

EXHIBIT 26

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,
)	
v.)	Case No.
)	07-CV-01658 PJH (EDL)
)	
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 MR. GERHARD OSWALD

VOLUME I

Wednesday, December 10, 2008

AT: 8:52 a.m.

Taken at:

Bingham McCutchen LLP
41 Lothbury

London EC2R 7HF

UNITED KINGDOM

09:08:55 1

09:08:58 2

09:09:00 3

09:09:03 4

09:09:11 5

09:09:13 6

09:09:19 7

09:09:25 8

09:09:26 9

09:09:38 10

09:09:43 11

09:09:48 12

09:09:52 13

09:09:59 14

09:10:02 15

Q. I know you have been there a long time, but

09:10:07 16

I don't know what the easiest way to do your job history is.

09:10:11 17

Why don't we try to start from the beginning. We don't have

09:10:26 18

to have great detail. Can you just give me a general

09:10:34 19

description of what you did over the period?

09:11:03 20

A. I think I'll have to start by telling you that

09:11:05 21

in 1973/1974 I did my graduate thesis on SAP, and at the

09:11:12 22

time SAP had a staff of five people.

09:11:26 23

And then after my graduation, I worked for

09:11:28 24

Siemens, but for SAP as a consultant.

09:11:40 25

And then I continued working for SAP and

09:11:45 1 I consulted customers on how to use applications as

09:11:51 2 an applications consultant.

09:11:52 3 And then I established quality assurance at SAP.

09:11:58 4 And then Hasso Plattner and myself were the project managers

09:12:04 5 for R/3.

09:12:07 6 THE INTERPRETER: Do you want me to spell that

09:12:07 7 name, Hasso Plattner? That's H-A-S-S-O, P-L-A-T-T-N-E-R.

09:12:28 8 A. And then I became responsible for the service

09:12:31 9 area since 1992, 1993.

09:12:42 10 And in 1996 I became a member of the Vorstand, the

09:12:47 11 executive board, and since then I have been responsible for

09:12:51 12 service and support.

09:12:54 13

09:12:54 14

09:12:58 15

09:13:06 16

09:13:20 17

09:13:28 18

09:13:32 19

09:13:41 20

09:13:42 21

09:13:46 22

09:14:12 23

09:14:18 24

09:14:21 25

10:53:33 1

10:53:37 2

10:53:42 3

10:53:46 4

10:54:02 5

10:54:12 6

10:54:15 7

10:54:18 8

10:54:35 9

10:54:38 10

10:54:41 11

10:54:44 12

10:54:47 13

10:54:47 14

Q. Let's look at an e-mail that you sent about

10:54:50 15

SAP's acquisition of TomorrowNow on 7th January, just

10:54:55 16

a couple of days later. Please look at what was previously

10:55:11 17

marked exhibit 449.

10:55:13 18

(Exhibit 449, previously marked)

10:55:18 19

Q. Which is a document, Bates numbered

10:55:21 20

SAP-OR00136126 through 136. It's a January 7, 2005 e-mail

10:55:34 21

from Mr. Oswald to Bernd Welz and Thomas Ziemer, forwarding

10:55:42 22

Mr. Shenkman's e-mail with its PowerPoint of the TomorrowNow

10:55:52 23

business case. Did you send this?

10:56:18 24

A. Yes, I have forwarded that.

10:56:20 25

Q. And who is Stefan Wagner?

10:56:31 1 A. Stefan Wagner is one of the assistants who
10:56:34 2 were active at that time.

10:56:35 3 Q. We have got one identified. Several to go.
10:56:40 4 And was he specifically working on the TomorrowNow
10:56:44 5 acquisition?

10:56:51 6 A. No.

10:56:52 7 Q. But the others that you sent it to, Mr. Ziemen
10:56:55 8 and Mr. Welz, they were connected to the acquisition on
10:57:00 9 services' behalf?

10:57:18 10 A. Yes.

10:57:21 11 Q. And the e-mail you forward was from Arlen
10:57:28 12 Shenkman who you understood was on the mergers and
10:57:30 13 acquisitions part of the deal; correct?

10:57:49 14 A. Yes.

10:57:51 15 Q. And he says he is attaching SAP's initial
10:57:54 16 business case to acquire TomorrowNow; right?

10:58:06 17 A. Yes.

10:58:07 18

10:58:08 19

10:58:22 20

10:58:23 21

10:58:25 22

10:58:30 23

10:58:45 24

10:58:46 25

15:04:01 1

15:04:08 2

15:04:10 3

15:04:15 4

15:04:20 5

15:04:39 6

15:04:40 7

15:04:43 8

15:04:46 9

15:05:04 10

15:05:12 11

15:05:17 12

15:05:23 13

15:05:24 14

15:05:26 15

15:05:26 16

Q. Let me see if I can refresh your recollection.

15:06:00 17

Please look at what was previously marked exhibit 252.

15:06:04 18

(Exhibit 252, previously marked)

15:06:08 19

Q. Which is an e-mail dated 24th January, 2005;

15:06:25 20

the same date as the e-mail we were just looking at. And in

15:06:34 21

this e-mail, Mr. Mackey writes:

15:06:38 22

"The following individuals have been nominated by

15:06:41 23

Gerd and Werner to be board members of TomorrowNow. Bernd

15:06:46 24

Welz, Mark White and Andrew Nelson."

15:06:49 25

Do you see that?

15:07:10 1

A. Yes.

15:07:11 2

Q. Does that refresh your recollection that you

15:07:14 3

and Mr. Brandt came up with the names of the TomorrowNow

15:07:17 4

board?

15:07:38 5

A. Probably we drew up communication together,

15:07:42 6

but we probably discussed this together and came up with the

15:07:45 7

names.

15:07:46 8

15:07:49 9

15:07:54 10

15:08:21 11

15:08:25 12

15:08:35 13

15:08:42 14

15:08:45 15

15:09:14 16

15:09:14 17

15:09:19 18

15:09:25 19

15:09:29 20

15:10:03 21

15:10:08 22

15:10:15 23

15:10:35 24

15:10:36 25

CERTIFICATE OF COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, ROSE HELEN CLAIRE KAY, an Accredited LiveNote Reporter with Merrill Legal Solutions (a LegaLink company) of London, England, and Asia, hereby certify that the testimony of the witness GERHARD OSWALD in the foregoing transcript, numbered pages 1 through 172, taken on Wednesday, December 10, 2008 was recorded by me in machine shorthand and was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed: *Rose Helen Claire Kay*

ROSE HELEN CLAIRE KAY

Dated: Wednesday, December 10, 2008

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,
)	
v.)	Case No.
)	07-CV-01658 PJH (EDL)
)	
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 MR. GERHARD OSWALD

VOLUME II

Thursday, December 11, 2008

AT: 8:28 a.m.

Taken at:

Bingham McCutchen LLP
41 Lothbury

London EC2R 7HF

UNITED KINGDOM

09:36:05 1

09:36:07 2

09:36:10 3

09:36:14 4

09:36:19 5

09:36:38 6

09:36:48 7

Q. Could you look at exhibit 601.

09:36:50 8

(Exhibit 601 marked for identification)

09:37:03 9

Q. This is an August 13, 2007 e-mail chain,

09:37:09 10

with the pertinent e-mail at the top between Albert van

09:37:16 11

Wissen and Thomas Ziemen. It is SAP-OR00133223 through 24.

09:37:23 12

And there is a certified German translation attached.

09:37:49 13

MR. LANIER: Holly, to clarify, you may have

09:37:51 14

misspoken. I just want to make sure I understand. The

09:37:53 15

original was German and the translation is into English. Is

09:37:56 16

that what it is?

09:37:57 17

MS. HOUSE: Yes.

09:37:57 18

MR. LANIER: Okay.

09:37:58 19

MS. HOUSE: The original -- the way we have done

09:38:00 20

these is that we have put the English translation on top,

09:38:03 21

the original German behind and then the certified letter at

09:38:07 22

the end.

09:38:08 23

MR. LANIER: Thank you.

09:38:25 24

A. Yes.

09:38:26 25

BY MS. HOUSE:

09:38:27 1 Q. And is this a document that came after

09:38:29 2 Mr. Brandt talked to you about taking over your

09:38:33 3 responsibilities for TomorrowNow?

09:38:52 4 A. That is possible, but now I cannot remember

09:38:55 5 the date when that talk with Werner Brandt took place.

09:39:04 6 Q. Looking at Mr. van Wissen -- and he was the

09:39:07 7 CFO of TomorrowNow; correct?

09:39:18 8 A. I don't know.

09:39:20 9 Q. Looking at the middle paragraph of his e-mail,

09:39:23 10 he writes, in the English translation. You might want to

09:39:30 11 read the German and see if it's good:

09:39:32 12 "There may continue to be an unlimited exchange of

09:39:35 13 information/reporting with Gerd Oswald's board area, but in

09:39:39 14 principle all responsibilities/decisions from Gerd Oswald's

09:39:42 15 area are to be assigned to Werner Brandt/Mark White for the

09:39:48 16 moment."

09:40:10 17 And up until that point, there had been

09:40:12 18 information and exchange and reporting on TomorrowNow to

09:40:15 19 those within your board area; correct?

09:40:35 20 A. Yes.

09:40:39 21 Q. And in the next paragraph, Mr. van Wissen

09:40:42 22 writes:

09:40:45 23 "Since in the past many decisions regarding our

09:40:49 24 forecast/budget have been made by SAP Corporate (Thomas Z,

09:40:56 25 Thomas B, Gerd Oswald) or certain changes have been made

09:41:02 1 directly, it would be good if we all had the same idea how

09:41:04 2 it should work in the future."

09:41:36 3 And that reference is to Thomas Ziemer; correct?

09:41:44 4 A. Yes.

09:41:45 5 Q. And Thomas Bamberger; correct?

09:41:53 6 A. Correct.

09:41:54 7 Q. And to yourself; correct?

09:41:58 8 A. Yes.

09:41:58 9 Q. All of whom are at SAP AG; right?

09:42:06 10 A. Yes.

09:42:06 11 Q. And that's an accurate description of what had

09:42:09 12 happened in the past; correct?

09:42:19 13 A. Yes.

09:42:26 14

09:42:27 15

09:42:30 16

09:42:32 17

09:42:36 18

09:42:39 19

09:42:40 20

09:43:05 21

09:43:07 22

09:43:08 23

09:43:10 24

09:43:15 25

12:04:55 1

12:05:01 2

12:05:05 3

12:05:10 4

12:05:28 5

12:05:29 6

12:05:32 7

12:05:40 8

12:05:43 9

12:05:45 10

12:05:49 11

12:05:53 12

12:06:15 13

12:06:17 14

12:06:21 15

12:06:35 16

12:06:37 17

12:06:39 18

12:06:49 19

12:07:02 20

12:07:05 21

12:07:26 22

12:07:28 23

12:07:30 24

12:07:33 25

Q. And you have no understanding of what the going-forward plan was to implement this March 2005 executive board directive to remove customer local environments from TomorrowNow's computers?

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

Q. And do you know who, if anyone, was overseeing achievement of the board's directive?

A. No.

Q. Would it surprise you to learn that Mr. Brandt testified that it was you?

A. Yes.

Q. Do you recall getting any updates on the achievement of the directive at any point?

A. I can't remember having received such a report.

Q. And it's fair to say, based on your testimony, that you never followed up on the achievement of the

12:07:36 1 directive described in exhibit 522; correct?

12:08:18 2 A. Yes.

12:08:20 3

12:08:23 4

12:08:28 5

12:08:35 6

12:08:38 7

12:08:43 8

12:08:48 9

12:08:51 10

12:09:47 11

12:09:50 12

12:10:08 13

12:10:11 14

12:10:13 15

12:10:23 16

12:10:24 17

12:10:36 18

12:10:41 19

12:10:43 20

12:10:52 21

12:10:55 22

12:10:56 23

12:10:59 24

12:11:04 25

13:38:17 1
13:38:36 2
13:38:44 3
13:38:46 4
13:38:48 5
13:38:53 6
13:38:56 7
13:38:58 8
13:39:20 9
13:39:25 10
13:39:28 11
13:39:29 12
13:39:30 13
13:39:57 14
13:40:00 15
13:40:04 16
13:40:07 17
13:40:07 18
13:40:17 19
13:40:19 20
13:40:22 21
13:40:26 22
13:40:31 23
13:41:16 24
13:41:18 25

Q. Let me show you what has been marked

13:41:20 1 exhibit 608.
13:41:21 2 (Exhibit 608 marked for identification)
13:41:31 3
13:41:40 4
13:41:47 5
13:41:51 6
13:42:12 7
13:42:14 8
13:42:23 9
13:42:26 10
13:42:32 11
13:42:47 12
13:42:49 13
13:42:59 14
13:43:00 15
13:43:05 16
13:43:05 17
13:43:10 18
13:43:34 19
13:43:36 20
13:43:39 21
13:43:44 22
13:43:48 23
13:44:21 24
13:44:38 25

HIGHLY CONFIDENTIAL

Page 271

13:52:16 1

13:52:30 2

13:52:32 3

13:52:36 4

13:52:36 5

13:52:37 6

13:52:46 7

13:52:48 8

13:52:51 9

13:52:53 10

13:52:56 11

13:53:29 12

13:53:32 13

13:53:37 14

13:53:42 15

13:53:44 16

13:53:50 17

13:53:51 18

Q. Could you turn to page 136764, titled

13:53:57 19

"Business Case TomorrowNow 2006: Executive Summary, Reason".

13:54:13 20

And under the top portion, there's a reference to "Key

13:54:18 21

Achievements 2005".

13:54:35 22

A. Yes.

13:54:36 23

Q. And the third bullet reads:

13:54:38 24

"The maintenance offering -- a key part of the

13:54:41 25

Safe Passage program and provided by TomorrowNow -- is used

13:54:46 1 as enabler for future license revenue, to grow maintenance
13:54:52 2 contract volume taken away from Oracle and to generate
13:54:55 3 additional maintenance revenue for SAP."

13:55:34 4 And those were among the key achievements for
13:55:37 5 TomorrowNow in 2005?

13:55:47 6 A. Yes.

13:55:53 7 Q. And the other key achievements listed in this
13:55:57 8 section, do you have any reason to believe that those are
13:56:00 9 inaccurately presented?

13:56:16 10 A. No.

13:56:17 11

13:56:20 12

13:56:24 13

13:56:29 14

13:57:04 15

13:57:05 16

13:57:07 17

13:57:16 18

13:57:19 19

13:57:22 20

13:57:24 21

13:57:38 22

13:57:54 23

13:57:55 24

13:57:57 25

CERTIFICATE OF COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, ROSE HELEN CLAIRE KAY, an Accredited LiveNote Reporter with Merrill Legal Solutions (a LegaLink company) of London, England, and Asia, hereby certify that the testimony of the witness GERHARD OSWALD in the foregoing transcript, numbered pages 173 through 307, taken on Thursday, December 11, 2008 was recorded by me in machine shorthand and was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed: *Rose Helen Claire Kay*

ROSE HELEN CLAIRE KAY

Dated: Thursday, December 11, 2008

GERHARD OSWALD December 10, 2008
HIGHLY CONFIDENTIAL

Page 172

E R R A T A

Deposition of GERHARD OSWALD

Page/Line No.	Description	Reason for change
9 / 10	"when I can read things" change to: "when I read from something"	More accurate translation
17 / 23-24	"Stock Operation Act ... , as the official ... " change to: "Stock Corporation Act ... , is the official ... "	Mishearing / incorrect transcription
22 / 18-19	"and that difference was 11 million" change to: "out of these 11 millions"	translation
24 / 04	"fixed componant" change to: "fixed salary"	more accurate translation
26 / 11-12	"general information on the board" change to: "general information in the Executive Board"	more accurate translation
Signed:	<i>[Signature]</i>	
Name:	GERHARD OSWALD	
Date:	12. 10. 2008	

Merrill Legal Solutions
(800) 869-9132

GERHARD OSWALD December 10, 2008
 HIGHLY CONFIDENTIAL

E R R A T A

Deposition of GERHARD OSWALD

Page/Line No.	Description	Reason for change
30 / 17	"Yes, Shai Agassi" change to: "Yes, and Shai Agassi"	translation
43 / 12	"more details on the issue" change to: "more details about the market"	translation
52 / 6-7	"... under my purview, it is the purview of..." change to: "under my area of responsibility - it is the area of responsibility of..."	more accurate translation
53 / 17	"evaluated the legal aspects of the acquisition" change to: "evaluated the legality of the methods of access"	translation

Signed: 

Name: GERHARD OSWALD

Date: 12.31.2008

Merrill Legal Solutions
 (800) 869-9132

GERHARD OSWALD December 10, 2008
HIGHLY CONFIDENTIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E R R A T A

Deposition of GERHARD OSWALD

Page/Line No. Description Reason for change

88 / 03 "It's more go-to-market"
change to:
"Its more go-to-market and marketing"

translation omits final portion of answer

97 / 07 "No, I don't remember"
change to:
"No"

correct translation of "nein" only.

~~440~~ / 07 "within the entire management, as far as..."
change to:
"within the entire management team of Safe Passage, as far as..."

translation omits reference to Safe Passage

Signed: 

Name: GERHARD OSWALD

Date: 12, Jan. 2009

GERHARD OSWALD December 10, 2008
HIGHLY CONFIDENTIAL

Page 172/4

E R R A T A

Deposition of GERHARD OSWALD

Page/Line No.	Description	Reason for change
112 / 17-21	'Well, the individual members of the board of directors and all subsidiaries report to the board of directors and its relative areas, and those ones responsible.' change to: 'The Board of Directors of all subsidiaries report to the full executive board and each member of the executive board is responsible for his area.'	Not correct translation
122 / 10	"... an acquisition team,..." change to: "... an acquisition, ..."	no sense
130 / 68	"... to make an assessment of the service model and processes" change to: "... to make an assessment of the service model and processes were ok." correct	translation omits final part of answer

Signed: 

Name: GERHARD OSWALD

Date: 12-Jan-2009

Merrill Legal Solutions
(800) 869-9132

GERHARD OSWALD December 11, 2008
 HIGHLY CONFIDENTIAL


Page 307 /)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E R R A T A

Deposition of GERHARD OSWALD

Page/Line No.	Description	Reason for change
197/10-11	"reporting structures" change to: "reporting structure"	translation
201/10	"old structure" change to: "org structure"	in correct transcription
202/7-8	"... no longer active in this, because..." change to: "... no longer active in reporting and other things, because..."	translation omits portion of answer
228/68	"I don't know that." change to: "I no longer remember"	translation
252/10	"It was a separate unit..." change to: "It was an independant unit..."	translation

Signed: 

Name: GERHARD OSWALD

Date: 12/11/2008

Merrill Legal Solutions
 (800) 869-9132


GERHARD OSWALD December 11, 2008
HIGHLY CONFIDENTIAL

Page 307/2

E R R A T A

Deposition of GERHARD OSWALD

Page/Line No.	Description	Reason for change
260/20	"That is the entire application." change to: "That is, the entire application."	Clarifies subject to more accurately reflect original answer in German (comma added)
261/07-10	"Well, we in German call it "ungewogenes" "unweighted." That's the term we use for "unfactored pipeline". That is, interested parties who have - interested parties, where there has been no offer so far." change to: "That doesn't mean "unfactored" but an "unbewichtet", unweighted, pipeline, that means purely interested parties to whom there has not yet been an offer. This is called "unbewichtet" - unweighted - in German."	More accurate translation of the original answer in German

Signed: 

Name: GERHARD OSWALD

Date: 12 Jan 2015

GERHARD OSWALD December 11, 2008
 HIGHLY CONFIDENTIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E R R A T A

Deposition of GERHARD OSWALD


Page/Line No. Description Reason for change

264/06 "I have no assessment of that" translation
 change to:
 "I cannot appraise that"

264/24-265/01 "I can only assume that to mean that each -- that everybody had a certain margin to deliver, and that each area had a margin." More precise translation of several terms
 change to:

"I can only give my appraisal that every unit had a certain margin to deliver, and that each area had a guideline for the margin."

270/11-12 "That is not my focus anyway." translation adds the term "anyway"
 change to:
 "That is not my focus."

Signed: 

Name: GERHARD OSWALD

Date: 12.11.2008

GERHARD OSWALD December 11, 2008
HIGHLY CONFIDENTIAL

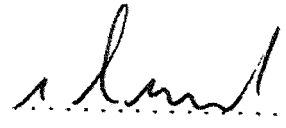
Page 307/4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E R R A T A

Deposition of GERHARD OSWALD

Page/Line No.	Description	Reason for change
275/20	"I don't recall that." change to: "I don't know."	translation
280/12-13	"... revenue we would make through new software agreements for SAB applications." change to: "... revenue we seek to make through new software agreements for SAB applications."	Better translation

Signed: 
Name: GERHARD OSWALD
Date: 12 Jan. 2008

Merrill Legal Solutions
(800) 869-9132