

# **EXHIBIT VV**

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Court's Ruling</i>
<b>Agassi, Shai 01/05/09</b>		
53:14 – 53:17 <b>Q. Didn't you acquire TomorrowNow with the knowledge that there was a risk that Oracle would sue?</b> <b>A. Yes.</b>	Mr. Agassi was on the SAP AG Executive Board at the time of the TomorrowNow acquisition. The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.	<i>Overruled</i>
55:13 – 55:15 <b>Q. Do you know the board issued a directive to TomorrowNow to stop that practice?</b> <b>A. I might have. I don't know.</b>	The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.	<i>Overruled</i>
93:25 – 94:03 & 94:09 – 94:11 <b>Q. Did you have any concerns at any time with the legality of TomorrowNow's operations?</b> <b>A. Yes.</b> <b>Q. When did they first arise?</b> ***** <b>THE WITNESS: It was one of the questions that we've asked from the first minute is, was this legal or not?</b>	The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.	<i>Overruled</i>
97:04 – 97:09 <b>Q. And so you deny ever learning that TomorrowNow downloaded</b>	The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to	<i>Overruled</i>

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<p>copies of software to its own servers?  <b>A. I don't know. I mean, you -- I don't recall today if you're -- you know, I'm -- I may or may not. I don't know.</b></p>	<p>contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.</p>	
<p>104:18 – 104:22  <b>Q. Do you recall that the Executive Board of SAP in which you were a member issued a directive to TomorrowNow to remove PeopleSoft software from its systems?</b>  <b>A. No.</b></p>	<p>The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.</p>	<i>overruled</i>
<p>201:13 – 201:14 &amp; 202:08 – 202:17  <b>Q. Okay. Let me ask you to look at Exhibit 212, please.</b>  *****  <b>Q. Did you tell Mr. Word what the role of Mr. Zepecki and Mr. Geers was supposed to be?</b>  <b>A. Yeah. John is our bullshit detector.</b>  <b>Q. Was that your phrase?</b>  <b>A. No. But it's a good phrase.</b>  <b>Q. What does it mean?</b>  <b>A. It means that if these -- if TomorrowNow would tell things that are not credible, John has better experience than we do in understanding that material.</b></p>	<p>The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.</p>	<i>Sustained</i>
<p>218:09 – 218:19; 218:20 – 218:21; 218:25 – 219:04; 219:09 – 219:22  <b>Q. The second page of Exhibit 707 includes an</b></p>	<p>The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not</p>	<i>Sustained</i>

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<p>analysis by Mr. Zepecki of the strengths, opportunities of TomorrowNow, and the weaknesses, threats. Do you see that?</p> <p>A. Yeah.</p> <p>Q. And under strengths, opportunities, the last bullet point states: Oracle's legal challenges to TomorrowNow's ability to provide derivative works/support will get customers, quote, "in the middle," close quote, no-win situation for Oracle.</p> <p>*****</p> <p>Is this the first time you'd heard that?</p> <p>A. No.</p> <p>*****</p> <p>Q. What did you understand Mr. Zepecki to mean?</p> <p>A. That Oracle -- if Oracle went after TomorrowNow, it would -- it would actually alienate customers.</p> <p>*****</p> <p>Q. Was it a factor in favor of supporting the acquisition?</p> <p>A. Yes.</p> <p>Q. Under Weaknesses/Threats, about halfway down there's a bullet point that states: The access rights to the PeopleSoft software is very likely to be challenged by Oracle. SAP has to determine how much of a liability a legal challenge would be and factor it into the deal. That's not the first time used heard that at this</p>	<p>damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.</p>	

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<p>point. Correct?  <b>A. John has -- John has expressed that a few times.</b></p>		
<p>242:01 – 242:04; 242:10 – 242:20; 242:22 – 242:22  Q. Let me show you what's been marked as Exhibit 221. This is an email from you to Mr. Mackey dated Janary 6, 2005.  *****  <b>A. But in any event, what I want to ask you about is the next sentence: Should not be an issue to do the stock deal since there is no IP to transfer to Germany, and we want a separate identity to shield liability. You did know by now that there was no IP being acquired?</b>  <b>A. Yes.</b>  <b>Q. So you knew that TomorrowNow had no independent right to PeopleSoft intellectual property?</b>  *****  <b>THE WITNESS: I assumed - I assumed that.</b></p>	<p>The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.</p>	<p><i>Sustained</i></p>
<p>255:06 – 255:09  <b>Q. Did anyone point out concerns that hadn't been raised in the business case?</b>  <b>A. No. The only concerning that was brought up was legal.</b></p>	<p>The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.</p>	<p><i>Sustained</i></p>
<p>358:21 – 358:22; 360:13 – 360:21  Q. Let me show you an exhibit that has been marked 720.</p>	<p>The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to</p>	

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<p>*****</p> <p><b>Q. In the top of the page, near the top of the page, you ask the participants to stop the thread and communicate over the phone. Why is that?</b></p> <p><b>A. It's a general rule that if you start these over-expanding emails, you're better off getting on the phone and hashing it out.</b></p> <p><b>Q. It doesn't have anything to do with the sensitivity of the topic?</b></p> <p><b>A. It could be.</b></p>	<p>contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.</p>	<p><i>Sustained</i></p>
<p>366:15 – 366:18</p> <p><b>MR. PICKETT: Q. Did Mr. Mackey tell you that TomorrowNow is a separate entity due to the threat of litigation?</b></p> <p><b>A. In this email, he says so.</b></p>	<p>The testimony is not relevant under FRE 401-402 and is unfairly prejudicial under FRE 403, as it is only relevant to contributory infringement (not damages) and goes beyond what is necessary to provide appropriate context pursuant to the Court's October 28, 2010 Minute Order. ECF No. 952.</p>	<p><i>sustained</i></p>
<p><b>Ritchie, John 12/02/10</b></p>		
<p>180:20-23; 181:2-5</p> <p><b>Q. Do you know <u>what people did after things got down into the hard-coded download path</u>?</b></p> <p><b>A. <u>No. I already said I didn't.</u> I said they could rename it easily and copy it and move it.</b></p> <p>*****</p> <p><b>Q. Correct.</b></p> <p><b>A. I didn't mean – afterward they could do whatever they want with it. They could download it to a flash drive and take it to SAP if they wanted.</b></p>	<p>The bolded testimony is not relevant under FRE 401-402 and unfairly prejudicial under FRE 403. The witness was a hostile former TomorrowNow employee at the time of his deposition. The only relevance this could have is towards contributory infringement; therefore, under the Court's Minute Order (ECF No. 952), the testimony is not relevant. Additionally, the witness already testified that he did not know what "people did after things got down into the hard-coded download path" (see the underlined text). To</p>	<p><i>Sustained</i></p>

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	allow the witness to gratuitously say, after clearly stating that he did not know, that "[t]hey could download it to a flash drive and take it to SAP if they wanted" is unfairly prejudicial and the prejudicial effect outweighs any probative value.	