

# **EXHIBIT LL**

Mark Kreutz

October 30, 2007

JOB NO. 94821

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a	)	Case No. 07-CV-01658 (MJJ)
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.	)	

ORAL AND VIDEOTAPED DEPOSITION OF  
TOMORROWNOW BY AND THROUGH MARK KREUTZ  
VOLUME 2  
OCTOBER 30, 2007

ORAL AND VIDEOTAPED DEPOSITION OF MARK KREUTZ, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above styled and numbered cause on October 30, 2007, from 8:43 a.m. to 3:31 p.m., before RENE WHITE MOAREFI, CSR, CRR, RPR in and for the State of Texas, reported by machine shorthand, at Jones Day, 717 Texas, Suite 3300 Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record herein.

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Q. All right. I've put in front of you a document which I have marked as Plaintiffs' Exhibit 14 titled World Download Customer Connection, Bates No. TN-OR 4145 through 4159. Do you have that, Mr. Kreutz?

1 A. Yes, I do.

2 Q. Do you recognize the document which has been  
3 marked as Exhibit 14?

4 A. I do.

5 Q. What is the purpose of this document?

6 A. This document is used as a guideline for our  
7 download team and our customers in performing a  
8 download. And this is really -- kind of in -- in  
9 answer to your earlier question, this would be the --  
10 the process or procedures that would be used for -- for  
11 accessing Customer Connection.

12 Q. For the JDE products?

13 A. For the JD Edwards products, right.

14 Q. And is this a document that's prepared and  
15 maintained in the ordinary course of business of  
16 TomorrowNow?

17 A. Yes.

18 Q. And you're familiar with this document in the  
19 course of your responsibilities at TomorrowNow?

20 A. I am.

21 Q. Is this the most recent version of this  
22 document?

23 A. I believe so, yes. And, you know, as far as  
24 time lines go, you know, we aren't doing those any  
25 longer. Right. It's not in use any longer.

1 Q. Understood.

2 Do you have an understanding as to whether  
3 this document changed in the period prior to the filing  
4 of the litigation?

5 A. It may have gone through an iteration of  
6 changes or more than one change.

7 Q. In order to find out what changes this document  
8 may have been through, how would I find that out?

9 A. We have typically -- well, there may be  
10 variations of this document in e-mails again; but there  
11 also may be some audit history within the Lotus Notes  
12 databases. In other words, there may be an earlier  
13 version of it. Typically we put version numbers --  
14 well, down here, you might see -- see at the bottom of  
15 page 4145, Customer Connect-v1.doc. Maybe it hasn't  
16 gone through more than one iteration.

17 But what I was going to say was that in the  
18 Lotus Notes database, many times we will copy an older  
19 version of a document within the -- the Lotus Notes  
20 database down to a, you know, older versions section or  
21 something like that before making changes.

22 Q. Would you say that that's a routine practice at  
23 TomorrowNow, to maintain prior document versions in the  
24 way that you've just described --

25 A. Yes.

1 Q. -- in the Lotus Notes database?

2 A. Yes.

3 Q. What -- what word processing program is used to  
4 create a document such as Exhibit 14?

5 A. I believe this is Word.

6 Q. Microsoft --

7 A. Microsoft --

8 Q. -- Word?

9 A. -- Word.

10 Q. Now, did I understand you to say that this is a  
11 document that would be distributed to customers as well?

12 A. It has been, yes, uh-huh.

13 Q. And so on page 2, I note that there's a  
14 reference to TomorrowNow building a support library on  
15 the customer's behalf and a recommendation that the  
16 customer build the same type of library; is that right?

17 A. Yes.

18 Q. According to this document, then, what are the  
19 components of that support library as it's referenced  
20 here?

21 A. We're referencing SARs, so that would include  
22 information related to a SAR. And -- and I believe  
23 there is some reference to -- when I talk about related  
24 information to a SAR, we're talking about the code  
25 change document that's related to that.

1 Q. Anything else that's included within the  
2 meaning of the phrase "support library" as it's used in  
3 this document?

4 A. That would be the intent of this document would  
5 be to -- to download SARs and -- and related code  
6 changes.

7 Q. Okay. If you'd look at page 6 of the document,  
8 Bates No. 4150.

9 A. Okay.

10 Q. There's a reference to system code?

11 A. Yes.

12 Q. What -- what do you understand that reference  
13 to be?

14 A. That would correlate back to the -- a system  
15 code that was provided to us from one of our customers,  
16 from a customer.

17 Q. And what do you understand the system code  
18 reference to be?

19 A. That would reference what a customer would be  
20 entitled to. And for -- for -- for example, system code  
21 00, which is a foundation level system code, I think,  
22 all customers get system 00 or are licensed to 00.

23 So that system code would be, you know,  
24 given to us by the customer; and then it's gone through  
25 from the software request form and represented here as

1 being one of the search criteria for the SAR search.

2 Q. How does a customer tell you what it is that  
3 they're licensed to have in terms of support materials?

4 A. Two ways that we typically receive that  
5 material or that information, either through a product  
6 verification form or through the contract with  
7 TomorrowNow. There's an Appendix A section of the  
8 contract that outlines the -- the products that  
9 they're -- that they're requesting support for.

10 Q. Taking Appendix A to the TomorrowNow contract,  
11 how are the products identified if a customer is telling  
12 you they're licensed to have support materials for?

13 A. It's outlined by name. So, for example,  
14 accounts payable might be what's described in the  
15 contract, in the Appendix A part of the contract; and  
16 that would equate to a system code 03.

17 Q. And does TomorrowNow maintain an index of the  
18 system codes that correlate to the various products  
19 identified to it by its customers?

20 A. Yes.

21 Q. And then when the customer provides that  
22 information about what it's licensed to have in terms of  
23 downloaded support materials on the product verification  
24 form, does the information there contain -- conveyed the  
25 same way as it is in the Exhibit A to the TomorrowNow

1 contract?

2 A. I would say they should map to each other.  
3 Typically -- the way I understand it is the information  
4 provided on the product verification form is -- is  
5 basically cut and pasted into a appendix form for  
6 customers' acceptance and review and approval.

7 One thing that -- on the product  
8 verification form, there is that mapping that you're  
9 talking about. So 03 on the product verification  
10 form -- and you have some of this material, also, would  
11 have accounts payable as the description.

12 Q. So the product verification form maybe has more  
13 complete information than the Exhibit A to the contract  
14 because it has not just the name of the product but the  
15 associated system code?

16 A. It -- it may have -- I -- I suppose the answer  
17 is yes, it may have more information.

18 Q. What other information would it have?

19 A. Related to?

20 Q. Related to identifying the -- the support  
21 materials that that customer would be licensed to have.

22 MR. COWAN: Objection, form.

23 A. My only comment on that is that, you know,  
24 initially we receive that product verification form from  
25 the customer; and it's used as a basis for downloading

1 and as the -- as a basis for the initial contract draft.

2 Now, a customer came -- may come back and  
3 change something in the contract as far as those  
4 products are -- have been -- you know, have -- as they  
5 were represented to us in the first product verification  
6 form. So I don't know -- you know, the -- the contract  
7 may be -- may change depending on what they've  
8 discovered. So they may not be one -- exact matches  
9 between the two.

10 Q. (BY MR. HOWARD) Are you aware of instances in  
11 which the list of products on the contract has changed  
12 after the downloading has been done?

13 A. I am aware of some amendments to a contract  
14 after the fact.

15 Q. Amendments to change the list of products that  
16 are listed?

17 A. Yes.

18 Q. To add products or subtract products or both?

19 A. In -- in the instances that I can remember, it  
20 would have been to add a product; in other words, they  
21 forgot to put something on the -- the contract.

22 Q. Are you aware of any instances in which the  
23 contract has been changed to -- to subtract products  
24 initially listed?

25 A. No, I'm not aware of that.

1 Q. Would you please look at page 11 of Exhibit 14,  
2 Bates No. 4155.

3 A. Okay.

4 Q. There's a paragraph here that begins, "To  
5 ensure a complete library is built." Do you see that?

6 A. Yes.

7 Q. And it refers to -- it appears to have  
8 instructions for how to do a search?

9 A. Correct.

10 Q. It says, "Continue to increment the number  
11 searched on." Do you see that?

12 A. The -- continue to increment -- yes.

13 Q. What do you understand that part of the  
14 instruction here to mean?

15 A. Let me -- let me read through this one more  
16 time.

17 Q. Sure.

18 A. Okay. Yesterday I had mentioned that there  
19 were some limitations in the download search whereby --  
20 and for performance reasons it would only bring back,  
21 say, a hundred or 200 records. And this is really meant  
22 to be, okay, get the increment for the next hundred  
23 records.

24 Q. Does this document refer to downloads using  
25 Customer Connection?

1           A.   Yes.

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Mark Kreutz

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THE STATE OF TEXAS )  
COUNTY OF HARRIS )

REPORTER'S CERTIFICATION  
DEPOSITION OF MARK KREUTZ  
TAKEN OCTOBER 30, 2007

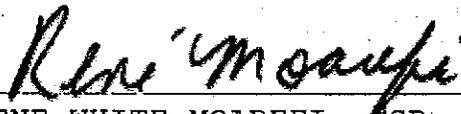
I, RENE WHITE MOAREFI, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, MARK KREUTZ, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on \_\_\_\_\_ to the witness or the attorney for the witness for examination, signature and return to Esquire Deposition Services, by \_\_\_\_\_;

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this NOV 05 day of 2007, 2007.



RENE WHITE MOAREFI, CSR, CRR, RPR  
CSR NO. 3070; Expiration Date: 12-31-08  
ESQUIRE DEPOSITION SERVICES, LLC  
3401 Louisiana, Suite 300  
Houston, Texas 77002  
(713) 524-4600

MARK KREUTZ February 19, 2008  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO  
DIVISION

BEFORE: CHARLES A. LEGGE, JUDGE (Ret.)

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ORACLE CORPORATION, a	)	
Delaware corporation; ORACLE,	)	
USA, INC., a Colorado	)	
corporation, and ORACLE	)	
INTERNATIONAL CORPORATION, a	)	No. 07-CV-01658-MJJ
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.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

DEPOSITION OF MARK KREUTZ

Tuesday, February 19, 2008

Reported by:  
GEORGE SCHUMER, CSR 3326

(406438)

MARK KREUTZ February 19, 2008  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 171

15:25:19 1

15:25:23 2

Q. But there did exist a master library that included downloads that had been obtained using various customer credentials; right?

15:25:31 4

15:25:33 5

A. Yes.

15:25:34 6

15:25:38 7

Q. That library was not organized according to customer; right?

15:25:40 8

A. Correct.

15:25:41 9

15:25:47 10

Q. And there was a project undertaken to split that library up into specific customer folders?

15:25:53 11

A. Yes.

15:25:54 12

15:25:59 13

15:26:03 14

15:26:08 15

15:26:09 16

15:26:13 17

15:26:17 18

15:26:25 19

15:26:30 20

15:26:36 21

15:26:46 22

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15:26:57 24

15:27:00 25

CERTIFICATE OF REPORTER

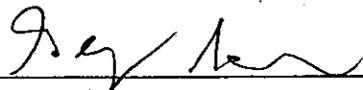
I, George Schumer, a Certified Shorthand Reporter, hereby certify that the witness in the forgoing matter was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said proceeding 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 vested in the outcome of this cause, and that I am not related to any of the parties thereto.

DATED: 2-23-08

  
\_\_\_\_\_

George Schumer, CSR 3326