

EXHIBIT E

United States District Court
Northern District of California

Before The Honorable Elizabeth D. Laporte

Oracle Corporation,)
)
Plaintiff,)
)
vs.)
)
SAP AG, et al.,)
)
Defendants.)
_____)

No. C07-1658 EDL

COPY

San Francisco, California
Thursday, July 24, 2008

Reporter's Transcript Of Proceedings

Appearances:

For Plaintiff: Bingham McCutchen
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By: Jennifer Gloss, Esquire

(Appearances continued on next page.)

Reported By: Sahar McVickar, RPR, CSR No. 12963
Official Reporter, U.S. District Court
For the Northern District of California

(Computerized Transcription By Eclipse)

1 additional delving down is going to be required. In addition
2 to the materials, they gave us some samples; we don't think
3 that materials that they provided us -- the general material --
4 is comparable to what we have provided. But, in order to
5 really figure out what did additionally we need and from which
6 customers we want to start that process because, obviously,
7 with a limited amount of time we want to focus, as you
8 suggested, on the ones that are most likely to be the hot ones.
9 But, we are still awaiting information from them on that. And,
10 I think we have to just defer a discussion on where we are on
11 that until the next conference on the 28th.

12 **THE COURT:** So there was a -- was the prioritized
13 list of customers due on Friday?

14 **MS. HOUSE:** Right, per your order. And we got a
15 list, but it was just a non-prioritized alphabetical list of 61
16 customers with no gradation at all. According to our last
17 conference about, you know, gee, which one -- there is specific
18 language in your order, we called it to their attention. They
19 have come back with a proposal to give us additional
20 information. We'll evaluate that once we get it. I don't know
21 -- I would like to know when I am going to get it.

22 **THE COURT:** So what is the story with the holdup on
23 that?

24 **MR. MCDONELL:** Yeah, let me tell you the background.
25 So, the subject here is which customers of SAP will

1 be subject to discovery, especially as it relates to the
2 causation of damages issue. And, when we were last here, I
3 think I was the one who raised this issue and explained to the
4 Court that there was -- for this discovery to exist at all, the
5 starting point would be, well, did the customer have a
6 TomorrowNow contract at all, and then, if so, did the customer
7 also have an SAP contract? And, you had made some insightful
8 comments about that about, well, how can you -- well, excuse me
9 for --

10 **THE COURT:** Groveling?

11 (Laughter.)

12 **MR. MCDONELL:** Yes, thank you.

13 You had followed up on what I said, that even within
14 that class of customers for which there is both a TomorrowNow
15 and an SAP contract that there are going to be variations on
16 the theme.

17 **THE COURT:** Right.

18 **MR. MCDONELL:** And I knew that, generally. And I'm
19 absolutely convinced that there is going to be variations. And
20 you said, well, why don't you give that them that list and
21 annotate it so the clear ones are clear and the fuzzy ones are
22 fuzzy. And I said that is what we will do.

23 So, we went back and began trying to do that. And,
24 as fate would have it, it's not at all a simple task. In fact,
25 as we thought about it, the things we can do and are proposing

1 to do are to get objective data points that should assist in
2 this process.

3 So the things that made sense to us were to get the
4 list of customers and to take all of the customers that we have
5 been able to confirm as both a TomorrowNow and an SAP contract.
6 So, that is the universe.

7 Then, in terms of trying to get some data with which
8 to do an evaluation of that, it seemed to us the things that
9 made sense would be contract dates -- now, they have all the
10 TomorrowNow contracts, so that is not at issue. The product's
11 at issue. So SAP sells a number of products, and then by
12 giving products that the SAP customer has, they can do whatever
13 mapping they think is appropriate back to the TomorrowNow
14 contract.

15 Contract dates, if we can get them, and the plot
16 thickens a little bit on that, but we should be able to, and
17 then, dollar volumes of the contracts. And by getting that
18 objective data, then either side can draw whatever conclusions
19 they want about what it all means.

20 But, we concluded that we didn't think that the
21 right thing to do would be to try to do the subjective
22 qualitative kind of statements about, well, we think this one
23 is a winner and that one is not, because that is what the
24 discovery is ultimately intended to be directed to.

25 So that is -- I have told counsel that that is what

1 we are working on. Tougher than we thought. There is no --

2 **THE COURT:** How many are we talking about?

3 **MR. MCDONELL:** Sixty-one.

4 **THE COURT:** When do you think you can do that?

5 **MR. MCDONELL:** My goal is to have it done before we
6 are back here on August 28th and to provide them with whatever
7 list we have. And obviously, we have an incentive to get this
8 done.

9 **THE COURT:** That just seems like a long time. Maybe
10 you can do it at least in a rolling fashion.

11 What are your thoughts on that?

12 **MS. HOUSE:** And then, in addition, we need to see
13 the underlying contracts, which we also haven't received.

14 Part of the problem is this was all supposed to be
15 the filler information that would then inform our discussion
16 about what additional information we need in order to figure
17 out what really was the motivation behind going to an SAP
18 application.

19 So, every one of these is just a stage to the next
20 thing. Obviously, the sooner we can get that underlying
21 information, the soon are we can say, well, gosh, we want to
22 start with these top ten and get this kind of e-mail that has
23 to do with the customer's -- that anything that customer had to
24 say about TomorrowNow or what, you know, because that is the
25 piece of the contract that we find the most interesting, how

1 did the TomorrowNow piece of the puzzle work to entice them
2 into the SAP purchase.

3 **MR. MCDONELL:** And, I'm not proposing to slow down,
4 in any way, the production of the SAP contracts themselves for
5 these 61 customers. So, to the extent that we have obtained
6 the customer files for those 61, and, I believe, it's the
7 majority, by far, we should have them all by next week, I hope,
8 we'll produce those. So we'll get that rolling right away.

9 **THE COURT:** All right. So, produce the actual
10 contracts by next week. Is that --

11 **MR. MCDONELL:** Unless, I put my foot squarely in the
12 mouth again --

13 Ms. Freud is closer.

14 **MS. FROYD:** We have been collecting them from the
15 U.S., and I think will be able to get the vast majority of the
16 North American ones done in the time period. The international
17 ones are sort of coming in piecemeal, and will take a bit
18 longer to collect.

19 **THE COURT:** And what -- how many are U.S.?

20 **MS. FROYD:** Unfortunately, I don't have the list in
21 front of me. I would say at least half of them are the U.S.

22 **THE COURT:** All right. All the U.S. customers by
23 the end of next week.

24 And, can you also give the dollar value by the end
25 of next week for those customers?

1 **MR. MCDONELL:** Your Honor, we will try. I just
2 can't promise I can get it done. It's a large company is about
3 the simplest way to say it.

4 **THE COURT:** I don't want to wait a whole other month
5 for this to get going.

6 **MR. MCDONELL:** Your Honor, I will commit to try to
7 start pushing this information to counsel of -- you know,
8 reasonably promptly after we get it and confirm it, and so
9 forth, but I am doubtful that it will be completed much before
10 August 28.

11 But, I understand the need to be working on
12 everything simultaneously here.

13 **THE COURT:** Right.

14 **MR. MCDONELL:** So, we will push out what we
15 reasonably think --

16 **THE COURT:** All right, I think that is as far as we
17 go on that.

18 Search terms?

19 **MS. HOUSE:** The search terms has been, you know,
20 meet and confer, meet and confer, meet and confer. We have --
21 my understanding is we have the latest proposal of what the
22 German terms are going to be, and we are running them. We have
23 been trying to help them. There is another meet and confer on
24 Monday.

25 I would say my understanding is that the process has

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/s/ Sahar McVickar

Sahar McVickar, RPR, CSR No. 12963

Wednesday, July 30, 2008