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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, et al.,	} CASE NO. C 04-0807 VRW
Plaintiffs,	
v.	
ORACLE CORPORATION	
Defendant.	

**PARTIES' JOINT SUBMISSION OF DEFINITIONS**

Pursuant to the Court's Order, dated June 25, 2004, the parties have conferred regarding definitions for the terms specified in the Court's Order and have reached agreed-upon definitions for nearly all the terms. Except as indicated below, the parties jointly stipulate to the definitions set forth below. Those definitions or comments as to which the parties have not agreed are separately indicated below.

1. High-function software: The parties could not agree upon the definition for high-function software.

*Plaintiffs' separate definition:*

As an initial matter, Plaintiffs note that the definition of "high-function software" presents a different issue than the other terms on the Court's list. For the other terms, the

1 relevant question is how market participants generally use the word. “High-function software,”  
2 however, is a term adopted by Plaintiffs in order to describe more precisely the features of a  
3 category of software products that industry participants call “enterprise” software, “up-market”  
4 software, or “Tier One” software.” *See, e.g.*, Tr. at 274:24-275:7 (Richard Bergquist testimony);  
5 Tr. at 1771:5-1772:1 (Phillip Wilmington testimony); Tr. at 1554:25-1555:7 (Curtis Wolfe  
6 testimony); Tr. at 2180:22-2181:5 (Marco Iansiti testimony).<sup>1</sup> Through the evidence presented at  
7 trial, Plaintiffs have identified the features of this software that distinguish it from products  
8 developed and sold by other industry players (*e.g.*, mid-market, etc.). Plaintiffs describe these  
9 features below.

10 “High-function software” is a software product that is capable of executing a wide array  
11 of business processes at a superior level of performance. *See, e.g.*, Tr. at 2035:5-17 (Marco  
12 Iansiti testimony). Thus, “high-function” software must have at least the following advanced  
13 performance capabilities, not all of which each user may demand:

- 14 (a) the software must be *scalable*, such that it can track thousands of transactions and  
15 support thousands of concurrent users; *see, e.g.*, Tr. at 3011:19 to 3013:3 (Doug  
16 Burgum testimony); Tr. at 289:22 to 290:7 (Richard Bergquist testimony); Tr. at  
17 1755:11-24 (Ken Johnsen testimony);<sup>2</sup>

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20 <sup>1</sup> “High-function software” is also, however, how Plaintiffs have defined the relevant  
21 product market in this case. Market definition is, of course, a factual question, not a semantic  
22 one, and it is dependent on critical underlying facts about how a market operates. *Rebel Oil Co.,*  
23 *Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995) (“A ‘market’ is any grouping of  
24 sales whose sellers, if unified by a monopolist or a hypothetical cartel, would have market power  
25 in dealing with any group of buyers.”). Thus, while Plaintiffs herein define “high-function  
26 software” as Plaintiffs use the term in this case, Plaintiffs will be addressing the term as it relates  
27 to market definition in this case, and how Plaintiffs’ market definition is supported by the factual  
28 record of the trial, in the Proposed Findings of Fact and in the post-trial brief.

26 <sup>2</sup> As an example, whereas high-function software can process and track virtually  
27 unlimited transactions across companies, Lawson software – which Plaintiffs maintain is not  
28 high-function – cannot track more than 10,000 transactions between entities. Tr. at 2050:19-23  
(Marco Iansiti testimony).

- 1 (b) the software must be *highly configurable* (e.g., it must enable unlimited levels of  
2 organization), such that the user can mold the software to meet its business needs  
3 without having to undertake expensive and inefficient customization of the  
4 software; *see* Tr. at 1753:9-1754:8 (Ken Johnsen testimony); Tr. at 2046:19-  
5 2048:5, 2036:7-20 (Marco Iansiti testimony); Tr. at 284:17-285:6, 287:9-17  
6 (Richard Bergquist testimony);<sup>3</sup>
- 7 (c) the software must be able to *perform a variety of related transactions seamlessly*  
8 (e.g., provide a “very tight integration between” business processes without  
9 having to write customized code) and with a *high degree of ease and*  
10 *sophistication*; *see* Tr. at 1135:16-1136:13 (Scott Wesson testimony); *see also*,  
11 e.g., Tr. at 2039:12-2040:7 (Marco Iansiti testimony);<sup>4</sup> and
- 12 (d) the software must have the capability to *handle international aspects* of a  
13 business, such as multiple currencies, multiple languages, and multiple legal  
14 regimes (e.g., “enhanced multi-currency transaction support, invoicing in any  
15 currency, [and] cross-charging and inter-company accounting” and the support of  
16 “30 languages, all currencies, and many regulatory requirements in a single  
17 database” with all languages “installable in the same Unicode instance”). *See*  
18 P2208, at 14, 35; *see also* Tr. at 290:15-23 (Richard Bergquist testimony); *Cf.* Tr.

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20 <sup>3</sup> For example, high-function software generally permits the customer to establish  
21 unlimited distinct units and employees within each unit that can share data seamlessly and can  
22 be moved -- or reconfigured -- easily (such as with a click and a drag) without causing the loss of  
23 historical data. In contrast, the Lawson products permit only 5 levels of organization in FMS  
24 and only 3 in HRM and do not enable extensive data sharing across entities. Tr. at 2046:23-  
25 2047:5 (Marco Iansiti testimony).

26 <sup>4</sup> Examples include the ability (i) to accept thousands of invoices in different currencies  
27 and to remit payment in a different currency while automatically recalculating the exchange rates  
28 on a real-time basis; (ii) to create reports from hundreds of separate business units while  
29 permitting the user to quickly “drill down” to the underlying source data; (iii) to model  
30 reorganizations of the business and to generate forecasts; and (iv) to generate reports on costs  
31 associated with a product or component that may be drawn from dozens or even hundreds of  
32 distinct entities within the larger organization. Tr. at 2039:12-2040:7 (Marco Iansiti testimony).

1 at 3645:16-24 (Jay Coughlan testimony) (Lawson’s products only support French,  
2 French Canadian and Spanish, in addition to English); Tr. at 4106:15-25 (Jay  
3 Rising testimony) (integrated international payroll system ADP creating with  
4 SAP is “a new product, not a replacement product” for ADP’s current 26 “local”  
5 payroll solutions that are not integrated).

6 *Defendant’s separate definition:*

7 “High-function software” is a term coined by Plaintiffs as “shorthand” to “describe the  
8 phenomenon that . . . different customers have different requirements.” (Tr. at 30:23-31:3 C.  
9 Scott.) The term has no independent, industry-standard, or generally accepted meaning (Tr. at  
10 349:7-10 R. Bergquist), 2298:6-20 (K. Elzinga).), and the evidence offers no clear guidance on  
11 the aspects or dimensions of “high-function software” or the level of quality or performance that  
12 would qualify EAS software as “high-function software.” (*Compare* Tr. at 394:17-395:12 R.  
13 Bergquist), 1612:3-7 C. Bass), 2089:14-21 (M. Iansiti).) “High-function software” does not in  
14 fact describe a kind of software (in contrast to “lower-function software”), but rather customer  
15 performance requirements that, in some cases, allegedly can only be met by products from  
16 Oracle, PeopleSoft or SAP. (Tr. at 3807:8-25 (J. Hausman); Amended Complaint ¶ 23(b)  
17 (defining “high function FMS software” as “Financial Management Services (FMS) software  
18 and accompanying services . . . that meet[s] the demands of multifaceted organizations with high-  
19 level functional needs”).)<sup>5</sup>

20 2. Function:

21 A function is a business process that can be performed manually and/or can be automated  
22 in whole or in part by enterprise applications software. Examples of business functions include  
23 paying payroll or preparing a general ledger. Function is related to functionality, but is not used  
24 interchangeably.

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27 <sup>5</sup> Oracle does not believe the Court’s Order contemplated argument on which products  
28 are or are not “high-function,” and therefore will not respond to Plaintiffs’ arguments on that  
score.

1           3.     Functionality:

2           Functionality refers to the ability of enterprise applications software to automate  
3 particular business functions. Functionality can also be thought of as the capabilities of a  
4 software program.

5           *Plaintiffs' separate comments:*

6           Functionality is one means of distinguishing high-function software from basic software  
7 solutions. Tr. at 2039:2-2040:7 (Marco Iansiti testimony). A number of software solutions  
8 allow organizations to automate basic functions. For example, almost all organizations track  
9 basic information on their employees. Basic software packages allow the user to track employee  
10 names, addresses, salaries and job levels. In contrast, the high-function human resource capital  
11 management software sold by PeopleSoft, Oracle and SAP goes beyond the basics and allows an  
12 organization to track employees by skills, job classes, job codes, union affiliations, and any  
13 number of other criteria. Tr. at 1484:8-1485:20 (Mary Glover testimony). Thus in this example,  
14 the greater functionality of high-function human resource capital management software gives  
15 managers more information and allows an organization more efficiently and effectively to utilize  
16 its employees. As another example, "high functionality" can also be used to describe a software  
17 solution's ability to support international operations, such as the ability to make payments for  
18 and manipulate (*e.g.*, track/report/convert/consolidate) transactions in multiple countries  
19 denominated in multiple currencies subject to multiple regulatory regimes – *i.e.*, such software  
20 would have "international functionality."

21           *Defendant's separate comments:*

22           As explained above, the term "high-function software" is a DOJ-constructed term and  
23 Defendant Oracle Corporation cannot, based on the record or otherwise, assess its relation, if  
24 any, to the term "functionality."

25           4.     Core financial management services ("FMS") software:

26           The term "core financial management services ("FMS") software," as generally used in  
27 the software industry and by the parties in this case, refers to the software necessary to automate  
28

1 an organization’s basic financial functions, including the following modules: General Ledger,  
2 Accounts Receivable, Accounts Payable, and Cash and Asset Management.

3 5. Core human resource management (“HRM”) software:

4 The term “core human resource management (“HRM”) software,” as generally used in  
5 the software industry and by the parties in this case, refers to the software necessary to automate  
6 an organization’s basic human resource management functions, including the following modules:  
7 Payroll, Employee Tracking and Benefits Administration business processes.

8 6. Legacy system; Incumbent system:

9 A legacy system refers to an installed software system that was never or is no longer  
10 available for purchase as a new product or platform. An incumbent system refers to whatever  
11 software system a customer currently has installed. Legacy systems are one subset of incumbent  
12 systems.

13 7. Enterprise resource planning (“ERP”) software:

14 Enterprise resource planning (“ERP”) software refers, at a minimum, to the set of  
15 business applications software that is designed to automate an organization’s back-office  
16 functions, such as payroll, general ledger, accounts payable and receivable, benefits  
17 management, and employee recordkeeping. It traditionally encompasses HRM and FMS. Some  
18 also include one or more other pillars in the definition of ERP, such as Supply Chain  
19 Management (SCM) or Customer Relationship Management (CRM). It is Plaintiffs’ position  
20 that the term ERP is not equivalent to high-function software; high-function software is a subset  
21 of ERP.

22 8. Enterprise application software (“EAS”):

23 In contrast to ERP, enterprise applications software (“EAS”) refers to the broader  
24 universe of software applications that are used by an enterprise to automate its overall business  
25 processes. In addition to the Human Resource Management (HRM) and Financial Management  
26 Services (FMS) pillars that traditionally comprise ERP, EAS also encompasses the Supply Chain  
27 Management (SCM), Customer Relationship Management (CRM), Product Life Cycle  
28 Management, Student Information Systems (SIS), and Business Intelligence (BI) pillars. It is

1 Plaintiffs' position that the term EAS is not equivalent to high-function software; high-function  
2 software is a subset of EAS.

3 9. Integration:

4 In the context of this case, the term "integration" refers to the ability of a software  
5 application in one module to communicate with, work with and update software and data in  
6 another module. Most companies, particularly large ones, have a large number of software  
7 products that need to be integrated so they can communicate with each other.

8 10. Analytics:

9 Analytics is software that enables a company to use, analyze, report and aggregate data  
10 collected through one or more other business applications.

11 11. Module:

12 A module is software designed to automate one or more functions.

13  
14 Dated: July 1, 2004

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