

EXHIBIT 39

JUERGEN ROTTLER May 13, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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.)
)
SAP AG, a German corporation,)
SAP AMERICA, INC., a Delaware)
corporation, TOMORROWNOW,)
INC., a Texas corporation, and)
DOES 1-50, inclusive,)
)
Defendants.)
)

No. 07-CV-1658 (PJH)

VIDEOTAPED DEPOSITION OF
JUERGEN ROTTLER

WEDNESDAY, MAY 13, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-417821)

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Q. And I want to focus on price reductions
that you believe were granted primarily because of a
concern of competition with TomorrowNow.

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10:47:53 1 Do you have those thoughts in mind?
10:47:55 2 A. There is -- as you can see, even with the
10:47:58 3 exhibit that you gave me, TomorrowNow is mentioned
10:48:00 4 in here. It was constantly on our mind, as with the
10:48:05 5 acquisition by SAP, it was the one perceived, you
10:48:13 6 know, credible alternative to our own support
10:48:15 7 offering. And as such, it became a frequent reason
10:48:24 8 for people to ask for exceptions.
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Q. So what trends have you identified?

A. In general, over time, we see renewal rates

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16:51:13 1 improve for acquired companies. We have
16:51:17 2 historically -- we have sustained and continued to
16:51:21 3 improve, historically, very high renewal rates on
16:51:25 4 the Oracle core products, and we see, over time, an
16:51:33 5 ability to drive renewal rates in that direction as
16:51:36 6 well.

16:51:37 7 We saw a significant impact from
16:51:39 8 SAP/TomorrowNow, but -- you know, but at the same
16:51:46 9 time, we've obviously taken a lot of countermeasures
16:51:50 10 to that threat as well. So we've been able to --
16:51:54 11 you know, recover from what were at times very poor
16:52:00 12 renewal rates when the threat was the greatest.

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17:48:53 9 Q. Do you see there the entry for PeopleSoft,
17:48:55 10 and it's got a cancellation percentage of 7.14
17:48:58 11 percent?

17:49:01 12 A. Yep.

17:49:02 13 Q. Is that a percentage of the support dollars
17:49:05 14 that were available to renew during that period?

17:49:10 15 A. That would be my indication given the title
17:49:15 16 saying "Q2 Acquisitions," Slide No. 1.

17:49:18 17 Q. Is that typically the way you look at
17:49:23 18 cancellation rates, as a percentage not renewed of
17:49:28 19 the available to renew for that period?

17:49:31 20 A. In dollar terms, yes. But not always by
17:49:35 21 quarter. We'd look at it for the full year as well.
17:49:38 22 Because in the quarter, you could see a spike or you
17:49:41 23 could see something below what the real run rate is.

17:49:44 24 Q. Okay. So in that regard, in Exhibit 450,
17:49:47 25 would you look at Slide 12, please?

17:49:51 1 A. Could I make another comment on this, since
17:49:53 2 you asked me about it?

17:49:54 3 Q. Okay. Go ahead.

17:49:55 4 A. So this would actually be a very alarming
17:49:58 5 number to look at. Here we are in Q2, fiscal year
17:50:03 6 '07, more than 2 years after the acquisition of
17:50:07 7 PeopleSoft. By now, we would have typically
17:50:11 8 expected to have cancellation rates to be much more
17:50:15 9 in line with Oracle's cancellation rates of 2 and 3
17:50:19 10 percent. You see some acquisitions here that have
17:50:21 11 high cancellation rates. Those are all brand-new
17:50:25 12 acquisitions, where typically the high cancellation
17:50:28 13 rates show a cleanup that happens in the first
17:50:30 14 quarter or two of contracts that the company may
17:50:34 15 still show as active, but once we take over the
17:50:39 16 company and we inspect their contracts, it turns out
17:50:41 17 they're customers that had already canceled or
17:50:44 18 whatever. She these are typical blips that we see
17:50:47 19 at the beginning of an acquisition.

17:50:48 20 By 2 years into it, a 7 percent
17:50:51 21 cancellation rate is very high, and, you know, would
17:50:56 22 have been continued cause for attention, which it
17:50:59 23 had. So this shows the dire impact of the
17:51:07 24 activities of TomorrowNow and SAP.
17:51:11 25

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1 Q. The opposite could be companies going the
2 other direction to SAP.

3 A. Yeah.

4 MR. McDONELL: Counsel, I have nothing
5 further now, but I am reserving rights to not have
6 this deposition concluded. I think there's some
7 real document concerns but I'll reserve rights.

8 MS. HOUSE: And we'll reserve ours.

9 MR. McDONELL: Okay.

10 MS. HOUSE: Okay, thank you.

11 MR. McDONELL: No questions?

12 MS. HOUSE: No questions.

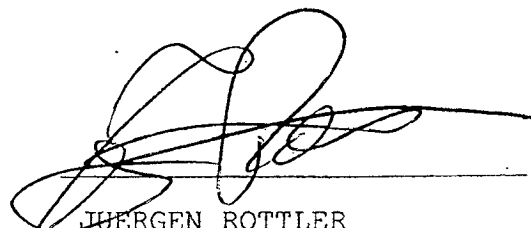
13 THE VIDEO OPERATOR: This is the end of
14 Volume 1, Videotape No. 4 in the deposition of
15 Juergen Rottler. We're going off the record. The
16 time is 6:29.

17 (Time noted, 6:29 p.m.)

18 --o0o--

19 I declare under penalty of perjury that
20 the foregoing is true and correct. Subscribed at

21 Saratoga, California, this 22 day of
22 June 2009.



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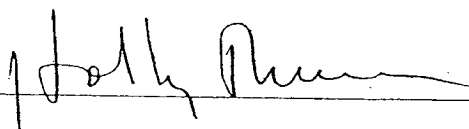
CERTIFICATE OF REPORTER

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 stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript [] 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 19th, 2009



HOLLY THUMAN, CSR No. 6834