

# **EXHIBIT 34**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

-----x

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,

Defendants.

-----x

11:00 a.m.

March 5, 2009

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Videotaped 30(b)(6) Deposition of  
TomorrowNow, Inc, by MARK WHITE, held at the  
offices of Bingham McCutchen, LLP, 399 Park  
Avenue, New York, New York, before David  
Henry, a Notice Public of the State of New  
York.

MARK WHITE March 5, 2009

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Page 6

11:04:11 1

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11:04:36 15 Q. Let's start with asking what your  
11:04:39 16 job title and responsibilities for at the  
17 time that SAP acquired TomorrowNow, January,  
11:04:45 18 2005.

11:04:45 19 A. My job title at the time was  
11:04:47 20 senior vice-president, SAP Americas, chief  
11:04:51 21 financial officer.

11:05:06 22 Q. And starting in January, 2005 and  
11:05:10 23 going forward to today, how has your job  
11:05:13 24 title changed, if it has?

11:05:18 25 A. In April of 2007, I was appointed

11:05:21 1 chief operating officer for SAP Americas.

11:05:28 2 The job level was still senior

11:05:31 3 vice-president and then in effectively the

11:05:34 4 last week of June of 2007, I was appointed

11:05:37 5 executive chairman of TomorrowNow.

11:05:42 6 Q. And what is your job title?

11:05:44 7 A. Today it's senior vice-president

11:05:46 8 and chief financial officer SAP North

11:05:50 9 America.

11:05:50 10 Q. And are you still executive

11:05:51 11 chairman of TomorrowNow?

11:05:57 12 A. Yes, I am.

11:06:01 13 Q. Can you describe your job

11:06:02 14 responsibilities over time with respect to

11:06:04 15 TomorrowNow?

11:06:06 16 A. After the acquisition of

11:06:08 17 TomorrowNow in early 2005, I was appointed

11:06:13 18 to the board of TomorrowNow as it was a

11:06:17 19 wholly-owned subsidiary of SAP. And in

11:06:24 20 June, July of 2007, I was appointed as

11:06:28 21 executive chairman, so responsible at that

11:06:31 22 time for the day-to-day operations of

11:06:33 23 TomorrowNow.

11:06:33 24 Q. And as a member of the board of

11:06:35 25 directors, what were your responsibilities

11:06:37 1 with respect to TomorrowNow?

11:06:39 2 A. It was more statutory in nature  
11:06:42 3 to sign off on the financial results,  
11:06:44 4 approve bonus plans, compensation plans, and  
11:06:48 5 approve back office, what I will call back  
11:06:53 6 office functions like real estate, location  
11:06:56 7 of real estate, approval of the hiring plans  
11:07:03 8 for headcount.

11:07:04 9 Q. Anything else?

11:07:04 10 A. Not really.

11:07:05 11 Q. And can you describe in a little  
11:07:08 12 more detail your responsibilities as  
11:07:10 13 executive chairman?

11:07:11 14 A. For executive chairman I was  
11:07:14 15 responsible for primarily four areas. One  
11:07:20 16 was to determine the ultimate conclusion for  
11:07:27 17 TomorrowNow, number one; number two, take  
11:07:31 18 any disciplinary actions, number three,  
11:07:38 19 implement the company's directive around  
11:07:42 20 project Level-Set; and fourth was to  
11:07:46 21 continue to provide the daily service to the  
11:07:49 22 customers.

11:07:51 23 Q. Anything else?

11:07:53 24 A. No. Those are really the four  
11:07:55 25 major categories.

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Page 9

11:07:57 1 Q. Did you report to anyone?

11:07:59 2 A. I reported to Werner Brandt who  
11:08:02 3 is the global chief financial officer.

11:08:05 4 Q. Did you report to anyone else?

11:08:07 5 A. No.

11:08:07 6 Q. And when you were -- prior to  
11:08:09 7 becoming executive chairman as a member of  
11:08:11 8 the TomorrowNow board of directors, did you  
11:08:13 9 report to anyone?

11:08:15 10 A. Not in my capacity as a board  
11:08:18 11 member. As chief financial officer I  
11:08:21 12 reported to Werner Brandt and I reported to  
11:08:24 13 Bill McDermott.

11:08:25 14

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MARK WHITE March 5, 2009  
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Page 10

11:08:54 1

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11:09:02 6

Q. And are you designated as

11:09:05 7

TomorrowNow's corporate representative for

11:09:07 8

all the topics listed?

11:09:08 9

A. Yes.

11:09:09 10

Q. And do you understand that the

11:09:11 11

testimony you give today is on behalf of

11:09:12 12

TomorrowNow?

11:09:13 13

A. Yes.

11:09:14 14

Q. And today you are employed by SAP

11:09:20 15

America?

11:09:20 16

A. SAP America.

11:09:21 17

Q. But you are testifying as

11:09:24 18

TomorrowNow's corporate designee on the

11:09:26 19

topics in Exhibit 1031?

11:09:28 20

A. Yes.

11:09:28 21

Q. Do you have any personal

11:09:29 22

knowledge of the topics listed in

11:09:32 23

Exhibit 1031?

11:09:32 24

A. Yes.

11:09:33 25

Q. What is that personal knowledge?

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Page 11

11:09:35 1 MR. COWAN: Objection, form.

11:09:39 2 You can answer.

11:09:43 3 A. The personal knowledge is from  
11:09:44 4 the time I was appointed as executive  
11:09:46 5 chairman beginning in either last week of  
11:09:49 6 June or first week of July of 2007 and to  
11:09:55 7 its ultimate wind-down.

11:09:57 8 Q. Do you have any personal  
11:09:58 9 knowledge prior to your appointment as  
11:10:01 10 executive chairman?

11:10:02 11 A. Only in my capacity as the  
11:10:04 12 chairman of the board of directors of  
11:10:06 13 TomorrowNow.

11:10:08 14

11:10:10 15

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MARK WHITE March 5, 2009  
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Page 14

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11:13:56 24

11:13:58 25

Q. When you said that he issued a directive to Andrew Nelson, which directive were you referring to?

A. The SAP AG management board had issued a directive through Chris Faye to communicate to Andrew Nelson that the environments were to be all done remotely.

Q. Mr. Faye said he communicated that to Andrew Nelson?

A. Yes, he did.

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Page 17

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11:16:03 8

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11:16:12 12

13

11:21:04 14

11:21:04 15

Q. Let me repeat the question. You

11:21:09 16

had mentioned that Mr. Faye told you about

11:21:12 17

phone meetings that he had with Andrew

11:21:14 18

Nelson. What did he tell you about those

11:21:16 19

meetings?

11:21:16 20

A. That during those meetings he

11:21:18 21

emphasized the company directive to

11:21:24 22

implement Project Blue.

11:21:26 23

Q. How did he emphasize it?

11:21:29 24

A. Just continuous communication

11:21:33 25

during the monthly meeting, he would say to

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Page 18

11:21:36 1 Andrew that it is a company directive that  
11:21:40 2 this be done.  
11:21:41 3  
11:21:44 4  
11:21:46 5  
11:21:49 6  
11:21:51 7  
11:21:53 8  
11:21:56 9  
11:21:58 10  
11:22:01 11  
11:22:05 12  
11:22:08 13  
11:22:10 14  
11:22:11 15  
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MARK WHITE March 5, 2009  
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Page 125

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Q. Are you aware that TomorrowNow

14:12:25 9

issued procedures in June of 2007

14:12:28 10

prohibiting the copying of new environments?

14:12:33 11

A. Yes.

14:12:33 12

Q. And those procedures are a set of

14:12:35 13

rules that relate to the handling of

14:12:38 14

intellectual property, right?

14:12:41 15

A. Yes.

14:12:41 16

Q. Why were they put in writing?

14:12:45 17

MR. COWAN: Objection, form.

14:12:48 18

Q. Let me ask, were they put in

14:12:50 19

writing?

14:12:50 20

A. Yes.

14:12:51 21

Q. Why?

14:12:52 22

MR. COWAN: Objection, form.

14:12:53 23

A. To clarify to the TomorrowNow

14:13:03 24

employees some of the policies that would

14:13:11 25

underline the directive that SAP gave to

14:13:13 1 TomorrowNow back in early 2005.

14:13:22 2 Q. They were put -- talking about  
14:13:25 3 the June, 2007 procedures, and I just want  
14:13:28 4 to make sure I understand your testimony.  
14:13:30 5 They were put into writing to clarify to the  
14:13:32 6 TomorrowNow employees some of the policies  
14:13:35 7 that underlined the directive, is that  
14:13:39 8 right?

14:13:40 9 A. Yes.

14:13:41 10 Q. Why would putting it in writing  
14:13:45 11 clarify for the TomorrowNow employees some  
14:13:48 12 of the policy?

14:13:50 13 MR. COWAN: Objection, form.

14:13:51 14 A. Because the original directive  
14:13:54 15 back in early 2005 was never put in place.  
14:14:00 16 Had it been put in place, this sort of  
14:14:03 17 policy would have been a by product of it.

14:14:08 18

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MARK WHITE March 5, 2009

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Page 346

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19:20:30 19  
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19:20:44 21  
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19:21:02 25

Q. Look at what has been marked  
Exhibit 1045. Exhibit 1045 is an e-mail  
Bates labelled SAPOR00632752 through 755.  
The top e-mail is from you to Ann Tummon and

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Page 347

19:21:06 1 a variety of others. The subject is forward  
19:21:10 2 TomorrowNow employee communication, the date  
19:21:11 3 is November 26, 2007. Do you have that in  
19:21:14 4 front of you?

19:21:14 5 A. I do.

19:21:15 6 Q. Did you send this e-mail, the top  
7 people?

19:21:19 8 A. It was sent on my behalf by Mandy  
19:21:22 9 Wheeler, but I did write the content of it.

19:21:24 10 Q. Are you speaking of the content  
19:21:26 11 that begins below Mandy Wheeler's name on  
19:21:29 12 the first page?

19:21:29 13 A. Correct.

19:21:30 14 Q. And the very top e-mail, it looks  
19:21:33 15 like you're forwarding that e-mail on to  
19:21:35 16 some others, do you see that?

19:21:36 17 A. Yes.

19:21:36 18 Q. Do you recall this e-mail?

19 A. I do.

19:21:36 20 Q. And you wrote the content in  
19:21:38 21 under Mandy Wheeler's name?

19:21:40 22 A. I did.

19:21:40 23 Q. Was Mandy Wheeler your assistant?

19:21:43 24 A. She was my assistant at

19:21:48 25 TomorrowNow but she was not my day-to-day

MARK WHITE March 5, 2009  
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Page 348

19:21:51 1 assistant.

19:21:54 2 Q. Your day-to-day assistant with  
19:21:56 3 regard to SAP duties?

19:21:58 4 A. And my office, my main office  
19:22:00 5 location in Newtown Square. But because  
19:22:06 6 Mandy had the ability to communicate to all  
19:22:09 7 of TomorrowNow employees much more easily, I  
19:22:13 8 utilized her for all the communications.

19:22:18 9 Q. I want to look at something on  
19:22:19 10 the page that ends 753 under Project  
19:22:21 11 Level-Set priorities. It says as of last  
19:22:28 12 week we determined that our first priority  
19:22:31 13 was to ensure customers had outstanding  
19:22:33 14 service through January, 2008. Do you see  
19:22:36 15 that?

19:22:36 16 A. Yes.

19:22:40 17 Q. Was that true?

19:22:41 18 A. Pardon?

19 19 Q. Was that true?

19:22:41 20 A. Yes.

19:22:42 21 Q. Why was it decided that was your  
19:22:44 22 first priority?

19:22:48 23 A. Going back to my earlier  
19:22:51 24 testimony, customers were innocent victims  
19:23:02 25 so to speak of the litigation and we wanted

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Page 349

19:23:04 1 to ensure that SAP and TomorrowNow had an  
19:23:10 2 outstanding reputation for customer service  
19:23:12 3 and customer support. So we wanted -- we  
19:23:16 4 had a contract with them as TomorrowNow, and  
19:23:19 5 would he wanted to honor that contract and  
19:23:23 6 not force them to find another service  
19:23:27 7 provider because of the litigation.

19:23:31 8 Q. And that was your top priority,  
19:23:35 9 is that correct?

19:23:38 10 A. Through January, so from the  
19:23:42 11 December through January, for those  
19:23:43 12 customers that had not transitioned to  
19:23:46 13 remote support, it was to provide them their  
19:23:49 14 regulatory tax updates for payroll so that  
19:23:52 15 they could continue to run their business  
19:23:55 16 because if we had forced them to go to  
19:23:58 17 remote support and not provided them with  
19:24:01 18 the regulatory updates, they would fail  
19:24:05 19 their employees.

19:24:06 20 Q. Was it your decision to make this  
19:24:08 21 the first priority?

19:24:10 22 A. Yes.

19:24:11 23 Q. And those regulatory tax updates  
19:24:15 24 for payroll that were provided in December  
19:24:17 25 or January, were those created in part at

MARK WHITE March 5, 2009

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Page 350

19:24:22 1 least using a non-remote model?

19:24:25 2 MR. COWAN: Objection, form.

19:24:27 3 A. Yes.

19:24:29 4 Q. Let's see, skipping the middle  
19:24:38 5 sentence, starting with the sentence we have  
19:24:39 6 to go to remote support but we also need to  
19:24:43 7 honor our contracts, do you see that?

19:24:47 8 A. I do.

19:24:47 9 Q. And was that true?

19:24:48 10 A. Yes.

19:24:49 11 Q. For the reasons you just stated?

19:24:50 12 A. Yes.

19:24:51 13 Q. For any other reasons?

19:24:52 14 A. No.

19:24:53 15

19:25:03 16

19:25:06 17

19:25:08 18

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C E R T I F I C A T E

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

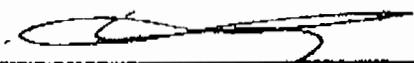
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I, DAVID HENRY, a Notary Public within  
and for the State of New York, do hereby  
certify:

That MARK WHITE, the witness whose  
deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition is  
a true record of the testimony given by such  
witness.

I further certify that I am not related  
to any of the parties to this action by  
blood or marriage; and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 8th day of March, 2009.

  
\_\_\_\_\_  
DAVID HENRY

## Corrections to the Transcript of the Deposition of

Mark White

Taken on March 5, 2009

Page	Line(s)	Reads	Should Read
11	21-22	... and with Scott Counsel	... and with Scott Cowan
11	9	... with Greg Tom	... with Greg Tomb
11	15	... Mr. Tom	... Mr. Tomb
24	20	... recall the names	... recall all the names
41	21-22	He said I was worried about the license agreements.	He said "I was worried about the license agreement."
64	4	... Bernard	... Werner
66	6	... as can you	... as you can
66	17-18	... do you it	... you do it
76	3	... Bernard	... Werner
79	7	... Ivar	... Yavar
128	6	Mr. Cowan: Yes	A: Yes
142	9	Mr. Wetts?	Mr. Welz?
142	11	Mr. Tom	Mr. Tomb
147	2	Bernard Brandt	Werner Brandt
180	24	Bonn	Baan
196	13	... it's no a	... it's on a
229	18	... is ans arrow	... is an arrow
287	20	... they it conversations	... they had conversations
304	20	... almost everone	... almost every one
306	15	?	no question mark
316	8	Bonn	Baan
318	7	... put him	... put it
320	17-19	... interpretation was it was a preference, SAP from SAP's perspective, and so let me go back.	... interpretation was it was a preference. SAP from SAP's perspective - and so let me go back.

