

EXHIBIT 28

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

KEITH SHANKLE

JUNE 16, 2009

ORAL VIDEOTAPED DEPOSITION OF KEITH SHANKLE, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 16th day of June, 2009, from 9:09 a.m. to 2:29 p.m., before Dana Richardson, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Jones Day, 717 Texas Avenue, Suite 3300, Houston, Texas 77002, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 1601-91410

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Q. (By Mr. Polito) Mr. Shankle I'm going to hand you what's already been marked as Plaintiff's Exhibit 1147 and 1148.

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Mr. Shankle, do you recognize these spreadsheets, generally?

11:30:17 19

11:30:20 20

A. Yes.

11:30:23 21

Q. Did you create these spreadsheets?

11:30:30 22

A. I don't remember doing it.

11:30:34 23

Q. Ms. VonFeldt testified that she believes you created these spreadsheets. Do you tend to agree with her?

11:30:38 24

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MR. WILKES: Objection, form.

11:30:42 1 A. I can't disagree with her.

11:30:45 2 Q. (By Mr. Polito) There is a column here that says "DL

11:30:47 3 Lib." Do you see that?

11:30:48 4 A. Yes.

11:30:52 5 Q. And there's one on each of the two.

11:30:56 6 Does that stand for "download library"?

11:30:58 7 A. I presume so.

11:31:02 8 Q. So, a "yes" indicates that they have a download

11:31:05 9 library; and a "no" indicates that there's not a download

11:31:06 10 library?

11:31:08 11 MR. WILKES: Objection, form.

11:31:08 12 A. I believe so.

11:31:12 13 Q. (By Mr. Polito) And is that the same for both

11:31:20 14 Exhibit 1147 and 1148?

11:31:45 15 A. It appears that way.

11:31:50 16 Q. Looking at the -- the World exhibit, which is 1147,

11:31:51 17 you see the second line there, it says "Ajinomoto Co.

11:31:54 18 Incorporated"?

11:31:55 19 A. Yes.

11:31:59 20 Q. And there is a vendor end date of December 30th,

11:32:04 21 2005; and there is a TomorrowNow start date of January 1st,

11:32:08 22 2006. Do you see those two facts, Mr. Shankle?

11:32:08 23 A. I do.

11:32:11 24 Q. And do you see that there is a download library?

25 A. Yes.

11:32:17 1 Q. Do you -- can you explain to me how a download
11:32:22 2 library was created for Ajinomoto when their TomorrowNow start
11:32:26 3 date was after their maintenance end date?

11:32:27 4 A. I cannot explain that.

11:32:29 5 Q. Do you have an understanding that certain download
11:32:34 6 libraries were created after customers' maintenance end dates?

11:32:37 7 MR. WILKES: Objection to form.

11:32:38 8 A. Could you repeat the question, please?

11:32:40 9 Q. (By Mr. Polito) Do you have a general understanding
11:32:43 10 that TomorrowNow created some customer download libraries
11:32:46 11 after a customer's maintenance end dates?

11:32:47 12 MR. WILKES: Objection, form.

11:32:50 13 A. This document appears that way; but I don't know of
11:32:50 14 it, no.

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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. John Polito - 03:41
- Mr. Laurens Wilkes - 00:00

SUBSCRIBED AND SWORN TO under my hand and seal of office on this the 19 day of June, 2009.

Dana Richardson

Dana Richardson, CSR
Texas CSR 5386
Expiration: 12/31/09
Merrill Legal Solutions, Firm No. 210
315 Capitol, Suite 100
Houston, Texas 77002
Phone (713) 426-0400

**Corrections to the Transcript of the Deposition of
KEITH SHANKLE**

Taken on June 16, 2009

Page	Line(s)	Reads	Should Read
		<i>No Changes</i>	

Shankle
Witness Signature

28 July 09
Date