

# Daily Journal

FEBRUARY 15, 2023



## TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS AND APPELLATE REVERSALS IN CALIFORNIA IN 2022

### Oracle America Inc. v. Hewlett Packard Enterprise Inc.



CHRISTOPHER S. YATES



SARAH M. RAY



BRITTANY N. LOVEJOY



SARANG (SY) V. DAMLE

In 2015, Oracle America secured a \$54 million settlement from Terix Computer Co., a software support provider that it had accused of violating Oracle's copyrights in software patches for the Solaris operating system. Two years later, four former Terix executives pleaded guilty to conspiring to steal Oracle's intellectual property.

But when Oracle sued Hewlett Packard Enterprises for copyright infringement by working with Terix, it had to take HPE to trial. In fact, Judge Jon S. Tigar initially granted summary judgment against Oracle but was reversed by the 9th Circuit.

Solaris is a large, complex operating system that runs the high-end servers used by

airlines, banks, cloud providers and other big businesses. "It's got tens of millions of lines of code," said Christopher S. Yates of Latham & Watkins LLP, one of Oracle's lead trial lawyers. The company spends millions annually on regular software patches and updates to support Solaris users.

Terix found a way to improperly copy those patches for its

support customers. It also has provided support for HPE customers who have Oracle computers running Solaris. Over a nearly four-week trial in May and June, Yates and his team had to prove that Hewlett Packard infringed Oracle's copyrights, too. *Oracle America Inc. v. Hewlett Packard Enterprise Co.*, 4:16-cv-01393 (N.D. Cal., filed March 22, 2016).

Yates said a pivotal moment in the trial was Latham partner Sarah Ray's cross-examination of an HPE executive, in which she showed that the company had great control over what Terix did with HPE's customers.

Britt Lovejoy said another important element was the Latham team's extensive use of clips from HPE executives' video depositions during the

#### Case Details

**CASE NAME**

Oracle America Inc. v. Hewlett Packard Enterprise Inc.

**TYPE OF CASE**

Copyright infringement, interference with contractual relationships

**COURT**

Northern District

**JUDGE(S)**

U.S. District Judge Jon S. Tigar

**PLAINTIFFS' LAWYERS**

Latham & Watkins LLP, Christopher S. Yates, Sarah M. Ray, Sarang (Sy) V. Damle, Brittany N. Lovejoy, Abigail Parr, Alex Epstein, Emma Eastwood-Paticchio, Kevin Wu, Sarah O'Connor, Peter Calello, Mia Cabello

**DEFENSE LAWYERS**

Gibson, Dunn & Crutcher LLP, Jeffrey T. Thomas, Blaine H. Evanson, Samuel G. Liversidge, Ilissa Samplin, Eric Vandeveld, Veronica Moyé, Joseph Gorman

trial. Together, they showed “an understanding by HP that Terix was indeed making copies of Oracle’s IP,” said Lovejoy.

A former top Oracle software engineer also testified about creating Solaris initially and the creative effort involved in writing the later patches. “He was pretty passionate about the amount of effort it takes to develop an enterprise operating system,” Yates said.

His team also were allowed to tell the jury about the Terix executives’ convictions for wire fraud.

On June 14, the jury found that HPE should pay Oracle \$30 million for direct and vicarious copyright infringement and \$24 million for intentionally interfering with Oracle’s contractual and economic relationships with its customers.

Gibson Dunn partners who represented Hewlett Packard did not respond to a request to comment on the trial.

Yates said that the importance of the case for Oracle was about protecting its intellectual property, not about money. “With all the hackers out there, it’s a never-ending task to ensure that [they’re] issuing new patches that will address any vulnerabilities,” he said.

Several months after the verdict, the parties reached a confidential

settlement, which was finalized early this year.

“Everything has been resolved to the mutual satisfaction of the parties,” Yates said.

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— WRITER