

EXHIBIT 21

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

ORACLE CORPORATION, a)	
Delaware corporation, ORACLE)	
USA, INC., a Colorado)	
corporation, and ORACLE)	
INTERNATIONAL CORPORATION, a)	
California corporation,)	
)	
Plaintiffs,)	
)	
vs.)	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.)	
)	

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF ANDREW NELSON

FEBRUARY 26, 2009

VOLUME I

(Pages 1 - 266)

REPORTED BY: SARAH LUCIA BRANN, CSR 3887 (#416642)

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10:03:32 5 Q. Who came up with the idea, then, of

10:03:34 6 starting TomorrowNow as an alternative?

10:03:38 7 A. Alternative to working at PeopleSoft?

10:03:41 8 Q. Correct.

10:03:41 9 A. I think it was my idea to start and found

10:03:44 10 the company, and to do so for largely the reasons

10:03:49 11 that I have explained.

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MR. HOWARD: Q. Mr. Nelson, who was

10:51:50 10

responsible for creating the means at TomorrowNow to

10:51:55 11

provide the extended support deliverables to

10:51:59 12

TomorrowNow clients under this extended support

10:52:02 13

model that the company adopted?

10:52:06 14

MR. FUCHS: Objection to form.

10:52:07 15

THE WITNESS: By "responsible" what do you

10:52:08 16

mean?

10:52:09 17

MR. HOWARD: Q. Who was in charge of

10:52:12 18

setting up what you needed to set up in order to

10:52:14 19

create the tax and regulatory updates that you sent

10:52:17 20

out to your customers when you first adopted the

10:52:21 21

model?

10:52:21 22

A. At TomorrowNow?

10:52:23 23

Q. Yes.

10:52:23 24

A. I had responsibility for service delivery

10:52:27 25

at TomorrowNow.

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MR. HOWARD: Q. Now, would you agree

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that, in the course of providing extended support

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services, TomorrowNow would from time to time use an

11:07:42 22

environment that had originated from one customer's

11:07:49 23

software in the course of creating a deliverable for

11:07:53 24

a different customer?

11:07:54 25

MR. FUCHS: Objection to form.

11:07:56 1 THE WITNESS: I am again hoping you can
11:07:58 2 clarify "extended support." There are many
11:08:04 3 different support offerings that we had at many
11:08:07 4 different times with different products. If you
11:08:09 5 could break that down for me, or somehow rephrase
11:08:14 6 that, I would appreciate it.

11:08:16 7 MR. HOWARD: Q. Well, I am thinking of
11:08:17 8 the services that TomorrowNow provided to customers
11:08:21 9 who were still on maintenance, but for a release
11:08:31 10 that had been de-supported by PeopleSoft. Is that a
11:08:39 11 description that makes sense to you?

11:08:41 12 A. When you say "still on maintenance," we
11:08:43 13 offered annual maintenance support services. Are
11:08:47 14 you talking about our maintenance? When you say
11:08:50 15 still on maintenance --

11:08:52 16 Q. I am talking about PeopleSoft maintenance.

11:08:55 17 A. Still on the original vendor's maintenance
11:08:58 18 services?

11:08:58 19 Q. Right. But TomorrowNow is supporting a
11:09:00 20 release which is being de-supported, like 702, for
11:09:06 21 example.

11:09:07 22 A. Like HRMS 702?

11:09:11 23 Q. Correct.

11:09:11 24 A. Okay. So HRMS 702 becomes a retired
11:09:16 25 release by the software vendor. And I am clear on

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11:09:21 1 that.

11:09:21 2 Can you repeat the question? I am now

11:09:24 3 thinking, I think, more clear --

11:09:25 4 Q. Sure.

11:09:25 5 A. -- on what you are talking about.

11:09:26 6 Q. And so for these customers in this

11:09:29 7 universe TomorrowNow is providing this extended

11:09:34 8 support services using this retrofit model of

11:09:37 9 creating tax and regulatory updates; right?

11:09:42 10 MR. FUCHS: Objection to form.

11:09:46 11 THE WITNESS: When you say "this model,"

11:09:47 12 can you -- can you help me understand the specific

11:09:52 13 part of the model that you are referring to?

11:09:54 14 MR. HOWARD: Q. I am talking about the

11:09:56 15 creation of tax and regulatory updates by

11:09:59 16 retrofitting in the way that you have described that

11:10:01 17 would be done. So, you would retrofit from a

11:10:05 18 supported release to a de-supported release. Do you

11:10:08 19 recall that?

11:10:09 20 A. At a very high level I do recall that. As

11:10:12 21 I said before, there were, even in the example that

11:10:16 22 you gave about how we even got the software, there

11:10:18 23 are definitely differences between how it was done.

11:10:23 24 But at a high level we did follow that, if that's

11:10:25 25 what you mean by retrofit model.

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11:10:28 1 Q. Okay.

11:10:29 2 A. The very high level conceptual idea of it.

11:10:32 3 Q. And so, having that in mind, do you agree

11:10:35 4 that from time to time in the course of creating

11:10:37 5 those retrofit deliverables TomorrowNow would use a

11:10:43 6 PeopleSoft environment that originated from a

11:10:46 7 customer that was different from the customer that

11:10:48 8 might ultimately receive that retrofitted

11:10:52 9 deliverable?

11:10:53 10 MR. FUCHS: Objection. Form.

11:10:55 11 THE WITNESS: It was possible.

11:10:57 12 MR. HOWARD: Q. Right.

11:10:58 13 A. It was possible, yeah.

11:10:59 14 Q. And so, in that scenario -- it did happen;

11:11:02 15 right? There were environments that were used to

11:11:04 16 create a retrofit deliverable, and then that

11:11:07 17 deliverable would go out to a common set of clients

11:11:13 18 receiving it; right?

11:11:14 19 A. When you say "a common set of clients,"

11:11:15 20 you mean a set of clients that would have had all

11:11:16 21 HRMS 702 commercial?

11:11:20 22 Q. Exactly.

11:11:20 23 A. All with the same release retirement date.

11:11:23 24 You mean like in that example you gave?

11:11:26 25 Q. Exactly. Exactly right.

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11:11:27 1 A. Sure.

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11:24:24 18 Q. Right. And did you have any understanding
11:24:29 19 as to whether TomorrowNow could use non-production
11:24:32 20 environments to aid in the development of
11:24:36 21 deliverables for a different customer?

11:24:41 22 A. I don't recall whether I perceived that
11:24:44 23 nuance as much as whether the customer, based on
11:24:52 24 their maintenance end date, had the right to, you
11:24:56 25 know, what we were doing based on maintenance end

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11:25:01 1 date, as opposed to the vehicle through which that
11:25:03 2 update got to them.

11:25:05 3 Q. All right. So is it fair to say that, in
11:25:08 4 setting the rules by which TomorrowNow would
11:25:11 5 operate, you were focused on maintenance end date as
11:25:16 6 the determinative criteria, as opposed to where the
11:25:20 7 software came from that was being used to create the
11:25:23 8 deliverable?

11:25:24 9 MR. FUCHS: Objection to form.

11:25:26 10 THE WITNESS: Maintenance end date was,
11:25:30 11 you know, of primary concern to us when determining
11:25:34 12 whether -- whether an update was something that a
11:25:38 13 customer was entitled to.

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13:20:38 13 Q. Were there certain business functions post
13:20:40 14 acquisition that SAP assumed control over that had
13:20:47 15 previously been managed entirely by TomorrowNow?

13:20:49 16 A. Yes.

13:20:50 17 Q. What were those?

13:20:58 18 A. Again, it was a dynamic company, and that
13:21:01 19 would have been a constantly changing set of things.

13:21:05 20 But the most customary thing that they

13:21:12 21 took responsibility over was a lot of the

13:21:14 22 operational matters. And by that I mean the payroll

13:21:26 23 function eventually transitioned from the way we

13:21:28 24 used to do it to someone at SAP doing that for us in

13:21:35 25 various locations.

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13:21:36 1 It's hard -- I want to make sure I am
13:21:39 2 clear when I answer these types of questions, but
13:21:41 3 it's a little bit difficult because we didn't, over
13:21:45 4 the course of this lifetime, just work with one SAP
13:21:50 5 entity on these things. But generally speaking, we
13:21:53 6 transitioned a lot of operational activities in the
13:21:55 7 HR finance type area to SAP.

13:22:04 8 Q. Did SAP have approval rights over
13:22:11 9 TomorrowNow budgets after the acquisition?

13:22:15 10 MR. FUCHS: Objection. Form.

13:22:21 11 THE WITNESS: When you say SAP, do you
13:22:22 12 mean just somewhere, at one of the SAP businesses?
13:22:25 13 Sure. I mean, generally speaking we did not -- I no
13:22:29 14 longer owned the company. TomorrowNow did not have
13:22:33 15 control of its budget. That was managed through the
13:22:36 16 SAP family of companies.

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13:25:28 9 Q. Was there one or more SAP AG board members
13:25:31 10 who were responsible at the high level for
13:25:34 11 TomorrowNow?

13:25:36 12 A. When you say responsible for, what
13:25:41 13 capacity?

13:25:41 14 Q. In any capacity.

13:25:47 15 A. To a degree, to varying degrees, yes.

13:25:49 16 Q. Explain what you mean.

13:25:50 17 A. Well, prior to the acquisition and after
13:26:01 18 the acquisition I would occasionally meet with Shai
13:26:08 19 Agassi.

13:26:08 20 And his role appeared to be, from my view,
13:26:13 21 responsible for the development and some of the
13:26:14 22 product strategy, but he was interested in -- I kind
13:26:19 23 of reported informally to him on our sales progress
13:26:23 24 and things that happened in that area. Gerd Oswald
13:26:30 25 was a person that I primarily felt I reported in to

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13:26:35 1 as time went along, in terms -- not my direct
13:26:39 2 report, but sort of this operating area reports in
13:26:43 3 to Gerd Oswald as the responsibility with support.

13:26:48 4 I understood that there was a finance --
13:26:52 5 things that purchasing, HR, finance, these
13:26:55 6 operational matters, there was another group, or
13:26:59 7 collections and various groups of people that did
13:27:02 8 that that were not in those organizations.

13:27:04 9 And so that there was still some type of
13:27:07 10 approvals that, you know, may in various cases tie
13:27:12 11 us into the CFO, Werner Brandt. There may have been
13:27:18 12 others. But I mean, that was my general
13:27:20 13 recollection of how we -- how we interacted with
13:27:24 14 board members.

13:27:25 15 And of course, Henning was someone who I
13:27:29 16 had met and knew that ultimately, you know, as a
13:27:34 17 CEO, that the organizations in those areas would
13:27:38 18 report in to him.

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CERTIFICATE OF REPORTER

I, SARAH LUCIA BRANN, a Certified
Shorthand Reporter, hereby certify that the witness
in the foregoing deposition was by me duly sworn to
tell the truth, the whole truth, and nothing but the
truth in the within-entitled cause;

That said deposition was taken 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 [X] 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 interested in the
event of this cause, and that I am not related to
any of the parties thereto.

DATED: March 2, 2009

Sarah Lucia Brann

SARAH LUCIA BRANN, CSR No. 3887

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.)	CASE NO. 07-CV-01658 (MJJ)
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
ORAL VIDEOTAPED DEPOSITION
ANDREW NELSON
VOLUME 2
APRIL 29, 2009

ORAL VIDEOTAPED DEPOSITION OF ANDREW NELSON, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 29th day of April, 2009, from 7:58 a.m. to 5:40 p.m., before Dana Richardson, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the Hilton Hotel, 801 University Drive East, College Station, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 1603-91104

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Q. Did you ever discuss the preference to take

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TomorrowNow -- to take customer software off of TomorrowNow

11:36:19 22

computers with anybody from the SAP AG board -- for example,

11:36:24 23

Mr. Oswald -- in your quarterly meetings with him?

11:36:27 24

A. I don't recall that I would have. And we focused on

11:36:31 25

what they indicated were the top KPIs and priorities to me,

11:36:36 1 and that's what I would have spent my time giving them
11:36:40 2 progress reports on.
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Q. Did you understand that the headcount number that was
approved for 2005, which you said was significantly less than

12:26:20 1 what you had requested, that that number was approved by the
12:26:23 2 SAP AG board?
12:26:28 3 A. Yes.
12:26:31 4 Q. And did you --
12:26:32 5 A. Certainly Gerd Oswald -- you know, we presented the
12:26:35 6 original business plan. In the first two weeks, we -- we had
12:26:38 7 a meeting where -- a conference call where we presented what
12:26:42 8 we wanted to do and the headcount to him; and that's where I,
12:26:46 9 you know, understood that he supported that.
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17:25:23 8 Q. The -- we talked a little bit about the master

17:25:26 9 environments that were created from -- originally from

17:25:29 10 customers' software as part of the retrofit model. Do you

17:25:33 11 recall any of the customers' software that was used to create

17:25:38 12 any of those master environments?

17:25:42 13 A. Do I recall --

17:25:44 14 Q. Which customers' software was used to create any of

17:25:47 15 those master environments?

17:25:49 16 A. Not with certainty. We could look to the -- you

17:25:51 17 know, the customers at that time and probably narrow it down

17:25:54 18 to the customers that we had at that time.

17:25:56 19 Q. If -- if Catherine Hyde testified that one of them

17:26:02 20 may have been Safeway, would that refresh your recollection at

17:26:06 21 all?

17:26:09 22 A. It doesn't refresh my recollection, but it is -- I'm

17:26:13 23 not surprised if it had been Safeway because they were one of

17:26:17 24 our first customers that we had on support with the new --

17:26:21 25 with our, you know, third-party maintenance model.

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17:26:24	1	Q.	And same with Washington Gas Light?
17:26:26	2	A.	Sure. They were one of our first customers.
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STATE OF TEXAS

COUNTY OF HARRIS

REPORTER'S CERTIFICATE

I, Dana Richardson, a Certified Shorthand Reporter in and for the State of Texas, do certify that this deposition transcript is a true record of the testimony given by the witness named herein, after said witness was duly sworn by me. The witness was requested to review the deposition.

I further certify that I am neither attorney or counsel for, related to, nor employed by any parties to the action in which this testimony is taken and, further, that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

I further certify that the amount of time used by each party at the deposition is as follows:

Mr. Geoffrey M. Howard - 07:25

Mr. Joshua L. Fuchs - 00:00

Mr. Reid Wittliff - 00:00

SUBSCRIBED AND SWORN TO under my hand and seal of office on this the 4th day of May, 2009

Dana Richardson

Dana Richardson, CSR

Texas CSR 5386

Expiration: 12/31/09

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