

Nos. 12-16944, 12-17053

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ORACLE CORPORATION; ORACLE INTERNATIONAL
CORPORATION; ORACLE SYSTEMS CORPORATION; ORACLE
USA INC.; ORACLE EMEA LIMITED; J.D. EDWARDS EUROPE
LIMITED; SIEBEL SYSTEMS, INC.,

Plaintiffs-Appellants/Cross-Appellees,

v.

SAP AG; SAP AMERICA, INC.; TOMORROWNOW, INC.,

Defendants-Appellees/Cross-Appellants.

On Appeal from the United States District Court for the
Northern District of California, No. 07-CV-1658 PJH
Honorable Phyllis J. Hamilton

**APPELLEES' UNOPPOSED MOTION FOR EXTENSION OF
TIME TO FILE PRINCIPAL AND RESPONSE BRIEF**

Appellees SAP, SAP America, Inc., and TomorrowNow, Inc. respectfully move this Court for a 30-day extension of time, until February 8, 2013, in which to file their principal and response brief. Appellees' brief currently is due on January 9, 2013. Good cause exists for the requested extension, as set forth in detail in the following Declaration of Gregory A. Castanias. Appellants do not oppose this motion.

Dated: December 27, 2012

By: /s/ Gregory A. Castanias
Gregory A. Castanias

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**DECLARATION OF GREGORY A. CASTANIAS IN SUPPORT OF
APPELLEES' MOTION FOR AN EXTENSION OF TIME**

I, Gregory A. Castanias, declare:

1. I am a partner with Jones Day, in its Washington, D.C. office, counsel of record for appellees. I have personal knowledge of the matters set forth below and, if called to testify to them, could do so competently.

2. Appellees are seeking a 30-day extension of time until February 8, 2013, within which to file their principal and response brief. Appellees' brief currently is due January 9, 2013. No previous extensions for this brief have been sought or granted.

3. The grounds for this extension are as follows:

a. This appeal arises from an amended judgment entered after an order partially vacating judgment in appellants' favor after a three-week jury trial. On appeal, appellants challenge the district court's order granting judgment as a matter of law against appellants and granting a new trial conditioned on appellants' rejection of a remittitur. They also challenge various of the trial court's pre-trial and trial rulings made over the course of the five years of extensive discovery and motion practice that led to the trial and second scheduled trial. The record in this case is exceptionally large, including a 2,267-page trial transcript. Appellants have filed a 7-volume excerpts of record. Preparation of appellees' brief in this appeal will be a significant undertaking.

b. The period prescribed for preparation of appellees' responding brief includes three major holidays (Hannukah, Christmas, and New Year's Day), which have presented (or will present) substantial and long-existing conflicting family and travel obligations for each of appellees' lawyers.

c. I am the attorney with primary responsibility for the preparation of appellees' brief on appeal. In addition to the holiday-related conflicts created by the existing brief-preparation period, I am not able to complete the necessary work on appellees' brief within the normal time allotted because of other unavoidable, work-related conflicting commitments during the relevant time period, including principally the following:

(i) I am lead counsel for the appellees in *SkinMedica, Inc. v. Histogen Inc.*, No. 2012-1560, an appeal pending in the United States Court of Appeals for the Federal Circuit. Appellees' response brief was due in that court on December 17, 2012, and preparation of that brief occupied a significant portion of my time during the week after Plaintiffs-Appellants filed their brief in this case.

(ii) I am lead counsel for the appellant in *nCUBE Corp. v. SeaChange International Inc.*, No. 2013-1066, an appeal pending in the United States Court of Appeals for the Federal Circuit. Appellant's opening brief is due in that court on January 8, 2013, and preparation of that brief will occupy a significant portion of my time between now and that date.

(iii) I am lead counsel for the appellees in *Global Communications, Inc. v. PDI Communications, Inc.*, No. 2012-1619, an appeal pending in the United States Court of Appeals for the Federal Circuit. Appellees' response brief is due in that court on January 9, 2013, and preparation of that brief will occupy a significant portion of my time between now and that date.

(iv) I am lead counsel for the appellants in *Futurewei Technologies, Inc. v. Acacia Research Corp.*, No. 2013-1090, an appeal pending in the United States Court of Appeals for the Federal Circuit. Appellants' opening brief is due in that court on January 29, 2013, and preparation of that brief will occupy a significant portion of my time between now and that date.

d. To meet my obligations in this appeal and with respect to the foregoing matters, I have enlisted the assistance of other attorneys in my firm. But even with such assistance, particularly given the holiday period, I will not reasonably be able to complete the work necessary to prepare appellees' brief in this appeal by the present due date, while at the same time meeting my other commitments.

4. I have exercised, and will continue to exercise, diligence regarding this appeal and will file the brief by the requested due date.

5. My colleague Jane Froyd contacted Kathleen Sullivan, William Adams, Geoffrey Howard, Steven Holtzman, and Fred Norton, counsel for

appellants, regarding this request for an extension. Mr. Adams responded that appellants will not oppose this request if appellees agree not to oppose a request by appellants for a 30-day extension of time to file their response and reply brief. Ms. Froyd informed Mr. Adams that appellees would not oppose such a request.

6. The court reporter is not in default with regard to any designated transcripts.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27th day of December 2012, at Washington, D.C.

/s/ Gregory A. Castanias
Gregory A. Castanias

**CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 26.1
OF THE FEDERAL RULES OF APPELLATE PROCEDURE**

SAP AG is a stock corporation organized under the laws of the Federal Republic of Germany and there is no publicly held corporation that owns 10% or more of its stock.

SAP America, Inc. is a privately held corporation organized under the laws of the state of Delaware and is a wholly owned subsidiary of SAP AG.

TomorrowNow, Inc. is a privately held corporation organized under the laws of the state of Texas and is a wholly owned subsidiary of SAP America, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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Dated: December 27, 2012

/s/ Gregory A. Castanias
Gregory A. Castanias