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 18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT  
 20 NORTHERN DISTRICT OF CALIFORNIA  
 21 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,  
 23 Plaintiffs,  
 24 v.  
 25 SAP AG, et al.,  
 26 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DECLARATION OF M. GARY FUNCK IN  
 SUPPORT OF DEFENDANTS'  
 OPPOSITION TO PLAINTIFFS'  
 PROPOSED FINAL JUDGMENT**

1 I, M. Gary Funck, declare as follows:

2 (1) I am President and founder of Intrepid Technology, Inc. (“Intrepid”). Intrepid is a  
3 software consulting company with extensive experience in operating systems, development tools,  
4 and embedded systems software. During the past several years, numerous Silicon Valley  
5 companies have retained my services as well as the services of Intrepid to investigate and render  
6 opinions based upon analysis of electronic evidence. During such investigations, Intrepid  
7 practices and follows industry standards and procedures generally recognized for the collection  
8 and analysis of electronic evidence. I have over 30 years of experience working in various  
9 capacities in the computer industry. For the past 20 years, along with my business partner, Nenad  
10 Vukicevic, I have provided software development, technical, and litigation-related technical  
11 expert services through our firm, Intrepid Technology, Inc., based in Palo Alto, California. I  
12 make this declaration based on personal knowledge and, if called upon to do so, could testify  
13 competently thereto.

14 (2) During my work for this case, I examined some of Oracle’s software, and gained  
15 an understanding of how the software installs on a computer. Like the installation of many  
16 software packages, I found that the component files for some of the Oracle software install in  
17 multiple locations on a computer.

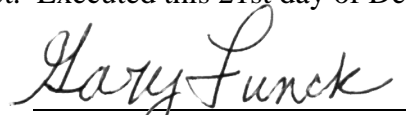
18 (3) Additionally, I reviewed content from the hard drives for approximately 82  
19 TomorrowNow employees in order to locate Oracle code and/or files within that content.  
20 Through this costly and time consuming review, I determined that for many of the employees, the  
21 Oracle code and/or files only made up a small sub-set of the searched data, which included  
22 substantial amounts of non-Oracle data.

23 (4) It is my understanding that Oracle also reviewed the same data for the same  
24 purpose. Based on a comparison of my results and Oracle’s results, it appears that we employed  
25 similar methods to search the data, yet we still characterized certain files differently. And, after  
26 an extensive review of each other’s findings and several exchanges between the parties in an  
27 attempt to reach agreement, we were unable to agree on the exact files that made up Oracle code  
28 and/or files.

1 (5) Based on these experiences, it is my conclusion that locating all of Oracle's  
2 intellectual property on a given hard drive with a high degree of certainty is an extremely difficult,  
3 and likely impossible, task. This is both because of the volume of data that has to be considered  
4 and searched, and the fact that it is not always apparent what piece of code or data is actually  
5 Oracle's. For example, some of Oracle's code and/or files will likely be attached to email  
6 messages that were exchanged among TomorrowNow employees.

7 (6) Moreover, because the Oracle code and/or files are located on a hard drive with  
8 other non-Oracle data, it would be impossible to segregate and return only the Oracle code and/or  
9 files without returning the non-Oracle code and/or files on any given hard drives. To store data  
10 semi-permanently, computers write the data onto a hard drive. The hard drives contain several  
11 disks called platters. Platters are covered with magnetic coating. Hard drives also have a  
12 read/write head that writes the data onto the hard drive and subsequently reads the data when  
13 needed. The platters spin very quickly and the read/write heads pivot back and forth quickly to  
14 read information from any part of the hard drive. Due to the complexity of the systems involved  
15 and volume of data, it would be impractical and likely impossible to remove all remnants of non-  
16 Oracle code and/or files on the hard drive platters at issue. There is no way to return a portion of  
17 data on a given hard drive, server, or database (i.e., platter) without returning the entire hard drive,  
18 server, or database (platter).

19 I declare under penalty of perjury under the laws of the United States and the State of  
20 California that the foregoing is true and correct. Executed this 21st day of December, 2010 in  
21 Palo Alto, California.

  
M. Gary Funck

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