

EXHIBIT 3

IN THE 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,

Defendant.

Case No.
07-CV-01685
PJH (EDL)

VIDEOTAPED DEPOSITION UPON
ORAL EXAMINATION
OF
LEO APOTHEKER

Taken on:

Thursday, October 2, 2008
Commencing at 8:58 a.m.

Taken at:

American Consulate General
Special Consular Services,
Giessener Strasse 30
60435 Frankfurt am Main, Germany

REPORTED BY: FREDERICK WEISS, CSR, CM

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09:02:48 25

Q. Very good. Can you describe for the ladies and gentlemen of the jury what your

09:02:51 1 current position at SAP is?

09:02:53 2 A. I am the Vorstandssprecher, the
09:02:58 3 speaker of the management or the executive board
09:03:01 4 of SAP AG.

09:03:02 5 Q. What are your duties and
09:03:03 6 responsibilities?

09:03:05 7 A. My essential duty is to be the
09:03:06 8 speaker of the management board, and that is my
09:03:11 9 essential duty.

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09:03:36 21

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09:03:45 23

09:03:46 24

09:03:47 25

10:22:39 1

10:22:41 2

10:22:42 3

10:22:43 4

10:22:43 5

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Q. Let me turn now to a new topic,

10:23:13 13

although related in many ways to all topics, this

10:23:16 14

would be the acquisition of TomorrowNow.

10:23:21 15

Do you recall whether there was any

10:23:24 16

specific purpose that SAP had in mind when it

10:23:28 17

acquired TomorrowNow?

10:23:29 18

A. The acquisition of TomorrowNow was

10:23:37 19

meant to facilitate the movement of customers who

10:23:44 20

so desired to move away from PeopleSoft -- from

10:23:49 21

PeopleSoft software in that particular case to

10:23:52 22

SAP.

10:23:52 23

10:23:55 24

10:23:58 25

01:41:06 1 Q. Did you, to use your words, pay
01:41:16 2 attention to the number of Safe Passage wins that
01:41:19 3 were reported to you from time to time?

01:41:20 4 A. Yes.

01:41:20 5 Q. And why was that important to you,
01:41:21 6 or why did you pay attention?

01:41:23 7 A. Because there would have indicated
01:41:28 8 a part of -- that our approach to move customers
01:41:32 9 from Oracle to SAP was working.

01:41:34 10 Q. Did you count as a win a customer
01:41:38 11 who switched maintenance only and did not buy SAP
01:41:41 12 software?

01:41:42 13 A. It was counted as part of the Safe
01:41:46 14 Passage program, yes.

01:41:46 15

01:41:49 16

01:41:51 17

01:41:53 18

01:42:04 19

01:42:05 20

01:42:05 21

01:42:11 22

01:42:15 23

01:42:18 24

01:42:21 25

1 CERTIFICATE OF COURT REPORTER

2 I, Frederick Weiss, CSR, CM, do hereby
3 certify that I took the stenotype notes of the
4 foregoing deposition and that the transcript
5 thereof is a true and accurate record transcribed
6 to the best of my skill and ability.

7 I further certify that I am neither
8 counsel for, related to, nor employed by any of
9 the parties to the action in which this deposition
10 was taken, and that I am not a relative or
11 employee of any attorney or counsel employed by
12 the parties hereto, nor financially or otherwise
13 interested in the outcome of the action.

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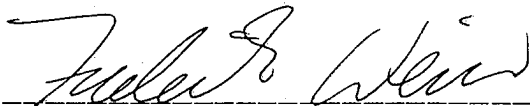
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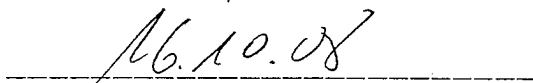


21 FREDERICK WEISS, CSR, CM

22

23

24



25 DATE

1

ERRATA

2

CORRECTION

PAGE

3

Michael Junge, Chefsyndikus, (Michael Junge,
General Counsel Chefsyndikus)

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4

5

Konferenzdolmetscherin (Konferensdolmetschen)

3

6

Aufsichtsrat (Aufsichsrat)

15

7

They report to the

(They report to the -

21

8

Chief Financial Officer

to the speaker of
the executive board)

9

Joerg

(Jeorg)

61

10

R/3

(R3)

110

11

regions or subsidiaries

(regions or seals)

150

12

Hydrus (twice)

(Hybrus)

152

13

licensed from Oracle

(licensed from SAP)

154

14

Q: Let's mark as
Exhibit

(... Let's mark as
Exhibit)

182

15

to Joerg Jung

(to Jeorg Jung)

3180

16

to Joerg Jung

(to Jeorg Jung)

321

17

that Joerg would

(that Jeorg would)

322

18

copy to JoJoerg

(copy to Jeorg)

323

19

middleware (twice)

(middle wear)

354

20

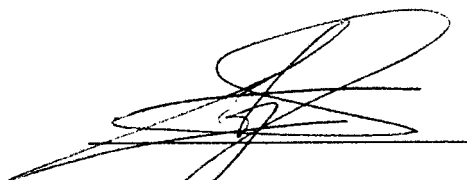
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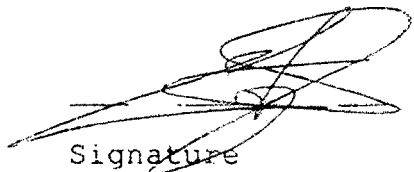
Signature

Oct. 29th 2008

Date

	ERRATA	
	CORRECTION	PAGE
1		
2		
3	"panel"	(premium) 14
4	"advice or counsel"	(advise counsel) 16
5	"achieve the business"	(achieve what the business) 29
6	"Safe Passage"	(safe passage) 38
7	"describe it as"	(discount what) 43
8	"in general or on SAP Software"	(in general on SAP Software) 54
9	"FIELD LEADERSHIP TEAM"	(field leadership team) 55, 58, 60
10	"with SAP"	(within SAP) 71
11	"talk about acquisitions"	(talk under acquisitions) 78
12	"It is contractually"	(it is not contractually) 82
13	"let me ask you"	(let me ask you) 96
14	"honestly"	(honesty) 111
15	"I don't even know"	(I don't even know) 153
16	"toy lying"	(toy lying) 155
17	"It would only mean"	(delete in fact, my... in fact... environment) 169
18	"The fact that it was my first thought, in fact"	(The fact that it was my first thought, in fact.) 175
19	"would take a slightly different"	(would take a different) 178
20		
21	"Commenting on"	(-- commenting the) 184
22	"Independency"	(Independence) 199-200
23	"where the company"	(were the company) 213
24		7 Nov 2008
25	Signature	Date

	ERRATA	
	CORRECTION	PAGE
1		
2		
3	"that all the people" (- all the people)	264
4	"that logic" (that logical)	267
5	"I honestly" (I honesty)	270
6	"in this precise light" (in this precise light)	284
7	"by a competitor" (by compete)	290
8	"and inside the customer" (and insight the customer)	298
9	"SAP" (Sap)	312
10	"SWAT" (Swat)	332-333
11	"hypotheses here" (hypothesis here)	335
12	"competitors battle" (competitors battles)	344
13	"Goullas" (Gouilla)	345
14	"usefulness of the 'of SAP' program" (usefulness of the SAP program)	349
15	"than the past" (than the best)	355
16		
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Signature

7 Nov 2008

Date

1 I, Leo Apotheker, am a deponent in the
2 foregoing video deposition. I have read the
3 foregoing video deposition, and having made such
4 changes and corrections as I desired, I certify
5 that the transcript is a true and accurate record
6 of my responses to the questions put to me on
7 Thursday, October 2, 2008.

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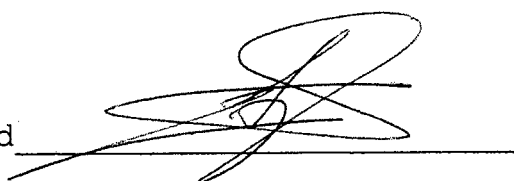
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Signed

A handwritten signature in black ink, appearing to be 'Leo Apotheker', written over a horizontal line.

LEO APOTHEKER