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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 OAKLAND DIVISION

19 ORACLE USA, INC., *et al.*,
 20 Plaintiffs,
 21 v.
 22 SAP AG, *et al.*,
 23 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**DECLARATION OF NORM
 ACKERMANN IN SUPPORT OF
 ORACLE'S MOTION FOR PARTIAL
 SUMMARY JUDGMENT**

REDACTED

Date: May 5, 2010
 Time: 9:00 am
 Place: 3rd Floor, Courtroom 3
 Judge: Hon. Phyllis J. Hamilton

1 I, Norm Ackermann, declare as follows:

2 1. I am a Senior Principal Applications Systems Designer for Oracle Canada,
3 ULC. I have personal knowledge of the facts set forth in this declaration and would competently
4 testify to them if called upon to do so.

5 2. I have been an employee of Oracle Canada, ULC, or of its predecessors
6 and related entities, (collectively, "Oracle") since December 1995. In my over 14 years of
7 experience with Oracle, I helped to develop and maintain many versions of PeopleSoft HRMS
8 software, including HRMS 7.0, HRMS 7.5, and HRMS 8.0 SP1. My references below to
9 "PeopleSoft HRMS" and "HRMS" specifically include these three versions.

10 3. HRMS is a very large and complex application that enables its users to
11 manage human resources data and processes. HRMS resulted from the creative efforts of
12 hundreds of developers, including my own creative efforts. Among other things, it includes user
13 interface code, business logic or workflow code, queries, reports and data storage code. In
14 writing this code, Oracle's developers implemented the overall HRMS program architecture,
15 designed the look and feel of the application, and integrated the querying, reporting, and
16 information storage technologies. Each of these portions of the HRMS architecture was further
17 designed to be updatable and expandable over time, as the scope and functionality of HRMS
18 expanded and as technology continued to evolve. HRMS overall, then, is the result of hundreds
19 of thousands of choices made by hundreds of individual developers, because there are nearly
20 limitless ways to create programs (such as HRMS) that allow users to enter, review and report
21 data.

22 4. The programs that make up HRMS are also large and complex. Many
23 developers, over time, worked together to implement each report, each user interface screen,
24 each database table, and all of the connections between these items. I have modified the code for
25 many of these items hundreds of times over my career at Oracle; in every case, the modifications
26 that I implemented would likely have been executed differently had some other developer been
27 writing the code. When I and other HRMS developers are adding to or modifying the features
28 and functionality of a particular version of HRMS, we are constantly required to make additional

1 choices about how to implement those features and functionality. Although we might be given
2 high-level specifications about what features and functionality to add, the choice about how to
3 implement features and functionality in the existing code is ultimately a personal and creative
4 one.

5 5. As one of the HRMS developers, I am personally familiar with the way
6 Oracle created each new version of HRMS software, starting with version 5.1 and continuing to
7 the present day. To create a new version of HRMS software, Oracle began with a copy of the
8 latest code—source code, database schema and database contents—from the immediately prior
9 version. Thus, Oracle incorporated the software in its entirety (including source code on the file
10 system and code and schema in the database) from the earlier version of HRMS into each
11 subsequent version, with only small portions of that earlier software being modified or replaced.

12 6. To create HRMS 7.01, Oracle started with a copy of the source code and
13 database (both schema and contents) for HRMS 7.0 and developed an update called HRMS 7.01
14 Application Update; application of the HRMS 7.01 Application Update to an installation of
15 HRMS 7.0 resulted in HRMS 7.01. To create HRMS 7.02, Oracle started with a copy of the
16 source code and database (both schema and contents) for HRMS 7.01 and developed an update
17 called HRMS 7.02 Application Update; application of the HRMS 7.02 Application Update to an
18 installation of HRMS 7.01 resulted in HRMS 7.02. To create HRMS 7.51, Oracle started with a
19 copy of the source code and database (both schema and contents) for HRMS 7.5 and developed
20 an update called HRMS 7.51 Application Update; application of the HRMS 7.51 Application
21 Update to HRMS 7.5 resulted in HRMS 7.51. I was personally involved in the creation of each
22 of the updates discussed in this paragraph.

23 7. In the course of developing each of the updates described in the preceding
24 paragraph, only a very small part of the code from the earlier version of HRMS was modified or
25 replaced. In my estimation, and based on my knowledge that Oracle rarely if ever deleted
26 features and functionality from one version of HRMS to another, almost all of the code from
27 HRMS 7.0 is present in HRMS 7.01 and in HRMS 7.02, and almost all of the code from HRMS
28 7.5 is present in HRMS 7.51.

1 8. I have often installed HRMS from a CD, DVD or downloaded executable
2 file, and I have personal knowledge of the results of an installation. When HRMS is installed
3 from a CD, DVD or downloaded executable file, a copy of the entire HRMS software is
4 installed. An installation of HRMS includes nearly 100% of the source code, database schema
5 and database contents, described below.

6 9. An installation of HRMS software, sometimes called an “environment,”
7 contains a database component (see paragraphs 10-11, below) and a PS_HOME component (see
8 paragraph 12, below). The database component generally determines what screens a user sees,
9 what data shows up on each screen and how that data is presented, what kind of data a user can
10 enter on the screen, and what kind of interactive tasks a user can perform. The database
11 component comprises a database schema and database contents.

12 10. The database schema includes tables, such as [REDACTED], which
13 contains employee tax results from payroll paycheck calculations. Tables contain fields, such as
14 [REDACTED], which holds employee identification numbers. As a developer, I had the ability to
15 design tables according to my own creative choices. I could name tables and fields as I chose,
16 subject only to a loose naming convention that has evolved over time among HRMS developers;
17 I could also decide how tables would be organized, for instance specifying what information
18 would be included in each record and how records would relate to one another. Dozens of
19 tables, table structures, table names and field names in HRMS were the results of my creative
20 choices. As a developer, I also more broadly chose whether to solve a problem by adding fields
21 to an existing table or whether instead to create a new, related table.

22 11. The database content includes user interface data, code that implements
23 business logic, comments, and other content, all designed and implemented in the manner chosen
24 by the developers who created that content. PeopleSoft HRMS database content is often in the
25 form of online objects, a type of code that is created and maintained inside of a PeopleSoft
26 HRMS database schema. In my experience, PeopleSoft HRMS database content, and
27 specifically the online objects related to user interface data, online objects related to business
28 logic, comments, online object names, and other attributes and content, result from creative

1 choices made by hundreds of my Oracle developer colleagues. As a developer, I have created
2 dozens of new online objects. I had innumerable choices for how to name these objects, subject
3 only to a loose naming convention that has evolved over time among HRMS developers.
4 Similarly, on dozens of occasions, I have chosen how to display data to a user, how to connect
5 different display pages and user activities, and how to solve other problems relating to the user
6 interface and database content.

7 12. The component referred to as a PS_HOME is generally is involved in
8 running and formatting reports, loading data, exporting data, and similar batch or non-interactive
9 tasks. PS_HOME refers to a directory structure created by Oracle developers that includes
10 programs which contain functions, subroutines, and program variables. These programs,
11 functions and subroutines include both source code and comments. In my experience, the names
12 of, relationships between and structures of these programs, functions, subroutines, and program
13 variables all result from the creative choices made by hundreds of my Oracle developer
14 colleagues. As a developer, I have created hundreds of program variables. Each time I
15 introduced a program variable, I had innumerable choices for how to name these program
16 variables, subject only to a loose naming convention that has evolved over time among HRMS
17 developers. In creating or modifying functions and subroutines, I have repeatedly chosen exactly
18 what code to write. I also chose, stylistically, whether to write code in one continuous section or
19 split it into separate sections with named subroutines, and whether and how to set off sections or
20 important programmatic structures with comments.

21 13. Because developers like me have so much creative license in how to
22 name, structure and present their code, I have observed that individual developers often have
23 their own style. In addition to structural choices like those discussed above, in the database and
24 in the source code, developers have tremendous leeway in their use of comments, whitespace,
25 and names, because these stylistic choices generally do not affect the functioning of the code. I
26 have written hundreds of comments in the code for HRMS to visually organize thousands of
27 lines of code.

28

1 14. Although the database and PS_HOME components of HRMS are stored
2 separately (one in a database and one in a directory structure on a computer's file system), both
3 are equally important portions of the PeopleSoft HRMS software, and the program will not
4 function unless both are present. The creative and original content in both components is
5 reproduced when PeopleSoft HRMS software is reproduced, whether by performing a new
6 installation or by copying an existing environment. Copying an existing environment also results
7 in the reproduction of all of the programs that make up HRMS, described in paragraphs 3-4,
8 above, that result from the initial installation.

9 15. On February 17-22, 2010, I obtained from Oracle's counsel copies of the
10 contents of install CDs for HRMS 7.0, HRMS 7.5 and HRMS 8.0 SP1 that I understand Oracle
11 produced in this matter as ORCL00264031, ORCL00400498, and ORCL00264026, respectively.

12 16. On February 18, 2010, I obtained three files from Oracle's counsel that
13 were identified as compressed backups from the servers of TomorrowNow, Inc. ("SAP TN"):
14 H702RHIM_20060705_1307, HR751CSS_20070404_0927, and HR810DMO_20050315_1158.

15 17. In order to illustrate the fact that SAP TN's installations and reproductions
16 of HRMS created copies of HRMS code that had the creative characteristics described above, I
17 compared code from install CDs for HRMS 7.0, HRMS 7.5 and HRMS 8 SP1 to the
18 corresponding code from corresponding SAP TN HRMS environment backups that were
19 provided to me. From each of the Oracle install CDs and each of the SAP TN backups, I
20 extracted three files with which I am personally familiar: PER002.SQR, which creates a report
21 listing employee birthdays; PSPCPCAL.CBL, which is used in calculating Canadian payroll;
22 and, PSPFNDSE.CBL, which is used in retrieving information about "special earnings," which
23 are data structures that handle different combinations of earnings. A list of the file paths for each
24 file that I extracted is attached as Appendix A.

25 18. I compared the three files from the install CD for HRMS 7.0 to the three
26 files from H702RHIM_20060705_1307, the three files from the install CD for HRMS 7.5 to the
27 three files from HR751CSS_20070404_0927, and the three files from the install CD for HRMS
28 8.0 SP1 to the three files from HR810DMO_20050315_1158. My observations are attached as

1 Appendix B. I found that between 80% and 100% of the lines from the Oracle install CDs show
2 up identically in the SAP TN backup file, and I confirmed that the common lines included or
3 reflected many types of the creative developer input that I have both created and observed, as
4 described above.

5 19. A comparison of each pair of files or an excerpt thereof can be found in
6 Appendices C through K. These comparisons accurately reflect the on-screen code comparisons
7 that I have examined. Code from the Oracle install CD file appears on the left side of each page,
8 and code from the SAP TN backup file appears on the right side of each page. Code that is
9 identical in both files is black or grey. Code that is present in one file but not the other, or that is
10 different between the two files, is red or blue.

11 20. A cursory visual inspection of Appendices C through K will show that the
12 vast majority of the original Oracle code is present in the SAP TN backup file. In other words,
13 though there are many ways to write an employee birthday report, calculate Canadian payroll
14 taxes or retrieve data structures for special earnings, the Oracle-developed report or calculation is
15 almost entirely present in the SAP TN copy.

16 21. Looking more specifically at just one example, Appendix G is the
17 PSPCPCAL.CBL comparison between the Oracle HRMS 7.5 install CD and
18 HR751CSS_20070404_0927. The Oracle file contains 3307 lines. Below, I have reproduced a
19 very small part of PSPCPCAL.CBL, a file that is a small but important part of the HRMS
20 product.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 (Appendix G, lines 1350-1360 of the Oracle install CD file / lines 1545-1555 of the SAP TN
28 backup file)

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 (Appendix G, lines 1399-1404 of the Oracle install CD file / lines 1596-1601 of the SAP TN
5 backup file)

6
7 22. The comments and code from lines 1399-1404 of the Oracle file in
8 Appendix G, reproduced in paragraph 21, reflect multiple, small-scale, creative choices made by
9 Oracle's developers. For example, in order to indicate that a segment of code is a comment, a
10 developer must put one asterisk in front of the comment. For aesthetic reasons, however, Oracle
11 developers often choose to make a box of asterisks around a comment or an important code
12 feature. This use of asterisks, which appears in both files, was a creative choice.

13 23. The uncommented code in lines 1399-1404 of the Oracle file defines a
14 subroutine named "[REDACTED]." I know from writing dozens of named
15 subroutines in COBOL files for HRMS that this name was arbitrarily chosen by an Oracle
16 developer. In my over 14 years of HRMS development experience, I have never seen two Oracle
17 developers independently choose the exact same name to define subroutines of this type.
18 Appendix G shows that the exact same subroutine name appears in both files.

19 24. The code from lines 1350-1360 of the Oracle file in Appendix G,
20 reproduced in paragraph 21, also reflects multiple, small-scale, creative choices made by
21 Oracle's developers. For example, this code refers to the "[REDACTED]"
22 subroutine discussed in paragraph 23, thus reflecting that creative choice of subroutine name.

23 25. Based on my working knowledge of the COBOL files and on my own
24 experience in writing HRMS COBOL code, using whitespace to indent certain lines of code is
25 purely optional. In lines 1350-1360 of the Oracle file, the choices to indent the line beginning
26 "TO" by eight spaces relative to the IF statement, to indent the line beginning "MOVE" by four
27 spaces relative to the IF statement and to indent the line beginning "PERFORM" by six spaces

28

1 spaces relative to the IF statement and to indent the line beginning “PERFORM” by six spaces
2 relative to the IF statement are all arbitrary choices, made at an Oracle developer’s discretion.
3 These stylistic choices have been reproduced verbatim in the SAP TN file.

4 26. Additionally, based on my personal experience writing COBOL code in
5 general and editing this file in particular, this exact same functionality could have been written
6 by checking a different variable and exchanging the IF and ELSE conditions. In fact, another
7 developer could have written this same functionality using a different structure entirely, such as
8 an EVALUATE structure rather than an IF structure. These choices are further examples of the
9 individual developer styles I have observed during my 14 years at Oracle, and further examples
10 where even simple creative choices appear to have been copied in their entirety by SAP TN.

11 27. Oracle’s HRMS code is the result of millions of small-scale choices like
12 the small, discrete examples described in paragraphs 22-26. On a larger scale, HRMS as a whole
13 reflects hundreds of thousands of additional choices, including choices about what reports and
14 calculations to provide to users, what data to store to be displayed in those reports and
15 manipulated in those calculations, in what structure that stored data ought to be kept, and what
16 user interfaces to build to allow users to enter, view and modify data, reports and calculations.
17 HRMS is the sum of these creative choices and more, from what architecture and technologies to
18 use all the way down to how to implement particular subroutines.

19 I declare under penalty of perjury that the foregoing is true and correct and that
20 this declaration was executed on March 1, 2010, at Vancouver, British Columbia, Canada.

21
22 

23 _____
24 Norm Ackermann
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