

EXHIBIT N

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,)	
v.)	Case No.
)	07-CV-01658 PJH (EDL)
)	
SAP AG, a German corporation, SAP)	
AMERICA, INC., a Delaware)	
corporation, TOMORROWNOW, INC.,)	
a Texas corporation, and DOES)	
1-50, inclusive,)	
)	
Defendants.)	

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF MR. GERHARD OSWALD

VOLUME I

Wednesday, December 10, 2008

AT: 8:52 a.m.

Taken at:

Bingham McCutchen LLP
41 Lothbury

London EC2R 7HF

UNITED KINGDOM

GERHARD OSWALD December 10, 2008
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13:57:38		14:02:54	
13:57:41		14:02:55	
13:57:44		14:03:00	
13:57:55		14:03:05	
13:58:02		14:03:10	
13:58:04		14:03:13	
13:58:29		14:03:14	
13:58:30		14:03:33	
13:58:34		14:03:46	
13:58:36		14:03:56	
13:58:43		14:04:04	
13:59:01		14:04:04	
13:59:08		14:04:07	
13:59:22		14:04:09	
13:59:23		14:04:12	
13:59:26		14:04:15	
13:59:35		14:04:33	
13:59:38		14:04:34	
13:59:43		14:04:36	
13:59:46		14:04:39	
13:59:48		14:04:59	
13:59:51		14:04:59	
13:59:53		14:05:03	
14:00:16		14:05:05	
14:00:17		14:05:08	
Page 99		Page 101	
14:00:21		14:05:09	
14:00:27		14:05:21	
14:00:30		14:05:22	3 Q. And another goal was to:
14:00:34		14:05:25	4 "Discredit [Oracle's] efforts to create
14:00:45		14:05:29	5 a next-generation application platform."
14:00:45		14:05:32	6 Correct?
14:00:50		14:05:43	7 A. That is correct.
14:00:59		14:05:44	8 Q. And TomorrowNow was to be a key part of
14:01:01		14:05:47	9 achieving those goals; correct?
14:01:04		14:05:59	10 A. A role.
14:01:08		14:06:00	11 Q. It was part of the means to achieve those
14:01:11		14:06:03	12 goals; correct?
14:01:15		14:06:10	13 A. That is correct.
14:01:22		14:06:11	
14:01:57		14:06:18	
14:01:58		14:06:32	
14:02:00		14:06:35	
14:02:00		14:06:38	
14:02:01		14:06:41	
14:02:02		14:06:47	
14:02:10		14:06:48	
14:02:12		14:07:21	
14:02:19		14:07:23	
14:02:25		14:07:29	
14:02:49		14:07:35	

26 (Pages 98 to 101)

1
2
3 **CERTIFICATE OF COURT REPORTER**

4 I, ROSE HELEN CLAIRE KAY, an Accredited LiveNote Reporter
5 with Merrill Legal Solutions (a LegalLink company) of London,
6 England, and Asia, hereby certify that the testimony of the
7 witness GERHARD OSWALD in the foregoing transcript, numbered
8 pages 1 through 172, taken on Wednesday, December 10, 2008
9 was recorded by me in machine shorthand and was thereafter
10 transcribed by me; and that the foregoing transcript is a
11 true and accurate verbatim record of the said testimony.

12
13 I further certify that I am not a relative, employee,
14 counsel or financially involved with any of the parties to
15 the within cause, nor am I an employee or relative of any
16 counsel for the parties, nor am I in any way interested in
17 the outcome of the within cause.

18
19
20
21
22
23
24
25
Signed:

Rose Helen Claire Kay

ROSE HELEN CLAIRE KAY

Dated: Wednesday, December 10, 2008

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NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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GERHARD OSWALD December 11, 2008
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Page 254		Page 256	
12:35:29		13:07:11	1 besides revenue for doing the TomorrowNow deal; correct?
12:35:55		13:07:27	2 A. Yes.
12:35:57		13:07:28	3 Q. The acquisition was also driven by the
12:35:57		13:07:30	4 strategic impact it would have on Oracle; correct?
12:36:08		13:07:49	
12:36:11		13:07:52	
12:36:13		13:08:00	
12:36:20		13:08:03	
12:36:42		13:08:11	
12:36:45		13:08:16	
12:36:48		13:08:20	
12:36:50		13:08:29	
12:37:30		13:08:38	
12:37:33		13:08:44	
12:37:51		13:09:19	
12:37:54		13:09:22	
12:37:56		13:09:28	
12:38:03		13:09:45	
12:38:09		13:09:45	
12:38:11		13:09:57	
12:38:29		13:09:59	
12:38:30		13:10:03	
12:38:31		13:10:05	
12:38:34		13:10:09	
12:38:39		13:10:21	
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12:38:43		13:10:24	
12:38:44		13:10:31	
12:38:45		13:10:33	
12:39:07		13:10:37	
12:39:12		13:10:39	
12:39:14		13:10:42	
12:39:16		13:10:44	
12:39:20		13:11:11	
12:39:21		13:11:12	
12:39:22		13:11:16	
12:39:26		13:11:32	
12:39:27		13:11:35	
12:39:28		13:11:40	
12:39:29		13:11:42	
13:06:11		13:12:00	
13:06:16		13:12:01	
13:06:17		13:12:05	
13:06:19		13:12:11	
13:06:23	19 Q. Let's go back to thinking -- let's go back to	13:12:21	
13:06:27	20 SAP's thinking about TomorrowNow before Oracle filed its	13:12:47	
13:06:32	21 suit. At the time that SAP acquired TomorrowNow, you	13:12:51	
13:06:35	22 expected it to have negative margins for the first few	13:13:07	
13:06:38	23 years; correct?	13:13:09	
13:07:06	24 A. Yes.	13:13:11	
13:07:07	25 Q. But as we have seen, SAP had other reasons	13:13:20	

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Page 270		Page 272	
13:50:02		13:54:46	1 as enabler for future license revenue, to grow maintenance
13:50:11		13:54:52	2 contract volume taken away from Oracle and to generate
13:50:15		13:54:55	3 additional maintenance revenue for SAP."
13:50:22		13:55:34	4 And those were among the key achievements for
13:50:37		13:55:37	5 TomorrowNow in 2005?
13:50:39		13:55:47	6 A. Yes.
13:50:42		13:55:53	7 Q. And the other key achievements listed in this
13:51:03		13:55:57	8 section, do you have any reason to believe that those are
13:51:03		13:56:00	9 inaccurately presented?
13:51:05		13:56:16	10 A. No.
13:51:21		13:56:17	11 Q. At the bottom of this --
13:51:23		13:56:20	12 A. To the extent that I can read them this fast.
13:51:25		13:56:24	13 Q. Take your time. If you need more time --
13:51:27		13:56:29	14 A. It's almost impossible to read that.
13:51:30		13:57:04	15 That's okay.
13:51:31		13:57:05	16 Q. You don't have any reason to believe any of
13:51:32		13:57:07	17 those are inaccurate?
13:51:48		13:57:16	18 A. No, no reason to believe that.
13:51:53		13:57:19	19 Q. And under the description of the "Motivation
13:51:53		13:57:22	20 for and description of the business case" at the bottom of
13:51:58		13:57:24	21 this page, there is a graph. And the dark bolded amounts
13:52:04		13:57:38	22 are the revenue in million euros; correct?
13:52:06		13:57:54	23 A. Yes.
13:52:09		13:57:55	24 Q. And the --
13:52:15		13:57:57	25 A. Yes, that's right.
Page 271		Page 273	
13:52:16		13:57:58	1 Q. And then the line above that is the
13:52:30		13:58:01	2 profitability projection; correct?
13:52:32		13:58:12	3 A. Yes.
13:52:36		13:58:13	4 Q. So in 2006, the projection is 15 percent
13:52:36		13:58:19	5 profitability and 23 million in euros revenue?
13:52:37		13:58:36	6 A. Yes.
13:52:46		13:58:37	7 Q. And for 2007, the projection was 25 percent
13:52:48		13:58:42	8 profitability for TomorrowNow and 47.4 million euros in
13:52:51		13:58:49	9 revenue?
13:52:53		13:59:04	10 A. Yes.
13:52:56		13:59:05	11 Q. And for 2008, the projected profitability for
13:53:29		13:59:09	12 TomorrowNow was 32 percent, with 81 -- it's hard to read.
13:53:32		13:59:21	13 Maybe yours is a better copy. Why don't you read the
13:53:37		13:59:30	14 revenues section.
13:53:42		13:59:56	15 A. It could be 50 or 80, I don't know.
13:53:44		14:00:01	16 Q. Well, we will get a clearer copy from your
13:53:50		14:00:04	17 counsel.
13:53:51		14:00:05	18 MR. LANIER: They were produced native, so you
13:53:57		14:00:06	19 should be able to print one.
13:54:13		14:00:14	20 BY MS. HOUSE:
13:54:18		14:00:14	21 Q. And looking at the next page, the first
13:54:35	22 A. Yes.	14:00:23	22 question is:
13:54:36	23 Q. And the third bullet reads:	14:00:23	23 "How does this business case support SAP's
13:54:38	24 "The maintenance offering -- a key part of the	14:00:26	24 strategy and Board area strategy?"
13:54:41	25 Safe Passage program and provided by TomorrowNow -- is used	14:00:41	25 And there are four bullets. And the second bullet

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Page 274		Page 276
14:00:47	1 reads:	14:06:35
14:00:48	2 "Leverage service as competitive weapon in order	14:06:38
14:00:54	3 to restrict competition."	14:06:39
14:01:05	4 And the next bullet reads:	14:06:41
14:01:06	5 "Support SAP's strategy to grow and secure	14:06:53
14:01:10	6 Maintenance revenue."	14:07:27
14:01:21	7 And the last bullet reads:	14:07:29
14:01:23	8 "Strengthen global market position and increase	14:07:32
14:01:26	9 global market share."	14:07:55
14:01:34	10 And those were all SAP's strategy and the board	14:07:59
14:01:37	11 area's strategy?	14:08:01
14:01:47	12 A. Yes.	14:08:12
14:01:48		14:08:15
14:01:51		14:08:21
14:02:01		14:08:27
14:02:09		14:08:31
14:02:16		14:09:14
14:02:18		14:09:17
14:02:22		14:09:36
14:02:43		14:09:38
14:02:44		14:09:40
14:02:46		14:09:43
14:02:52		14:09:48
14:03:03		14:09:54
14:03:03		14:10:20
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14:03:09		14:10:23
14:03:17		14:10:26
14:03:26		14:10:33
14:03:29		14:10:42
14:03:41		14:10:45
14:03:44		14:10:57
14:03:47		14:11:01
14:04:02		14:11:05
14:04:06		14:11:29
14:04:14		14:11:36
14:04:15		14:11:42
14:04:35		14:11:56
14:04:38		14:11:58
14:04:41		14:12:02
14:04:43		14:12:29
14:04:45		14:12:31
14:04:51		14:12:34
14:04:54		14:12:39
14:04:59		14:12:44
14:05:38		14:12:48
14:05:40		14:12:51
14:05:43		14:13:04
14:05:47		14:13:07
14:05:51		14:13:13
14:05:59		14:13:19

27 (Pages 274 to 277)

CERTIFICATE OF COURT REPORTER

I, ROSE HELEN CLAIRE KAY, an Accredited LiveNote Reporter with Merrill Legal Solutions (a LegaLink company) of London, England, and Asia, hereby certify that the testimony of the witness GERHARD OSWALD in the foregoing transcript, numbered pages 173 through 307, taken on Thursday, December 11, 2008 was recorded by me in machine shorthand and was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed: *Cherry 7/10/1*

ROSE HELEN CLAIRE KAY

Dated: Thursday, December 11, 2008

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