

# **EXHIBIT 45**



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.	)	JURY TRIAL
	)	
PLAINTIFFS,	)	NO. C 07-01658 PJH
	)	
VS.	)	VOLUME 6
	)	
SAP AG, ET AL.,	)	PAGES 947 - 1187
	)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
	)	TUESDAY, NOVEMBER 9, 2010

TRANSCRIPT OF PROCEEDINGS

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Q. ALL RIGHT. LET'S GO ON, THEN, TO EXHIBIT 12 WHICH IS THE NEXT SLIDE.

(EXHIBIT PUBLISHED TO JURY.)

BY MR. PICKETT:

Q. THIS IS A DOCUMENT WE'VE SEEN A NUMBER OF TIMES. WHAT'S -- IS THIS A SIGNIFICANT DOCUMENT?

A. YES, IT IS. IT'S SIGNIFICANT ON A VARIETY OF FRONTS. WE'VE TALKED ABOUT THE FACT THAT THIS WAS IN -- IT INVOLVED THE EXECUTIVE BOARD MEMBERS OF SAP, AND -- AND IT ACTUALLY SHOWS BY REVENUE CATEGORIES, TYPES OF REVENUES, MAINTENANCE, AND OTHER ADDITIONAL REVENUES, A PROJECTION THAT GOES OUT THROUGH 2007. SO FOR THREE YEARS. AND IT ACTUALLY SHOWS A PROJECTION OF CUSTOMERS TO RECEIVE MAINTENANCE, CUSTOMERS TO BE CONVERTED, AND THEN THE REVENUE VALUE THAT WAS PROJECTED BY SAP'S MANAGEMENT AT THAT TIME.

Q. NOW, THE -- THERE'S THREE COLORS ON THE GRAPH. SORT OF A -- NOT GOOD WITH COLORS -- KIND OF A LAVENDER, MAYBE A LILAC AND A PEACH.

WHAT DO THOSE COLORS REPRESENT?

A. THERE'S THREE DIFFERENT WHAT I'LL CALL REVENUE CATEGORIES,

1 AND THE FIRST ONE, WHICH IS THE LAVENDER IS -- I THINK THAT'S  
2 LAVENDER, BUT -- THAT'S THE MAINTENANCE REVENUE. AND SO THAT  
3 MEANS THAT AS TOMORROWNOW PROVIDES THE MAINTENANCE, THAT'S THE  
4 REVENUE THAT THEY WILL EARN OVER THAT THREE-YEAR PERIOD.

5 IT THEN MOVES INTO SOMETHING THAT THEY REFER TO AS --  
6 AS CROSS-SELL, AND THAT'S AN ADDITIONAL REVENUE SOURCE. THAT'S  
7 THE NEXT COLOR THERE. AND THAT CROSS-SELL IS LIKE SELLING THE  
8 NETWEAVER PRODUCT, A LICENSE ON THAT, AND THEN REVENUE FOR  
9 MAINTENANCE ULTIMATELY ON THAT.

10 AND THEN LASTLY, WHAT'S CALLED UPSWITCH AND, AND  
11 UPSWITCH SAP'S PHRASE, SO WHEN THEY ULTIMATELY CONVERT CUSTOMER  
12 TO MYSAP, THAT'S THE REVENUE FROM -- FROM THAT SOURCE. AND  
13 WHAT'S IMPORTANT HERE -- NOT ONLY DO YOU SEE DIFFERENT  
14 CATEGORIES OF REVENUE, WHICH IS IMPORTANT FOR SAP AND ITS  
15 FINANCIAL RETURNS, THERE'S ALSO TREMENDOUS GROWTH BETWEEN YEARS.

16 SO BETWEEN THE FIRST YEAR AND THE SECOND YEAR, THE  
17 GROWTH THEY PROJECT IS 140 PERCENT. AND THEN I BELIEVE IT'S  
18 120 PERCENT AFTER THAT. SO EACH YEAR, THE REVENUES ARE ON AN  
19 UPWARD GROWTH CYCLE. SO IT ONLY GOES FOR THREE YEARS, BUT THE  
20 VALUE WILL CONTINUE ON INTO THE FUTURE, WHICH I'LL TALK ABOUT IN  
21 A MOMENT.

22 BUT IT SHOWS GROWTH. IT SHOWS A VARIETY OF REVENUES.  
23 AND IT SHOWS THE ABILITY TO CONVERT THE CUSTOMERS TO MYSAP.  
24 AND, ULTIMATELY, IT SHOWS 3,000 CUSTOMERS THAT WOULD TAKE  
25 MAINTENANCE FROM TOMORROWNOW USING THE SOFTWARE, AND THE VALUE

1 OVER THE THREE YEARS OF REVENUE IS ABOUT \$900 MILLION.

2 SO IT'S AN IMPORTANT PROJECTION DOCUMENT DONE AT THE  
3 TIME AND ACCEPTED BY THE EXECUTIVE BOARD.

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Q. ALL RIGHT. LET'S LOOK AT THE NEXT EXHIBIT, EXHIBIT 141, PLEASE.

WHAT DOES THIS TELL YOU ABOUT SAP'S THINKING AT THE TIME THEY SHOULD HAVE BEEN NEGOTIATING FOR A LICENSE?

A. THIS GOES TO FACTORS 2 AND 3. SO, ONE, THE IMPACT ON ORACLE FROM SAP'S PERSPECTIVE AND ALSO THE EXPECTATIONS POINT OUT UNDER GOAL -- I'LL POINT OUT OUR GOAL IS TO CONVERT THE MAJORITY OF THE PEOPLESOFT AND JD EDWARDS CUSTOMERS BASE TO SAP AND CONTAIN ORACLE'S POTENTIAL GROWTH IN THE NEXT-GENERATION APPLICATION MARKET. SO THAT'S THE GOAL.

AND THEN UNDER "STRATEGY," IT COMES BACK TO STEP ONE. BY OFFERING FULL MAINTENANCE AND SUPPORT, PEOPLESOFT AND JD EDWARDS SYSTEMS, AND THEN IT GOES ON AND SAYS, WITH FAVORABLE UPGRADE LICENSING TERMS TO SAP, NETWEAVER, THAT'S STEP TWO WHICH IS THE INTEGRATION PRODUCTS. AND, ULTIMATELY, STEP THREE'S MYSAP ERP. THAT'S THE CONVERSION TO SAP, THEIR APPLICATIONS.

1           AND THEN IT SAYS, SAP WILL SIPHON OFF THE CASH FLOW  
2           THAT ORACLE NEEDS TO BUILD OR ACQUIRE ITS NEXT-GENERATION  
3           APPLICATIONS. SO THAT WAS --

4           AND THEN IT GOES ON AND SAYS, "SAP WILL ESTABLISH OR  
5           REINVIGORATE RELATIONSHIPS WITH POTENTIALLY THOUSANDS OF NEW AND  
6           EXISTING CUSTOMERS." AND I THINK THEY HAD DOCUMENTED THERE WERE  
7           4,000 JOINT CUSTOMERS THAT HAD SAP AND PEOPLESOFT, AND THEY WERE  
8           GOING TO TARGET THAT GROUP.

9           Q. LET ME ASK YOU JUST ONE QUESTION IF I COULD INTERRUPT YOU  
10          PLEASE. UNDER "STRATEGY" WHERE IT STARTS, "BY OFFERING FULL  
11          MAINTENANCE AND SUPPORT OF PEOPLESOFT AND JD EDWARDS SYSTEMS,"  
12          WHAT DID THAT HAVE TO DO WITH THE NEGOTIATIONS THAT SHOULD HAVE  
13          BEEN TAKING PLACE FOR A LICENSE?

14          A. WELL, THAT'S REALLY KEY. BECAUSE WHEN IT SAYS "FULL  
15          MAINTENANCE AND SUPPORT," THAT'S CALLED VENDOR-LEVEL SERVICE,  
16          AND TO HAVE VENDOR-LEVEL SERVICE ON THE ORACLE PRODUCTS, YOU  
17          NEED THE SOFTWARE AND THE MATERIALS THAT ARE COPYRIGHTED. SO  
18          THEY WOULD NEED THOSE MATERIALS AND COPYRIGHTED PROPERTIES TO  
19          OFFER THAT -- THAT MAINTENANCE, THAT FULL MAINTENANCE SERVICE  
20          WHICH WAS STEP ONE OF PROGRAM.

21          Q. ALL RIGHT. AND THEN FINALLY, "KEY TACTICS," WHAT'S THE  
22          SIGNIFICANCE OF SAP'S THINKING THERE?

23          A. WELL, THIS ONE IS VERY IMPORTANT, 'CAUSE ONE OF OUR THOUGHTS  
24          YESTERDAY WAS THE IMPORTANCE OF TIMING. AND THIS SHOWS HOW  
25          FOCUSED SAP'S MANAGEMENT WAS ON THE TIME TO DO THIS. IT WAS OF



1 THE ESSENCE. IT SAYS, "REACH OUT TO THE JOINT" -- SO IT SAYS,  
2 "JOINT SAP-PEOPLESOFT-JDE ACCOUNTS." IT SAYS, "WITHIN THE  
3 GLOBAL 1000 ESTABLISHED" -- I THINK IT'S 450, THEY HAD OF GLOBAL  
4 1000 WERE THEIR CUSTOMERS OVER THE NEXT 30 DAYS, WHICH IS  
5 FEBRUARY, AND AGGRESSIVELY CONVERT THEIR MAINTENANCE CONTRACTS  
6 TO SAP AND THEN FACILITATE ADOPTION -- IMMEDIATE ADOPTION OF  
7 NETWEAVER AND THE PLANNED ADOPTION OF MYSAP ERP AT PEOPLESOFT  
8 AND JDE INSTALLATIONS WITHIN THOSE ENTERPRISES.

9 AND SO IT SHOWS THAT THE NEXT 30 DAYS, THEY WANTED TO  
10 GO AFTER ALMOST 500 CUSTOMERS AND CONVERT THEM. SO IT SHOWS ME  
11 THAT THIS WAS VERY IMPORTANT TO MANAGEMENT AT THAT TIME, TO GET  
12 INTO THE MARKET, AND THEY NEEDED THE SOFTWARE.

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Q. ALL RIGHT. LET'S LOOK AT EXHIBIT 24, NEXT.

(EXHIBIT PUBLISHED TO JURY.)

1 BY MR. PICKETT:

2 Q. IT'S A DOCUMENT WE'VE SEEN. WHAT DOES THIS -- HOW DOES THIS  
3 DOCUMENT RELATE TO THE NEGOTIATION OF THE LICENSE THAT SHOULD  
4 HAVE TAKEN PLACE?

5 A. THIS DOCUMENT WAS PRESENTED TO THE -- THE BOARD AT SAP ON  
6 JANUARY 20TH OF 2005. AND IT'S CONSISTENT WITH WHAT WE BEEN  
7 TALKING ABOUT THE LAST FEW MINUTES.

8 I THINK WHAT'S IMPORTANT IN THAT FIRST -- THAT FIRST  
9 PHRASE, IT SAYS, THE GOAL -- IT SAYS, "CONVERT APPROXIMATELY  
10 50 PERCENT OF THE PEOPLESOFT AND JD EDWARDS CUSTOMER  
11 INSTALLATIONS TO SAP." SO THAT'S THE CONVERSION.

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Q. ALL RIGHT. LET'S TAKE A LOOK AT ANOTHER DOCUMENT IN EVIDENCE, PLAINTIFFS' EXHIBIT 161.

(EXHIBIT PUBLISHED TO JURY.)

BY MR. PICKETT:

Q. WHAT'S THE RELEVANCE OF THIS DOCUMENT, MR. MEYER?

A. THIS DOCUMENT COMES BACK TO FACTOR 3, WHICH IS THE EXPECTED FINANCIAL BENEFITS OR GOALS. AND THIS IS JANUARY 25TH, 26TH. IT'S A MEETING WHERE THERE'S AN INTEGRATION BETWEEN TOMORROWNOW AND SAP. AND WHAT WAS IMPORTANT HERE WAS THERE WAS SOME COMMUNICATION IN THE INTEGRATION MEETING ABOUT THE POTENTIAL CUSTOMERS.

AND IT SAYS WITH SCENARIO 1, IT SAYS, "2000 CUSTOMERS IN 2009." AND THEN WHAT YOU'LL SEE, WHICH IS IMPORTANT TO THE RIGHT-HAND SIDE, THAT SAYS, "FIVE TIMES ORIGINAL TOMORROWNOW PLANNING." SO THAT INDICATES TO ME THAT SAP NOW IS GOING TO

1 TAKE TOMORROWNOW FROM BEING A SMALL OPERATION AND THEN PUSH IT  
2 AS PART OF SAFE PASSAGE TO BEING MUCH BIGGER OPERATION. IT'S A  
3 FIVE TIMES MULTIPLE IN TERMS OF EXPECTATIONS.

4 AND THEN IT SAYS, SCENARIO 2, THE EXPECTATIONS WOULD  
5 BE 4,000 CUSTOMERS IN 2009, AND, ONCE AGAIN, THE REFERENCE TO  
6 TOMORROWNOW AND A FIVE TIMES FACTOR.

7 AND I BELIEVE THAT MR. ZIEMEN TESTIFIED IN DEPOSITION  
8 THAT THE 2,000 PROJECTION WAS MORE CONSERVATIVE, AND THE 4,000  
9 WAS WHAT HE CALLED MORE UPBEAT.

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Q. AND SO HOW DID YOU BASE YOUR ESTIMATES IN YOUR FINANCIAL MODEL, THE 3,000, AND THEN THE CONVERSIONS TO MYSAP APPLICATIONS AND THE CROSS-SELLS?

A. I USED THEIR PROJECTIONS.

Q. SAP'S OWN PROJECTIONS?

A. THAT'S CORRECT.

Q. ALL RIGHT. GO AHEAD.

1 A. SO I STARTED WITH THEIR PROJECTIONS. I WENT TO THE  
2 ATTRITION RATES. AND THEN THE THIRD ROW THERE, I MULTIPLIED THE  
3 AVERAGE REVENUE PER CUSTOMER BASICALLY TIMES THE NUMBER OF  
4 CUSTOMERS.

5 AND SO FOR MAINTENANCE, IT WAS \$68,000 A YEAR.  
6 THAT'S THE AVERAGE YOU GET FOR EACH CUSTOMER THAT'S TAKING  
7 MAINTENANCE. AND THAT WAS PER SAP'S BUSINESS RECORDS. AND THEN  
8 FROM THERE, I WENT AND IT CAME UP WITH -- AND THEN ON THE  
9 RIGHT-HAND SIDE, I DEALT WITH -- WHEN THEY CONVERT A CUSTOMER,  
10 THEY MAKE \$358,000 IN A CONVERSION AND THEN FOR THE OTHER SALES  
11 WHICH IS THE CROSS-SELL ITEM, THEY MAKE \$86,000 PER CROSS-SELL.

12 SO I USED THOSE ITEMS TO COME UP WITH THE AVERAGE  
13 REVENUE PER YEAR AND THEN MULTIPLIED THAT TIMES THE NUMBER OF  
14 CUSTOMERS AND CAME UP WITH TOTAL REVENUE. AND SEE, THAT'S THE  
15 NEXT ROW. SO THAT'S YOUR CALCULATIONS THERE. AND AS YOU WORK  
16 DOWN, YOU THEN HAVE TO DEDUCT COSTS, AND I SAW FROM SAP'S  
17 FINANCIAL RECORDS THAT THEY BASICALLY WOULD HAVE PROFIT MARGINS  
18 OF 70 PERCENT. SO I DEDUCT COST OF 30 PERCENT, AND THAT LEAVES  
19 70 PERCENT THERE FOR THE PROFIT THAT -- THAT SAP WOULD MAKE.

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Q. SO LET'S GO TO THE FIRST GOAL, GOAL ONE. ACTUALLY, WE'LL GO TO ALL THREE GOALS THIS TIME FOR THE SAKE OF SPEED. WHAT DOES THIS CHART SHOW WITH RESPECT TO GOAL ONE, FACTOR 1, WHAT SAP'S GOAL WAS, FACTOR 2, WHAT SAP THOUGHT THE IMPACT ON ORACLE WOULD BE, AND NO. 3, WHAT THEY THOUGHT THEY'D GAIN FROM IT?

A. WELL, THERE'S SEVERAL THINGS NEEDED TO POINTED OUT. OBVIOUSLY, THE FIRST ITEM THERE ON THE RIGHT-HAND SIDE, UNDER THIS OCTOBER 2005 DOCUMENT, IT SAYS THE OPPORTUNITY IS TO MOVE THE 300-PLUS SAP CUSTOMERS, SAP AND SIEBEL HAVE IN COMMON TO MIGRATE THEM TO MYSAP CRM.

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CERTIFICATE OF REPORTER

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, TUESDAY, NOVEMBER 9, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

*Raynee H. Mercado*

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

*Diane E. Skillman*

DIANE E. SKILLMAN, CSR, RPR, FCRR

WEDNESDAY, NOVEMBER 10, 2010