy,” he had to
12 understand the enterprise software needs of his corporate customers. Professor Iansiti has
13 extended his practical knowledge about the impact of technology (software and hardware)
14 selection and implementation on the operations of hundreds of companies through numerous
15 consultations, advisory engagements, and memberships on the boards of directors of technology
16 companies. For example, he served as an advisor to IDe, Inc., an enterprise procurement
17 software applications company whose products interact with the enterprise HRM and FMS
18 products at issue in this case.¹⁴ Additionally, Professor Iansiti testified that he served as an
19 advisor to Merloni, a multi-billion-dollar European appliance manufacturer concerning its
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24 ¹² Marco Iansiti & Alan MacCormack, *Developing Products on Internet Time*, Harv. Bus.
25 *Rev.* (75th Anniversary Issue) (1997); MacCormack, Verganti & Iansiti, *Developing Products On*
Internet Time: The Anatomy of a Flexible Development Process, 1 *Mgmt. Sci.* 47 (Jan. 2001).

26 ¹³ Iansiti Dep. Tr. at 34-35.

27 ¹⁴ *Id.* Professor Iansiti described IDe as offering product life cycle management software
28 along with companies such as Oracle and SAP. *Id.* at pgs. 38-39. Additionally, he described
serving in an advisory capacity to Supplier Market, a procurement solutions platform that was
purchased by Ariba in 2000. *Id.* at 39-41.

1 selection of a ERP system.¹⁵ Neither Professor Iansiti’s research and experience nor the software
2 selection issues in this case are as narrow as portrayed by Defendant.

3 The Court will hear substantial lay testimony from customers regarding product selection
4 and requirements. Professor Iansiti’s testimony will assist the Court in understanding the software
5 features and functional capability necessary to support the requirements of large complex
6 businesses and why the features and functional capability of certain vendor’s HRM and FMS
7 would be inadequate to support Enterprise customer requirements.

8 **III. Professor Iansiti’s Methodology Is Appropriately Applied to the Technology Products**
9 **at Issue Here**

10 Defendant’s challenge to Professor Iansiti’s methodology is also without merit. Professor
11 Iansiti used a structured methodology, drawn from his field of expertise, to analyze the complex
12 technology products and enterprise operations in this case. He identified certain high function
13 business requirements of large enterprise customers for HRM and FMS software products and
14 compared the software offerings of a large number of software vendors to determine which among
15 them offered software that could functionally satisfy those requirements.

16 In his scholarly research, Professor Iansiti and his colleagues have used a methodology that
17 he describes as a comparison of independent case studies to understand the challenges that firms
18 encounter in managing their operations in a complicated network of organizations.¹⁶ Professor
19 Iansiti’s methodologies for evaluating software vendors’ capabilities to satisfy the functional
20 requirements of large complex enterprises in this case conforms to his regularly-used methods of
21 academic research and evaluation. *Kumho Tire Co.*, 526 U.S. at 152 (“The objective of that
22 requirement is to ensure the reliability and relevancy of expert testimony. It is to make certain that
23 an expert, whether basing testimony upon professional studies or personal experience, employs in
24 the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the
25 relevant field.”); *Elsayed Muktar*, 299 F.3d at 1063-64 (requiring trial court to ensure that same

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28 ¹⁵ *Id.* at 44-47.

¹⁶ *Id.* at 20-22.

1 intellectual rigor is used by expert outside and inside the court room to avoid “junk science”);
2 *Tyus v. Urban Search Manag.*, 102 F.3d 256 (7th Cir. 1996).

3 In undertaking the research used for his expert report, Professor Iansiti applied a type of
4 structured case-study methodology. As described in his report, after reviewing a variety of
5 sources, including a review of RFP’s which he found “useful to ascertain the most important
6 functional and other requirements of enterprises,” Professor Iansiti identified a set of criteria that
7 are important to Enterprise customers.¹⁷ He established threshold requirements that each vendor
8 must satisfy to be identified for further evaluation: “(a) provide software to the U.S. market; (b)
9 possess business credibility such as financial viability; (c) indicate an explicit and focused effort
10 selling to Enterprise customers (not necessarily to the exclusion of other customers); and (d)
11 supply the basic FMS and HRM functionality,” which are described and justified in the first
12 twenty of pages of his report.¹⁸ Professor Iansiti’s selected focus on core FMS and HRM
13 functionality is consistent with both an assessment of operations that are key to every business and
14 to those areas of significant product overlap that are involved in this case.¹⁹ Recognizing that such
15 key functionality would be important—but not sufficient—meeting the business requirements of
16 large enterprises, Professor Iansiti selected an evaluation methodology designed to be inclusive
17 rather than narrowly restrictive.

18 Using information from a wide-variety of sources, Professor Iansiti examined 145
19 companies against those four criteria. As explained in his report, some companies are incapable
20 of meeting the most basic of criteria, such as selling HRM and FMS software in the United States.
21 Another group of firms supply specialized point solutions that can be added to HRM and FMS
22 software, but cannot supply basic functions such as general ledger and human resources to track

24 ¹⁷ Iansiti Report, at ¶33. Defendant’s contention that Professor Iansiti used a “biased
25 sample of the industry” is a red herring. Def.’s Mot. at 8. Professor Iansiti looked to numerous,
26 independent sources to ascertain the software needs of large enterprises. If Defendant believes
27 that those needs are not accurate or broadly required, it may seek to prove such facts at trial to
reduce the weight accorded to Professor Iansiti’s testimony by the Court.

28 ¹⁸ Iansiti Report, 21-22.

¹⁹ *Id.* at ¶¶ 17-82.

1 personnel within a firm. Another group of firms are simply not sufficiently viable financially (i.e.
2 have revenues in the tens of millions of dollars and R&D expenditures of incrementally less) to
3 compete with companies like Oracle, which spent hundreds of millions of dollars on research and
4 development last year alone. Finally, a group of firms were excluded based upon self- “de-
5 selection.” For those firms, Professor Iansiti confirmed that their business models, sales history,
6 and expressed intent to serve mid-market customers excluded them from competition with Oracle
7 and PeopleSoft for sales of high function software.²⁰

8 As discussed in detail in his report, Professor Iansiti then concentrated his evaluation on
9 understanding the capabilities of the remaining group of HRM and FMS vendors in order to
10 determine which, if any, offer high-function HRM and FMS software sufficient to satisfy the
11 business requirements of large and complex Enterprises.²¹ As detailed in his report, for this
12 smaller group, Professor Iansiti mapped the software capability of competing vendors, (such as
13 their general ledger functionality) to basic requirements of Enterprises (for example, the necessity
14 to roll-up a chart of accounts across its entire enterprise).²² To accomplish this, Professor Iansiti
15 analyzed a variety of sources, primary among them the product documentation and other
16 operational literature supplied by those vendors to customers. Professor Iansiti applied the same
17 methodology to determine if outsourcers or putative new entrants are capable of providing

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21 ²⁰ *Id.* at ¶¶ 131-40.

22 ²¹ *Id.* at ¶ 28. “[I] streamlined my analysis to focus on the following three important factors
23 that drive vendor selection in a typical Enterprise:(a) vendor credibility, experience and
24 capabilities; (b) basic software functional requirements for human resource management and/or
25 financial management systems; and c) high function software requirements of an Enterprises’
26 complex and diverse organization.” As to the final category, Professor Iansiti notes that: “In
27 general, Enterprises: (a) have a diverse and changing set of organizational units, operating in many
28 Jurisdictions and a variety of geographic locations: (b) require that the operation of each
organizational unit is in keeping with its local environment, Jurisdiction and geographical location
rather than its organizational boundary; and c) desire to share common financial and human
resource information and integrate a variety of common business practices throughout its
organizational units, legal entities and geographical locations.” *Id.* at ¶ 16.

²²*Id.* at ¶¶ 150-60.

1 equivalent functionality to large complex enterprises.²³ The results of this inquiry are detailed at
2 length in his report.²⁴

3 In an effort to call Professor Iansiti’s methodology into question, Defendant cites
4 inapposite cases involving “experts” so deficient as not to be comparable to Professor Iansiti’s
5 qualifications or his thorough and detailed expert reports. For example, in *Hammond v. Coleman,*
6 *Inc.*, cited by Defendant, the court excluded the proffered expert in a products liability case
7 because the expert had not tested the product or similar products, was not familiar with the
8 product, and had merely repeated the plaintiff’s testimony that an accident had occurred. 61 F.
9 Supp. 2d 553, 538-39 (S.D. Miss. 1999). In *Lang v. Kohl’s Food Stores, Inc.*, also cited by
10 Defendant, the court excluded the proffered expert because his report was merely a three-page
11 summary of the store’s employees’ job descriptions, and because the expert had not even sought to
12 verify that those employees’ actual jobs matched the published descriptions. 217 F.3d 919, 925
13 (7th Cir. 2000).²⁵

14 Defendant also cites a medical malpractice case where the court, following *Daubert’s*
15 focus on excluding “junk science,” scrutinized the proffered medical expert’s methodology to
16 ensure that the expert’s inquiry was grounded in an accepted scientific analysis. *See Claar v.*
17 *Burlington Northern Railroad*, 29 F.3d 499, 502-03 (9th Cir. 1994) (excluding medical experts’
18 testimony when the experts failed to respond to court order requiring experts to describe their
19 methodology; experts did not attempt to screen out other medical factors; and expert report cited
20 irrelevant medical literature). However, *Claar*, like *Dabuert* itself, involved medical experts,
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22 ²³ See as an example, Iansiti Dep. Tr. at 91-96.

23 ²⁴ Iansiti Report at ¶¶161-247.

24 ²⁵ Defendant also cites two cases that are irrelevant to their motion. Although Defendant
25 states on page 6 of its memorandum that Professor Iansiti’s report reads like a trial brief, it does
26 not – and could not – claim that Professor Iansiti reaches legal conclusions. Therefore,
27 Defendant’s citations to *Griffin v. City of Clanton*, and *Lipsett v. Univ. of Puerto Rico*, are
28 irrelevant. *See Griffin*, 932 F. Supp. 1357 (M.D. Ala. 1996) (excluding affidavit attached to
memorandum in opposition to summary judgment that stated legal conclusion); *Lipsett*, 740 F.
Supp. 921, 925 (D.P.R. 1990) (pre-*Daubert* case excluding testimony that did not aid the jury and
was merely repetitive of attorney’s argument).

1 where arguably the most pressing policy concern was that juries would be misled by experts
2 offering novel, untested theories, or even “junk science.” *See Daubert v. Merrell Dow*
3 *Pharmaceuticals, Inc.*, 509 U.S. 579, 595-97 (1993) (toxic tort case; new standard will prevent
4 “befuddled juries”); *Elsayed Mukhtar v. Cal. State Univ., Hayward*, 299 F.3d 1053, 1063-64 (9th
5 Cir. 2002) (*Daubert* guards against “junk science” and “is particularly important considering the
6 aura of authority experts often exude, which can lead juries to give more weight to their
7 testimony”); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1321 n.17 (9th Cir.
8 1995) (scientific evidence must “not mislead the jury”).

9
10 **IV. Professor Iansiti’s Expertise and Testimony Will Aid the Court in Assessing the**
11 **Technical and Business Issues in this Case That May Be Beyond the Grasp of a Lay**
12 **Individual**

13 There is a fundamental disagreement between the parties about how the merger of Oracle
14 and PeopleSoft would affect the market for high function HRM and FMS software. Oracle’s
15 rebuttal to the Plaintiffs’ case has contended that the ERP software industry is undergoing a
16 “paradigm-shift” that renders obsolete the industry model that has evolved over the past two or
17 more decades and, thereby, eliminates any antitrust concerns that might flow from the merger of
18 Oracle and PeopleSoft. Defendant posits a model of competition, centered on the integration of the
19 “stack” of software applications, and argues that such integration will protect consumers from
20 anticompetitive effects if the merger is allowed.

21 Professor Iansiti’s fifteen-years of scholarly research have been dedicated to understanding
22 the role of technology integration in business practices. That research is presented in his upcoming
23 book and numerous published articles such as *Technological Evolution, System Architecture and*
24 *the Obsolescence of Firm Capabilities*.²⁶ He has also studied the advantage incumbents have in
25 technology industries in “*Leveraging the Incumbent’s Advantage*.”²⁷

26 ²⁶ Iansiti, M. And Khanna, T, 4 *Industrial and Corporate Change* 333-61 (1995); *see also*,
27 M. Iansiti & MacCormack, *Technological Evolution, Architecture and the Obsolescence of Firm*
28 *Capabilities*, Harvard Business School, 2002.

²⁷ Iansiti Dep. Tr. at 55; Marco Iansiti, F. Warren McFarlan & George Westerman,
Leveraging the Incumbent’s Advantage, 44 *Sloan Mgmt. Rev.* 44, 58-64 (Summer 2003).

1 At a deeper level, Professor Iansiti's direct experience with software integration products
2 should provide substantial benefit to the Court's understanding.²⁸ Professor Iansiti was an advisor
3 to NetDynamics, the company which developed one of the first pieces of Java applications server
4 software and later sold it to Sun Microsystems.²⁹ The Java applications server software platform
5 is part of the applications integration software platform that Oracle and its experts claim are
6 involved in the "paradigm shift" and should (in combination with other software products) help
7 mitigate any competitive concerns about this merger. Professor Iansiti has conducted fifteen- years
8 of academic and professional research into the challenges facing firms as they try to integrate. He
9 is highly qualified to assist the Court in evaluating Defendant's claim that software "stack"
10 integration will render inconsequential a merger of two of the three software vendors who: 1) have
11 the richest core HRM and FMS offerings; 2) have the deepest set of complementary HRM and
12 FMS software modules; and 3) offer the widest variety of other ERP software pillars (supply
13 chain management ("SCM"), customer relationship management ("CRM"), and business analytics,
14 product life-cycle management ("PLM"). Professor Iansiti can explain, for example, why the
15 integration will extend rather than diminish the coercive power Oracle will obtain by acquiring
16 PeopleSoft.

17 CONCLUSION

18 Professor Iansiti is qualified to provide this Court with expert testimony about the facts that
19 are well beyond "everyday experience." The Court's understanding of the issues in dispute is
20 best served by the Court hearing his testimony and, thereafter, weighing its benefits to issues to be
21 adjudicated.

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25 ²⁸ Iansiti Dep. Tr. at 35-37.

26 ²⁹ Sun Microsystems, Inc., *Sun Microsystems, Inc. to Acquire Netdynamics, Inc.*, July 1,
27 1998, available at <http://www.sun.com/smi/Press/sunflash/9807/sunflash.980701.1.html> (last
28 visited 6/8/04). The Sun Microsystems press release stated, "With the acquisition of
NetDynamics, Sun will gain a critical component for the enterprise solutions that companies
working on next generation network applications are demanding," said Edward J. Zander, Chief
Operating Officer of Sun Microsystems, Inc.

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Respectfully Submitted,

Dated: June 8, 2004

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