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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, et al., Plaintiffs, v. ORACLE CORPORATION Defendant.	CASE NO. C 04-0807 VRW Filed June 8, 2004 Hearing Date: June 10, 2004 at 2:00 PM **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE THE TESTIMONY OF PROFESSOR MARCO IANSITI**

INTRODUCTION

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

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

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

ARGUMENT

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

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

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

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

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

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[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.].

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

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

expert fields. *See Kumho Tire Co.*, 526 U.S. at 1999 ("In other cases, relevant reliability concerns may focus upon personal knowledge or experience.").

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

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

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

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

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

A. Professor Iansiti's Academic Background Qualifies Him to Testify in this Case

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

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

Defendant's submission to the court presents only a portion Professor Iansiti's academic and professional qualifications.[3] To correct any misapprehensions about Professor Iansiti's

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

[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

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

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

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

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

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

[5] The Harvard case method is world-renowned and has been duplicated by business 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.ed/ (last visited 6/7/04).

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

Software architecture and features, which map software functional capabilities to actual business processes they must automate, is the core of ERP software and a key element of this case. Defendant would have the Court reject Professor Iansiti's testimony because his academic expertise allegedly has been "focused on product development issues rather than the software needs of those firms."[11] The argument lacks merit for two reasons. First, his experience in

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[7] *Id*; Harvard Business School Press, Preface at xi (1998).

[8] Iansiti Dep. Tr. at pgs 32-33, referencing, Marco Iansiti & Alan MacCormack, *Developing Products on Internet Time*, Harvard Business Review (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).

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

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

[11] Def.'s Mem. at p. 4

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

Indeed, Professor Iansiti has had direct experience developing software functions and features to satisfy business requirements. While the vice president of products and strategy at Model N, Inc., he applied his scholarly expertise to create pricing and contract management business applications software to be used by firms in conjunction with the FMS ERP software.[13] With responsibility for "product management, product marketing, and strategy," he had to understand the enterprise software needs of his corporate customers. Professor Iansiti has extended his practical knowledge about the impact of technology (software and hardware) selection and implementation on the operations of hundreds of companies through numerous consultations, advisory engagements, and memberships on the boards of directors of technology companies. For example, he served as an advisor to IDe, Inc., an enterprise procurement software applications company whose products interact with the enterprise HRM and FMS products at issue in this case.[14] Additionally, Professor Iansiti testified that he served as an advisor to Merloni, a multi-billion-dollar European appliance manufacturer concerning its

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[12] Marco Iansiti & Alan MacCormack, *Developing Products on Internet Time*, Harv. Bus. 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).

[13] Iansiti Dep. Tr. at 34-35.

[14] *Id.* Professor Iansiti described IDe as offering product life cycle management software 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 platofrm that was purchased by Ariba in 2000. *Id.* at 39-41.

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

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

III. Professor Iansiti's Methodology Is Appropriately Applied to the Technology Products at Issue Here

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

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

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[15] *Id.* at 44-47.

[16] *Id.* at 20-22.

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

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

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

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[17] Iansiti Report, at ¶33. Defendant's contention that Professor Iansiti used a "biased sample of the industry" is a red herring. Def.'s Mot. at 8. Professor Iansiti looked to numerous, independent sources to ascertain the software needs of large enterprises. If Defendant believes 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.

[18] Iansiti Report, 21-22.

[19] *Id.* at ¶¶ 17-82.

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

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

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[20] *Id.* at ¶¶ 131-40.

[21] *Id.* at ¶ 28. "[I] streamlined my analysis to focus on the following three important factors that drive vendor selection in a typical Enterprise:(a) vendor credibility, experience and capabilities; (b) basic software functional requirements for human resource management and/or financial management systems; and c) high function software requirements of an Enterprises's complex and diverse organization." As to the final category, Professor Iansiti notes that: "In general, Enterprises: (a) have a diverse and changing set of organizational units, operating in many 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.

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

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

Defendant also cites a medical malpractice case where the court, following *Daubert*'s focus on excluding "junk science," scrutinized the proffered medical expert's methodology to ensure that the expert's inquiry was grounded in an accepted scientific analysis. *See Claar v. Burlington Northern Railroad*, 29 F.3d 499, 502-03 (9th Cir. 1994) (excluding medical experts' testimony when the experts failed to respond to court order requiring experts to describe their methodology; experts did not attempt to screen out other medical factors; and expert report cited irrelevant medical literature). However, *Claar*, like *Dabuert* itself, involved medical experts,

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[23] See as an example, Iansiti Dep. Tr. at 91-96.

[24] Iansiti Report at ¶¶161-247.

[25] Defendant also cites two cases that are irrelevant to their motion. Although Defendant states on page 6 of its memorandum that Professor Iansiti's report reads like a trial brief, it does not – and could not – claim that Professor Iansiti reaches legal conclusions. Therefore, Defendant's citations to *Griffin v. City of Clanton*, and *Lipsett v. Univ. of Puerto Rico*, are 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).

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

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

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

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

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[26] Iansiti, M. And Khanna, T, 4 *Industrial and Corporate Change* 333-61 (1995); *see also,* M. Iansiti & MacCormack, *Technological Evolution, Architecture and the Obsolescence of Firm 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).

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

CONCLUSION

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

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[28] Iansiti Dep. Tr. at 35-37.

[29] Sun Microsystems, Inc., *Sun Microsystems, Inc. to Acquire Netdynamics, Inc.*, July 1, 1998, *available at* http://www.sun.com/smi/Press/sunflash/9807/sunflash.980701.1.html (last 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.

Respectfully Submitted,

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