EXHIBIT D

Page 1

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.)	 No. 07-CV-1658 (PJH)
SAP AG, a German corporation, SAP AMERICA, INC., a Delaware corporation, TOMORROWNOW, INC., a Texas corporation, and DOES 1-50, inclusive,) Defendants.)	

VIDEOTAPED DEPOSITION OF

HASSO PLATTNER

_____

TUESDAY, JUNE 2, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-419913)

HASSO PLATTNER   June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 55

10:02:25	4	Q. Sure. We can only get so far with these
10:02:27	5	theoretical discussions.
10:02:29	6	So let me ask you to think about the
10:02:32	7	reverse situation, and assume that -- assume that
10:02:38	8	SAP is forced to license its own IP -- and to make
10:02:42	9	it equivalent, let's focus on it's ERP, its Business
10:02:48	10	Suite, and the IP used to support it -- to a
10:02:53	11	third-party provider.
10:02:55	12	You're required to do this license.
10:02:57	13	A. By law?
10:02:57	14	Q. By my hypothetical.
10:03:01	15	A. Now we are in two-tier hypothetical square?
10:03:08	16	Q. It's true, it's a hypothetical. But your
10:03:11	17	instructions are, you must license it. And I want
10:03:14	18	you to assume that the third party is owned by
10:03:18	19	Oracle, and that you understand that Oracle is going
10:03:24	20	to be subsidizing that third-party provider in a way
10:03:30	21	that will allow the provider to charge 50 percent of
10:03:35	22	what you would ordinarily charge for maintenance on
10:03:38	23	your own software. And, that the subsidiary may
10:03:49	24	charge nothing if the customers agree to switch from
10:03:56	25	SAP to Oracle.

6e454e30-7d55-4e0c-a2c5-d1dfe712c5e4

HASSO PLATTNER   June 2, 2009
HIGHLY   CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 56

10:03:58	1	A. Maintenance.
10:03:59	2	Q. Maintenance. Well, and switch their
10:04:00	3	applications themselves. Zero for maintenance, yes,
10:04:07	4	if that was your question.
10:04:08	5	A. Then there is no business for us any more.
10:04:11	6	Then we lost the customer.
10:04:16	7	Q. Well, you are competing for the customer,
10:04:17	8	but you're licensing to Oracle to allow it to
10:04:20	9	compete with you.
10:04:21	10	A. Okay. Have we lost the customer, or we are
10:04:25	11	going to lose the customer, or it's still our
10:04:27	12	customer?
10:04:28	13	Q. It's still your customer, but you are
10:04:29	14	licensing the software to Oracle to allow it to
10:04:32	15	compete with you on essentially --
10:04:33	16	A. The maintenance?
10:04:34	17	Q. -- the maintenance, and also the software
10:04:36	18	itself.
10:04:37	19	MR. LANIER: Let him get his whole question
10:04:39	20	out.
10:04:39	21	MR. HOWARD: Q. Right. But it's okay. I
10:04:41	22	want it to be clear.
10:04:45	23	So in other words, I want you to have in
10:04:47	24	mind that Oracle is essentially launching a Safe
10:04:50	25	Passage program, but it has the SAP software through

Merrill Legal Solutions
(800) 869-9132

HASSO PLATTNER   June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 57

10:04:53	1	its license with you to provide the support to the
10:04:56	2	customers to migrate them off of SAP and to Oracle.
10:05:05	3	In that situation, and you're negotiating a
10:05:07	4	license for that, I want to ask whether you would
10:05:11	5	consider the following factors:
10:05:13	6	Would you consider the research and
10:05:15	7	development that SAP expended to develop the
10:05:21	8	software it would then be licensing to Oracle?
10:05:24	9	MR. LANIER: Calls for speculation, lacks
10:05:25	10	foundation, incomplete and counterfactual
10:05:29	11	hypothetical, assumes facts not in evidence, calls
10:05:31	12	for an expert opinion -- I'm going to now -- you can
10:05:34	13	answer.
10:05:34	14	THE WITNESS: The price has to be lower
10:05:35	15	than the price we charge for maintenance, because
10:05:39	16	somebody else is doing the job for us. So it's net
10:05:42	17	income to us. So it's actually -- if this
10:05:46	18	hypothetical case would happen, it's actually an
10:05:48	19	interesting case, and it depends now what the
10:05:53	20	percentage is, but -- so it will be lower than what
10:05:57	21	we charge the customer, because it's an indirect
10:06:00	22	charge. It's like indirect software sales.
10:06:02	23	MR. HOWARD: Q. Okay. So if I understand
10:06:04	24	you, then, you would not -- in setting this fee, you
10:06:07	25	would not take into account the money that SAP spent

Merrill Legal Solutions
(800) 869-9132

6e454e30-7d55-4e0c-a2c5-d1dfe712c5e4

HASSO PLATTNER   June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 58

10:06:09	1	to develop the software in the first place?
10:06:12	2	A. No.
10:06:12	3	MR. LANIER: Same objections.
10:06:13	4	THE WITNESS: And actually, in this
10:06:15	5	hypothetical case, which has to have a legal
10:06:17	6	framework, I think part of the legal framework would
10:06:20	7	be that we are not allowed to charge a third party
10:06:24	8	more than we charge ourselves, which would be
10:06:28	9	probably antitrust.
10:06:31	10	MR. HOWARD: Q. Okay. Would you take
10:06:33	11	into --
10:06:33	12	A. At least -- excuse me, at least I think I
10:06:36	13	interpret the EU law like this.

Merrill Legal Solutions
(800) 869-9132

HASSO PLATTNER   June 2, 2009
HIGHLY   CONFIDENTIAL - ATTORNEYS' EYES ONLY

10:16:23	19	Q. No, I'm perfectly fine.
10:16:24	20	Assume that you were one of the
10:16:26	21	decision-makers at Oracle, if that's possible to do.
10:16:30	22	And you've just acquired PeopleSoft. You've spent
10:16:38	23	18 months doing that. You've paid a lot of money
10:16:41	24	for it. And you are expecting to get at least a
10:16:47	25	1.2-billion-dollar-per-year maintenance revenue

HASSO PLATTNER   June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 66

10:16:51	1	stream from that customer base. But now are going
10:16:56	2	to be forced to license the PeopleSoft software
10:17:00	3	to --
10:17:02	4	A. Maintenance.
10:17:02	5	Q. -- maintenance software -- well, all of it.
10:17:06	6	All software, to SAP's subsidiary TomorrowNow for it
10:17:14	7	to provide competing maintenance service at 50
10:17:18	8	percent off, and so that SAP can attempt to sell its
10:17:23	9	software to that same customer base.
10:17:27	10	In determining now -- and remember, in this
10:17:30	11	hypothetical, you're in the position of Oracle --
10:17:33	12	would you consider the purchase price that Oracle
10:17:36	13	has just paid to PeopleSoft in setting that license
10:17:40	14	fee?
10:17:40	15	MR. LANIER: Same objections.
10:17:42	16	THE WITNESS: No.
10:17:45	17	MR. HOWARD: Q. And for the reasons that
10:17:46	18	you've already given?
10:17:47	19	A. That's -- the history of the development of
10:17:54	20	cost at GM is not relevant to the price GM can
10:17:58	21	charge for a car now.
10:18:00	22	Q. And would you take into account the
10:18:02	23	18-month struggle that you've just gone through to
10:18:06	24	get that software and that customer base?
10:18:09	25	A. If they're --

HASSO PLATTNER   June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 67

10:18:10	1	MR. LANIER: Same objections.
10:18:11	2	THE WITNESS: If there is a legal umbrella
10:18:13	3	you described before, then this is not related.
10:18:16	4	MR. HOWARD: Q. And would you take into
10:18:20	5	account that by the acquisition, you have just
10:18:24	6	expanded your share of the applications business?
10:18:30	7	MR. LANIER: Same objection.
10:18:31	8	MR. HOWARD: Q. By acquiring the
10:18:32	9	PeopleSoft customers?
10:18:33	10	MR. LANIER: Sorry. Same objections. Go
10:18:34	11	ahead.
10:18:34	12	THE WITNESS: I don't understand the
10:18:35	13	question.
10:18:36	14	MR. HOWARD: Q. In other words, if you're
10:18:38	15	in Oracle's position, a rationale for the
10:18:40	16	acquisition is that you are increasing market share
10:18:43	17	in the software business. Right?
10:18:46	18	MR. LANIER: Same objections. Go ahead.
10:18:48	19	THE WITNESS: Yes.
10:18:48	20	MR. HOWARD: Q. And you're going to be
10:18:51	21	getting this maintenance revenue stream from those
10:18:53	22	customers.
10:18:54	23	Would you take those factors into account
10:18:56	24	in setting the license fee?
10:18:58	25	MR. LANIER: Same objections.

Merrill Legal Solutions
(800) 869-9132

6e454e30-7d55-4e0c-a2c5-d1dfe712c5e4

HASSO PLATTNER   June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 68

10:18:59	1	MR. HOWARD: Q. To TomorrowNow?
10:19:05	2	A. Okay. Again, if I'm forced to provide this
10:19:09	3	license to competitors, then there are rules under
10:19:11	4	which I am being forced, and I follow these rules.
10:19:15	5	And as I said several times, I do not
10:19:18	6	understand antitrust laws, but there is -- this is
10:19:23	7	derived from the position and the freedom of choice
10:19:27	8	of the customer.
10:19:29	9	Q. Well, let's say you're not being forced.
10:19:33	10	Let's say that the two sides are just sitting down
10:19:39	11	to try and negotiate that license under those
10:19:41	12	circumstances I just described.
10:19:44	13	Would you then be taking into account how
10:19:46	14	much you've paid?
10:19:47	15	MR. LANIER: Same objections.
10:19:53	16	THE WITNESS: Then I can do what I want.
10:19:58	17	MR. HOWARD: Q. And would you then --
10:20:00	18	A. And --
10:20:01	19	Q. Would you then take into account how much
10:20:03	20	you've paid if you're Oracle for the PeopleSoft
10:20:05	21	business?
10:20:05	22	A. Then we don't have to sit together.

Page 92

11:13:19	1	Going off the record, the time is 11:13.
11:26:47	2	(Time noted, 11:13 a.m.)
	3	--oOo--
	4	I declare under penalty of perjury that
	5	the foregoing is true and correct. Subscribed at
	6	*Walldorf* *GERMANY*, California, this *01* day of
	7	*July* 2009.
	8	
	9	_____
	10	HASSO PLATTNER
	11	
	12	
	13	
	14	
	15	
	16	
	17	
	18	
	19	
	20	
	21	
	22	
	23	
	24	
	25	
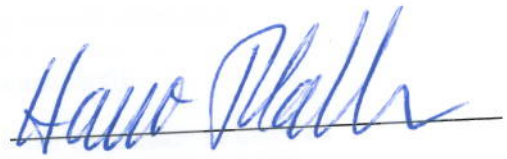
6e454e30-7d55-4e0c-a2c5-d1dfe712c

Notarization	**Notarielle Unterschriftsbeglaubigung**
I, the undersigned Notary Public,	Ich, der unterzeichnende Notar,

Manfred G a u l

(Name of the Notary Public / Name des Notars)

hereby confirm that the proceeding signature was executed before me today by Mr.	beglaubige hiermit die Echtheit der vorstehenden Unterschrift, vor mir heute vollzogen durch Herrn

Prof. Dr. h.c. Hasso Plattner

(Name / Name)

January 21st, 1944 / 21. Januar 1944

(Date of birth / Geburtsdatum)

Röschbacher Hof 2, D- 69198 Schriesheim-Altenbach

(Residential adress / Privatanschrift)

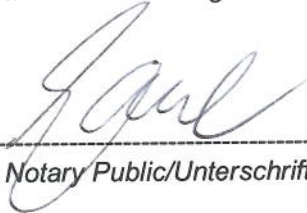| who is personally known to me.	der mir persönlich bekannt ist.
In case of doubt, the German version of this notarization shall prevail.	Im Zweifelsfalle ist die deutsche Übersetzung dieses Beglaubigungsvermerks maßgeblich.

Walldorf (Germany), July 1, 2009 / Walldorf (Deutschland), 1. Juli 2009

(Place, date / Ort, Datum)

Notariat 5 Heidelberg

(Signature of the Notary Public/Unterschrift des Notars)

(Gaul, Notary Public / Notar)

(Seal / Siegel)
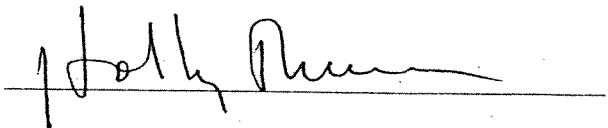
5 UR 930/2009

1   CERTIFICATE OF REPORTER

2   I, HOLLY THUMAN, a Certified Shorthand

3   Reporter, hereby certify that the witness in the

4   foregoing deposition was by me duly sworn to tell the

5   truth, the whole truth, and nothing but the truth in the

6   within-entitled cause; that said deposition was taken

7   down in shorthand by me, a disinterested person, at the

8   time and place therein stated, and that the testimony of

9   the said witness was thereafter reduced to typewriting,

10   by computer, under my direction and supervision;

11   That before completion of the deposition,

12   review of the transcript [X] was [ ] was not requested.

13   If requested, any changes made by the deponent (and

14   provided to the reporter) during the period allowed are

15   appended hereto.

16   I further certify that I am not of counsel or

17   attorney for either or any of the parties to the said

18   deposition, nor in any way interested in the event of

19   this cause, and that I am not related to any of the

20   parties thereto.

21

22   DATED   June 5, 2009.

23

24   _____

25   HOLLY THUMAN, CSR No. 6834