EXHIBIT B

Oracle USA, Inc., et al

v.

SAP AG, et al

Stephen K. Clarke
Expert Report

May 7, 2010

Ajinomoto Co., Inc. SAP Support Revenue On Or After TomorrowNow Service Start Date Less Ongoing Revenue				
	2006	**2007**	**2008**	**Total**
Total Revenues	$1,581,414	$1,658,883	$2,118,256	$5,358,553
Ongoing Revenue	($1,271,624)	($1,271,624)	($1,271,624)	($3,814,872)
Corrected Revenues	$309,790	$387,259	$846,632	$1,543,681

As reflected in the table, Mr. Meyer's accused revenue for Ajinomoto was overstated by $3,814,872. The Ajinomoto error demonstrates the enormity of Mr. Meyer's failure to exclude Ongoing Revenue from his calculations. In total, I determined that Mr. Meyer failed to exclude $100 million[1082] of Ongoing Revenue from the $575 million of accused revenue.

I deducted Ongoing Revenue from my analysis. As shown in Appendix N-3, total revenue "On or After TN Start Date" is $900 million. However, as shown on Appendix N-4, Ongoing Revenue during that period was $196 million, 21.8% of total revenue.[1083]

12.1.4. BOBJ Revenue

SAP purchased BOBJ in January 2008.[1084] I understand that BOBJ was not part of SAP's Safe Passage program and had no connection to TomorrowNow. Therefore, it is inappropriate for Mr. Meyer to include BOBJ revenue. Had Mr. Meyer properly excluded BOBJ, he would have removed $10.6 million[1085] in revenue from the $575 million he accused.

12.2. Excluded Expenses

According to the Litigation Services Handbook:

> Neither accounting jargon nor a prior court's categorization of a cost as variable or fixed should prejudice the analysis: any cost, however named, that varies as a function of increased sales should be deducted to the extent that it varies in the range between the actual sales and the but-for sales…a change in sales volume will always increase strictly variable costs. The same change in volume, however, has a different impact on semi variable

1082 Arrived at by summing the revenue adjustments in Appendix N-4 for Mr. Meyer's non-excluded customers.

1083 $195,831,380 (Appendix N-4) ÷ $899,564,161 (Appendix N-3).

1084 SAP.com. "SAP Acquires Business Objects in Friendly Takeover." <http://www.sap.com/about/investor/bobj/index.epx>.

1085 Appendix N-2.

> costs, depending on how that cost changes in specific range or increased or decreased volume.[1086]

The courts have considered the question of overhead[1087] allocation in a number of cases. My reading of relevant cases leads me to understand that overhead costs may be deducted, provided they can be properly 'attached' in some meaningful way to the accused revenues. The following case illustrates the point:

The 1999 copyright infringement case Hamil v. GFI states:

> The court thus concluded that certain categories of general overhead expenses – in this case, those relating to creating and maintaining a 'supervising staff and organization' – were appropriately deducted from gross revenue. The court then considered various methods of allocating those overhead expenses to the production of the infringing movie, and selected the method that was most fair, accurate, and practical in light of the infringing company's structure and products. Given the impossibility of determining the overhead costs that were directly related to the production of the infringing motion picture, the court permitted a deduction of a portion of overhead expenses based on the cost of production of the motion picture.[1088]
>
> Sheldon [Sheldon v. Metro-Goldwyn Pictures Corp.] thus contemplates a two-step procedure for deducting overhead expenses from an infringer's profits. The first step is to determine what overhead expense categories (such as rent, business, entertainment, personnel and public relations) are actually implicated by the production of the infringing product. Once a sufficient nexus is shown between a category of overhead and the production or sale of the infringing product, a court need not scrutinize for inclusion or exclusion particular items within the overhead category. For example, if 'entertainment expenses' is a category of overhead implicated in the line of business that produced or sold the infringing product, then country club dues included within that category should not be singled out for exclusion as they were by the district court here. Rather, the court should limit its inquiry to the sufficiency of the nexus between the expense category and production of the infringing product.[1089]

Neither Mr. Meyer nor I can say with certainty how much expense SAP incurs as a result of servicing a particular customer's needs. The evidence I have reviewed suggests that there are customers that take a lot of time and effort (and, therefore, expense) to service and some not so

1086 Weil, Roman L., et al. *Litigation Services Handbook: The Role of the Accountant as Expert*. 2nd ed. New York, NY: John Wiley & Sons, Inc., 1995. Section 33.2, page 7.

1087 Throughout this report I refer to overhead to maintain consistency with the support and Mr. Meyer's report. However, the relevant usage of "overhead" in the context of this analysis is as "variable overhead" because Oracle's and SAP's accounting methods do not classify all variable expenses above the gross margin line. Even though certain expenses are accounted for as overhead below the gross margin line, if they vary with the level of revenue, they should be deducted from the accused revenues.

1088 *Hamil America, Inc. v. GFI*, 193, 218 F.3d 92 (2nd Cir. 1999) *(citing, Sheldon v. Metro-Goldwyn Pictures Corporation*).

1089 *Hamil America, Inc. v. GFI*, 193, 218 F.3d 92 (2nd Cir. 1999).

much. The customers may be difficult because their in-house IT staff lack necessary skills to solve problems, because their software is convoluted by heavy customization or for other reasons. However, because it is not possible to determine what the added costs of SAP servicing any of the accused customers would have been (or in Oracle's case what the added costs of servicing the customer would have been if they had stayed with Oracle), I deduct the variable costs of servicing the relevant customer base from the relevant customer revenue.

To do so, I quantified the costs incurred to generate the identified disgorgeable revenues by determining the relationship between SAP's historical costs and revenue based on SAP's historical quarterly income statements from 2002 to 2008. Relevant costs include overhead expenses as well as direct and indirect costs.

I identified the following revenue producing functional areas as being subject to disgorgement:[1090]

1. Components[1091]
2. Other SW [software] Services
3. Other
4. Projects
5. Rental
6. Support
7. Training
8. Hosting
9. Documentation
10. Not assigned
11. Other services

SAP's historical accounting records do not contain revenue categories for each of the above functional areas (i.e. certain of the functional areas are grouped in the same revenue category as another and may not have the identical description). The revenue categories included in SAP's income statements include the following:

1. Software
2. Support

1090 SAP Revenue Report.
1091 SAP refers to its applications and portion of applications as "components" which I also refer to as "applications" or "software" in this report.

3. Subscriptions

4. Consulting

5. Training

6. Other Services

7. Intercompany Services[1092]

8. Other Revenue

I mapped the functional areas to SAP's revenue categories based on discussions with SAP management as follows:

1. Software (Components, Documentation, Other)

2. Support (Support)

3. Subscriptions (Rental, Other SW Services)

4. Consulting (Projects)

5. Training (Training)

6. Other Services (Other Services, Hosting)

7. Other Revenue (Not Assigned)

SAP's expense accounts are not specific to the product level. The *Litigation Services Handbook* states:

> Where accounting records are not specific to the individual-product level, as is usually the case with overhead costs, courts have accepted allocating these costs to the infringed work based on the infringed work's share of total sales. For example, in Aitken, Hazen, Hoffman, Miller, P.C. v. Empire Construction Co., the defendant divided its overhead expenses by net sales to yield a pro rata share. This share was applied to the infringing sales to yield the attributable overhead costs.
>
> The difficulty with this approach is that it measures the average cost per sales dollar rather than the marginal cost. A better alternative uses regression analysis to measure the variability of overhead costs as a function either of all sales or of the smallest sales category encompassing the infringing sales. This approach better estimates the variable component

[1092] Intercompany Services does not appear as a functional area in relation to revenues associated with the 86 customers on the SAP Revenue Report.

> of overhead costs and conforms more to the legal standard of using costs that would not have been incurred but for the infringement.[1093]

Accordingly, I analyzed SAP's produced financial information using regression techniques to determine the fixed versus variable expense components in order to determine the deductible expenses to apply to the relevant revenues.

12.2.1. Regression Analysis

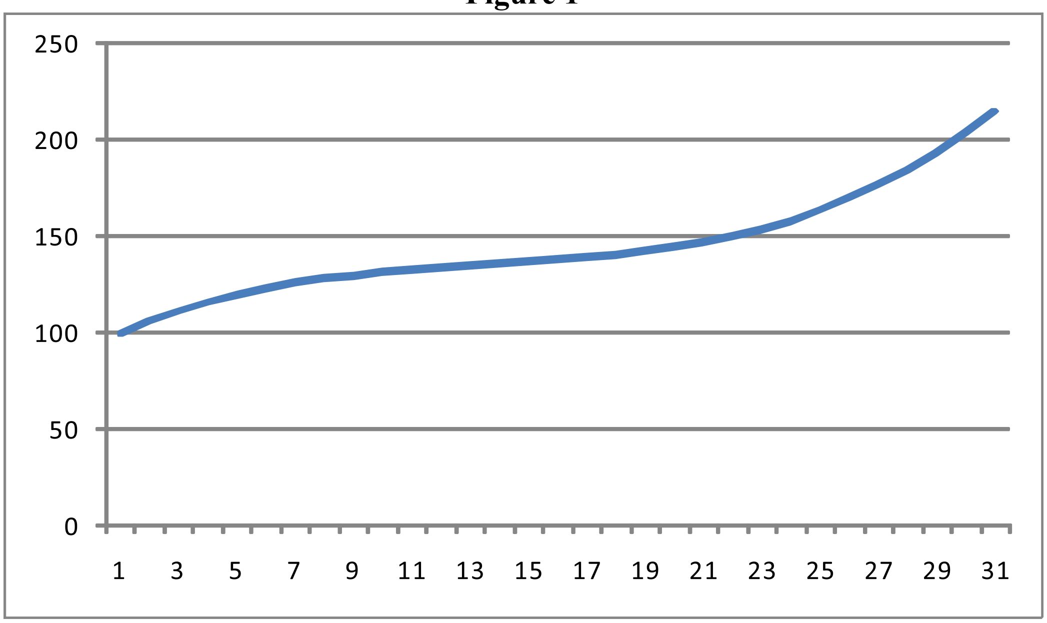
SAP's total costs include variable costs and fixed costs. The fixed costs are the costs the firm incurs regardless of the level of sales and variable costs change with the level of sales.

In the long run, all costs are variable.[1094] Theoretically, the total cost function is a multivariate non-linear equation[1095] in the form of:

$$TC = a + b_1Q + b_2Q^2 + b_3Q^3$$

Where: TC represents total cost; the intercept 'a' theoretically represents fixed costs; Q is the level of output; and the 'b' coefficients represent measured constants (see Figure 1 below).

Figure 1



1093 Weil, Roman L., et al. *Litigation Services Handbook: The Role of the of Accountant as Expert*. 2nd ed. New York, NY: John Wiley & Sons, Inc., 1995, pages 33.9-33.10.

1094 For example, in the case of a manufacturing operation, even the plant becomes a variable expense if production demands exceed capacity or if the level of demand no longer requires such a large facility.

1095 Most basic microeconomic textbooks describe the total cost curve as a simple linear function in the form of TC = a + bQ which may be a reasonable fit in the short run. Note that the total cost curve is close to a linear function after the initial (fixed cost) start up period (see graph in the range of Q = 9 to Q = 20).

12.2.2. Regression Analysis to Apportion Fixed and Variable Costs

I assume that as revenues increase costs also increase. In practice it is not always possible to identify which of the cost categories tracked in the accounting records are fixed and which are variable. Therefore, I performed a regression analysis to allow discrimination between the two.

To estimate the fixed and variable components of total SAP costs I used single variable nonlinear regression analysis. The functional format I employed was a double log model using the natural logarithm (Ln). My specific equation was:

$$\text{Ln(Total Cost)} = \text{Ln}(a) + (b)\text{Ln}(x) \text{ (where } x = \text{ revenues)}$$

My equation above differs from a simple linear regression (i.e. $TC = a + bx$) in that it calculates the statistical relationship between costs and revenues using a double log format. Double log models to measure nonlinear relations and incremental changes (i.e., elasticities) are well suited to my current purpose. I considered other functional formats and determined my double log model provided the best fit for the SAP cost data. Given the functional format I used, fixed costs are approximated by the 'a' coefficient and the expected variable cost is estimated using the 'b' coefficient.

I analyzed quarterly costs and revenues for SAP subsidiaries with 2002 to 2008 data setting the dependent variable as total cost and the independent variable as total revenue.[1096] In all, this approach allows for 448 observations in my model and would typically be referred to as "pooled" cross-section/time series analysis (or panel data). I selected the 2002 to 2008 period to increase the number of observations and improve the accuracy of my model and to determine whether there is a fundamental change in the relationship between costs and revenues in the (alleged) "pre" and "post" period of disgorgeable revenues.[1097] My model is designed to apportion the fixed and variable costs on a percentage basis (i.e., I did not directly estimate the fixed and variable dollar amounts before and after the relevant period). Prior to estimating my regressions, I adjusted all dollars for inflation using the U.S. CPI (1982-1984 base year) as reported by the Bureau of Labor Statistics.[1098]

I summarize the results of my regression model in Appendix M-9 (Figure 1) and conclude that approximately 42% of total costs are fixed (i.e. costs that are theoretically incurred at zero revenue). My R^2 of 99% indicates that 99% of the change in costs is statistically explained by the change in revenue.[1099]

1096 This includes the U.S. (multiple subsidiaries), Germany (multiple subsidiaries), Japan, France, Switzerland, Canada, Netherlands, Italy, Australia, Singapore, Sweden, New Zealand, and Croatia.

1097 Appendix M-5. and Appendix M-9 (Figure 1).

1098 <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt>.

1099 Two traditional measures of association are the coefficient of correlation (r) and the coefficient of determination (r^2). "The coefficient of determination (r^2)… represents a true measure of strength between a dependent and independent variable. It measures the proportion of total variation in the dependent variable (Y) that is explained or accounted for by the total variation in the independent variable (X)." *Applied Statistics for Public Policy,* Macfie and Nufrio, p. 398.

I checked for the effect of autocorrelation in the regression using a Durbin-Watson test.[1100] The Durbin-Watson statistic of 2.07 showed my model was not affected by autocorrelation. The result of my regression is shown in Appendix M-9 (Figure 1).

12.2.3. Tests for Robustness

I tested my model for robustness to ensure the model results were stable (i.e. robust) to simple changes in functional format. The tests were to (1) apply a semilog format to the 2002 to 2008 data; (2) apply a double log format to the 2005 to 2008 data; and (3) apply a double log format to the 2002 to 2004 data. The results of my robustness tests are as follows:

1. Test 1 showed approximately 48% of total costs is estimated to be fixed costs. Although my semilog model is not as statistically strong as my double log model, the R^2 is still reasonably significant at 55%.[1101]

2. Test 2 analyzed 256 observations from 2005 to 2008 and showed 31% of total costs to be fixed.[1102]

3. Test 3 analyzed 192 observations from 2002 to 2004 and showed 51% of total costs to be fixed.[1103]

My checks for robustness suggest that there is no functional change in the relationship between costs and revenues when using a double log or semilog format, nor is there is a fundamental change in the relationship prior to or after 2005. This leads me to conclude that approximately 42% of total costs are fixed.

12.2.4. Calculation of Relevant Margin

I applied the fixed cost estimate of 42% to total cost by country (see Appendix M-1) to derive variable costs by revenue function *across* countries then allocated variable costs according to the proportion of revenue by account (shown on Appendices M-2 and M-3). For example, because Support revenue is 34.7% of all revenue, I allocated 34.7% of variable costs to support revenue account.

I made one additional adjustment to Appendix M-1 regarding the allocation of costs to specific revenue accounts for Subscriptions, Training, and Other Services. As shown on Appendix M-3, these are the three smallest accounts of the eight revenue accounts that I analyzed (i.e. 1.8%, 3.4%, and 0.6%, respectively). Due to the skewness of various account balances (e.g. the difference between the average and median expenses), if costs for a particular revenue function for a given country were less than one percent of total costs, I simply allocated variable costs equal to the amount of revenue for that account to reduce the incidence of negative balances. I then took the remainder and allocated it to either Software or Consulting, effectively reallocating

---

1100 The Durbin-Watson statistic is explained in *Applied Statistics for Public Policy,* Macfie and Nufrio, p. 471.
1101 Appendix M-9, Figure 2.
1102 Appendix M-9, Figure 3.
1103 Appendix M-9, Figure 4.

some costs from Subscriptions to Software and some costs from Training and Other Services to Consulting.[1104]

As an example (as shown on Appendix M-3), while 1.8% of variable costs are allocated to Subscriptions overall, Subscription revenue for France is only 0.1% of total revenue. So I allocated 0.1% of variable cost to France Subscription revenue and reallocated the remaining 1.7% to France Software revenue.

I estimate the relevant margin by revenue function, by subsidiary (country), as shown in Appendix M-4. I also repeated my analysis for Oracle data.

12.2.5. SAP Variable Expense Conclusion

Based on my analysis of the data, I determined that there is a substantial portion of variable expense embedded in the "below-the-line" accounts maintained by SAP (and Oracle). I have, therefore, included adjustments to the overall profitability of each company to reflect the variable component of total costs. The effect of my inclusion of the variable component of cost is shown in the analysis of each company's results for Lost Profits and Disgorgement.

12.3. SAP Disgorgement Damages

I calculated disgorgement damages as follows:

1. Used SAP Revenue Report for the List of 86[1105] to determine the total revenues earned by SAP from the 86 SAP customers from 2002 through 2008.

2. Excluded revenues earned prior to SAP's acquisition of TomorrowNow to arrive at total SAP revenues for the List of 86 from 2005 through 2008.[1106]

3. Excluded revenue related to BOBJ.[1107]

4. Excluded revenues earned prior to each of the customers' TomorrowNow support start date to arrive at total relevant revenues for the List of 86.[1108]

5. Excluded revenue related to Ongoing Revenue.

1104 This allocation is consistent with how SAP reports and categorizes their revenues and expenses. They categorize Software and Software-related Services (Software, Support, and Subscriptions) together and Services (Consulting, Training, and Other Services (Hosting)) together (based on SAP Annual Reports, and discussions with SAP Corporate Controlling.)

1105 Including Nextiraone Europe B.V. and Nextiraone Management, S.A.S, which Mr. Meyer omitted from his calculation of disgorgement damages.

1106 $1.37 billion, Meyer Report, page 273, paragraph 445. $1.35 billion, Appendix N-1. Revenues differ due to exclusion of BOBJ and inclusion of Nextiraone entities.

1107 Appendix N-7.

1108 $898 million, Meyer Report, page 273, paragraph 445. $885 million, Appendix N-1. Revenues differ due to exclusion of BOBJ and inclusion of Nextiraone entities.

6. Excluded revenues related to the customers excluded by Mr. Meyer on Schedule 42.SU as well as those customers that should have been excluded for other reasons, as described elsewhere in this report.

7. Applied annual relevant margins for the remaining revenues according to the "functional area" and "company name" from the revenue report.

8. Added interest at an appropriate risk free rate to compensate Oracle for the delay in receiving profits. [1109]

The three customers[1110] from the List of 86 that I have not excluded spent $8.1 million on purchases of applications, support and other services,[1111] which resulted in disgorgeable profits of $3.9 million and disgorgement damages of $4.3 million after interest, as shown in the table below:

Summary of Disgorgement of SAP Profits[1112]	
Total revenues from 2002 – 2008	$1,632,807,583
Excluding revenues prior to the acquisition	$1,368,728,122
Excluding BOBJ revenues	$1,353,938,789
Excluding revenues prior to the TN start date	$884,774,828
Excluding Ongoing Revenues	$688,943,449
Excluding revenues for excluded customers	$8,093,877
After applicable relevant margins	$3,862,031
After interest	**$4,344,212**

1109 I applied a risk-free interest rate from the mid-point of the year in which the revenues were earned through the estimated trial end date of December 10, 2010 (six weeks after the trial start date of November 1, 2010). I matched the number of years from the mid-point of each year through December 10, 2010 to the Federal Reserve treasury constant maturities as shown on Appendix N-8.

1110 Of the three remaining disgorgement customers (PCI Limited, Rotkaeppchen Sektkellerei and Syngenta Crop Protection), one of them (Rotkaeppchen Sektkellerei) earned a Safe Passage credit (which at least suggests it was a Safe Passage customer - I have been unable to determine whether the other three customers were Safe Passage). Any significant concessions as part of a Safe Passage deal would have reduced the margins which would indicate lower, rather than higher, profits on Safe Passage deals.

1111 Appendix N-1.

1112 From Appendix N-3 and Appendix N-1.

13. Disgorgement of TomorrowNow Profits

13.1. TomorrowNow Revenue

Mr. Meyer quantified TomorrowNow support revenue as follows:

> According to the customer-level revenue data produced by Defendants, excluding the reductions in revenue for settlement payments made to customers due to TomorrowNow's shutdown due to this litigation, TomorrowNow received $54.1 million in revenue since 2002, $48.5 million (90%) of which was received since TomorrowNow was acquired by SAP in January 2005. Net of revenue reductions for settlement payments made, TomorrowNow received $41 million in net revenue from the Relevant TomorrowNow Customers since 2002, $35.4 million of which was received since it was acquired by SAP in January 2005.[1113]

Mr. Meyer's analysis has errors. He shows TomorrowNow revenues by customer from 2002 to 2009[1114] on Schedule 41.1, which is based on financial records contained in a QuickBooks file from 2002 to 2005 and a customer-specific report containing revenues by customer, titled "TN_Customer_Report-Revised.xls"[1115] ("TN Revenue Spreadsheet") for 2005 to 2009. QuickBooks contains some revenue information for 2005 that is duplicative of the TN Revenue Spreadsheet in 2005. Mr. Meyer properly removed some duplicate revenue information, but he failed to account for all of the duplicate information. I identified 12 additional items that were double counted between QuickBooks and the TN Revenue Spreadsheet and removed them from my analysis. The total revenue was corrected from $41,046,117[1116] to $40,577,617, a difference of $468,500, as corrected in Appendix Q-3. Additionally, for certain customers, Mr. Meyer attributed revenue to the incorrect customer, and attributed revenue to the incorrect product line supported by TomorrowNow for certain customers. I have corrected for these errors in Appendix Q-3.

Although Mr. Meyer and Mr. Mandia both conclude that all of TomorrowNow's activities are infringing (which would mean all of TomorrowNow's costs would be properly deductible), I disagree. Analysis[1117] shows there were numerous customers that were not the recipient or beneficiary of any of the accused activity identified by Mr. Mandia. Therefore, there is TomorrowNow revenue that is not subject to disgorgement. The total revenue generated by the customers with no accused conduct (i.e. the No Accused Conduct Customers) was $1,356,006.[1118]

1113 Meyer Report, page 268, paragraph 438.

1114 Although the underlying report upon which the data are based states it is revenue by customer through 2009, the reality is that there were no earned revenues from customers after TomorrowNow ceased operations. The company was, however, still accounting for discounts/refunds given to customers at the end of their support at TomorrowNow.

1115 TN-OR06125333. It is unclear why revenues for one customer, Transfield Services New Zealand were allocated to 2009 when TomorrowNow wound down its operations in October 2008.

1116 Meyer Report, Schedule 41.1.

1117 I base my analysis and conclusion on Mr. Gray's report.

1118 Found by summing the TomorrowNow revenues (Appendix Q-2) for the No Accused Conduct Customers (Appendix E-2 and Appendix E-3).

Therefore, the correct TomorrowNow revenue figure for analysis of disgorgement (before customer exclusions) is $39,221,611.[1119]

Although Plaintiffs are not entitled to recover Lost Profits for customers that terminated Oracle support for reasons other than the Alleged Actions, if those customers went to TomorrowNow for support, then there may be disgorgeable profits at TomorrowNow. Therefore, I calculated disgorgement of TomorrowNow profits for customers that are excluded from the Lost Profits calculation. I excluded No Accused Conduct customers from all of my damages models.

13.2. Deductible TomorrowNow Expenses

Defendants are allowed to deduct expenses that were incurred in generating the accused revenues in order to quantify a defendant's total disgorgeable profit or loss. Deductible costs include the direct costs incurred to produce the infringing revenue and a portion of overhead expenses when the defendant "can demonstrate that [the overhead expense] was of actual assistance in the production, distribution or sale of the infringing product."[1120] Additionally, non-willful infringers may deduct income taxes paid on the infringing profits.[1121]

In his report, Mr. Meyer states,

> I also understand that Oracle's expert, Kevin Mandia, has concluded that TomorrowNow's entire business model relied upon the alleged infringement and misuse of Oracle's Software and Support Materials, and the unauthorized downloading and copying of Oracle's intellectual property. Therefore, Defendants have been unjustly enriched by every sale of TomorrowNow support services.[1122]

Based on Mr. Mandia's conclusion that "TomorrowNow's entire business model relied upon the alleged infringement,"[1123] and Mr. Meyer's conclusion that "Defendants have been unjustly enriched by every sale of TomorrowNow support services,"[1124] it is arguable that every expense TomorrowNow incurred would be attributable to producing the infringing revenues and, therefore, deductible.

TomorrowNow's net income/(loss) for the years ended December 31, 2002 through October 31, 2008 was as follows:

1119 $40,577,617 minus $1,356,006.
1120 *Frank Music Corporation v. MGM Grand Hotel, Inc.*, 772 F.2d 505, 516 (9th Cir. 1985).
1121 *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 487 (9th Cir. 2000).
1122 Meyer Report, page 267, paragraph 436.
1123 Meyer Report, page 267, paragraph 436.
1124 Meyer Report, page 267, paragraph 436.

Table: TomorrowNow Net Income/(Loss)[1125] In Thousands						
2002	2003	2004	2005	2006	2007	2008
$(160.6)	$(155.4)	$20.2	$(4,003.3)	$(10,781.9)	$(23,975.3)	$(50,709.4)

Because there are 51 No Accused Conduct customers for which damages do not apply, I assume that TomorrowNow's entire business model is not infringing. I identified variable expenses and fixed expenses by analyzing TomorrowNow's income statements from 2002 to the third quarter of 2008, as shown on Appendices P-2 and P-3.[1126] I determined that the relevant margins are negative in 2002, positive from 2003 to 2004, and negative from 2005 to 2008, as shown in Appendix P-1. I applied the relevant margin to the relevant revenues. Total disgorgement after interest is $1,054,474, as shown in Appendix Q-1.[1127]

14. Lost Profits Claim

As an alternative to the "Value of Use" damages, Mr. Meyer refers to a category of damages as "Oracle's lost profits" which includes profits related to the support of PeopleSoft, J.D.Edwards, and Siebel products that Mr. Meyer opines Oracle would have received absent the Alleged Actions ("Lost Profits").

14.1. Damage Claim Confusion

Mr. Meyer discusses several types of damage claims. In footnote 657, Mr. Meyer states that Lost Profits is an available damages remedy as an alternative measure to his Value of Use methodology. However, he fails to: explain how the various damage claims relate to one another; how damages for one claim may offset damages in another claim; and present a unified damages conclusion.

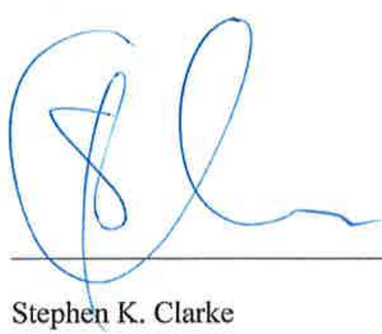
The Court's Order precludes evidence related to lost up-sell and lost cross-sell opportunities. Because Oracle had already made the license sale, and was therefore only generating revenue from support, the only relevant revenues for its lost profits claim are revenues related to support. Some of my comments in the following sections of this report reference SAP and as such, may seem irrelevant from a lost profits point of view. However, I make the comments in response to Mr. Meyer's report notwithstanding their relevance to Oracle's lost profits claim.

1125 Appendix O.

1126 I did not rely on a regression analysis of the TomorrowNow revenues and expenses due to the existence of both intercompany revenue and expense accounts that were material in nature and could not be analyzed with the available information.

1127 Revenue of $816,059 plus interest of $238,415 through the estimated trial end date of December 10, 2010.

REDACTED



Stephen K. Clarke

May 7th, 2010

Date

1269 I did not calculate damages for the No Accused Conduct customers in any of my damages analyses. Earlier in my report, I calculated a reasonable royalty in response to Mr. Meyer's presentation. I do not consider reasonable royalty to be an appropriate measure of damages in this matter.

1270 Appendix N-1.

1271 Appendix Q-1.