

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a)
Delaware corporation,)
ORACLE USA, INC., a)
Colorado corporation, and)
ORACLE INTERNATIONAL)
CORPORATION, a California)
corporation,)
)
Plaintiffs,)
)
vs.) No. 07-CV-1658 (PJH)
)
SAP AG, a German)
corporation, SAP AMERICA,)
INC., a Delaware)
corporation, TOMORROWNOW,)
INC., a Texas corporation,)
and DOES 1-50, inclusive,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF

PAUL K. MEYER

VOLUME 3; PAGES 648 - 937

FRIDAY, MAY 14, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-427378)

09:17:35 1 MR. McDONELL: Q. So Mr. Meyer, you
09:17:37 2 referred to your report. And as I understand your
09:17:40 3 report, what you referred to there is a lot of the
09:17:42 4 activities of the defendants that you chronicle in
09:17:46 5 your report, or the alleged activities.

09:17:49 6 But that's -- I have a little different
09:17:52 7 question.

09:17:52 8 Have you made an effort in your work to
09:17:55 9 actually establish the causation between a
09:18:01 10 particular customer's purchase of something from
09:18:05 11 SAP, either some software or service, and some
09:18:10 12 alleged infringement in a way that you can say that
09:18:14 13 you know that that customer made that purchase from
09:18:18 14 SAP and, but for the activities of TomorrowNow,
09:18:20 15 that customer would not have made that purchase?

09:18:23 16 Have you done that analysis?

09:18:24 17 MS. HOUSE: Objection. Compound, vague,
09:18:27 18 assumes a legal test that's not in evidence,
09:18:30 19 overbroad. And asked and answered.

09:18:35 20 THE WITNESS: I believe I've answered that
09:18:36 21 question. And from my perspective, I have
09:18:38 22 addressed that exact issue. And the activities as
09:18:41 23 I've testified clearly the last 2 days of
09:18:44 24 TomorrowNow and SAP, and the significant references
09:18:48 25 to my report, which I mentioned right here, and the

09:18:51 1 hundreds of documents in my footnotes that
09:18:54 2 reference this plan of SAP and TomorrowNow and
09:18:56 3 working in union, from my perspective, sets up a
09:19:00 4 situation where one cannot undo what's been done.
09:19:04 5 Let me finish.
09:19:05 6 So once that plan is unveiled, and the
09:19:07 7 salesforce is initiated, and 4000 customers are --
09:19:11 8 joint customers are approached and presented and
09:19:14 9 solicited, you have a situation now where a
09:19:17 10 business plan and marketing activities have taken
09:19:20 11 place using the property that in this case is not
09:19:24 12 the property of SAP/TomorrowNow.
09:19:26 13 That has an impact on all those customers.
09:19:29 14 And I focused on the 86, and I've made some
09:19:31 15 adjustments and I've looked at timing issues. But
09:19:35 16 those customers now have all been -- at some level
09:19:37 17 been impacted, and SAP has benefited from having a
09:19:40 18 program in place that was announced to the world on
09:19:44 19 January 19th, 2005. And one can't go to any level
09:19:48 20 much different than that, because you look at all
09:19:51 21 those customers, and those were joint customers,
09:19:53 22 they had TomorrowNow, they had SAP's other
09:19:56 23 products, and that's where we are.
09:19:58 24 And I've quantified it, I've made
09:20:00 25 adjustments. I believe I've addressed what I need

09:20:02 1 to address, and I feel the numbers are
09:20:03 2 appropriates.

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09:29:51 3 MR. McDONELL: Q. Would you look at
09:29:51 4 paragraph 435 of your report again, please?
09:30:13 5 Strike that.
09:30:39 6 Okay. I want to draw your attention to
09:30:41 7 paragraph 435 of your report. The third sentence
09:30:45 8 reads:
09:30:46 9 If Oracle is awarded actual damages on
09:30:48 10 the basis of its lost support profits, as
09:30:51 11 opposed to based on the fair market value of
09:30:53 12 SAP's use of the infringed copyrighted
09:30:56 13 materials in suit, I understand Oracle would
09:30:58 14 be entitled to an award of infringer's
09:31:00 15 profits as it relates to any relevant
09:31:03 16 TomorrowNow customers who are -- who also
09:31:06 17 purchased applications or other services from
09:31:08 18 SAP or were otherwise excluded from the
09:31:11 19 calculation of lost support profits.
09:31:13 20 Do you see that?
09:31:15 21 A. Yes.
09:31:15 22 Q. And I think this is clear, but just to
09:31:19 23 make it clear, that defined term "relevant
09:31:22 24 TomorrowNow customers," that's our list of 86.
09:31:25 25 Right?

09:31:32 1 A. That would be the list of 86, that's
09:31:34 2 correct.

09:31:34 3 Q. And then going on in that same sentence,
09:31:37 4 where you say, or were otherwise excluded from the
09:31:42 5 calculation of lost support profits, what do you
09:31:45 6 mean by that?

09:31:58 7 A. Let me back up. Just to be precise, with
09:32:01 8 the relevant TomorrowNow customers, it's the ones
09:32:04 9 that overlap with having SAP, other purchases. So
09:32:11 10 it is the 86, but just -- it really is the whole
09:32:15 11 phrase that brings that together.

09:32:16 12 Q. Thank you. Then my follow-up question is,
09:32:18 13 in that same sentence where you make reference to
09:32:22 14 those customers who are otherwise excluded from the
09:32:26 15 calculation of lost support profits, what are you
09:32:29 16 getting at there?

09:32:30 17 A. Well, that would be a situation where, of
09:32:33 18 the 358, I've made certain exclusions and I've done
09:32:36 19 certain calculations. If there was a situation
09:32:39 20 where in the group that was excluded in that
09:32:44 21 determination of the lost profits due to Oracle
09:32:47 22 from TomorrowNow, if someone was excluded for the
09:32:50 23 reasons I've laid out in my report, and I've
09:32:53 24 presented those schedules, that from -- my
09:32:55 25 understanding is that that customer would also be

09:32:59 1 eligible for a calculation of infringer's profits
09:33:03 2 as it relates to that TomorrowNow customer that's
09:33:05 3 not also in the group of 86.
09:33:08 4 So it's sort of that -- that's the
09:33:10 5 category of that -- of that situation.

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09:35:21 6 Q. Okay. So as you sit here today, what's
09:35:22 7 marked as Exhibit 2020 reflects your current
09:35:25 8 analysis of infringer's profits. Is that right?

09:35:28 9 A. That's correct.

09:35:29 10 Q. So I want to walk through it and make sure
09:35:32 11 I understand all the details.

09:35:35 12 First of all, is it -- I think you already
09:35:38 13 established that the customers listed here are the
09:35:42 14 list of 86. Is that right?

09:35:51 15 A. Yes. This would be the list of 86
09:35:53 16 customers.

09:35:53 17 Q. And I think in some cases, because there
09:35:56 18 are some companies that may appear twice, like a
09:36:02 19 Zimmer, Inc., there may be more than 86 line items.
09:36:06 20 But essentially, what you've tried to do is analyze
09:36:09 21 the list of 86 customers. Correct?

09:36:11 22 A. That's right. I would agree, there's some
09:36:12 23 additional lines, but it comes back to the 86.

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09:50:03 5 Q. Okay. Then let's look at the box on page
09:50:06 6 4 of 4 in Exhibit 2020. I want to just make sure
09:50:13 7 we've got this clear.
09:50:14 8 So your ultimate calculation of
09:50:16 9 infringer's profits is 577 million in SAP revenue,
09:50:22 10 less a 50 percent profit margin, and resulting in
09:50:27 11 alleged SAP infringer's profits of 288 million
09:50:30 12 dollars. Correct?
09:50:33 13 A. That's correct.

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12:53:30 1 Q. Yeah. So, you know, my overall question,
12:53:34 2 just to to get started here, is whether you've read
12:53:37 3 Section 12.2 of Mr. Clarke's report; and, if so,
12:53:41 4 whether you have -- you know, take issue with it.

12:53:44 5 A. If we're focused on the issue of the cost
12:53:47 6 deductions from infringer's revenues as it relates
12:53:54 7 to determining infringer's profits in this case, I
12:53:57 8 have read through this at a medium to high level,
12:54:01 9 and from my perspective, in this part of
12:54:06 10 Mr. Clarke's report, have come to no -- really no
12:54:10 11 particular opinion.

12:54:12 12 But when you really cut through it all, I
12:54:14 13 basically have taken what I'll call some results
12:54:18 14 from his analysis, he comes up with a wide variety
12:54:21 15 of analytical schedules and approaches, which I
12:54:27 16 can't determine why he had to do that, but the long
12:54:31 17 and the short is, he determines that basically, the
12:54:35 18 costs are around 50 percent and the profits are
12:54:38 19 around 50 percent.

12:54:39 20 And you'll see in my schedule that we're
12:54:41 21 talking about 42.2.DU, that the figure I use for
12:54:48 22 the profit margin of 50 percent is referenced at
12:54:53 23 Footnote 10, which basically I take two figures
12:54:57 24 from Mr. Clarke's appendix M-9, and I compare those
12:55:05 25 figures and come up with a factor of 50 percent.

12:55:08 1 And we can go look at that. So in this
12:55:10 2 area, I'm not accepting or rejecting. I'm just
12:55:14 3 saying, for purposes of the determination of the
12:55:15 4 infringer's profits, I'll use this figure, and
12:55:19 5 there we are.

12:55:21 6 Q. Okay. Thank you.

12:55:21 7 A. And I understand that represents sort of
12:55:23 8 the cost of license and support. That's sort of
12:55:27 9 a --

12:55:27 10 Q. Blended?

12:55:28 11 A. -- blended cost of product and support.

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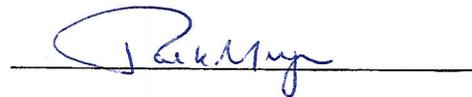
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I declare under penalty of perjury that
the foregoing is true and correct. Subscribed at
San Francisco, California, this 17 day of
June, 2010.

Subject to the attached errata



PAUL K. MEYER

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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein state, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: May 26, 2010
Holly Thuman
HOLLY THUMAN, CSR