

1 GIBSON, DUNN & CRUTCHER LLP
2 ROBERT E. COOPER (SBN 35888)
3 rcooper@gibsondunn.com
4 SAMUEL G. LIVERSIDGE (SBN 180578)
5 sliversidge@gibsondunn.com
6 333 South Grand Avenue
7 Los Angeles, California 90071-3197
8 Telephone: 213.229.7000
9 Facsimile: 213.229.7520

7 BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP
8 PHILIP S. BECK (*pro hac vice* pending)
9 philip.beck@bartlit-beck.com
10 MARK E. FERGUSON (*pro hac vice* pending)
11 mark.ferguson@bartlit-beck.com
12 54 West Hubbard Street, Suite 300
13 Chicago, Illinois 60654
14 Telephone: 312.494.4400
15 Facsimile: 312.494.4440

16 Attorneys for Plaintiff
17 HEWLETT-PACKARD COMPANY

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SANTA CLARA**

20 HEWLETT-PACKARD COMPANY,

21 Plaintiff,

22 v.

23 ORACLE CORPORATION,

24 Defendant.

ENDORSED

2011 JUN 15 P 1:11

David H. Yamaseki, Clerk of the Superior Court
County of Santa Clara, California

By L. Komorovsky

Case No. **111 CV 203163**

CIVIL COMPLAINT FOR

**(4) BREACH OF IMPLIED
CONTRACT; (5) PROMISSORY
ESTOPPEL; (6) DEFAMATION-LIBEL;
(7) INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE; (8) VIOLATION OF
CA BUS. AND PROF. CODE § 17043;
(9) VIOLATION OF CA BUS. AND
PROF. CODE § 17044; AND (10)
VIOLATION OF CA BUS. AND PROF.
CODE § 17200, et. seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff Hewlett-Packard Company ("HP"), for its Complaint against Defendants Oracle
2 Corporation ("Oracle"), alleges as follows:

3 **INTRODUCTION**

4 1. This case arises out of Oracle's failure to live up to a clear and simple promise to work
5 with HP in the interests of both companies' mutual customers. In a mere eight months, Oracle has
6 gone from arm-in-arm "partnership" with Hewlett-Packard to bitter antagonist. Starting with
7 Oracle's hiring of HP's former CEO Mark Hurd in September 2010, followed by its March 2011
8 announcement that Oracle would no longer enable its latest software to run on HP's flagship Integrity
9 line of servers, and culminating with its use of strong-arm tactics to coerce customers into replacing
10 their HP servers with Sun servers they do not want, Oracle has acted contrary to the best interests of
11 its customers and in clear violation of its commitments to HP.

12 2. For years, Oracle told HP and the market that it was committed to working in
13 partnership with HP so that the two companies' products would be compatible. For customers
14 considering what can be a multi-million dollar commitment to technology, that promise of future
15 compatibility is a material consideration in the purchase decision. Oracle's ongoing promises
16 provided those customers with the assurance they thought they needed to be able to invest in both HP
17 hardware and Oracle software for their most critical enterprise systems.

18 3. Oracle has now abandoned that approach and has made clear that it will no longer be
19 governed by the best interests of customers, by the boundaries of a partnership, or by its contractual
20 commitments and promises.

21 [REDACTED]
22 [REDACTED]
23 4. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5.

In press releases issued on March 22 and March

23, 2011, Oracle abruptly announced, without any notice to HP, that new versions of Oracle's software would not run on HP's Itanium-based server platform, and that Oracle was discontinuing all software development for platforms using the Itanium microprocessor. At the same time, Oracle also made a series of false statements about HP and the future of the Itanium product, on their face designed to create uncertainty in the minds of HP customers and weaken confidence in the Itanium platform.

6. Since its March 2011 press releases, Oracle has not only breached its contractual commitments to HP and its promises of continuing support to customers, but it has engaged in a series of tactics designed to force customers to shift from HP's Itanium server hardware to Oracle's own server hardware. Thus, for example, when customers have complained of critical bugs in Oracle's existing software that Oracle has a duty to fix, Oracle has refused to do so, demanding instead that customers move to the next version of the software, which Oracle says will not run on HP's Itanium servers. Oracle has also coupled this demand with below-cost offers to give away—free of charge—Sun servers that will run new versions of Oracle's software, in an effort to get customers to accept Sun servers that they do not want.

7. Oracle's sudden departure from its commitment of long-term support for the Itanium platform is a calculated effort to thwart competition from HP and harm its customers. Having induced customers to commit to Oracle's software products with promises of future support on their existing hardware, Oracle is now exploiting the leverage it enjoys over these customers to try to force them to change to Oracle's hardware. In addition to being contrary to the interest of Oracle's own customers,

1 8. HP seeks judicial determination and enforcement of the promises that Oracle made [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Oracle's recent
6 announcements and actions have created uncertainty between the parties and among their mutual
7 customers about the future of the HP-Oracle partnership— [REDACTED]
8 [REDACTED]

9 9. In particular, Oracle has decided that Oracle's next generation database product
10 (version 12g) will not run on HP's Itanium-based server platforms [REDACTED]
11 [REDACTED]

12 Indeed, [REDACTED]
13 [REDACTED] Oracle and HP engineers had already been working together for months in
14 a joint development effort to prepare version 12g to run on the Itanium platform. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 10. [REDACTED] HP seeks performance of [REDACTED] and
19 implied contracts arising out of a long course of dealing consistently followed by both parties in their
20 longstanding effort to provide and support compatible software and server systems for their mutual
21 customers. HP and its customers relied on that collaboration, as well as on Oracle's promises that the
22 collaboration and partnership would continue. [REDACTED]
23 [REDACTED]

24 11. Oracle's breach of its undertakings was without justification, and constitutes a breach
25 of [REDACTED] and implied contract, [REDACTED]
26 [REDACTED], all of which has caused and, if not enjoined, will continue to cause injury and damage to HP.
27 Oracle's false and deceptive statements about HP's Itanium platform and other unfair practices are
28

1 also without justification and have caused and, if not enjoined, will continue to cause injury and
2 damage to HP.

3 12. HP has filed this action to protect its customers, to ensure fair competition, and to
4 redress the harm caused by Oracle's unlawful conduct.

5 **PARTIES, JURISDICTION, AND VENUE**

6 13. Plaintiff Hewlett-Packard Company is a Delaware corporation, with its principal place
7 of business and headquarters in Palo Alto, California.

8 14. Defendant Oracle Corporation is a Delaware corporation with its principal place of
9 business and headquarters in Redwood City, California.

10 15. This is an unlimited civil case because the amount in controversy exceeds \$25,000.

11 16. Venue is proper in Santa Clara County pursuant to California Code of Civil Procedure

12 § 395.5

13
14
15 **DETAILED FACTS GIVING RISE TO THIS ACTION**

16 17. The "Itanium" processor line is a family of 64-bit microprocessors based on what is
17 known as the Itanium architecture. The Itanium architecture was originally conceived by HP and
18 jointly developed by HP and Intel Corporation ("Intel"). Intel manufactures Itanium microprocessors
19 and sells them for use in enterprise servers and high-performance computing applications. A server
20 is a multi-user computer, or series of computers, that links other computers or electronic devices
21 together across a network.

22 18. HP began selling server systems based on the Itanium microprocessor in 2001 and
23 continues to sell such systems today under the brand name "Integrity." The Integrity line is a core
24 offering of HP's enterprise business group in the high-performance segment of the market, and
25 Integrity servers typically are used in enterprise systems for large-scale technical, government or
26 business computing and generally cost in excess of \$200,000 per system.

27 19. Operating systems control the basic functions of a computer or server and allow a user
28 to run application software on it. There are various types of computer operating systems. Among

1 server operating systems, Unix is one of the most powerful due to its multitasking and multi-user
2 characteristics. As a result, Unix is used in businesses, governments, sciences, academia, and
3 industry for mission-critical applications and large databases. A number of Unix-based operating
4 systems (such as HP's HP-UX, IBM's AIX, and Sun's Solaris) have been developed and share the
5 same or similar features. Itanium-based servers deliver powerful and scalable performance for UNIX
6 operating system environments and are adapted to enterprise customers' most demanding workloads.

7 20. Oracle is one of the world's largest enterprise software companies. Databases are
8 software programs designed to store, organize, analyze and retrieve information stored in an
9 electronic format. Relational database management systems account for approximately 97% of all
10 databases. According to Oracle's website, Oracle is the largest supplier of relational database
11 management system software, which is the primary type of database application used by enterprise
12 customers. Oracle touts itself as holding "more market share than its four closest competitors
13 combined." Furthermore, as a result of numerous acquisitions of software companies in recent years,
14 Oracle also owns some of the largest-selling enterprise application software, such as Siebel,
15 PeopleSoft, and E-business suite, which are widely used by enterprises to address their most critical
16 business requirements.

17 21. In January 2010, Oracle acquired Sun Microsystems. As a result, Oracle also became
18 a seller of enterprise hardware and services, including servers that compete with HP's Integrity line
19 of Itanium servers. In its 2010 10K filing, Oracle states that its "goal is to be the world's most
20 complete, open and integrated enterprise software and hardware company."

21 22. Until recently, and at least since the mid-1990s, Oracle and HP had worked closely
22 together to serve the hardware and software needs of their mutual customers. As one of the largest
23 manufacturers of high-end enterprise servers, HP had an interest in seeing that its products would be
24 compatible with a wide range of software products, including those of Oracle. And, as one of the
25 leading suppliers of enterprise software, including among other things, database and related
26 enterprise application software, Oracle had an interest in assuring that its products would be
27 compatible with a wide range of server hardware, including systems offered by HP.

28

1 23. In furtherance of these complementary interests, HP and Oracle entered into and
2 maintained a close engineering collaboration to ensure that their respective products would operate
3 optimally together. Oracle proudly referred to this collaboration as a "partnership," and both parties
4 devoted substantial resources to the process.

5 24. In the fall of 2010, however, after Oracle hired Hurd following his departure from HP,
6 the relationship between the two companies began to sour.

7 25. As HP's highest-ranking executive from April 2005 to August 6, 2010, Hurd
8 developed, acquired and utilized in-depth knowledge of HP's valuable trade secrets—including HP's
9 strategic and financial plans, merger and acquisition strategies, customer information, sales and
10 marketing strategies, technology and product development, pricing, operational processes, and other
11 competitively sensitive business information—under strict and ongoing contractual duties of
12 confidentiality.

13 26. Hurd departed HP on August 6, 2010, and a month later, on September 6, 2010,
14 accepted the position of co-President at Oracle.

15 27. 

16
17
18
19 28. 

20
21
22
23
24 29. 

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

30.

[REDACTED]

[REDACTED]

[REDACTED]

31.

[REDACTED]

32.

[REDACTED]

33.

[REDACTED]

In essence, each time Oracle developed a new version of its software, prior to release, HP and Oracle engineers worked together to “port” the software to the Itanium platform – that is, to make the software compatible with HP’s then-current hardware and operating

1 system. At the end of the porting process, including testing, certifications were issued by each
2 company to assure their mutual customers that the products would interface properly with expected
3 capabilities and performance.

4 34. This course of dealing included, among other things: HP receiving early access to
5 Oracle's new software releases for developmental purposes, with Oracle providing its source code to
6 HP under license; interaction between HP and Oracle engineers to exchange information concerning
7 new and existing software versions and their features, new and existing operating system versions
8 and their features and relevant details concerning new and existing processor performance; and
9 testing and certifications. This process was carried out for each new major release of Oracle's
10 software, as well as in the interim for the release of minor revisions and updates and in the context of
11 bug fixes.

12 35. As part of this collaboration over the years, HP provided Oracle with hundreds of
13 Itanium server systems, free of charge, for use in development work. HP also dedicated engineering
14 staff and resources to the ongoing effort required to port new software and support the functionality
15 of existing software on the Itanium platform.

16 36. Year after year, HP invested substantial time, effort and money in this process. HP
17 modified its products to accommodate Oracle's requests, and also pursued its own product
18 development initiatives in reliance on Oracle's ongoing commitment to the collaboration. HP
19 expended millions of dollars in furtherance of this work, based on its reasonable expectation that this
20 collaboration would continue.

21 37. Throughout this time, both parties sought to continue this relationship to ensure their
22 mutual customers' ability to use HP and Oracle products in a complementary manner. Both parties
23 have received substantial benefit in this respect. Among other things, in large part due to Oracle's
24 ability to offer products that would run on HP's well-regarded product line, Oracle has been able to
25 capture significant market share in the database and applications software markets. This would not
26 have been possible had Oracle's software been unable to operate on HP's servers.

27 38. Until Oracle's March 2011 announcements, Oracle and HP had a steady and unbroken
28 record of mutually supporting HP's Itanium platform for Oracle's database, applications and other

1 software. Oracle has supported its products on the Itanium platform since the introduction of
2 Itanium-based servers in December 2001, and has introduced new versions of its database and other
3 software that work on successive versions of HP's Itanium-based hardware. Since the time HP
4 introduced its first Itanium-based servers in 2001, Oracle has always ported its database, applications
5 and other software to run on the Itanium platform.

6 39. Further to the parties' collaboration, in November 2005, HP, Intel, Oracle and others
7 formed the Itanium Solutions Alliance, in which the members pledged to promote the Itanium
8 platform and to accelerate the availability of software for the Itanium platform. The Alliance
9 announced that members expected to invest \$10 billion in Itanium solutions by the end of the
10 decade. In conjunction with this initiative, Oracle's CEO, Larry Ellison stated that "[t]here is no
11 more important platform for Oracle than HP and Itanium."

12 40. Oracle also publicly proclaimed its commitment to its partnership with HP in other
13 statements. For example, in a May 4, 2010 letter that it provided to HP for distribution to customers,
14 Oracle declared that "HP's family of servers based on Itanium is a significant technology platform for
15 Oracle Corporation," and that "Oracle looks forward to continuing to ship quality products for the
16 Integrity [HP's Itanium line] platform." That letter references the wide variety of software that
17 Oracle develops for the HP Itanium platform, and states that Oracle will "continue shipping
18 upcoming Oracle infrastructure releases for HP-UX Integrity [Itanium] around the same timeframe as
19 the other strategic UNIXes."

20 41. This May 2010 letter continued a long-standing practice by Oracle of making
21 statements demonstrating Oracle's commitment to offering its products on the HP Itanium platform.
22 In 2006, John Burke, Oracle's group Vice President, Applications Business Unit, provided the
23 following statement concerning Oracle's commitment: "Oracle has always been committed to open
24 standards and our customers have realized billions of dollars of savings as a result. Oracle is
25 committed to testing and certifying our applications on the new HP Integrity servers. Many of our
26 customers, including HP, run their mission critical applications, for example Customer Care and
27 Supply Chain optimization on Oracle applications and look forward to the benefits provided by HP's
28 next generation of servers."

1 42. Indeed, Oracle's public and private statements throughout the companies'
2 collaboration consistently reflect the same commitment. Oracle has made promises to HP, to
3 customers and to the market at large that it was committed to following the same approach in the
4 future. Among these, without limitation, are the following:

- 5 A. In a March 2, 2006 press release, Judson Althoff, Oracle's Vice President,
6 Platform and Distribution Alliances, pointed to the importance of HP's
7 Itanium-based Integrity server line to Oracle's success: "HP's technology and
8 server products have long been a strategic foundation for Oracle Applications
9 and infrastructure software. . . . Today, we are demonstrating Oracle's
10 increasing and ongoing commitment to the HP Integrity family of servers as a
11 truly optimal platform for an enterprise's most demanding workload. We look
12 forward to the ongoing success of Integrity alongside our database and
13 application products."
- 14 B. In a February 15, 2007 press release, Doug Kennedy, Oracle's Vice President,
15 Worldwide Alliances echoed this continuing commitment: "Customers want
16 access to world class applications on platforms that are scalable and cost
17 effective. . . . The ongoing partnership between HP and Oracle delivers a great
18 combination of robust technology and exceptional support to our joint installed
19 base of worldwide customers. We look forward to the ongoing success of
20 Integrity with Oracle's database, middleware, and applications products."
- 21 C. In a September 26, 2009 interview, Larry Ellison said, "HP is a very important
22 partner for us. We have a very important relationship with HP. We're going
23 to work very hard to preserve that relationship. That's the right thing for us;
24 that's the right thing for our customers."

25 Numerous similar statements of Oracle's continuing commitment were made directly to HP
26 personnel throughout this period of time.

27 43. [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 44. [REDACTED]
4 [REDACTED] On December 1, 2010, Oracle changed the pricing
5 formula for its software to disadvantage HP's Itanium-based servers. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Oracle's change [REDACTED] had the effect of doubling the price charged to
10 HP's Itanium customers for Oracle licenses. The cost of software is much greater than the cost of the
11 server hardware over the life of the product. Oracle's decision [REDACTED]
12 [REDACTED] lacks any legitimate business or technical justification and was designed to
13 disadvantage HP's Itanium platform. [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 45. Then, on March 22 and March 23, 2011, Oracle announced that new versions of
17 Oracle's database and other software would not run on HP's Itanium-based server platforms, and that
18 it was discontinuing all software development for platforms using the Itanium processor.

19 46. In the same set of communications, Oracle also made false statements to the effect that
20 the Itanium processor was soon to be phased out by Intel. In its March 22, 2011 press release, issued
21 just hours before HP's annual meeting with shareholders, Oracle claimed that, "Intel management
22 made it clear" that "Itanium was nearing the end of its life." Intel immediately denied Oracle's
23 baseless assertion. Intel's President and Chief Executive Officer Paul Otellini stated, "Intel's work
24 on the Itanium processors and platforms continues unabated with multiple generations of chips
25 currently in development and on schedule. We remain firmly committed to delivering a competitive,
26 multi-generational roadmap for [HP's UNIX operating system] and other operating system customers
27 that run the Itanium architecture." Mr. Otellini's statements are consistent with Intel's public Itanium
28

1 development roadmap and product release schedule, which show that Intel plans to release a new
2 generation of Itanium processors in 2012 and then another generation in approximately 2014.

3 47. Ignoring this information and Intel's statements, Oracle continued its misinformation
4 campaign. In a press release issued late on March 23, 2011, Oracle stated that Intel's "plans to
5 replace Itanium with [the x86 processor architecture] are already in place." That same press release
6 went on to falsely accuse HP of misleading its customers: "HP is well aware that Intel's future
7 direction is focused on X86 and that plans to replace Itanium with x86 are already in place. HP is
8 knowingly withholding this information from our joint Itanium customers."

9 48. The apparent intent and effect of Oracle's false and disparaging statements about HP
10 and its products was to mislead HP's customers and potential customers, and thereby to weaken
11 customer confidence in HP and its Itanium platform.

12 49. Knowing that its announcement about discontinuing support for Itanium would not be
13 well-received by its customers, Oracle attempted to mitigate that reaction by promising in those same
14 press releases that it would "continue to provide customers with support for existing versions of
15 Oracle software products that already run on Itanium," and that Oracle "will support existing
16 Oracle/Itanium customers on existing Oracle products." Oracle's recent conduct, however, shows
17 that it has no intention of honoring these promises to customers, and that it does not intend to support
18 existing Oracle/Itanium customers on existing Oracle software.

19 50. Since issuing its March 2011 press releases, Oracle in fact has attempted to strong-arm
20 and coerce customers into replacing their existing HP server hardware with Oracle's own Sun server
21 hardware by withdrawing support even for existing software products on Itanium servers. Oracle's
22 tactics in this regard have included refusing to provide existing Itanium customers with the patches
23 needed to fix critical bugs in Oracle's existing software. These bugs are significant defects that relate
24 to the core functionality of the software, preventing it from working in the manner in which it was
25 intended; these are not defects that relate to compatibility issues specific to the Itanium platform, nor
26 are they requests for new features. It is customary in the software industry for software developers to
27 fix these types of defects, and Oracle contractually committed and otherwise promised that it would
28 provide customers with this type of support.

1 51. Nevertheless, Oracle has refused to provide the necessary fixes. Instead, Oracle has
2 told customers that no fix is available and that to resolve the problem they will have to move to the
3 next version of Oracle's software. Because Oracle has announced that the next version of its
4 software will not run on HP's Itanium servers, this course of action by Oracle effectively forces
5 customers to abandon their choice of Itanium servers in favor of server hardware that they do not
6 prefer. To further sway and coerce customers to accept Sun server hardware over other options,
7 Oracle has also offered to provide them with Sun server hardware for free or below cost.

8 52. In essence, through this process Oracle renders customers' existing Itanium hardware
9 unusable with Oracle's software by refusing to fix bugs in the software they are currently running,
10 forcing customers instead to buy new software that Oracle says will not run on Itanium servers, and
11 then seeks to fill the artificially created demand for new server hardware by offering to provide its
12 Sun server products at predatory prices. There is no legitimate business justification for Oracle's
13 conduct, which is designed to harm competition and eliminate customer choice.

14 53. Oracle's reneging on its promise to support its customers that are using existing
15 versions of Oracle's software on Itanium systems has significant consequences. These customers
16 have invested significant resources in purchasing HP's Itanium servers, configuring the Oracle
17 software to run optimally on the HP servers, validating these systems to ensure that they worked
18 properly, training its employees on these systems, and servicing and repairing these system as they
19 were being used. Similarly, HP invested significant resources in working with these customers in
20 these endeavors. By refusing to fix these critical bugs, Oracle has deprived these customers and HP
21 of the benefits of their investments.

22 54. Oracle's decision to discontinue all software development on the Itanium processor, to
23 stop offering new versions of Oracle software that will run on Itanium hardware, to stop supporting
24 existing versions of its software on Itanium hardware, and to double the licensing price for Itanium-
25 based servers, all constitute an unprecedented departure from the two companies' long-standing
26 course of dealing and their long-standing strategic relationship. There is no reasonable basis for
27 Oracle to take these actions, and [REDACTED]
28

1 [REDACTED] evidences a lack
2 of good faith and anticompetitive intent.

3 55. Indeed, [REDACTED]
4 [REDACTED] Oracle and HP engineers had already been working together for
5 months on Oracle's new database (version 12g) and preparing for the porting of that product to HP's
6 Itanium platform. HP's and Oracle's co-development work on 12g in fact continued even beyond the
7 March 22 and March 23 press releases, until late May 2011 when Oracle unilaterally ceased and
8 withdrew from the development engagement.

9 56. Meanwhile, Oracle continues to collaborate with other companies, such as IBM, to
10 port and to complete the other necessary steps to ensure that new versions of Oracle's software
11 products will work on these companies' hardware platforms. Thus, despite its history of stated
12 support for HP's Itanium platform as part of its longstanding and frequently acknowledged
13 partnership with HP, [REDACTED]
14 Oracle has singled out the Itanium platform as the one for which it will no longer release new
15 versions of its product suite. This approach is [REDACTED]
16 [REDACTED]
17 [REDACTED] in direct contravention of what it promised the
18 public and its customers.

19 57. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 **FIRST CAUSE OF ACTION**
26 [REDACTED]

27 58. HP incorporates by reference and realleges Paragraphs 1 through 57, as if set forth in
28 full herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

59.

60.

61.

62.

SECOND CAUSE OF ACTION

63. HP incorporates by reference and realleges Paragraphs 1 through 62, as if set forth in full herein.

64.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

65.

66.

67.

68.

69.

THIRD CAUSE OF ACTION

70. HP incorporates by reference and realleges Paragraphs 1 through 69, as if set forth in full herein.

1 71. [REDACTED]

6 72. [REDACTED]

13 73. [REDACTED]

15 74. [REDACTED]

18 **FOURTH CAUSE OF ACTION**

19 **(Breach of Implied Contract)**

20 75. HP incorporates by reference and realleges Paragraphs 1 through 74, as if set forth in
21 full herein.

22 76. By virtue of the collaborative "partnership" between HP and Oracle, described above,
23 to make their respective products compatible, a contract implied in fact arose between HP and Oracle
24 that obligated them to continue with the same collaboration for future product versions.

25 77. In the course of their collaboration, each party provided support and assistance to the
26 other in pursuit of their mutual goals, and each party requested substantial commitments of the other,
27 including engineering support, equipment and access to confidential technical information.

28 Throughout this time, both parties honored the requests of the other in pursuit of what they called a

1 “partnership.” All of this conduct evidences an intent to be contractually bound by a promise to
2 continue this mutually beneficial collaboration.

3 78. In addition, the parties’ public and private statements confirm their intent to be
4 contractually bound to continue with their collaborative partnership. As noted above, for example,
5 Oracle’s senior executives repeatedly affirmed Oracle’s commitment to continuing these activities,
6 and assured both HP and HP’s customers of Oracle’s intent to do so. Further, Oracle’s March 2011
7 press releases assured customers that Oracle would continue to support its existing versions of Oracle
8 software on Itanium systems.

9 79. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 80. By virtue of the mutual exchange of implied promises, as evidenced by the parties’
14 continued fulfillment of those promises over many years, the implied contract between Oracle and
15 HP was supported by adequate consideration, and is a just and reasonable contract.

16 81. HP has performed and intends to perform all conditions, covenants, and promises
17 required on its part to be performed in accordance with the parties’ implied contract.

18 82. Oracle breached this implied contract by, among other things, ceasing and refusing to
19 continue with the porting of its product suite to HP’s Itanium platform, telling customers that it will
20 not offer new versions of its software products on the Itanium platform, refusing to fix critical
21 defects, which is a fundamental aspect of supporting customers, in existing versions of its software
22 products designed for use with HP’s Itanium servers, and changing its longstanding software license
23 pricing formula to specifically disadvantage Itanium platforms. Further, Oracle [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 issued a press release on March 22, 2011 stating that “Oracle has decided to discontinue all software
27 development on the Intel Itanium microprocessor.” Oracle’s intent to breach the implied contract
28

1 was reiterated on March 23, 2011 in a second press release in which Oracle stated that "new versions
2 of Oracle software will not run on Itanium."

3 83. HP seeks specific performance of this implied contract because it lacks an adequate
4 remedy at law. Oracle's breach has and will continue to cause damage and unquantifiable harm to
5 HP's goodwill and business reputation in the Itanium server market and in its server business overall.
6 This harm cannot be adequately remedied through an award of damages because the harm to HP's
7 existing and prospective business relationships due to Oracle's breach would be extremely difficult to
8 calculate.

9 84. In addition, HP requests an award of direct and consequential damages, including lost
10 profits, costs of mitigation, and loss of goodwill and injury to HP's business reputation to the extent
11 caused by Oracle's breach of the implied contract.

12 **FIFTH CAUSE OF ACTION**

13 **(Promissory Estoppel)**

14 85. HP incorporates by reference and realleges Paragraphs 1 through 84, as if set forth in
15 full herein.

16 86. By virtue of its public statements set forth above, as well as its private statements to
17 HP over the relevant time period, Oracle is estopped from declining to fulfill its repeated promises to
18 continue with the parties' collaborative partnership to make their respective products, including new
19 versions, compatible with one another and to support them in the marketplace.

20 87. Each of the promises set forth above, as well as many others of similar import, were
21 clear and unambiguous and were made by Oracle with the unequivocal intent of conveying Oracle's
22 commitment to continuing to implement all aspects of its collaborative partnership with HP. Oracle
23 reasonably intended and reasonably should have expected that HP would rely upon these many
24 statements over many years' time.

25 88. HP did rely upon Oracle's promises to continue its collaborative partnership with HP.
26 Among other things, HP made significant expenditures as part of the effort to make HP products
27 compatible with Oracle's software, made changes to HP's own products at Oracle's request, and
28

1 made further expenditures and product development decisions in reliance on Oracle's promised and
2 repeatedly stated intention to continue porting its products to HP's Itanium servers.

3 89. As a result of Oracle's failure to perform in accord with its promises, HP has suffered
4 and will continue to suffer irreparable injury and significant damage.

5 90. HP seeks specific performance by Oracle in accord with its promises because HP lacks
6 an adequate remedy at law. Oracle's breach has and will continue to cause damage and
7 unquantifiable harm to HP's goodwill and business reputation in the Itanium server market and in its
8 server business overall. This harm cannot be adequately remedied through an award of damages
9 because the harm to HP's existing and prospective business relationships due to Oracle's breach
10 would be extremely difficult to calculate.

11 91. In addition, HP requests an award of direct and consequential damages, including lost
12 profits, costs of mitigation, and loss of goodwill and injury to HP's business reputation to the extent
13 caused by Oracle's conduct.

14 SIXTH CAUSE OF ACTION

15 (Defamation-Libel)

16 92. HP incorporates by reference and realleges Paragraphs 1 through 91, as if set forth in
17 full herein.

18 93. By its false and misleading statements concerning the future of the Itanium processor,
19 Oracle has defamed HP.

20 94. Specifically, among other things, Oracle's press release dated March 23, 2011 stated:
21 "HP is well aware that Intel's future direction is focused on X86 and that plans to replace Itanium
22 with x86 are already in place. HP is knowingly withholding this information from our joint Itanium
23 customers." In addition to the falsity of Oracle's statement about Intel's development of the Itanium
24 processor, this statement was libelous per se in its accusation that HP was "knowingly withholding"
25 information concerning Itanium from its customers.

26 95. Oracle's statements were without privilege and were published with knowledge of
27 their falsity or reckless disregard of their truth or falsity. Among other things, having been HP's
28 Chief Executive Officer until August 2010, Oracle's co-President Hurd had personal knowledge of

1 HP's own business and the interactions with Intel such that it is clear that Oracle knowingly or
2 recklessly made false claims about HP. In addition, Oracle's comments were published with the
3 intent of harming HP's Integrity Server line, and thus with malice, both in law and in fact.

4 96. As a result of Oracle's statements, which constitute libel per se, HP is entitled to
5 recover presumed damages for injury to its business resulting therefrom. Further, as a result of
6 Oracle's false statements, HP has suffered, and will suffer, injury in fact, including loss of goodwill
7 and injury to its reputation resulting in lost profits and future profits.

8 97. In addition, in that Oracle's statements were made with knowledge of their falsity, or
9 with reckless disregard of their truth or falsity and with the intention of causing injury to HP, HP is
10 entitled to punitive damages.

11 **SEVENTH CAUSE OF ACTION**

12 **(Intentional Interference With Prospective Economic Advantage)**

13 98. HP incorporates by reference and realleges Paragraphs 1 through 97, as if set forth in
14 full herein.

15 99. HP has relationships with enterprise hardware consumers that currently use HP
16 Itanium hardware or are considering the use of HP Itanium hardware. Many of the customers that
17 currently use HP Itanium hardware have valid contracts, which extend into the future, with HP
18 wherein these customers have agreed, among other things, to compensate HP for servicing and
19 otherwise supporting their Itanium products. Further, HP maintains relationships and is in
20 discussions with enterprise consumers that currently are not using HP's servers but who are
21 considering the possibility in the future. Oracle has knowledge of these relationships.

22 100. By Oracle's conduct described above—including its deliberate refusal to fix critical
23 defects on its existing software in order to force customers to transition to Sun or other non-Itanium
24 servers, and its March 2011 statements designed to undermine HP's reputation with its customers and
25 public confidence in the viability of HP's Itanium servers—Oracle sought to disrupt HP's
26 relationships with its existing and prospective server hardware customers. Oracle disrupted customer
27 relationships, resulting in customers cancelling their purchases of Itanium servers or delaying their
28 server purchase decisions in view of the uncertainty surrounding Itanium.

101. Oracle's conduct, designed to disrupt HP's existing and prospective economic relationships, is not fair or legitimate competitive conduct. Rather, as set forth elsewhere in this Complaint, Oracle's conduct violated a number of California statutes, breached Oracle's contracts with customers [REDACTED], and was misleading, deceptive, fraudulent and otherwise wrongful.

102. HP has suffered injury to its business, including damage to its reputation and lost sales, as a result of Oracle's interference with HP's prospective economic relationships.

103. In addition, HP requests an award of direct and consequential damages, including lost profits, costs of mitigation, and loss of goodwill and injury to HP's business reputation to the extent caused by Oracle's interference with HP's prospective economic relationships.

EIGHTH CAUSE OF ACTION

(For Violations of Bus. & Prof. Code § 17043)

104. HP incorporates by reference and realleges Paragraphs 1 through 103, as if set forth in full herein.

105. California Business and Professions Code § 17043, which is part of California’s Unfair Practices Act, prohibits any person engaged in business in California to sell or offer to sell “any article or product at less than the cost thereof to such vendor, or to give away any article or product, for the purpose of injuring competitors or destroying competition.”

106. Oracle is engaged in business in California and has sold or offered to sell its Sun server products at below cost prices and, in some instances, free of charge, an amount that is clearly less than their fully allocated cost, to existing HP Itanium server customers for the purpose of injuring HP and destroying fair competition in the server market.

107. HP has suffered injury to its business as a result of Oracle's offers to sell its server products below their fully allocated cost, and will suffer further such injury and damage unless such conduct is enjoined. HP therefore seeks an injunction prohibiting Oracle from engaging in this conduct in the future pursuant to California Business and Professional Code Sections 17070, 17078-79. In addition, HP requests an award of treble damages, and its attorneys' fees and costs pursuant to California Business and Professional Code Section 17082.

1 **NINTH CAUSE OF ACTION**

2 **(For Violations of Bus. & Prof. Code § 17044)**

3 108. HP incorporates by reference and realleges Paragraphs 1 through 107, as if set forth in
4 full herein.

5 109. California Business and Professions Code § 17044, which is part of California's
6 Unfair Practices Act, prohibits any person engaged in business in California to sell or offer to sell or
7 use "any article or product as a 'loss leader'," which is defined in California Business and Professions
8 Code § 17030 as including "any article or product sold at less than cost . . . where the effect is to
9 divert trade from or otherwise injure competitors."

10 110. Oracle is engaged in business in California and has sold or offered to sell its Sun
11 server products at below cost prices and, in some instances, free of charge, an amount clearly less
12 than their fully allocated cost, to existing HP Itanium server customers that has injured and will
13 further injure HP, and has diverted and will divert server sales away from HP.

14 111. HP has suffered injury to its business as a result of Oracle's offers to sell its server
15 products below their fully allocated cost, and will suffer further such injury and damage unless such
16 conduct is enjoined. HP therefore seeks an injunction prohibiting Oracle from engaging in this
17 conduct in the future pursuant to California Business and Professional Code Sections 17070, 17078-
18 79. In addition, HP requests an award of treble damages, and its attorneys' fees and costs pursuant to
19 California Business and Professional Code Section 17082.

20 **TENTH CAUSE OF ACTION**

21 **(For Violations of Bus. & Prof. Code § 17200 *et seq.*)**

22 112. HP incorporates by reference and realleges Paragraphs 1 through 111, as if set forth in
23 full herein.

24 113. The California Unfair Competition Law, set forth in California Business and
25 Professions Code § 17200 *et seq.*, prohibits acts of unfair competition, which include any "unlawful,
26 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
27 advertising . . ."
28

1 114. Oracle engaged in fraudulent and deceptive business practices by, among other things,
2 making false and deceptive statements to HP and its customers about its commitment to HP's Itanium
3 servers, its intent to make new versions of Oracle software available to the Itanium platform, and its
4 intent to continue to support existing versions of its Oracle software for the Itanium platform. These
5 material misstatements deceived and are likely to deceive customers and the public. In addition,
6 Oracle engaged in fraudulent and deceptive practices by, among other things, disseminating false,
7 deceptive, and defamatory statements to its customers and the marketplace regarding the alleged
8 status and future viability of Itanium products and platforms, and HP's alleged lack of candor with its
9 customers about the expected longevity of the Itanium architecture. These material misstatements
10 deceived and are likely to deceive customers and the public.

11 115. HP has suffered injury to its business, including damage to its reputation and customer
12 relationships, as a result of these statements about HP's Itanium products, and will suffer further such
13 injury and damage unless such conduct is enjoined. HP therefore seeks an injunction pursuant to
14 California Business and Professional Code Section 17203 prohibiting Oracle from making such false
15 and misleading statements in the future and remedying the harm caused by Oracle's conduct.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, HP prays for the following relief:

18 1. 

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

2. [REDACTED]

[REDACTED]

3. Temporary and permanent injunctive relief, including an order prohibiting Oracle from making false and misleading statements regarding the Itanium microprocessor or HP's Itanium-based servers and remedying the harm caused by Oracle's conduct;
4. General and special damages in amount to be proven at trial;
5. Punitive damages as permitted by law;
6. Treble damages as permitted by law;
7. Reasonable attorneys' fees as permitted by law;
8. Costs of suit herein incurred; and
9. All such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff HP hereby demands a trial by jury in the above-captioned matter on all matters so triable.

DATED: June 14, 2011

GIBSON, DUNN & CRUTCHER LLP

BARTLIT BECK HERMAN PALENCHAR
& SCOTT LLP

By: Robert E. Cooper / SJB
Robert E. Cooper

Attorneys for HEWLETT-PACKARD COMPANY