

# **EXHIBIT 37**

# **Oracle v. SAP**

## **Oracle Opening Statement**

Tuesday, November 2, 2010

## Oracle And SAP Compete To Provide Enterprise Application Software To Businesses



1. **Oracle** and **SAP** are software companies. They compete in developing and licensing complex software used by businesses of all sizes and industries.
2. In 2004, Oracle was the larger and more successful software company, but SAP dominated the **enterprise application software** business.

# What Is Enterprise Application Software

1. Enterprise application software is software that businesses use for important functions like payroll, accounting, payroll, tax, human resources, and customer relationship management.
2. Enterprise application software is used by hospitals, schools, banks, stores, and government agencies.
3. This software is used to serve you in many ways, such as making sure the grocery store is stocked with food and that you receive your paycheck on time.
4. Enterprise application software is expensive, complex software.

# Oracle's Business Software Product Lines



# What Is Enterprise Application Software Support

1. Because enterprise application software is so very large and complex it requires continuing **maintenance and support**.
2. Oracle and SAP provide that support, for a fee, for the software that they have developed.
3. Developing software and other copyrighted materials to maintain and support enterprise application software is itself expensive and time-consuming.
4. Customers pay separately for enterprise application software support – anything from several thousand dollars a year to millions of dollars per year depending in the number, size, and complexity of the enterprise application software they have licensed.
5. Providing enterprise application support is valuable for the revenues it generates, the ability to use those revenues to fund further research and development, and the chance to maintain and extend relationships with support customers.

## What Is Third Party Support

1. Oracle provides support for Oracle software, and SAP provides support for SAP software.
2. In addition, there are other companies that do not develop enterprise application software, but may offer some of the kinds of support that Oracle and SAP provide for their customers (“third party support”).
3. Without access to the original vendor’s intellectual property, third party support providers can only offer more limited support than the original developer of the software.
4. TomorrowNow was originally started by former PeopleSoft employees, and offered support on PeopleSoft enterprise application software.

## Who Is Oracle



1. Founded by Larry Ellison, Bob Miner, and Ed Oates in 1977.
2. Offered the world's first commercial relational database management system in 1979.
3. Began offering enterprise applications software in 1987.
4. Headquarters in Redwood City, California.
5. Has grown to employ over 106,000 employees worldwide, including over 12,000 in the Bay Area.



# Oracle Witnesses You Will Hear

# ORACLE®



**Larry Ellison**  
Oracle CEO



**Safra Catz**  
Oracle Co-President



**Charles Phillips**  
Oracle Co-President



**Edward Screven**  
Oracle Chief  
Corporate Architect



**Buffy Ransom**  
Oracle VP,  
Support Services

# Who Is SAP



1. Founded in 1972 by five former IBM engineers in Mannheim, Germany.
2. One of the world's largest software companies, with 47,500 employees worldwide.
3. SAP has been the dominant company in enterprise application software for many years.

# SAP Witnesses You Will Hear



## SAP AG Executive Board



**Shai  
Agassi**



**Leo Apotheker**



**Werner Brandt**



**Henning  
Kagermann**



**Gerhard  
Oswald**

# SAP Witnesses You Will Hear



**Andrew  
Nelson**  
SAP America VP  
and TN CEO



**Gregory  
Nelson**  
TN CIO



**Mark  
White**  
CFO,  
SAP America



**John  
Zepecki**  
SAP America  
VP

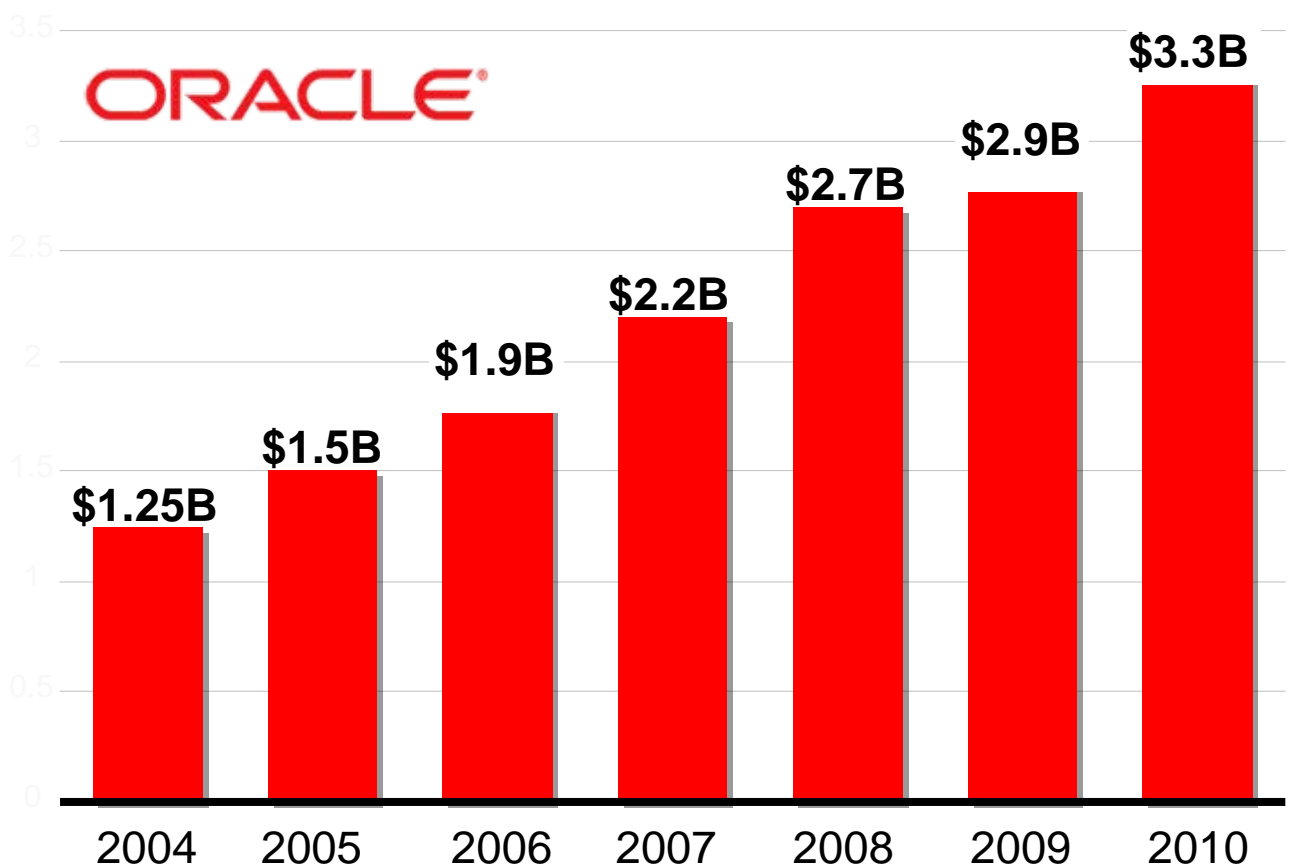


**Thomas  
Ziemen**  
SAP AG VP

# Oracle's Business Relies On Innovation, Research, and Development

Oracle invests billions of dollars each year and employs tens of thousands of engineers in research and development to develop new products, improve existing products, fulfill customer demand, and remain competitive.

## Billions of Dollars in R&D Investment Each Year



**28,000 full-time employees devoted to R&D (as of 2010) – over 25% of all Oracle employees**

**Without The Protection Of Intellectual Property Rights,  
Companies Cannot Invest Billions Of Dollars To  
Develop And Improve Their Products**



SAP Board Member **Leo Apotheker**:

- “[T]he entire software industry was founded on IP rights.”



SAP Board Member **Shai Agassi**:

- “At SAP, we believe that without the ability to protect IP, most companies will no longer invest so much of their current revenues in future product innovation.”

**Oracle + PSFT  
= Threat to SAP**

**In 2003 and 2004, It Became Clear That Oracle Would Acquire PeopleSoft, A Significant Competitor in Enterprise Application Software**

## **Oracle's purchase of PeopleSoft put billions of dollars at stake**

1. Oracle paid **\$11.1 billion** for PeopleSoft
2. PeopleSoft's total annual revenues were **\$2.7 billion**, of which PeopleSoft's annual support revenues were about half
3. PeopleSoft had **9,920 customers** for support



## **In Late 2004, Oracle's Purchase of PeopleSoft Challenged SAP's Dominance of the Enterprise Application Business for the First Time**

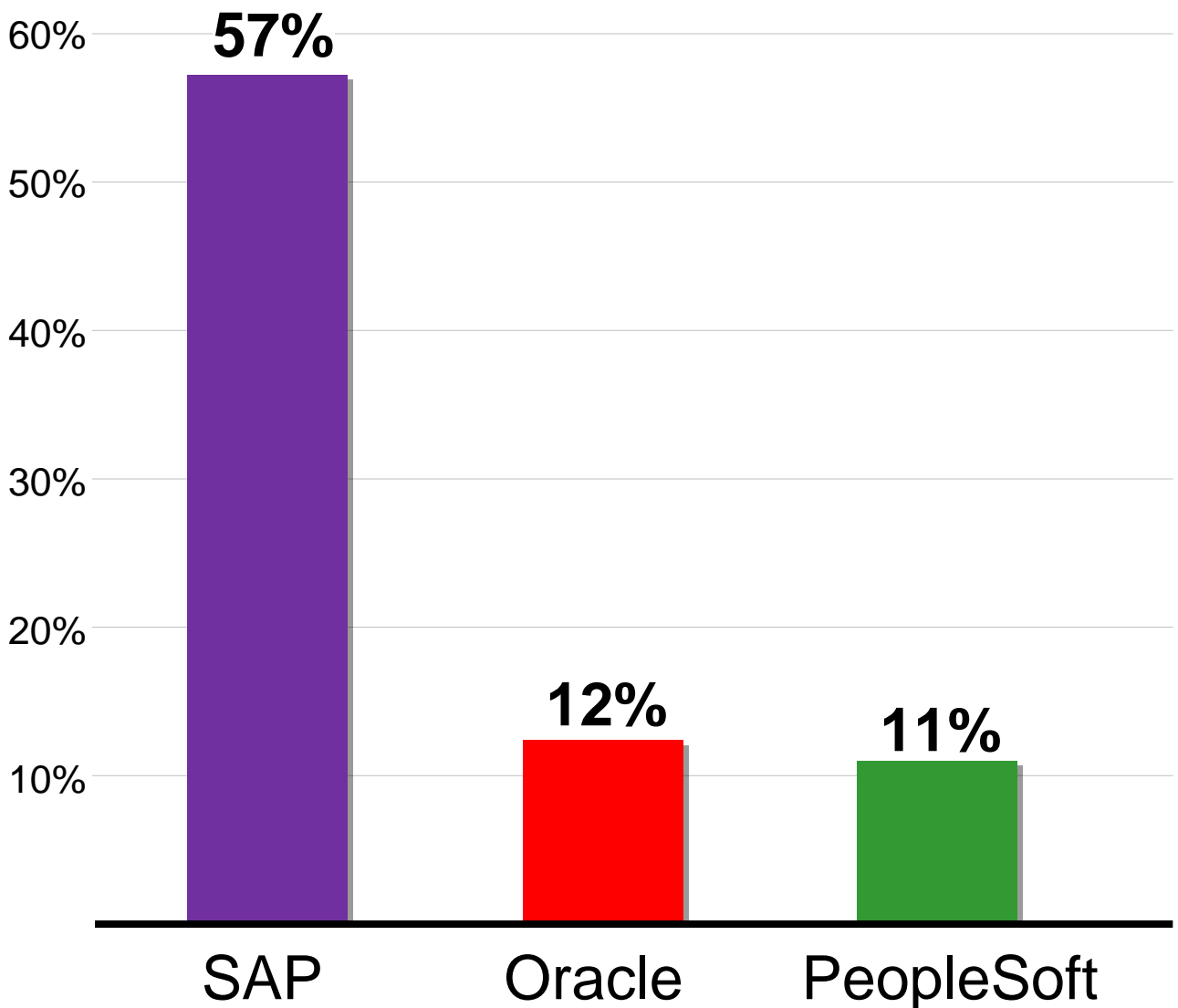
By combining with PeopleSoft, Oracle would be able to seriously challenge SAP in the enterprise application business for the first time.

By combining with PeopleSoft, Oracle

1. acquired PeopleSoft's extremely valuable copyrighted, "Best of Breed" software
2. gained the PeopleSoft customer base of nearly 10,000 business customers
3. gained established relationships with those customers
4. achieved economies of scale in its business
5. increased market share in enterprise applications
6. was able to use the larger maintenance base to invest more in R&D

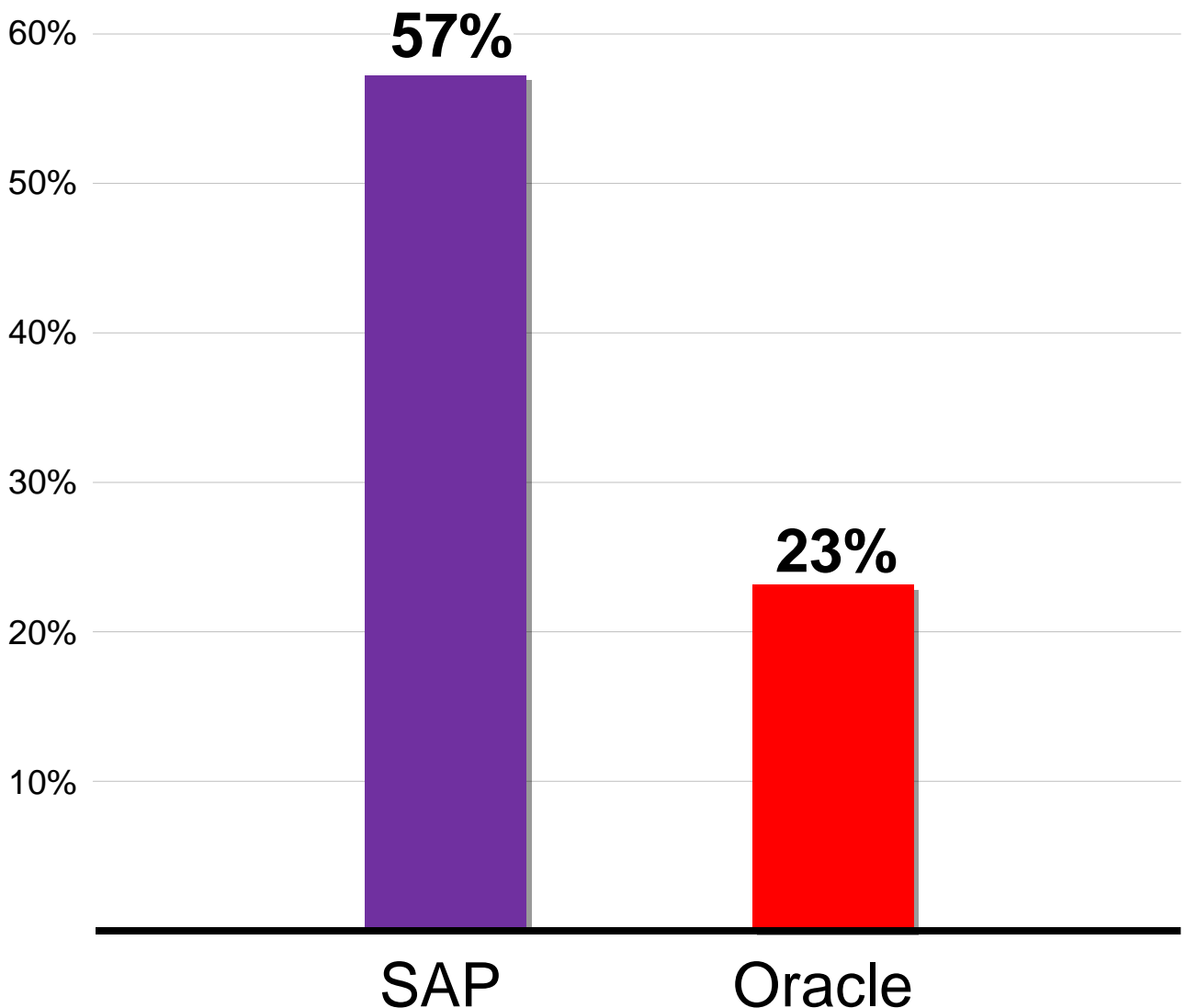
**Up Until 2005, SAP's Dominance Of The Enterprise Application Business Was Unchallenged**

## **Enterprise Application Software Global Market Share In 2004**



## Oracle's Acquisition of PeopleSoft Was Very Threatening to SAP

### Enterprise Application Software Global Market Share After Oracle Bought PeopleSoft



## **SAP Had A Choice: Compete On The Merits By Developing Or Buying Its Own Software Or Compete By Using Oracle's Software Against It**

1. In January 2005, SAP and Oracle each responded to the threat of competition by taking a deliberate, calculated risk.
2. **The risk Oracle took was to invest \$11.1 billion in PeopleSoft.** Oracle chose to take that risk, betting that it could keep PeopleSoft's 10,000 business customers happy, integrate the PSFT products into the Oracle product line, integrate the thousands of PSFT employees, and create a company that could compete head to head with SAP.
3. SAP chose to compete by using Oracle's own software against it.
4. And SAP chose to use Oracle's software illegally without paying for a license – it did this because it knew that it would cost billions of dollars to buy the license it needed to get the legal right to use Oracle's own software against it.
5. **The risk SAP took was to use TN, a company that SAP knew was infringing Oracle's copyrighted software and support materials.** SAP chose to take that risk because SAP expected to make enormous gains for itself and to inflict enormous harms on Oracle by using Oracle's own intellectual property against it.

# **Admissions of Liability**

# When Oracle Sued, TN Employees Admitted To TN's Unlawful Business

Yahoo Messenger Archive: (Instant Message) From: kimberley2229 To: kristin32532 Date  
03-23-2007

## March 23, 2007: Instant Message Between TN Employees Kimberly Martinez and Kristin Paige

kristin32532 (09:08:51 AM): i'm sorry....that sucks  
kimberley2229 (09:08:54 AM): just looking forward to tomorrow  
kimberley2229 (09:08:59 AM): hopefully i can get some rest  
kristin32532 (09:09:42 AM): yeah....i'm looking forward to today being over.....i'm so ready  
for the weekend

kimberley2229 (09:10:50 AM): we are getting sued!  
kristin32532 (09:10:53 AM): i know  
kristin32532 (09:10:58 AM): i am reading the lawsuit  
kimberley2229 (09:11:06 AM): i haven't done that yet  
kristin32532 (09:11:10 AM): it's long  
kimberley2229 (09:11:14 AM): what are they saying in a nutshell  
kristin32532 (09:11:27 AM): that we illegally downloaded their stuff  
kristin32532 (09:11:48 AM): used false information and customer id/pw to get it  
kimberley2229 (09:11:54 AM): well, that's true  
kimberley2229 (09:12:03 AM): wonder who on the inside told  
kristin32532 (09:12:21 AM): i think they caught us.....got the bryan ip addresss  
kimberley2229 (09:12:27 AM): oh really?  
kristin32532 (09:12:33 AM): yeah

kimberley2229 (09:13:29 AM): i always knew it would come back to this!  
kristin32532 (09:13:38 AM): it's sort of scary  
kimberley2229 (09:13:47 AM): that's what i was JUST thinking

**Confidential Information**  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Case #: 07-cv-01658-PJH  
PLNTF EXHIBIT NO. 0053  
Date Admitted: \_\_\_\_\_  
By: \_\_\_\_\_  
Nichole Heuerman, Deputy Clerk

TN-IM-16604

# All Defendants Have Admitted Vast Unlawful Conduct

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

24 ORACLE USA, INC., *et al.*,  
25 Plaintiffs,  
26 v.  
27 SAP AG, *et al.*,  
28 Defendants.

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TOMORROWNOW, INC.

No. 07-CV-01658 PJH (EDL)

**TRIAL STIPULATION AND  
[PROPOSED] ORDER NO. 1  
REGARDING LIABILITY, DISMISSAL  
OF CLAIMS, PRESERVATION OF  
DEFENSES, AND OBJECTIONS TO  
EVIDENCE AT TRIAL**

07-CV-01658 PJH (EDL)

TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1

# All Defendants Have Admitted That TN Repeatedly Violated Oracle's Rights To Its Software And Support Materials

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1 Pursuant to Local Rule 7-12, Plaintiffs Oracle USA, Inc., Oracle International  
2 Corporation and Siebel Systems, Inc. ("Plaintiffs" or "Oracle") and Defendants TomorrowNow,

**"TN stipulates to all liability on all claims"**

7 arguments.

8 The Parties agree that the terms of this stipulation shall not be binding or effective  
9 unless and until the Court accepts the stipulated terms in their entirety. The Parties reserve the  
10 right to withdraw agreement to any or all terms if the Court chooses not to accept any term.

11 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE,

**"TN therefore stipulates to all liability on Oracle's claims for copyright infringement, violations of the Federal Computer Fraud and Abuse Act and California's Computer Data Access and Fraud Act, breach of contract, intentional interference, negligent interference, unfair competition, trespass to chattels, unjust enrichment / restitution and an accounting."**

20 (e.g., saved development costs as a basis for unjust enrichment), which Oracle preserves for all  
07-CV-01658 PJH (EDL)

TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1



# SAP Admits That It Is Liable For All of TN's Copyright Infringement

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1 Pursuant to Local Rule 7-12, Plaintiffs Oracle USA, Inc., Oracle International  
2 Corporation and Siebel Systems, Inc. ("Plaintiffs" or "Oracle") and Defendants TomorrowNow,

**"SAP stipulates to vicarious liability on the copyright claims against TN in their entirety. . . ."**

3 objections to evidence at trial, and the length of the Parties' evidentiary proceedings and  
4 arguments.

5 The Parties agree that the terms of this stipulation shall not be binding or effective  
6 unless and until the Court accepts the stipulated terms in their entirety. The Parties reserve the  
7 right to withdraw agreement to any or all terms if the Court chooses not to accept any term.

8 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE,  
9 through their respective counsel of record, as follows:

## 10 TRIAL STIPULATION AND PROPOSED ORDER

11 1. TN stipulates to all liability on all claims (preserving no defenses,  
12 including any raised on summary judgment, but retaining all defenses to damages as described in  
13 paragraph 5 below). TN therefore stipulates to all liability on Oracle's claims for copyright  
14 infringement, violations of the Federal Computer Fraud and Abuse Act and California's  
15 Computer Data Access and Fraud Act, breach of contract, intentional interference, negligent  
16 interference, unfair competition, trespass to chattels, unjust enrichment/restitution and an  
17 accounting. SAP will not contend that Oracle has failed to prove indirect liability as to SAP due  
18 to a failure of proof against TN.

19 2. SAP stipulates to vicarious liability on the copyright claims against TN in  
20 their entirety (preserving no defenses, including any raised on summary judgment, but retaining  
21 all defenses as to damages as described in paragraph 5 below) and agrees to guarantee payment  
22 of any judgment awarded against TN or SAP.

23 3. Oracle dismisses with prejudice all claims against SAP except for indirect  
24 copyright infringement and except as to any right to appeal any rulings made by the trial court  
25 (e.g., saved development costs as a basis for unjust enrichment), which Oracle preserves for all  
26

07-CV-01658 PJH (EDL)

# **Decision for The Jury: Damages**

## What SAP Must Pay

1. In order to have been legally entitled to do what they did and planned, SAP and TN needed a license from Oracle
2. SAP and TN **never asked** for that license that they took, and **never paid** for the license that they took
3. The measure of Oracle's damages is therefore what SAP and TN would have actually paid, and Oracle would have actually accepted, if SAP had **bargained** for that license
4. That is the **"fair market value"** of that license and is the damage award to which Oracle is entitled
5. The **fair market value** of that license depends on
  - a. How important and valuable SAP expected the use of Oracle's copyrighted property to be and
  - b. What would Oracle have expected to get to face SAP using Oracle's own intellectual property against it

## What SAP Must Pay

1. When SAP bought TN, its board members and executives carefully considered
  - a. the **enormous benefits for SAP** and
  - b. the **enormous harm to Oracle**, that SAP believed and planned would result from SAP using Oracle's own intellectual property against it.
2. SAP's own documents, that they made at the time, show that they expected the value of those benefits and harms to be in the **billions of dollars.**
3. Oracle's own documents and actions, at the time, show that the value Oracle placed on those copyrights was in the **billions of dollars.**
4. The **enormous risk that SAP** knew it was taking in **deliberately infringing** Oracle's copyrighted property evidences how important and valuable SAP believed its use of that property would be.

# **Why Was It So Valuable and Important To SAP To Infringe Oracle's Copyrighted Software**

# **SAP's Stated Goal In January 2005 Was To Convert 50% of the 9,920 PeopleSoft Customers To SAP Software**

**January 20, 2005 Presentation**

**Approved by SAP AG Board**

## **The Goal**

**Convert approximately 50% of the PeopleSoft and J.D. Edwards customer installations to SAP (100% of shared customers)**

- **Disrupt Oracle's ability to pay for the acquisition out of cash flow**
- **Shrink their share of the application market**
- **Discredit their efforts to create a next-generation application platform**

**What Factors Show How Valuable And Important The License To Oracle's Copyrighted Property Would Be To SAP?**

**What factors that existed at the time demonstrate the value of the license that SAP took?**

- 1. scope and duration** of the license
2. each party's **need** for the copyrighted property
3. SAP's willingness to **assume risk of infringement liability** is an admission of value
- 4. competitive relationship** of the parties
- 5. goals and business plans** related to the copyrighted property
6. expected **financial benefits** or **impacts** to each party
7. other non-financial factors

**Scope**

**Need**

**Risk Taken**

**Competitive Relationship**

**Business Goals**

**Financial Benefit/Impact**



# **The Scope of SAP's and TN's Misconduct**

## Scope

# TN's Business Model Was Based On Massive Infringement, As Defendants Admit

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OAKLAND DIVISION

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SAP AG, SAP AMERICA, INC., and  
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No. 07-CV-01658 PJH (EDL)

TRIAL STIPULATION AND [PROPOSED]  
ORDER NO. 3 REGARDING CERTAIN  
FACTS

07-CV-01658 PJH (EDL)

TRIAL STIPULATION AND [PROPOSED] ORDER NO. 3 REGARDING CERTAIN FACTS

## Scope

### TN's Business Model Was Based On Massive Copying and Infringement

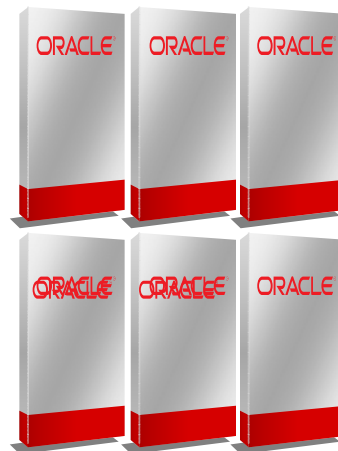
1. TN created and stored a master library of thousands of copies of Oracle enterprise application software as local environments on its servers. **These were all infringing copies.**
2. TN built a master library of millions of copies of Oracle's downloadable support materials. **Many of these were infringing copies.**
3. TN then used these environments and download copies to generate fixes to Oracle software that TN distributed to many different customers. **The vast majority of these fixes resulted from cross-use — using one customer's software to create fixes for other customers.**

## Scope

**SAP, Through Its Wholly Owned Subsidiary TN,  
Made, Stored, And Used Thousands Of Illegal Copies  
Of Oracle's Copyrighted Software From All Four  
Oracle Product Lines**



**CD Binders**  
**727 Copies**



**CD Jukebox**  
**127 Copies**

## Scope

**SAP, Through Its Wholly Owned Subsidiary TN,  
Made, Stored, And Used Thousands Of Illegal Copies  
Of Oracle's Copyrighted Software From All Four  
Oracle Product Lines**



**PeopleSoft  
Environments  
6,189 Copies**



**JD Edwards  
Environments  
29 Copies**



**Siebel  
Environments  
31 Copies**



**Oracle  
Database  
39 Copies**

# Scope



## Scope

### TN's Business Model Was Based On Massive Copying and Infringement

1. After TN was acquired by SAP, it designed computer programs called **“scrapers,”** such as Titan, specifically to download Oracle software and support materials.
2. TN designed these scrapers to take a single customer credential and indiscriminately access and download literally everything on Oracle's support websites.
3. TN's use of scrapers violated Oracle's website terms of use, and caused the websites to crash.
4. TN's use of scrapers permitted it to make millions of unauthorized copies of Oracle's copyrighted software.

## Scope /Risk Taken

**TN's Business Model Was Based On Massive Copying and Infringement**





## Scope /Risk Taken

**TN's Business Model Was Based On Massive Copying and Infringement**



## Scope /Risk Taken

**TN's Business Model Was Based On Massive Copying and Infringement**



## Scope /Risk Taken

**TN's Business Model Was Based On Massive Copying and Infringement**



## Scope

**SAP Expanded TN's Infringing Business Model to  
"as many new markets as possible."**

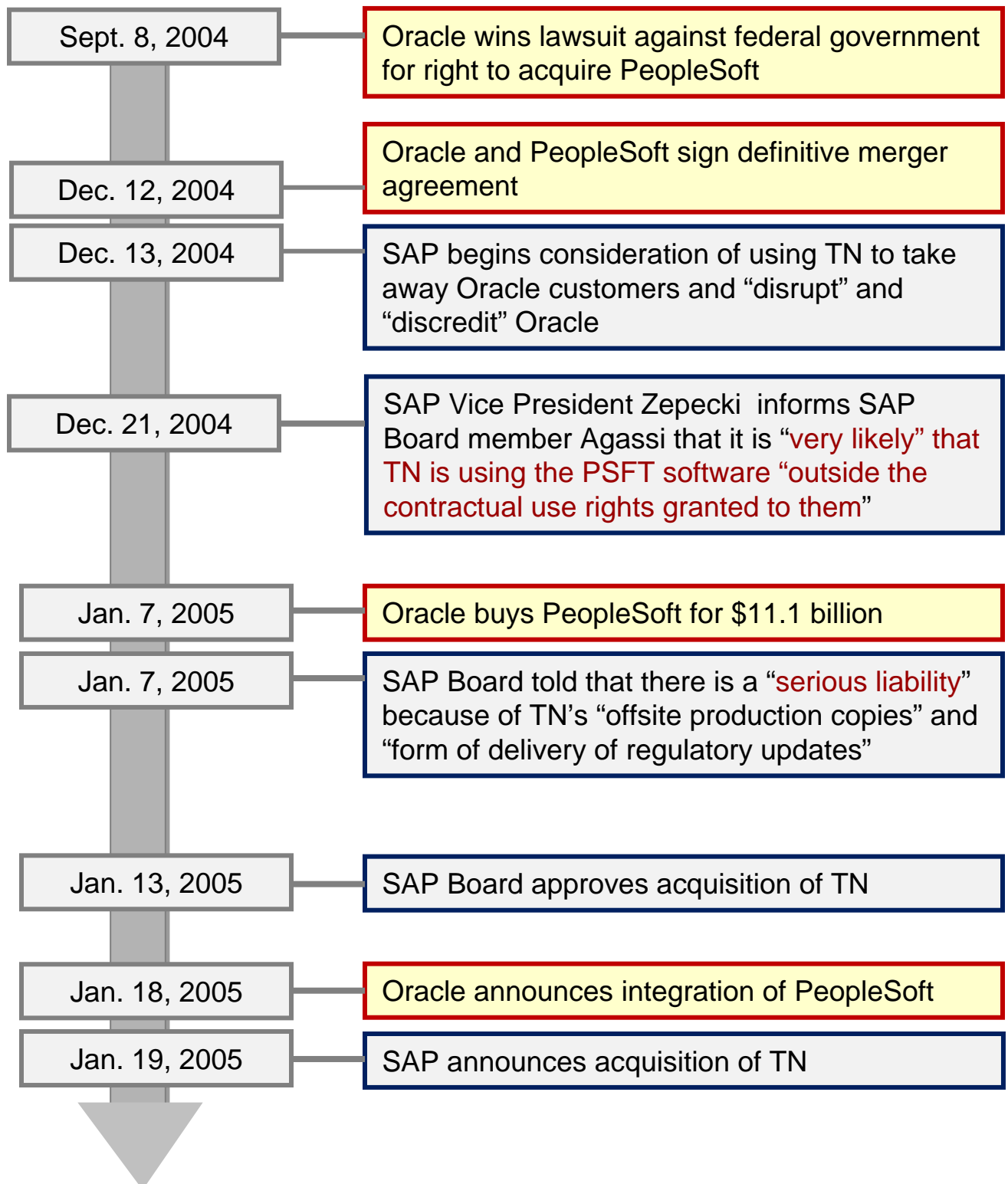


**Andrew Nelson,**

VP of SAP America, CEO of TN

- Q. [W]hat did you understand would be the ways in which your performance would be measured?
- A. [I]n my, what I believe was my first meeting with Gerd Oswald after the acquisition in California, and recall him telling me to close the first customer or the first couple customers in as many places as possible, in as many new markets as possible.

## Need/Risk Taken/Competitive Relationship



# **SAP's Need For Oracle's Copyrighted Software To Execute Its Plan to Take PSFT Customers**

## Need

### SAP Knew That It Could Not Offer Support to PeopleSoft Customers Without TN

Message

From: Shenkman, Arlen [O=SAP/OU=AMERICA1/CN=RECIPIENTS/CN=000000225832]  
Sent: 12/17/2004 11:17:33 AM  
To: Agassi, Shai [O=SAP/OU=AMERICA2/CN=RECIPIENTS/CN=000000115784]  
CC: Mackey, James [O=SAP/OU=AMERICA1/CN=RECIPIENTS/CN=000000065459]; Brandt, Werner [O=SAP/OU=EUROPE1/CN=RECIPIENTS/CN=000000105438]  
Subject: FW: Confidential  
Attachments: Hexaware.ppt

**December 17, 2004 Email  
From Arlen Shenkman  
To Shai Agassi, Werner Brandt, James Mackey**

to TomorrowNow in this space. We will certainly require TomorrowNow to identify its major competitors next week to confirm our research -- that TomorrowNow's competition is Peoplesoft and a few offshore service providers. As you are certainly aware, this is an emerging market, and according to Gartner less than 1 percent of customers paying for ERP product maintenance and support obtain this service from providers other than their ERP software vendors. In fact, currently the only vendor recommended by Gartner for this third party maintenance is TomorrowNow.

While Hexaware holds the skill sets we desire, because Hexaware is an Indian public company, the timeframe for closing an acquisition of the target will be 120 to 180 days.

**“Our research has not provided us with any meaningful competitors for TomorrowNow in this space.”**

**“In fact, currently the only vendor recommended by Gartner for this third party maintenance is TomorrowNow.”**

UNITED STATES DISTRICT COURT  
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PLNTF EXHIBIT NO. 0005  
Date Admitted: \_\_\_\_\_  
By: \_\_\_\_\_  
Nichole Heuerman, Deputy Clerk

## Business Goals / Financial Benefit/Impact

**SAP's Competitive Response to Oracle's PeopleSoft Acquisition Was To Acquire TN To Get Access To Oracle's Copyrighted Software**



Shai Agassi  
From: Werner Brandt  
To: James Mackey  
Subject: [REDACTED]

**December 13, 2004**

**Email from SAP Board Member **Shai Agassi** to SAP Board Member **Werner Brandt** and SAP America Vice President **James Mackey****

Shai  
[REDACTED]

**“In continuation to the PSFT Oracle saga, we decided to take a strong look at the possibility of offering PSFT support/maintenance services from SAP starting early 2005, the idea is to take away the maintenance revenue stream away from Oracle.”**

U.S. DISTRICT COURT FOR THE DISTRICT OF CALIFORNIA  
Case No. 04-cv-00543  
PLAINT FOR INJURY TO REPUTATION  
Filed: [REDACTED]  
By: [REDACTED]  
Nichole Houtman, Deputy Clerk



## Need/Competitive Relationship

**SAP's Competitive Response to Oracle's PeopleSoft Acquisition Was To Acquire TN To Get Access To Oracle's Copyrighted Software**

Executive Board Meeting  
December 15th, 2004

CONFIDENTIAL

SAP AG

Minutes

### Minutes of Meeting of the SAP AG Executive Board, December 15, 2004

Participants:

Executive Board:

W. Brandt, C. Heinrich, H. Kagermann, G. Oswald, P. Zencke,  
S. Agassi, L. Apotheker

Extended Management Board:

L. Hayman, K.-H. Hess, M. Hornish, P. Kirschbauer, K. Kreplin

Supervisory Board:

No participation

**“The Executive Board agrees to make a special offer to PeopleSoft / SAP customers to take over responsibility for maintenance of their PeopleSoft HR installations and potentially upgrading to my SAP.”**

T. Dosch  
July 11, 2008



**Werner  
Brandt**



**Henning  
Kagermann**



**Gerhard  
Oswald**



**Shai  
Agassi**



**Leo  
Apotheker**

**SAP AG Board**

# **The Risk Of Being Caught Infringing Oracle's Copyrighted Software Evidences How Valuable It Was To SAP**

## Risk Taken

# SAP's Competitive Response to Oracle's PeopleSoft Acquisition Was To Acquire TN To Get Access To Oracle's Copyrighted Software

### Message

From: Agassi, Shai [/O=SAP/OU=AMERICA2/CN=RECIPIENTS/CN=000000115784]  
Sent: 12/23/2004 1:18:41 AM



## December 21, 2004 email From John Zepecki To Shai Agassi



O.k., sounds good. I talked with Jeff today and I will be in Newtown Square Tuesday for due diligence. I'll write a quick summary on the plane ride back from Philadelphia.

Johnz

-----Original Message-----

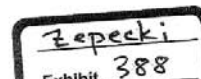
From: Agassi, Shai  
Sent: Tuesday, Dec 21, 2004 22:55 PM  
To: Zepecki, John  
Subject: Re: Peoplesoft 1-2-3

I need you to join the aquisition team asap. All your insights are on the money! I will forward your message to Jim and to Gerd. Expect their pings...

I am not rude, I am on a blackberry

-----Original Message-----

From: Zepecki, John <john.zepecki@sap.com>  
To: Agassi, Shai <shai.agassi@sap.com>  
Sent: Tue Dec 21 12:44:58 2004



**“ . . . its very likely that TN is using the software outside the contractual use rights granted to them.”**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Case #: 07-cv-01658-PJH  
PLNTF EXHIBIT NO. 0011  
Date Admitted: \_\_\_\_\_  
By: \_\_\_\_\_  
Nichole Heuerman, Deputy Clerk

## Risk Taken

**SAP's Competitive Response to Oracle's PeopleSoft Acquisition Was To Acquire TN To Get Access To Oracle's Copyrighted Software Despite Its Known Risk**

**Formal presentation of business case for TN acquisition approved by SAP Board, January 7, 2005**

### Business Case



January 7, 2005

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## SWOT Acquisition Analysis

### Strengths

- Very short time to market for offering and announcing service offering
- "No frills" model makes sense for a segment of customers
- This company has two years of experience building a maintenance and support model
- Targeting stable and mature PSFT releases and limiting the complexity of the service, appears to be a successful model

S

### Weaknesses

- Management is not sophisticated
- Customers have been offered 10 year support terms, discouraging upgrade
- Solely focused on U.S./Canada market
- JD Edwards support practice is just starting
- TomorrowNow has limited experience supporting PSFT 8.x customers
- The bulk of TomorrowNow personnel are outside Austin, Texas
- The TomorrowNow model is not unique - a similar model could be replicated by another company

W

### Opportunities

- Oracle's deal assumptions are challenged by this support model - losing support revenue stream forces actions or reactions and is a distraction
- Oracle's legal challenges to TomorrowNow's ability to provide derivative works/support will require Oracle to also sue its customers - a difficult situation for Oracle
- There is a level of critical mass with expertise delivering a no frill support model, but scaling is heavily reliant of adding new headcount

O

### Threats

- The access rights to the Peoplesoft software is very likely to be challenged by Oracle and past operating issues may be a serious liability if Oracle challenges (i.e., offsite production copies and the form of delivery of regulatory updates may be subject to Oracle challenge)
- The "no frills" lower cost model is at odds with SAP's maintenance model - this conflict will create issues among PSFT and SAP customers
- Its unclear if a "no frills" model is appealing to the broad PSFT customer base or the PSFT customer base that are most successfully converted to SAP

T

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THE BEST-RUN BUSINESSES RUN SAP



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# Competitive Relationship / Financial Benefit/Impact

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THE BEST-RUN BUSINESSES RUN SAP



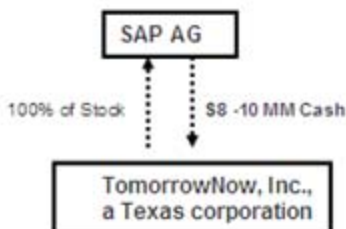
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# Risk Taken

## Acquisition Structure, Due Diligence and Indemnities

### Acquisition Structure



SAP AG, or a wholly-owned affiliate, acquires 100% of the stock of TomorrowNow, Inc., for cash, subject to representations and warranties of the stockholders and appropriate indemnities

*SAP will leave Texas corporation in existence as a liability shield for any potential claims*

### Due Diligence

All offers would be non-binding and subject to complete due diligence, areas of primary concern and focus include:

#### Legal

A full and complete assessment of the legality of the service model and the method of delivery by internal and external counsel.

#### Financial

A full assessment of the financial results, accounting practices and internal controls, including an financial integration assessment and Sarbanes-Oxley internal control and reporting issues.

#### HR

A full assessment of the skills, salaries and benefits offered by the Company.

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***SAP will leave Texas corporation in existence as a liability shield for any potential claims***

**Need/Competitive Relationship/Risk Taken**

**SAP's Competitive Response to Oracle's PeopleSoft Acquisition Was To Acquire TN To Get Access To Oracle's Copyrighted Software**





## Risk Taken

**SAP's Competitive Response to Oracle's PeopleSoft Acquisition Was To Acquire TN To Get Access To Oracle's Copyrighted Software**



**SAP Board Member Gerd Oswald:**

**“We looked at those risks and decided to acquire.”**



**SAP Board Member Shai Agassi:**

**SAP “acquire[d] TN with the knowledge that there was a risk that Oracle would sue.”**

## Risk Taken

**SAP's Competitive Response to Oracle's PeopleSoft Acquisition Was To Acquire TN To Get Access To Oracle's Copyrighted Software**



## Financial Benefit/Impact / Competitive Relationship



Age  
Agassi, Shai [O=SAP/OU=AMERICA2/CN=RECIPIENTS/CN=000000115784]  
1/6/2005 1:54:13 PM  
Mackey, James [O=SAP/OU=AMERICA1/cn=Recipients/cn=000000065459]  
Shenkman, Arlen [O=SAP/OU=AMERICA1/cn=Recipients/cn=000000225832]  
Subject: RE: TNow  
Activity: Private

The press release on this deal will be the cheapest advertising we have ever got... And ORCL's share price will probably

**January 6, 2005 email from SAP Board Member Shai Agassi to SAP America Executives James Mackey, Arlen Shenkman**

there are a few. Think we have some solutions though for the best way to integrate them and the service they currently provide if legal supports moving forward.

**Agassi: “The press release on this deal will be the cheapest advertising we have ever got. . . And ORCL’s share price **will probably go down by 10% that same minute.**”**

From: Mackey, James

**Oracle’s market capitalization on January 6, 2005 was approximately **\$70 billion.****

**A **10% drop** in Oracle’s share price is a **\$7 billion** loss in value.**

By:  
Nichole Heuerman, Deputy Clerk

# **What SAP Says Now**

## SAP Tries To Avoid Paying A Fair Price For What It Took From Oracle

1. SAP has said that it failed to harm Oracle as much as it expected, so the damages in this case should be measured only by Oracle's eventual lost profits.
2. If you hear that argument, ask yourself:
  - a. Does what **SAP failed** to do have anything to do with the value of what it took?
  - b. What did **SAP say** at the time, in its own documents, about the value it placed on TN?
  - c. Do Oracle's lost profits represent the **full value** of what SAP infringed?
  - d. Does Oracle receive the full value of its copyrighted software if Oracle is denied any **chance to bargain** for its market value?

## **SAP Tries To Avoid Paying A Fair Price For What It Took From Oracle**

3. You may also hear SAP say that Oracle executives did not expect SAP and TN to obtain significant benefits, or cause significant harm.
4. If you hear those arguments, ask yourself:
  - a. Did the Oracle employees know – like SAP knew – that TN was using Oracle's own copyrighted software to compete with it?
  - b. If Oracle had known that SAP and TN would be able to use PeopleSoft and JD Edwards copyrighted software to compete with Oracle, and take away those PeopleSoft and JD Edwards customers, how much would Oracle have expected SAP to pay for a license to do so?

## **SAP Tries To Avoid Paying A Fair Price For What It Took From Oracle**

5. SAP also has said that TN did not make money at all, and “only” cost \$10 million. When you hear that, ask yourself:
  - a. How did SAP value TN?
  - b. Did SAP itself measure the value of TN’s business only by its costs or by other benefits SAP expected?
  - c. Did SAP also measure the value of TN’s business by its disruption of Oracle’s efforts?
  - d. Did SAP plan to use TN as a loss leader?

# Business Goals / Competitive Relationship

## Financial Benefit/Impact

January 16, 2005 Draft Presentation

**“Goal:** Our goal is to convert the majority of the PeopleSoft and J.D. Edwards customer base to SAP and contain Oracle’s potential growth in the next generation application market.”

### Strategy

#### “Convert and Contain”

**Goal:** Our goal is to convert the majority of the PeopleSoft and J.D. Edwards customer base to SAP and contain Oracle's potential growth in the next generation application market.

**Strategy:** By offering full maintenance and support of PeopleSoft and J.D. Edwards systems, migration tools along with favorable upgrade licensing terms to SAP NetWeaver and mySAP ERP, SAP will siphon off the cash flow that Oracle needs to build or acquire it's next generation applications. SAP will establish or re-invigorate relationships with potentially thousands of new and existing customers.

#### Key Tactics:

- Announce a dramatic, market changing PeopleSoft and J.D. Edwards support and upgrade offering in January, just as Oracle announces their new strategy.
- Reach out to the joint SAP-PSFT-JDE accounts within the "Global 1,000" (est. 450) over the next 30 days (February) and aggressively convert their maintenance contracts to SAP and facilitate immediate adoption of NetWeaver and planned adoption of mySAP ERP at PSFT and JDE installations within those enterprises.
- Announce a joint initiative between SAP and IBM to service, support and upgrade the existing PeopleSoft and JDE installations by perhaps combining the IBM BCS PeopleSoft/JDE practice with the SAP practice and enable hundreds of IBM channel partners around the world to engage PeopleSoft and JDE accounts on behalf of the joint SAP and IBM initiative.
- Roll out targeted direct marketing and sales programs to a variety of PSFT and JDE market segments including strategic installed bases of mid market manufacturing, project/service industries, local/state governments and HCM
- Wrap up the first half 2005 Safe Passage campaign at the SAPPHIRES with high profile closing events and special tracks to further education and nurture PeopleSoft and J.D. Edwards customers.



# Business Goals / Competitive Relationship

## Financial Benefit/Impact

January 16, 2005 Draft Presentation

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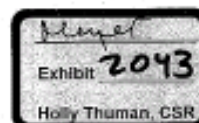
# Business Goals / Competitive Relationship

## Financial Benefit/Impact

**SAP AG**

**Phone Conference**

Ubiquis/Nation-Wide Reporting & Convention Coverage  
305 Broadway, Suite 408 - New York City, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • FAX 212-227-7524



HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS' EYES ONLY

SAP-OR00329565

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Case #: 07-cv-01658-PJH  
PLNTF EXHIBIT NO. 0023  
Date Admitted: \_\_\_\_\_  
By: \_\_\_\_\_  
Nichole Heuerman, Deputy Clerk

## Business Goals / Competitive Relationship

### Financial Benefit/Impact



SAP, PeopleSoft, JD Edwards customer.

MR. KASH RANGIN: I got it. Okay.

MR. SHAI AGASSI: And Tomorrow Now is the vehicle through which they get the maintenance services, not the customer-based that we're going after. It's also--it's not a 75 percent discount, it's a 75 percent credit on their original PeopleSoft, JD Edwards investment. So as a result of that, basically I think what we're looking at, and if you want to look at it from sort of the financials perspective, the rationale is more around the value, if you want, that these customers represent as a potential future set of customers for SAP applications. And it's--the value was estimated by Oracle, rightfully or wrongly, as \$10 billion. What we

### SAP AG Board Member Shai Agassi:

“[I]f you want to look at it from a financials perspective, the rationale is more around the value, if you want, that these customers represent as potential future set of customers for SAP applications. And it's--the value was estimated by Oracle, rightfully or wrongly, as \$10 billion. What we believe is that this customer base is not necessarily captive by Oracle. I think this customer base has to make a choice right now.”

13

## **Business Goals / Competitive Relationship** **Financial Benefit/Impact**

**January 20, 2005 Presentation**

**Approved by SAP AG Board**

### **The Goal**

**Convert approximately 50% of the PeopleSoft and J.D. Edwards customer installations to SAP (100% of shared customers)**

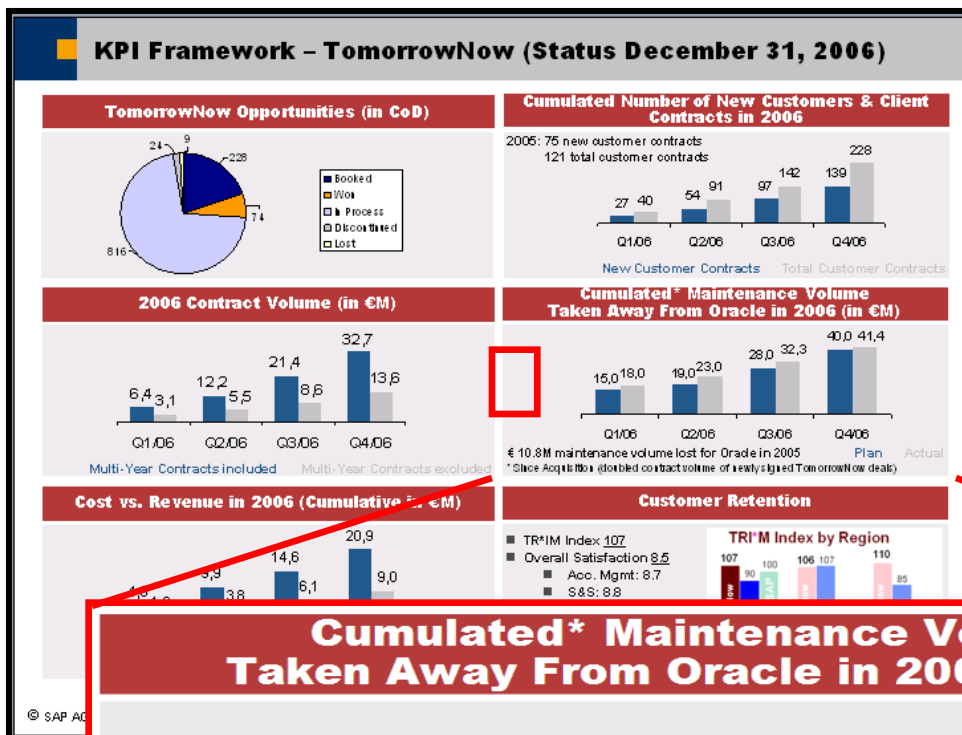
- **Disrupt Oracle's ability to pay for the acquisition out of cash flow**
- **Shrink their share of the application market**
- **Discredit their efforts to create a next-generation application platform**

# Competitive Relationship

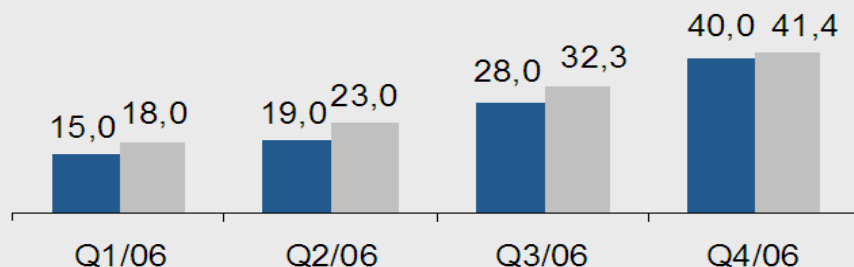
## Financial Benefit/Impact

### “Key Performance Indicator” (KPI)

### How TN Was Judged By SAP: Revenue Taken From Oracle



### Cumulated\* Maintenance Volume Taken Away From Oracle in 2006 (in €M)



€ 10.8M maintenance volume lost for Oracle in 2005

\* Since Acquisition (doubled contract volume of newly signed TomorrowNow deals)

### Customer Retention

## Business Goals / Competitive Relationship

### Financial Benefit/Impact

Email from SAP AG Board member  
Leo Apotheker to SAP America CEO  
Bill McDermott

March 9, 2005



Message

From: APOTHEKER, Leo [O=SAP/OU=EUROPE1/CN=RECIPIENTS/CN=000000042403]  
Sent: 3/9/2005 2:03:45 AM  
To: McDermott, Bill [O=SAP/OU=America1/cn=Recipients/cn=000000124288]  
Subject: Tomorrow now

Bill

Retek deal is in danger and I'm really pissed...we need to inflict some pain on oracle. Is there a chance to close a few TN deals in the next coming days, at extraordinary conditions?

Warm regards

Léo

-----  
Sent from my BlackBerry Wireless Handheld

**“Retek deal is in danger and I’m really pissed... we need to inflict some pain on Oracle. Is there a chance to close a few TN deals in the next coming days, at extraordinary conditions?”**

# Siebel

## **When Oracle Acquired Siebel for \$6.1 Billion, SAP And TN Did Exactly The Same Thing Again**



1. In September 2005, Oracle announced that it would acquire Siebel Systems.
2. Siebel was the market leader for customer relationship management (CRM) software.
3. Once again, SAP felt threatened by Oracle's acquisition.
4. In January 2006, Oracle closed the Siebel Systems, for \$6.1 billion.
5. In May 2006, SAP responded by announcing that TN would provide support for Siebel software, even though TN had never supported Siebel before.



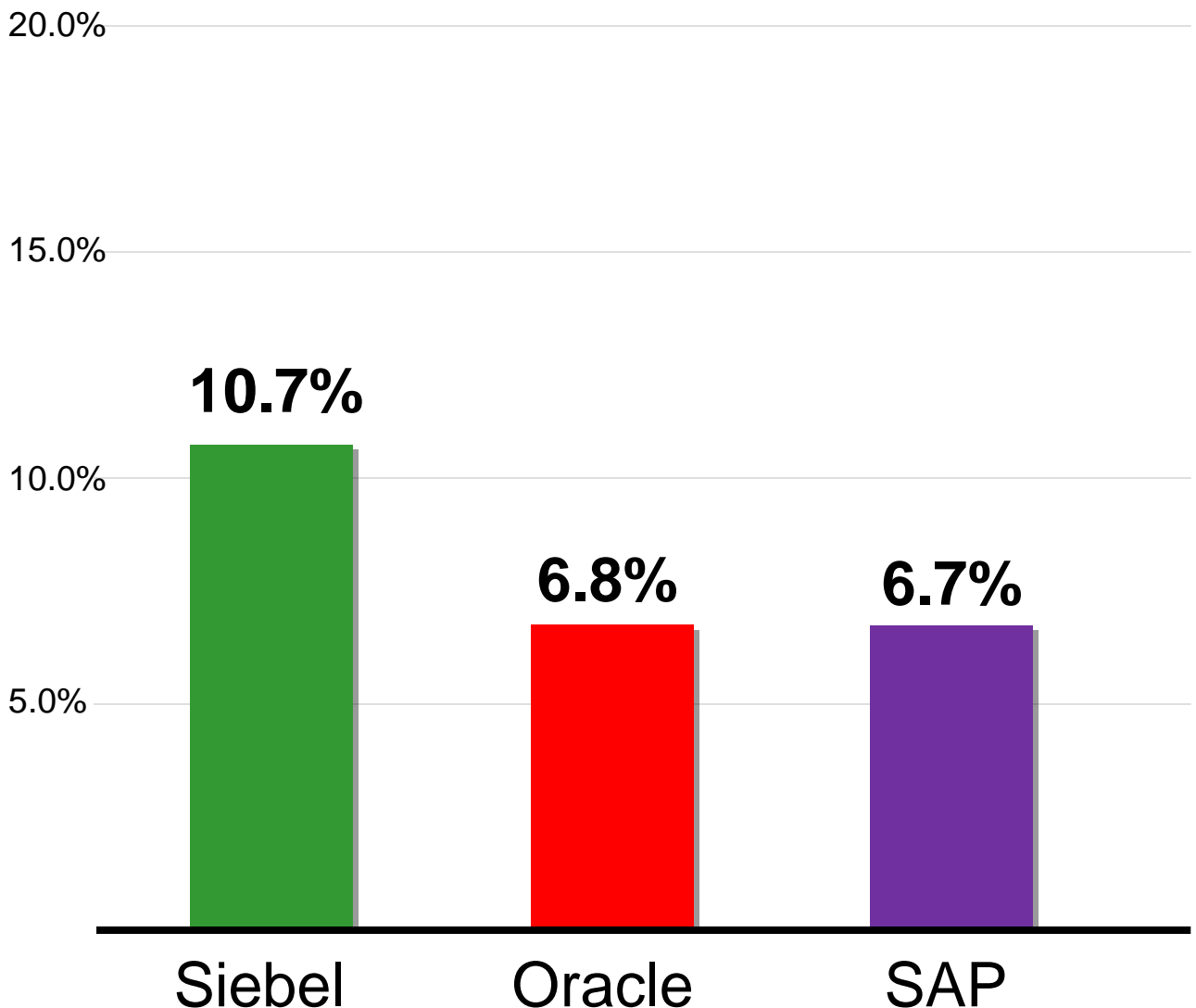
## The Same Factors Once Again Demonstrate The Value Of A Siebel License To SAP

What factors that existed at the time demonstrate the value of the Siebel license that SAP took?

1. **scope and duration** of the license
2. each party's **need** for the copyrighted property
3. SAP's willingness to **assume risk of infringement liability** is an admission of value
4. **competitive relationship** of the parties
5. **goals and business plans** related to the copyrighted property
6. expected **financial benefits** or **impacts**
7. other non-financial factors

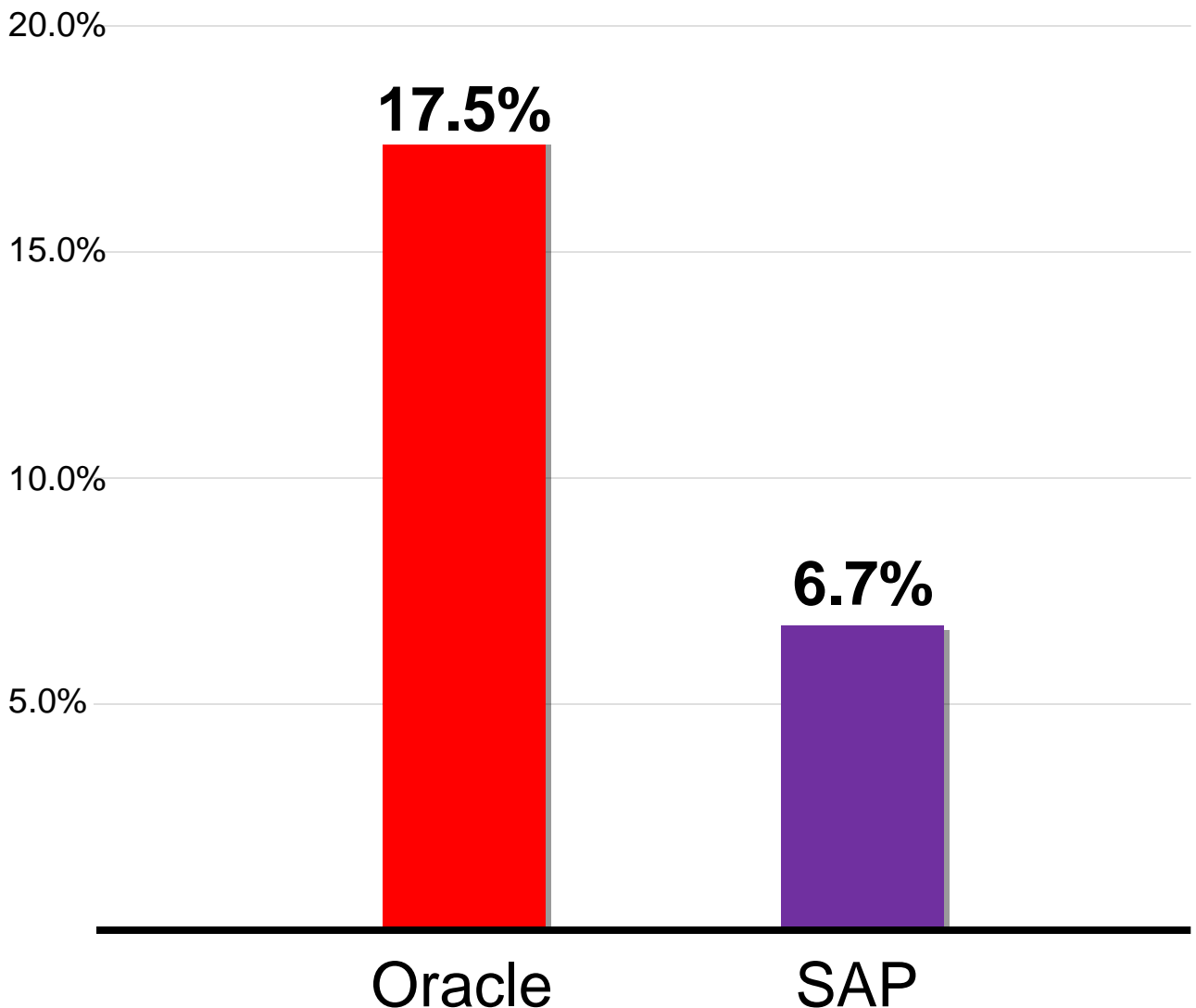
# **SAP Felt Threatened By Oracle's Acquisition Of Siebel**

## **CRM Market Segment Share Before Oracle Bought Siebel**



# **SAP Felt Threatened By Oracle's Acquisition Of Siebel**

## **CRM Market Segment Share After Oracle Bought Siebel**



# Competitive Relationship / Financial Benefit/Impact

## SAP Internal Presentation

October 24, 2005



## CRM Review II

October 24th, 2005 3-7pm CET

Attending	
Henning Kagermann	Executive Board
Shai Agassi	Executive Board
Peter Kirschbauer	PTU Applications
Bob Stutz	CRM
Darc Dencker-Rasmussen	CRM
Pat Bakey	SAP America CRM
Harald Stuckert	Custom Development
Ruediger Schubart	Support
Bernd Leukert	Quality Governance
Tobias Dosch	Board Assistant
Michael Spindler	Board Assistant

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# Competitive Relationship / Financial Benefit/Impact

## SAP Internal Presentation

October 24, 2005

- SAP competitive edge diminished by 40% post SEBL acquisition

### Oracle acquisition of Siebel : Impact on CRM & Business Suite revenues

#### Key Message:

- Historically, SAP's unique end-to-end process story and vendor viability enabled CRM wins while masking drawbacks in core CRM product.
- SAP competitive edge diminished by 40% post SEBL acquisition
- Core CRM deals drive x1.1 other SAP revenue<sup>2</sup>; ~ €1.52B of SAP S/W revenue at risk over 3 years.

Primary Reason for Win Against Competitors <sup>1</sup>	Pre Acquisition	Post Acquisition Impact	
	% of deals	% of deals	
Sales ability to execute	35%	35%	■ Assume no major changes. Need renewed CRM enablement efforts
End to end process story	30%	10%	■ SEBL can claim end-to-end process thru integration to ORCL, until they deliver we can win some times on FUD but only for 18 months
Vendor viability	20%	0%	■ SEBL vendor viability no longer in question
CRM product Capability	15%	15%	■ Becomes new battleground focus
	100%	60%	Ability to win diminished by 40%

#### Field Evidence

Sample deals won with end-to-end process story and vendor viability – would not be won today :

- Earthlink €1.6M CRM € 6.4M Total
- Rockwell €4.7M CRM €16.0M Total
- Timkin €4.7M CRM € 8.9M Total

#### Total Opportunity (b. Euro) (CRM + x1.1 \*50% Business Suite)

Revenue under threat through  
reduction in competitive ability  
(calculated at 40%)

	2006	2007	2008
Total Opportunity (b. Euro)	1.0	1.2	1.6
Revenue under threat through reduction in competitive ability	0.40	0.48	0.64

15%

■ Becomes new battleground focus

60%

Ability to win diminished by 40%

## Competitive Relationship



**SAP Board Member Werner Brandt**

- Q. At some point in time, a decision was made to expand the Safe Passage program to Siebel customers; correct?
- A. That is correct.
- Q. Did Oracle's acquisition of Siebel in any way influence the decision to expand the Safe Passage program to Siebel?
- A. Basically, yes.

## **Need/Risk Taken**

**Even After Oracle Sued In March 2007, SAP  
Continued To Knowingly Support TN's  
Infringement Of Oracle's Copyrights**



**What Factors Show How Valuable And Important The License To Oracle's Copyrighted Property Would Be To SAP?**

**What factors that existed at the time demonstrate the value of the license that SAP took?**

- 1. scope and duration** of the license
2. each party's **need** for the copyrighted property
3. SAP's willingness to **assume risk of infringement liability** is an admission of value
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