

# Exhibit J

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

September 25, 2008  
9:14 a.m.

HIGHLY CONFIDENTIAL  
VOLUME 1

Videotaped Deposition of HENNING  
KAGERMANN, held at the offices of BINGHAM  
MCCUTCHEM LLP, 399 Park Avenue, New York, New  
York, before Frank J. Bas, a Registered  
Professional Reporter and Notary Public of the  
State of New York.

Page 206		Page 208	
1	HIGHLY CONFIDENTIAL - H. KAGERMANN	1	HIGHLY CONFIDENTIAL - H. KAGERMANN
17:30:11	2 products, as it says here on the page that we	17:34:20	2 Washington to advocate on its behalf?
17:30:14	3 were looking at?	17:34:22	3 A. Yes.
17:30:17	4 A. I don't know, but it's not likely.	17:34:30	4 Q. And how about in California?
17:30:44	5 Q. Somebody was considering it, as	17:34:34	5 A. I don't know.
17:30:49	6 reflected here, weren't they?	17:34:35	6 Q. Did SAP adopt the strategy of
17:30:54	7 A. That's possible.	17:34:40	7 attacking Oracle on the Hill by attacking Larry
17:30:56	8 Q. Let's turn to the page 48542,	17:34:45	8 Ellison, as reflected here on Page 48543?
17:31:03	9 entitled Take Their Key People Or Distract Them.	17:34:58	9 MR. LANIER: Object. That
17:31:08	10 What's the org mapping project, if	17:34:58	10 mischaracterizes and assumes facts not in
17:31:10	11 you know?	17:35:00	11 evidence.
17:31:13	12 A. I don't know.	17:35:01	12 A. I don't think -- I don't think so.
17:31:19	13 Q. Are you aware of a program by the	17:35:07	13 I don't know anything about it.
17:31:24	14 Apollo group to identify key people in Oracle's	17:35:09	14 Q. Did the board discuss a strategy of
17:31:28	15 business to hire?	17:35:11	15 attacking Oracle by using the insider trading
17:31:30	16 A. No.	17:35:16	16 settlement in the case involving Mr. Ellison?
17:31:48	17 Q. Are you aware of a strategy to hire	17:35:21	17 A. I don't think so.
17:31:51	18 key database account executives and pay them to	17:35:40	18 Q. Let's do one more short document,
17:31:54	19 sit on a shelf or act as a recruiter for IBM?	17:35:46	19 and then let's finish for the day, if that's
17:31:59	20 A. No.	17:35:49	20 okay.
17:32:18	21 Q. SAP -- withdrawn.	17:35:58	21 MR. HOWARD: Let's mark as Exhibit
17:32:26	22 The last heading here is to, it	17:35:59	22 420 the minutes of an executive board
17:32:31	23 says, "Provide targeted disinformation campaign	17:36:04	23 off-site meeting, preliminary minutes,
17:32:34	24 to disrupt Oracle."	17:36:07	24 dated July 28-29, 2006.
17:32:35	25 Are you aware of such a strategy?	17:36:10	25 ---
Page 207		Page 209	
1	HIGHLY CONFIDENTIAL - H. KAGERMANN	1	HIGHLY CONFIDENTIAL - H. KAGERMANN
17:32:40	2 A. No.	17:36:10	2 (Plaintiffs' Exhibit 420 was marked
17:32:42	3 Q. Would you consider that the high	17:36:10	3 for identification.)
17:32:46	4 road?	17:36:26	4 ---
17:32:46	5 A. No.	17:36:26	5 BY MR. HOWARD:
17:32:50	6 Q. Would you consider it in compliance	17:36:34	6 Q. Mr. Kagermann, Exhibit 420 is a
17:32:53	7 with the SAP code of ethics?	17:36:41	7 document entitled Preliminary Minutes in a form
17:32:55	8 A. No.	17:36:44	8 that we saw before of a board meeting, July
17:33:03	9 Q. Would you consider it consistent	17:36:47	9 28-29, 2006.
17:33:06	10 with the effort to be perceived as a trusted	17:36:49	10 Are you familiar with this document?
17:33:09	11 advisor?	17:37:04	11 A. I'm familiar with the form of the
17:33:11	12 A. It doesn't have much to do with	17:37:15	12 document.
17:33:33	13 that.	17:37:16	13 Q. All right. And do you recall an
17:33:33	14 Q. Turning to the last page, titled	17:37:19	14 off-site board meeting in July of 2006 that had
17:33:42	15 Attack On Political Front.	17:37:23	15 as one of its topics SAP versus Oracle?
17:33:45	16 Do you see that?	17:37:26	16 A. I don't recall it, but I also cannot
17:33:46	17 A. Yes.	17:37:45	17 rule it out.
17:33:46	18 Q. It says: "Execute on existing	17:37:46	18 Q. All right. Well, let's see if
17:33:49	19 political campaign - we know what we need to	17:37:48	19 reading the minutes can refresh your
17:33:52	20 do."	17:37:51	20 recollection. Again, we're left with only the
17:33:53	21 Does that refresh your recollection	17:37:53	21 part that's been unredacted, but there's a title
17:33:54	22 that there was, in fact, a political campaign	17:37:56	22 of SAP versus Oracle, Where do we Stand, and it
17:33:58	23 against Oracle under way in July of 2006?	17:38:00	23 says: "The executive board agreed that we have
17:34:01	24 A. No.	17:38:03	24 a set of assets that we can attack them with and
17:34:13	25 Q. Does SAP have lobbyists in	17:38:06	25 need to put more emphasis on the GTM of these



1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 17:38:10 2 assets."  
 17:38:11 3 Do you see that?  
 17:38:13 4 A. Yes.  
 17:38:13 5 Q. And GTM refers to go-to-market?  
 17:38:17 6 A. Yes.  
 17:38:18 7 Q. Referring to the deployment of these  
 17:38:20 8 assets against Oracle. Is that accurate?  
 17:38:24 9 A. Yes.  
 17:38:32 10 Q. And TomorrowNow is identified as one  
 17:38:36 11 of those assets?  
 17:38:38 12 A. That's what it looks like, according  
 17:38:49 13 to this form.  
 17:38:50 14 Q. What do you recall about the  
 17:38:51 15 discussion?  
 17:38:53 16 A. I don't recall it.  
 17:39:00 17 Q. Do you recall a discussion about  
 17:39:04 18 aggressively positioning TomorrowNow in the  
 17:39:05 19 market?  
 17:39:07 20 A. That's possible.  
 17:39:18 21 Q. Do you remember?  
 17:39:22 22 A. I don't -- I can't recall  
 17:39:28 23 specifically, no.  
 17:39:29 24 Q. What other assets were discussed by  
 17:39:33 25 the board that SAP had to go to market with in

1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 17:41:36 2 front of Magistrate Judge LaPorte. You  
 17:41:39 3 tried it. You lost. It's done.  
 17:41:40 4 MR. HOWARD: I don't think so. So  
 17:41:42 5 we'll be back after further motion to the  
 17:41:44 6 Court to complete the questioning.  
 17:41:46 7 MR. LANIER: We disagree that we'll  
 17:41:48 8 be back, but that's your position. I  
 17:41:50 9 acknowledge it.  
 17:41:51 10 MR. HOWARD: Why don't we stop there  
 17:41:52 11 and reconvene in the morning.  
 17:41:53 12 MR. LANIER: Let's see how much  
 17:41:55 13 record time -- I want to make sure that we  
 17:41:57 14 have got at least our seven done today.  
 17:41:59 15 What's our record time so far?  
 17:42:01 16 THE VIDEO OPERATOR: One second.  
 17:42:02 17 I've got to do the math in my head. We're  
 17:42:05 18 at 1:55 --  
 17:42:11 19 MR. LANIER: Okay.  
 17:42:12 20 THE VIDEO OPERATOR: 1:53 or '5. I  
 17:42:14 21 have to check it out.  
 17:42:15 22 MR. LANIER: That's fine. Thank  
 17:42:16 23 you.  
 17:42:16 24 MR. HOWARD: I don't understand the  
 17:42:18 25 reference to 1:50.

1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 17:39:40 2 the SAP versus Oracle battle?  
 17:40:01 3 MR. LANIER: Object; it calls for  
 17:40:03 4 speculation. Lacks foundation.  
 17:40:06 5 A. I would have to speculate.  
 17:40:12 6 Q. I don't want you to speculate, but  
 17:40:15 7 would it potentially refresh your recollection  
 17:40:16 8 if you were able to see what's behind the  
 17:40:18 9 redactions on this page?  
 17:40:22 10 A. Not necessarily.  
 17:40:32 11 Q. And did SAP, after July 2006,  
 17:40:41 12 aggressively position TomorrowNow in the market?  
 17:40:54 13 A. It's a matter of opinion.  
 17:41:14 14 Personally, I think that we did not position it  
 17:41:18 15 aggressively.  
 17:41:22 16 MR. HOWARD: I am going to request a  
 17:41:23 17 production of an unredacted version of this  
 17:41:28 18 set of board minutes, so that I can  
 17:41:30 19 complete my questioning of this witness on  
 17:41:31 20 this topic, by tomorrow morning.  
 17:41:31 21 ---  
 17:41:31 22 (Request for Production)  
 17:41:33 23 ---  
 17:41:33 24 MR. LANIER: Your request is  
 17:41:35 25 refused. This was an issue litigated in

1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 17:42:19 2 MR. LANIER: That's on top of the  
 17:42:21 3 five -- however many hours we've already  
 17:42:24 4 done.  
 17:42:24 5 THE VIDEOGRAPHER: I'm sorry. We're  
 17:42:25 6 at 6:53.  
 17:42:25 7 MR. HOWARD: We're at 6:53?  
 17:42:27 8 THE VIDEO OPERATOR: Yes.  
 17:42:28 9 MR. HOWARD: Do you want to do seven  
 17:42:29 10 more minutes?  
 17:42:30 11 MR. LANIER: That's up to you.  
 17:42:30 12 MR. HOWARD: I'm happy to do it.  
 17:42:30 13 MR. LANIER: Well, let's do seven  
 17:42:35 14 more minutes.  
 17:42:35 15 MR. HOWARD: All right. But if we  
 17:42:36 16 start, then I want to finish whatever I  
 17:42:37 17 start and not cut off in the middle.  
 17:42:39 18 MR. LANIER: That's fine with us.  
 17:42:43 19 THE VIDEO OPERATOR: It's actually  
 17:42:43 20 6:55.  
 17:42:43 21 MR. HOWARD: 6:55. All right.  
 17:43:19 22 Let's mark as Exhibit 421 a document  
 17:43:21 23 entitled Oracle Competitive Update, dated  
 17:43:25 24 July 25, 2006.  
 17:43:36 25 ---

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, FRANK J. BAS, a Notary Public  
within and for the State of New York, do  
hereby certify:

That HENNING KAGERMANN, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 29th day of September  
2008.

  
FRANK J. BAS, NDR

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

September 26, 2008  
9:07 a.m.

HIGHLY CONFIDENTIAL  
VOLUME 2

Videotaped Deposition of HENNING  
KAGERMANN, held at the offices of BINGHAM  
McCUTCHEN LLP, 399 Park Avenue, New York, New  
York, before Frank J. Bas, a Registered  
Professional Reporter and Notary Public of the  
State of New York.



1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 10:38:48 2 A. It looks like the minutes of a board  
 10:39:00 3 meeting.  
 10:39:01 4 Q. Am I correct that the date is  
 10:39:03 5 January 14, 2005?  
 10:39:10 6 A. That's what it says on the document.  
 10:39:14 7 Q. And do you have any reason to doubt  
 10:39:15 8 that?  
 10:39:16 9 A. No.  
 10:39:19 10 Q. And your name is on the front page?  
 10:39:22 11 A. Yes.  
 10:39:24 12 Q. And do you know why that is?  
 10:39:26 13 A. Probably because I usually  
 10:39:40 14 distribute the minutes of the board meetings.  
 10:39:44 15 Q. And would this be a document then  
 10:39:48 16 that you would distribute out to the rest of the  
 10:39:51 17 executive board?  
 10:39:59 18 A. That's how it usually works.  
 10:40:02 19 Q. And do you review the document  
 10:40:04 20 before you distribute it out to the rest of the  
 10:40:07 21 executive board?  
 10:40:08 22 A. Yes.  
 10:40:14 23 Q. And is one of the purposes of that  
 10:40:17 24 review to make sure that it's an accurate  
 10:40:20 25 reflection of what transpired at the meeting?

1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 10:42:51 2 BY MR. HOWARD:  
 10:42:58 3 Q. Now, I'm showing this to you so you  
 10:43:03 4 can see what Mr. Agassi wrote, because he  
 10:43:07 5 reports something attributed to you that I want  
 10:43:11 6 to ask you about. He writes on January 6th, a  
 10:43:31 7 week before Mr. Mackey's e-mail announcing the  
 10:43:34 8 beginning of legal due diligence that, quote,  
 10:43:38 9 "Henning sees legal as a show-stopper."  
 10:43:42 10 Do you see that?  
 10:43:46 11 A. Yes.  
 10:43:47 12 Q. Did you, as of January 6, see legal  
 10:43:50 13 as a show-stopper on the TomorrowNow deal?  
 10:44:08 14 A. I don't recall.  
 10:44:10 15 Q. Do you recall any discussion with  
 10:44:13 16 Mr. Agassi to the effect that legal concerns  
 10:44:19 17 would prevent the board from approving the  
 10:44:23 18 TomorrowNow acquisition?  
 10:44:40 19 MR. LANIER: Mr. Kagermann, you may  
 10:44:42 20 answer that question as to any discussions  
 10:44:44 21 you had with Mr. Agassi with no lawyers  
 10:44:46 22 involved or where you were not discussing  
 10:44:48 23 things lawyers told you. If you had  
 10:44:51 24 independent discussions you may answer it,  
 10:44:52 25 but I instruct you not to answer the

1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 10:40:23 2 A. Specifically it is to have the  
 10:40:53 3 decisions complete in the minutes.  
 10:40:59 4 Q. To make sure I understand, before  
 10:41:02 5 circulating the minutes to the board, you review  
 10:41:04 6 them to make sure that they reflect the  
 10:41:06 7 decisions that were made by the board at that  
 10:41:08 8 meeting?  
 10:41:30 9 A. Yes.  
 10:41:30 10 Q. And also to make sure that those  
 10:41:34 11 decisions are accurately reflected in the  
 10:41:35 12 minutes?  
 10:41:36 13 A. At least from my view.  
 10:41:51 14 Q. Now I'm going to go back in time a  
 10:42:09 15 few days now. You can put that down.  
 10:42:21 16 MR. LANIER: Mr. Kagermann, he said  
 10:42:23 17 you could put it down. You can put it back  
 10:42:25 18 on the stack.  
 10:42:26 19 MR. HOWARD: I am going to mark as  
 10:42:27 20 Exhibit 426 an e-mail from Mr. Agassi to  
 10:42:32 21 Mr. Mackey and Mr. Shenkman.  
 10:42:45 22 ---  
 10:42:45 23 (Plaintiffs' Exhibit 426 was marked  
 10:42:45 24 for identification.)  
 10:42:51 25 ---

1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 10:44:55 2 question if your only discussions with him  
 10:44:58 3 were with lawyers or were discussing things  
 10:44:59 4 lawyers told you, the basis being the  
 10:45:04 5 attorney-client privilege.  
 10:45:05 6 Go ahead.  
 10:45:07 7 A. I don't recall any specific talk.  
 10:45:13 8 Q. Did you tell Mr. Agassi that legal  
 10:45:19 9 was a show-stopper?  
 10:45:29 10 A. I don't recall that.  
 10:45:32 11 Q. Do you recall any discussion with  
 10:45:37 12 Mr. Agassi in the January 6, 2005, time frame, a  
 10:45:44 13 week before the beginning of legal due  
 10:45:48 14 diligence, to the effect that legal concerns  
 10:45:50 15 would block the TomorrowNow acquisition?  
 10:46:16 16 MR. LANIER: Object; assumes facts  
 10:46:17 17 not in evidence.  
 10:46:18 18 Mr. Kagermann, the same instruction  
 10:46:20 19 to you I just gave.  
 10:46:22 20 A. I don't recall.  
 10:46:23 21 Q. Do you have any reason to doubt the  
 10:46:38 22 accuracy of Mr. Agassi's comment here in his  
 10:46:42 23 January 6, 2005, e-mail?  
 10:46:45 24 A. No.  
 10:47:35 25 MR. HOWARD: I am going to mark as



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1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 10:47:37 2 Exhibit 427 an e-mail from Mr. Shenkman to  
 10:47:44 3 Mr. Kagermann and others attaching the  
 10:47:47 4 business case for TomorrowNow. And I've  
 10:47:54 5 made one modification to this document,  
 10:47:55 6 which is I've had some of the language  
 10:47:59 7 which is very hard to read on the  
 10:48:01 8 PowerPoint typed onto a fresh page.  
 10:48:13 9 ---  
 10:48:13 10 (Plaintiffs' Exhibit 427 was marked  
 10:48:13 11 for identification.)  
 10:48:25 12 ---  
 10:48:25 13 MR. LANIER: So while Mr. Kagermann  
 10:48:26 14 is looking at it, to make sure I understand  
 10:48:28 15 it, for the record, taking, for example,  
 10:48:29 16 Page 91838 -- I'm not sure how they  
 10:48:39 17 correspond. how do the pages here  
 10:48:42 18 correspond to the pages of the PowerPoint?  
 10:48:43 19 Just so we can follow along and so the  
 10:48:45 20 record's clear.  
 10:48:46 21 MR. HOWARD: There's I think three  
 10:48:47 22 pages that people have found difficult to  
 10:48:49 23 read, and there's -- at the back of the  
 10:48:52 24 document there are three pages where the  
 10:48:55 25 language on those pages has been

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1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 10:48:57 2 re-created. So perhaps Mr. Kagermann, if  
 10:49:00 3 he's familiar with the document, can read  
 10:49:02 4 the document without the benefit of that  
 10:49:04 5 additional clarifying work. But I wasn't  
 10:49:08 6 able to, so I created it.  
 10:49:09 7 MR. LANIER: I'm not objecting to  
 10:49:11 8 it, as long as it's clear on the record  
 10:49:12 9 what it is.  
 10:49:13 10 And one other logistical point. I  
 10:49:15 11 notice that you have Shenkman 249 behind my  
 10:49:18 12 copy of this.  
 10:49:22 13 MR. HOWARD: Yeah. That should not  
 10:49:24 14 be the case. Oh, let's see. Shenkman 220  
 10:49:28 15 or Shenkman 249?  
 10:49:30 16 MR. LANIER: No, Shenkman 249  
 10:49:32 17 (indicating). That was behind my copy of  
 10:49:34 18 it. I don't know about --  
 10:49:38 19 MR. HOWARD: Is it -- Oh. Do you  
 10:49:39 20 also have Shenkman 220 at the back?  
 10:49:43 21 MR. LANIER: No, I do not. I  
 10:49:45 22 have -- the copy you handed me -- actually,  
 10:49:48 23 let me just look at the witness's copy so  
 10:49:50 24 we're clear on the record.  
 10:49:51 25 Mr. Kagermann, can I have that for a

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1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 10:49:52 2 moment? Thank you.  
 10:49:53 3 So Mr. Kagermann's copy has the  
 10:49:56 4 e-mail from Shenkman to them. It's got the  
 10:50:00 5 business case. It has those pages you  
 10:50:01 6 mentioned. It's got -- Shenkman 249 is  
 10:50:04 7 what it looks like it's got.  
 10:50:05 8 MR. HOWARD: Shenkman 249 should not  
 10:50:07 9 be part of that. So it's a separate --  
 10:50:09 10 MR. LANIER: And it has Shenkman  
 10:50:13 11 220 --  
 10:50:14 12 MR. HOWARD: Shenkman 249 and 220  
 10:50:16 13 should not be part of that exhibit.  
 10:50:18 14 MR. LANIER: Okay. I've taken them  
 10:50:19 15 out of the witness's copy, and I'm handing  
 10:50:21 16 it back to him.  
 10:50:22 17 MR. HOWARD: Thank you.  
 10:50:26 18 MR. LANIER: Do you have 249 in  
 10:50:27 19 there as well? I'm also getting it from  
 10:50:30 20 the interpreter.  
 10:50:32 21 MR. HOWARD: Thank you.  
 10:50:33 22 For the record, Shenkman Exhibit 249  
 10:50:34 23 and Exhibit 220 are -- is a separate  
 10:50:37 24 transmission of the same document. There  
 10:50:39 25 are some pages that are clearer on each of

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1 HIGHLY CONFIDENTIAL - H. KAGERMANN  
 10:50:41 2 them, but let's go with the one that I have  
 10:50:43 3 marked as Exhibit 427, which is  
 10:50:45 4 Mr. Shenkman's transmission to the board of  
 10:50:47 5 the business case on January 7, 2005.  
 10:50:51 6 BY MR. HOWARD:  
 10:50:51 7 Q. And with all of that behind us,  
 10:50:53 8 Mr. Kagermann, is this an e-mail with an  
 10:50:57 9 attached business case that you received from  
 10:50:58 10 Mr. Shenkman on January 7, 2005?  
 10:51:14 11 A. According to which I see here, yes.  
 10:51:19 12 Q. Is this the document you referred to  
 10:51:22 13 earlier that was the document presented to the  
 10:51:24 14 board identifying certain risks with the  
 10:51:27 15 acquisition of TomorrowNow?  
 10:51:44 16 A. It looks like this is the business  
 10:51:51 17 case that is usually presented.  
 10:51:55 18 Q. And is this the document you  
 10:51:57 19 referred to earlier that the board received  
 10:51:59 20 identifying certain risks associated with the  
 10:52:03 21 TomorrowNow acquisition?  
 10:52:05 22 A. I referred to a business case  
 10:52:39 23 which -- because we always prepared a business  
 10:52:40 24 case, and it always includes risks.  
 10:52:43 25 Q. And is this that document?



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	1 HIGHLY CONFIDENTIAL - H. KAGERMANN		1 HIGHLY CONFIDENTIAL - H. KAGERMANN
10:52:46	2 A. It looks like -- it looks like it.	10:56:19	2 TomorrowNow acquisition, such as Mr. Agassi, had
10:52:57	3 Q. All right. Mr. Shenkman -- turning	10:56:22	3 had any discussions with lawyers regarding the
10:53:01	4 to the first page of Exhibit 427, which is	10:56:24	4 TomorrowNow acquisition?
10:53:04	5 Mr. Shenkman's cover e-mail. Is this an e-mail	10:56:26	5 A. I don't know.
10:53:11	6 from Mr. Shenkman to the executive board?	10:56:45	6 Q. What action did the board take --
10:53:21	7 A. No.	10:56:58	7 what happened after Mr. Shenkman sent this
10:53:22	8 Q. He says that he is requesting -- "we	10:57:02	8 document in order to provide the authorization
10:53:27	9 are requesting authorization to proceed with due	10:57:05	9 that he requests in his e-mail?
10:53:31	10 diligence and to extend a nonbinding offer to	10:57:28	10 MR. LANIER: Mr. Kagermann, before
10:53:33	11 the Company."	10:57:29	11 you answer -- I'm just thinking about it.
10:53:37	12 Do you see that?	10:57:31	12 In answering your question you may provide
10:53:41	13 A. Yes.	10:57:33	13 steps that happened. If there's any legal
10:53:41	14 Q. Did the board provide that	10:57:35	14 communications involved, you may not
10:53:45	15 authorization that was requested?	10:57:37	15 disclose the content of those
10:53:50	16 A. I assume so.	10:57:38	16 communications.
10:54:03	17 Q. And is the nonbinding offer he's	10:57:40	17 Go ahead.
10:54:06	18 referring to here the term sheet that we saw	10:57:43	18 A. I could only guess.
10:54:10	19 previously circulated by Mr. Mackey on January	10:57:46	19 Q. Was there a meeting?
10:54:13	20 13?	10:57:48	20 A. I don't recall.
10:54:14	21 A. I don't know.	10:57:52	21 Q. Was there a conference call?
10:54:32	22 Q. Mr. Shenkman writes: "We do have	10:57:54	22 A. I don't recall.
10:54:36	23 concerns, but we recommend proceeding with the	10:57:58	23 Q. Was there e-mail discussion?
10:54:38	24 meetings scheduled for next week at FKOM with	10:58:02	24 A. I don't think so.
10:54:41	25 the CEO and President of TomorrowNow."	10:58:06	25 Q. How was the authorization
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	1 HIGHLY CONFIDENTIAL - H. KAGERMANN		1 HIGHLY CONFIDENTIAL - H. KAGERMANN
10:54:47	2 A. I see it.	10:58:09	2 communicated?
10:54:47	3 Q. What did you understand were the	10:58:11	3 A. I don't recall.
10:54:49	4 concerns that the SAP team had regarding the	10:58:16	4 Q. Did you review this business case
10:54:53	5 TomorrowNow acquisition at that point?	10:58:18	5 when you received it?
10:55:09	6 MR. LANIER: Mr. Kagermann, I	10:58:19	6 A. I think so.
10:55:11	7 instruct you in your answer not to include	10:58:25	7 Q. Did you review it carefully?
10:55:13	8 any concerns that may or may not have been	10:58:28	8 A. I don't recall any longer.
10:55:16	9 expressed by lawyers inside or outside.	10:58:45	9 Q. Did you discuss it with anybody?
10:55:18	10 But if there were others expressed by	10:58:46	10 A. That's possible.
10:55:21	11 non-lawyers, you may go ahead and answer.	10:58:51	11 Q. Do you recall discussing it with
10:55:23	12 The basis for the instruction is the	10:58:53	12 anybody?
10:55:24	13 attorney-client privilege and the doctrine	10:58:53	13 A. No.
10:55:26	14 of work product immunity.	10:58:58	14 Q. When you reviewed this business
10:55:31	15 A. I don't recall any details.	10:59:05	15 case, did you have concerns about the
10:55:32	16 Q. Had you had any discussions with any	10:59:11	16 acquisition of TomorrowNow?
10:55:38	17 lawyers by January 7, 2005, regarding the	10:59:13	17 A. It's possible.
10:55:41	18 TomorrowNow acquisition?	10:59:25	18 Q. Do you remember whether you did or
10:55:53	19 MR. LANIER: Mr. Kagermann, you may	10:59:26	19 not?
10:55:56	20 answer that question yes or no.	10:59:27	20 A. No.
10:56:01	21 A. Do you mean me, personally?	10:59:32	21 Q. Other than authorizing the team to
10:56:03	22 Q. Yes.	10:59:52	22 proceed with due diligence and extend an
10:56:06	23 A. I don't recall any such talks.	10:59:55	23 nonbinding offer to the company, did you or the
10:56:11	24 Q. Do you know whether any other	11:00:00	24 board take any other action after receipt of
10:56:14	25 members of the SAP team involved in the	11:00:04	25 this business case?