

EXHIBIT 8

H I G H L Y C O N F I D E N T I A L
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,

No. 07-CV-1658
(PJH)

-against-

SAP AG, a German corporation,
SAP AMERICA, INC., a Delaware
corporation, TOMORROWNOW, INC.,
a Texas corporation, and
DOES 1-50, inclusive,

Defendants.

-----X

November 12, 2008
9:14 a.m.

Videotaped deposition of WERNER BRANDT,
taken by Plaintiffs, pursuant to notice, at the
offices of Bingham McCutchen, LLP, 399 Park
Avenue, New York, New York, before Jack Finz and
Otis Davis, Shorthand Reporters and Notaries
Public within and for the State of New York.

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09:39:32 20 Q. Let's move on to your work history.

09:39:36 21 You joined SAP AG in February 2001 in your

09:39:40 22 current position as chief financial officer; is

23 that correct?

09:39:58 24 A. That's correct.

09:40:02 25 Q. And if I use the term CFO, do you

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09:40:04 2 understand that to mean chief financial officer?

09:40:12 3 A. Yes.

09:40:14 4 Q. And you have been CFO for SAP AG for
09:40:16 5 approximately seven and a half years?

09:40:26 6 A. That's correct.

09:40:28 7 Q. So that includes the entire time that
09:40:34 8 SAP owned Tomorrownow?

09:40:44 9 A. That's correct.

09:40:48 10 Q. Throughout your tenure as CFO of SAP
09:40:52 11 AG, to whom did you report?

09:41:12 12 A. I was and am reporting to the
09:41:18 13 Aufsichstrat.

09:41:20 14 THE INTERPRETER: We agreed last time
09:41:22 15 we were going to use the German term. The
09:41:28 16 supervisory board of SAP AG.

09:41:32 17 Q. And can you explain to the jury what
09:41:36 18 the supervisory board of SAP does?

09:42:02 19 A. The supervisory board of a German
09:42:06 20 stock corporation monitors or has the supervisory
09:42:10 21 function for the corporation.

09:42:12 22 Q. So there was no individual within SAP
09:42:16 23 AG who was more senior than you to whom you
09:42:16 24 reported?

09:42:32 25 A. That's correct.

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13:36:09 16
13:36:13 17
13:36:16 18
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Q. The PowerPoint attachment to
Exhibit 449 is titled "Business Case
January 7, 2005 TomorrowNow."

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13:37:05 2 A. I have a question. Are these
13:37:07 3 two the same (in English)?

13:37:09 4 Q. Yes.

13:37:10 5 A. So I can look to this one (in
13:37:11 6 English).

13:37:11 7 Q. Except I used the numbers on
13:37:13 8 had one.

13:37:13 9 A. It's easier for me to read (in
13:37:15 10 English).

13:37:15 11 Q. Okay.

13:37:23 12 Is this the business case that
13:37:24 13 you had discussed with Mr. Shenkman about
13:37:26 14 two days earlier in the e-mail that we
13:37:29 15 discussed, where you said, "Since the due
13:37:30 16 diligence is going to be short, you have to
13:37:32 17 address things in the business case."

13:38:10 18 A. Yes.

13:38:11 19 Q. You had asked him in that
13:38:13 20 e-mail, Exhibit 448, to include proposed
13:38:16 21 procedures to address the risks of the
13:38:19 22 acquisition, right?

13:38:23 23 A. Yes, (in English).

13:38:24 24 Q. I presume you were looking for
13:38:26 25 those procedures when you read this?

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13:38:38 2 A. Yes.

13:38:39 3

13:38:41 4

13:38:50 5

13:38:51 6

13:39:02 7

13:39:02 8

13:39:10 9

13:39:11 10

13:39:11 11

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13:39:18 14

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13:58:46 22

Q. Could you turn to page 136132,

13:58:53 23

it's titled "SWOT Acquisition Analysis."

13:58:56 24

A. Yes.

13:58:57 25

Q. And that's an acronym for

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13:59:00 2 strengths, weaknesses, opportunities and
13:59:02 3 threats, correct?

13:59:14 4 A. Yes, that's correct.

13:59:15 5 Q. Under "Threats," it says,
13:59:19 6 quote: "The access rights to the
13:59:21 7 PeopleSoft software is very likely to be
13:59:23 8 challenged by Oracle and past operating
13:59:28 9 issues may be a serious liability if Oracle
13:59:31 10 challenges (i.e. off-site production copies
13:59:35 11 and the form of delivery of regulatory
13:59:38 12 updates may be subject to Oracle
13:59:44 13 challenge)."

13:59:45 14 Did you read that?

13:59:45 15 A. Yes, I did (in English).

13:59:46 16 Q. Did this concern you?

14:00:05 17 A. As I indicated earlier, we
14:00:07 18 discussed this, and we determined who is
14:00:09 19 responsible for the individual point
14:00:16 20 issues, and then it was delegated to the
14:00:18 21 appropriate board member, who then would
14:00:26 22 have had to ensure that the corrective
14:00:30 23 measures are taken if something was not in
14:00:35 24 order.

14:00:35 25 Q. What did you understand was the

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14:00:37 2 reference to "off-site production copies"?

14:01:03 3 A. As far as I can recall, the
14:01:05 4 issue was on which systems the software is
14:01:09 5 running.

14:01:13 6

14:01:15 7

14:01:18 8

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14:01:24 11

14:01:37 12

14:02:18 13

14:02:21 14

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14:02:39 20

14:02:57 21

14:03:02 22

14:03:04 23

14:03:07 24

14:03:10 25

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14:10:10 3

14:10:12 4

What's the exhibit number on

14:10:14 5 that?

14:10:16 6

MR. LANIER: It's 513.

14:10:17 7

MS. HOUSE: Thank you.

14:10:18 8

Q. Exhibit 513.

14:10:21 9

A. Yes (in English).

14:10:22 10

Q. If you look at page 186999 on

14:10:24 11

that page, it appears to be the same as

14:10:28 12

136133, it is a little easier to read.

14:10:34 13

In the first box under

14:10:36 14

"Acquisition Structure," it says "SAP -- it

14:10:36 15

is different.

14:10:45 16

The one on 499 says, "SAP AG,

14:10:53 17

or a wholly-owned affiliate acquires 100

14:10:56 18

percent of the stock of TomorrowNow, Inc.

14:10:58 19

for cash, subject to representations and

14:11:00 20

warranties of the stockholders and

14:11:02 21

appropriate indemnities."

14:11:03 22

Do you see that?

14:11:11 23

A. I see it, yes (in English).

14:11:15 24

Q. And that was the plan at that

14:11:17 25

point in time?

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14:11:49 2 A. I think I can help you resolve
14:11:52 3 this. The document that is in the portrait
14:11:56 4 format is the earlier document, and the
14:12:00 5 document in the landscape format is the
14:12:02 6 later document.

14:12:04 7 In the earlier document, it
14:12:07 8 still reflects SAP AG, and the later
14:12:11 9 document already reflects that one of the
14:12:13 10 subsidiaries of SAP AG would acquire the
14:12:24 11 company TomorrowNow.

14:12:25 12 Q. Just for the record, the
14:12:29 13 landscape format --

14:12:38 14 THE VIDEOGRAPHER: I'm sorry,
14:12:39 15 the power got kicked out again.

14:13:15 16 (Discussion off the record.)

14:13:15 17 THE VIDEOGRAPHER: Returning to
14:13:16 18 the record at 2:12 from 2:11.

14:13:19 19 Q. The second box in both of these
14:13:21 20 documents reads: "SAP will leave the Texas
14:13:26 21 corporation in existence as a liability
14:13:29 22 shield for any potential claims."

14:13:31 23 Do you see that?

14:13:42 24 A. I see that (in English).

14:13:43 25 Q. Whose idea was that?

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14:13:54 2 A. I can't nail that down to one
14:13:56 3 person, but that was the idea.

14:13:57 4 Q. You were involved in that
14:13:58 5 decision?

14:14:06 6 A. The entire board of SAP AG was
14:14:10 7 involved in that decision.

14:14:13 8

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Q. Just so that the Court and the jury understands, SAP's exposure to an Oracle lawsuit based on TomorrowNow's service delivery practices were considered in deciding how to structure the company on a going-forward basis, correct?

A. It was something that was taken into account when the structure was established, determined.

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17:18:05 25

Q. Now, five days later, you and

Mr. Oswald decided who would be on the

TomorrowNow board, correct?

A. I can't recall the date, but we

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17:18:06 2 came to a conclusion at any point in time
17:18:11 3 (in English).

17:18:11 4 Q. Let's remind you of the date.

17:18:15 5 I'm showing you Exhibit 252, which is
17:18:19 6 SAP-OR 00123089. It's an e-mail chain
17:18:24 7 dated January 24, 2005, and it is two
17:18:36 8 e-mails.

17:18:40 9 The first e-mail was from
17:18:42 10 Mr. Mackey, and he indicates: "The
17:18:48 11 following individuals have been nominated
17:18:50 12 by Gerd and Werner to be board members of
17:18:54 13 TomorrowNow: Bernd Welz, Mark White, and
17:19:00 14 Andrew Nelson."

17:19:09 15 Does that refresh your
17:19:10 16 recollection?

17:19:10 17 A. I remember now having seen this
17:19:15 18 document (in English).

17:19:16 19 Q. Did you and Mr. Oswald have the
17:19:19 20 ability by yourself to make the
17:19:21 21 determination who was going to be on
17:19:23 22 TomorrowNow's board?

17:19:35 23 A. Yes.

17:19:35 24 Q. And Mr. Welz was senior vice
17:19:38 25 president at SAP AG in Mr. Oswald's service

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17:19:41 2 group, correct?

17:19:44 3 A. I can't remember his title, but
17:20:02 4 he did work for Mr. Oswald. He did report
17:20:05 5 to Mr. Oswald.

17:20:07 6 Q. Who was Mr. White?

17:20:28 7 A. He was the regional CFO for SAP
17:20:31 8 America until February or March of this
17:20:44 9 year.

17:20:52 10 What is this year?

17:20:54 11 Q. This is just after the
17:20:55 12 acquisition, this is 2005.

17:21:14 13 A. As far as I remember, he was
17:21:15 14 the regional CFO for SAP America until
17:21:22 15 sometime in 2004.

17:21:25 16 Sorry, I have to step back (in
17:21:32 17 English).

17:21:33 18 I think at that point in time,
17:21:40 19 he was the regional CFO for SAP America.

17:21:46 20 Sorry for the confusion (in
17:21:47 21 English).

17:21:47 22 Q. No worries.

17:21:48 23 And he was also an SAP America
17:21:50 24 board member at that point?

17:21:58 25 A. I don't think so.

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17:22:05 2 Q. So the board consisted of a
17:22:07 3 senior manager from SAP AG, a senior
17:22:10 4 manager from SAP America, and a senior
17:22:14 5 manager from TomorrowNow, correct?

17:22:26 6 MR. LANIER: Object. Assumes
17:22:27 7 facts not in evidence.

17:22:28 8 Go ahead.

17:22:32 9 A. That's correct.

17:22:37 10 Q. Why were these individuals
17:22:39 11 chosen?

17:23:12 12 A. I chose Mark White because as
17:23:17 13 the CFO for SAP America, he had the right
17:23:20 14 profile to safeguard that the financial tax
17:23:27 15 aspects would be properly supervised.

17:23:34 16 Q. Mr. Oswald chose Mr. Welz,
17:23:37 17 correct?

17:23:37 18 A. Yes (in English).

17:23:40 19 Q. I can ask him why.

17:23:42 20 You don't know why he chose
17:23:43 21 him?

17:23:44 22 A. It would be good if you asked
17:23:49 23 him, yes.

17:23:49 24 Q. And the reference to Brad in
17:23:52 25 the top e-mail, is that Brad Brubaker?

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17:23:56 2 A. Yes.

17:23:56 3 Q. What's his role?

17:24:05 4 A. He is the general counsel of
17:24:06 5 SAP America.

17:24:08 6

17:24:09 7

17:24:19 8

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss. _____

COUNTY OF NEW YORK)

I, JACK FINZ, a Certified Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That WERNER BRANDT, 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 the 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 17th day of November, 2008.



JACK FINZ, C.S.R.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ORACLE CORPORATION, a Delaware)
Corporation, ORACLE USA, INC.,) Case No.
a Colorado corporation, and) 07-CV-01658 PJH (EDL)
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.)

-----)

Thursday, November 13, 2008
8:39 a.m.
(Volume 2)

Continued Highly Confidential
Videotaped Deposition of WERNER
BRANDT, held at the offices of Bingham
McCutchen, LLP, 399 Park Avenue, New
York, New York 10022, pursuant to
Notice, before Otis Davis, a Notary
Public of the State of New York.

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10:51:25 9 Q. At any rate, there was a board

10:51:27 10 approval of an additional 94 full-time

10:51:31 11 employees based on the minutes.

10:51:32 12 Do you recall that that

10:51:33 13 occurred?

10:51:55 14 A. I don't recall specifically,

10:52:03 15 but based on this format here, it looks

10:52:05 16 like it from the board meeting.

10:52:11 17 Q. And you were the sponsor?

10:52:34 18 A. I'm responsible for increases

10:52:37 19 in budget; therefore, I'm responsible, in

10:52:41 20 addition to the person responsible for the

10:52:46 21 board presentation, for the business.

10:52:53 22 Q. The increase was to move

10:52:56 23 towards the globalization that you had

10:52:57 24 spoken about to increase the revenues from

10:53:01 25 expanding TomorrowNow's business, correct?

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10:53:32 2 A. According to my recollection,
10:53:34 3 that was one of the reasons for the
10:53:36 4 approval of additional investment.

10:53:40 5 Q. And do you recall any other
10:53:41 6 reasons?

10:53:51 7 A. Yes, to properly operate the
10:53:59 8 operative business of TomorrowNow.

10:54:04 9

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11:53:39 6

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11:54:19 13 Q. Without having the personnel to

11:54:20 14 develop the necessary service-related

11:54:23 15 intellectual property, how did you

11:54:25 16 understand that TomorrowNow was able to

11:54:28 17 service -- provide superior service at half

11:54:33 18 the price?

11:54:33 19 MR. LANIER: Object.

11:54:34 20 Argumentative. Assumes facts not in

11:54:36 21 evidence. Counterfactual again.

11:54:38 22 Translate, he can answer.

11:54:47 23 A. At the time, I did not know

11:55:17 24 that TomorrowNow did not have the number of

11:55:20 25 employees that it required to perform these

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11:55:24 2 services.

11:55:26 3 Q. In analyzing what headcount was

11:55:30 4 needed immediately after the acquisition,

11:55:34 5 did you learn that?

11:55:44 6 A. No.

11:55:45 7 Q. Did you ever learn that?

11:55:53 8 A. It wasn't my job to find that

11:55:54 9 out.

11:55:55 10 Q. That job belonged to

11:55:57 11 Mr. Oswald?

11:56:02 12 A. That's his area of

11:56:04 13 responsibility.

11:56:07 14

11:56:09 15

11:56:12 16

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11:56:38 21

11:56:40 22

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13:35:47 14

13:35:51 15

13:35:55 16

13:35:58 17

13:36:00 18

13:36:00 19

13:36:01 20

13:36:01 21

13:36:03 22 Q. Let's go back to the second

13:36:04 23 item listed in the answer to Interrogatory

13:36:08 24 number 4 in Exhibit 522 which is supposed

13:36:12 25 to set forth the efforts undertaken by the

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13:36:14 2 SAP AG executive board of directors to
13:36:17 3 ensure that TomorrowNow didn't violate any
13:36:20 4 Oracle intellectual property.

13:36:23 5 That second item is on page 15
13:36:27 6 starting at line 25, and it reads, quote:
13:36:35 7 "By March 2005, the SAP AG Executive Board
13:36:39 8 issued a directive to TomorrowNow's
13:36:42 9 management to remove customer local
13:36:45 10 environments from TomorrowNow computers.
13:36:48 11 On behalf of SAP AG's Executive Board,
13:36:52 12 Thomas Ziemer instructed TomorrowNow CEO
13:36:56 13 Andrew Nelson to evaluate and implement
13:36:59 14 removal of customer local environments from
13:37:02 15 TomorrowNow computers. In response to this
13:37:10 16 direction, TomorrowNow initiated a project
13:37:12 17 to investigate removal of customer local
13:37:15 18 environments from TomorrowNow computers.
13:37:16 19 Some have referred to this project as
13:37:20 20 'Project Blue.' Periodically, Andrew
13:37:24 21 Nelson will communicate the status of the
13:37:27 22 project to Thomas Ziemer," unquote.

13:37:31 23 Now, you were a member of the
13:37:32 24 executive board referenced as having issued
13:37:35 25 this directive, correct?

WERNER BRANDT

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13:37:49 2 A. Yes.

13:37:49 3 Q. The reason that the SAP

13:37:50 4 executive board decided to issue this

13:37:54 5 directive was what?

13:38:04 6 MR. LANIER: Object to that

13:38:07 7 question as phrased. Calls for

13:38:08 8 attorney-client communications in the

13:38:09 9 analysis.

13:38:10 10 Mr. Brandt, you can answer it

13:38:11 11 with the same sort of business

13:38:13 12 discussion level we've been talking

13:38:15 13 about on other topics, but don't

13:38:16 14 disclose advice or analysis from the

13:38:19 15 lawyers.

13:38:40 16 A. As far as I recall, and that

13:38:42 17 was the question, to adequately design,

13:38:56 18 align the operative business model of

13:38:58 19 TomorrowNow, and that included, just like

13:39:16 20 it says in here, that the customer

13:39:20 21 environments don't run on TomorrowNow

13:39:23 22 computers.

13:39:32 23 Q. Was there any analysis

13:39:33 24 undertaken to assess the cost of removing

13:39:35 25 these items from TomorrowNow's computers?

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13:40:15 2 A. As far as I recall, yes, but
13:40:17 3 that was not related to the decision of the
13:40:21 4 SAP board, SAP AG board.

13:40:25 5 Q. The analysis occurred after
13:40:27 6 this decision; is that right?

13:40:36 7 A. That's the way I recall it.

13:40:38 8 Q. Do you recall when the analysis
13:40:40 9 was done?

13:40:53 10 A. No, because the analysis was
13:40:55 11 done by TomorrowNow.

13:40:57 12 Q. Did you receive a copy?

13:41:09 13 A. I can't rule it out, but I
13:41:11 14 don't recall it specifically.

13:41:15 15 Q. Was anyone at SAP charged with
13:41:21 16 working with TomorrowNow to achieve this
13:41:24 17 removal?

13:41:45 18 A. If then, that would have been
13:41:47 19 in the area of Gerd Oswald.

13:41:53 20

13:41:54 21

13:41:57 22

13:42:02 23

13:42:05 24

13:42:29 25

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13:48:56 3

13:48:59 4

13:49:04 5

13:49:07 6

13:49:08 7

13:49:12 8

13:49:16 9

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13:49:52 11

13:49:57 12

13:49:59 13

13:50:02 14

13:50:04 15

13:50:05 16

13:50:06 17

13:50:08 18

13:50:37 19 A. We already discussed the
13:50:39 20 directive earlier, and the directive is
13:50:41 21 listed in Exhibit 522.

13:50:50 22 And, generally, the way it
13:50:52 23 works is that when decisions are made on
13:50:55 24 the board, regardless of whether the board
13:51:02 25 actually met in person, that responsibility

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13:51:13 2 board member then gives these directives to
13:51:16 3 his organization.

13:51:19 4 Q. So, again, in this case, it
13:51:21 5 would be Mr. Oswald, correct?

13:51:25 6 A. That's correct.

13:51:26 7 Q. And do you have any
13:51:28 8 understanding whether what was conveyed
13:51:32 9 indicated where the local environments
13:51:35 10 would go once they were removed from
13:51:38 11 TomorrowNow?

13:52:07 12 A. My understanding was that it
13:52:09 13 would then be transferred back to the
13:52:12 14 system environment of the customers.

13:52:17 15 Q. What was your understanding of
13:52:19 16 the going-forward plan to implement this
13:52:24 17 March 2005 executive board directive to
13:52:27 18 remove customer local environments from the
13:52:29 19 TomorrowNow computers?

13:52:31 20 MR. LANIER: Object. Assumes
13:52:33 21 facts not in evidence.

13:52:34 22 Go ahead.

13:53:03 23 A. My understanding was that the
13:53:07 24 management team of TomorrowNow would
13:53:09 25 immediately implement this.

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13:53:12 2 Q. Who told you that?

13:53:23 3 A. I said that that's my

13:53:24 4 understanding. I'm saying that because

13:53:29 5 board decisions are then implemented once

13:53:32 6 they have been made.

13:53:33 7 Q. Any other reason?

13:53:37 8 A. No.

13:53:40 9

13:53:45 10

13:53:58 11

13:54:01 12

13:54:06 13

13:54:07 14

13:54:09 15

13:54:13 16

13:54:17 17

13:54:35 18

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1

13:56:39 2

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13:56:53 8

Was there anybody prior to July

13:56:55 9

2007 involved in managing TomorrowNow's

13:56:58 10

operations and compliance programs?

13:57:18 11

A. If that was the case, then it

13:57:30 12

would have been from Gerd Oswald's area.

13:57:42 13

13:57:44 14

13:57:46 15

13:58:01 16

13:58:03 17

13:58:05 18

13:58:10 19

13:58:19 20

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14:17:07 2

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14:17:38 7

14:17:40 8

14:18:04 9

14:18:06 10

14:18:17 11

14:18:18 12

14:18:20 13

14:18:22 14

14:18:30 15

Q. Let's discuss the timing of the

14:18:32 16

actions referenced in this interrogatory

14:18:34 17

response.

14:18:41 18

The dates that you've seen in

14:18:42 19

this response for the actions are all

14:18:44 20

correct; is that right?

14:19:01 21

A. I can't judge that.

14:19:04 22

Q. Do you have any reason to

14:19:05 23

disagree with the dates that are in this

14:19:08 24

response from the company?

14:19:21 25

A. No, there is no reason.

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14:19:31 2 Q. So the only directive was March
14:19:33 3 of 2005, but it took until August 2007, 29
14:19:39 4 months later, for the board to reissue the
14:19:41 5 directive that the environments should be
14:19:44 6 moved off of the TomorrowNow servers,
14:19:47 7 correct?

14:20:15 8 A. Yes, that's correct.

14:20:16 9 Q. And then the customer
14:20:19 10 environments on the TomorrowNow computers
14:20:21 11 are referenced as being shut down
14:20:23 12 permanently on April 30, 2008, which is
14:20:26 13 nine months after the board issued a second
14:20:29 14 directive to get that IP off of
14:20:32 15 TomorrowNow's servers, right?

14:21:13 16 A. That's correct.

14:21:18 17 Q. And Oracle filed its lawsuit in
14:21:20 18 March of 2007. Do you recall that?

14:21:31 19 A. Yes.

14:21:32 20 Q. So it took over a year after
14:21:34 21 Oracle filed its lawsuit to remove the
14:21:38 22 customer local environments off of
14:21:39 23 TomorrowNow's computers, right?

14:21:53 24 A. That's correct.

14:21:55 25 Q. And TomorrowNow is still

1 WERNER BRANDT - HIGHLY CONFIDENTIAL

14:21:57 2 servicing its customers using these
14:22:00 3 customer local environments on its servers
14:22:03 4 after the lawsuit until they were finally
14:22:05 5 removed, correct?

14:22:11 6 A. That's correct.

14:22:26 7

14:22:31 8

14:22:34 9

14:22:36 10

14:22:53 11

14:22:53 12

14:23:06 13

14:23:09 14

14:23:18 15

14:23:20 16

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15:08:00 9

15:08:05 10

15:08:07 11

15:08:08 12

15:08:08 13

15:08:17 14

15:08:20 15

15:08:23 16 Q. Mr. White told Mr. McDermott

15:08:25 17 that he had spoken to you and told you he

15:08:27 18 would do the role.

15:08:28 19 And that was the role that we

15:08:29 20 talked about before in connection with

15:08:31 21 TomorrowNow; is that right?

15:08:47 22 A. That's correct.

15:08:49 23 Q. And he indicates that the

15:08:51 24 position would report to you. And you

15:08:53 25 explained from that point forward Mr. White

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15:08:57 2 reported to you in connection with

15:08:58 3 TomorrowNow, correct?

15:09:15 4 A. That's correct.

15:09:25 5

15:09:28 6

15:09:30 7

15:09:33 8

15:09:35 9

15:09:39 10

15:10:12 11

15:10:14 12

15:10:18 13

15:10:21 14

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15:11:06 21

15:11:08 22

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15:11:19 24

15:11:21 25

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

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

That WERNER BRANDT, 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 the 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 17th day of November 2008.



OTIS DAVIS

IN THE UNITED STATES DISTRICT COURT
FOR THE 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 PJH (EDL)
)
SAP AG, a German corporation,)
SAP AMERICA, INC., a Delaware)
corporation, TOMORROWNOW, INC.,)
a Texas corporation, and)
DOES 1-50, inclusive,)
)
Defendants)
)

VIDEOTAPED DEPOSITION OF MR. WERNER BRANDT

VOLUME III

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY

Tuesday, October 20, 2009
AT: 9:06 a.m.

Taken at:

Bingham McCutchen (London) LLP
41 Lothbury
London, EC2R 7HF
United Kingdom

Court Reporter:

JUDITH WHITE

WERNER BRANDT October 20, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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09:48:21 1

09:48:25 2

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09:49:34 16

09:49:36 17

09:49:39 18

09:49:44 19 Q. After the start of this litigation, which

09:49:46 20 was March 22nd, 2007, did you have any role with regard

09:49:52 21 to TomorrowNow?

09:50:12 22 A. Yes.

09:50:13 23 Q. What was that role?

09:50:37 24 A. Well, from the viewpoint of the executive

09:50:39 25 board, I took on responsibility for the litigation and

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09:50:43 1 all the questions concerning TomorrowNow.

09:50:48 2 Q. What was Mark White's role with respect to
09:50:50 3 TomorrowNow after this litigation began?

09:51:08 4 A. I asked him to take on the role of
09:51:10 5 president of TomorrowNow.

09:51:15 6 Q. Why?

09:51:17 7 MR. LANIER: Before you answer that,
09:51:20 8 Mr. Brandt, let me give you the following instruction:
09:51:22 9 you may answer that question as to any business or
09:51:25 10 operational considerations, but do not disclose the
09:51:28 11 contents of any communications with lawyers or any legal
09:51:32 12 advice.

09:52:23 13 THE WITNESS: The litigation with Oracle was
09:52:25 14 reason enough to establish someone as a president who
09:52:28 15 would monitor and control the business activities of
09:52:31 16 TomorrowNow.

17 BY MS. HANN:

09:52:34 18 Q. Someone from SAP?

09:52:37 19 A. Yes.

09:52:41 20 Q. With respect to your role in charge of the
09:52:44 21 litigation and all questions regarding TomorrowNow for
09:52:46 22 the executive board, did you interact with Mr. White in
09:52:49 23 his role as president of TomorrowNow?

09:53:09 24 A. Yes.

09:53:10 25 Q. In what ways?

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09:53:16 1 MR. LANIER: Mr. Brandt, before you answer
09:53:17 2 that, let me give an instruction that will apply to
09:53:19 3 questions on this topic so I don't have to keep
09:53:23 4 interrupting and repeating it: you can answer
09:53:27 5 Ms. Hann's questions about operational or business
09:53:29 6 considerations. Don't disclose in your discussions of
09:53:33 7 your interactions with Mr. White or anyone else the
09:53:35 8 contents of communications with lawyers or legal advice.

09:54:07 9 THE WITNESS: Could you please once again
09:54:09 10 repeat the question?

11 BY MS. HANN:

09:54:13 12 Q. In what ways did you interact with
09:54:16 13 Mr. White in his role as president of TomorrowNow?

09:54:35 14 A. We talked and we communicated via email.

09:54:45 15 Q. Did you have to ratify his decisions?

09:54:58 16 MR. LANIER: Calls for a legal conclusion.
09:55:00 17 Calls for speculation. Go ahead.

09:55:18 18 THE WITNESS: Well, basically, the situation
09:55:20 19 was like this: I told him what needed to be implemented
09:55:23 20 at TomorrowNow, and when he made decisions, he of course
09:55:36 21 talked to me about those decisions in order to
09:55:40 22 coordinate them.

23 BY MS. HANN:

09:55:47 24 Q. Did he seek your approval of any
09:55:49 25 decisions?

WERNER BRANDT October 20, 2009

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09:56:02 1 A. From time to time, yes.
09:56:04 2
09:56:06 3
09:56:20 4
09:56:22 5
09:56:24 6
09:56:26 7
09:56:56 8
09:56:58 9
09:57:01 10
09:57:03 11
12
09:57:09 13
09:57:11 14
09:57:21 15
09:57:45 16
09:57:47 17
09:57:53 18
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09:58:00 22
09:58:02 23
09:58:11 24
09:58:17 25

WERNER BRANDT October 20, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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14:15:16 1

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14:15:25 3

14:15:26 4

14:15:29 5

14:15:35 6

Q. At the time of the acquisition of

14:15:36 7 TomorrowNow by SAP in 2005, or shortly thereafter,

14:15:40 8 you knew that TomorrowNow had PeopleSoft and JDE

14:15:44 9 applications on its local systems; correct?

14:16:04 10

A. That is correct.

14:16:04 11

Q. At that time, the time of the acquisition

14:16:07 12 in 2005 or shortly thereafter, did you wonder if

14:16:11 13 TomorrowNow was running its copies of PeopleSoft and

14:16:15 14 JDE software in conjunction with a database of some

14:16:46 15 kind?

14:16:46 16

A. Well, it was obvious that that was the

14:16:48 17 case.

14:16:50 18

Q. Do you recall any discussions about that?

14:17:05 19

A. No, not regarding specifically that topic.

14:17:08 20

Q. I believe you previously testified in

14:17:11 21 November that in 2005 the board directed that the local

14:17:16 22 copies of Oracle software be removed from TomorrowNow's

14:17:20 23 systems; is that correct?

14:17:46 24

A. That is correct, and that's also what we

14:17:47 25 discussed at this deposition.

14:17:51 1 Q. Yes. I wish to direct you at this time
14:17:54 2 just to the 2005 instructions, rather than the 2007
14:17:58 3 instructions. Did this first set of instructions in
14:18:01 4 2005 also apply to copies of Oracle's database software?

14:18:32 5 A. I don't remember that.

14:18:33 6 Q. Should it have? I'm sorry, were you still
14:18:39 7 speaking?

14:18:40 8 A. I was finished.

14:18:41 9 Q. Should it have applied to Oracle's
14:18:43 10 database software?

14:18:44 11 MR. LANIER: Object. Calls for a legal
14:18:45 12 conclusion.

14:18:58 13 THE WITNESS: Fundamentally speaking, yes.

14 BY MS. HANN:

14:19:00 15 Q. And there was no reason that SAP would
14:19:01 16 have treated Oracle's database software differently from
14:19:04 17 its application software for the purposes of these
14:19:07 18 instructions?

14:19:34 19 A. If what applies to application software
14:19:37 20 also applies to database software, then yes.

14:19:41 21

14:19:42 22

14:19:46 23

14:19:49 24

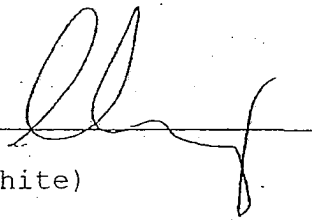
14:19:52 25

REPORTER'S CERTIFICATE

I, Judith White, of Merrill Legal Solutions Pty Limited, do hereby certify that the foregoing testimony was recorded by me stenographically and thereafter transcribed by me, and that the foregoing transcript constitutes a full, true and accurate record of said examination of and testimony given by said witness, and of all other proceedings had during the taking of said deposition, and of the whole thereof, to the best of my ability.

I further certify that I am not a relative, employee or counsel of any of the parties of 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



(Judith White)

Dated

10/26/09

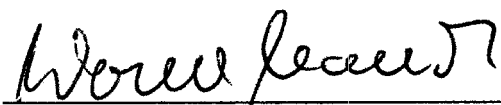
Corrections to the Transcript of the Deposition of

Werner Brandt

Taken on November 12, 2008

Volume 1, pages 1 - 223

Page	Line(s)	Reads	Should Read
14	12	Ea langen	Erlangen
16	13	Aufsichstrat	Aufsichtsrat
22	20	SEC 20(f)	SEC 20-F
22	22	CCO	CEO
30	5	Muckich	Mucic
41	24	Hammond	Haarmann
41	24	Gaerhart Meier	Gerhard Maier
65	3 and 4	a residual variable,	the residual,
65	7	part	portion
65	8 to 10	delete "distributed... include IP"	allocated to the individually identifiable tangible and intangible net assets including IP
75	25	Adam	Arlen
82	23	board	executive board
84	21	board	executive board
109	19	supported	support at
121	6	board	executive board
126	6 and 13	board	executive board
129	5 and 6		
132	15		
133	13, 16 and 18		
152	20	awhile	a while
193	9 and 12	board	executive board



Witness Signature

12/12/2008

Date

Corrections to the Transcript of the Deposition of

Werner Brandt

Taken on November 13, 2008

Volume 2, pages 224 - 437

Page	Line(s)	Reads	Should Read
238	6	gross	growth
244	22	on on	on
254	7	board	executive board
259	20	board	executive board
261	18	board	executive board
264	7	board	executive board
272	12	board	executive board
281	6	board	executive board
282	7 and 16, 20	board	executive board
291	4 and 5	board	executive board
291	14	processors	processes
301	19	employee	employees
315	17 - 20	, that employees...	delete sentence after , that employees...
332	20	a board	an executive board
335	18	board	executive board
345	4	board	executive board
349	24	board	executive board
350	2	board	executive board
351	5 and 12	board	executive board
357	15	board	executive board
358	6	meetings meetings	meetings
361	25	board	executive board
362	6	board	executive board

Werner Brandt

Witness Signature

12/12/2008

Date

Corrections to the Transcript of the Deposition of

Werner Brandt

Taken on November 13, 2008

Volume 2, pages 224 - 437

Page	Line(s)	Reads	Should Read
375	12	board	executive board
378	15	extreme	stream
385	10	are my Mark	are Mark's
387	6	board	executive board
396	16	MR. BRANDT	MR. LANIER
397	21	board	executive board
424	20	wine down	wind down

Werner Brandt

Witness Signature

12 / 12 / 2008

Date

Merrill Legal Solutions



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To assist you in making changes and /or corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

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Please do not make any changes and /or corrections on the face of the transcript.

Please do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated "Signature" line and return the Errata sheets to Merrill Legal Solutions at 135 Main Street, 4th Floor, San Francisco, CA 94105 or fax them to (415) 357.4301.

Errata sheet

Page Line

448 21

Change: a proposal for

Reason: translation

451 17

Change: decision proposal for

Reason: translation

452 11

Change: of the proposal to

Reason: translation

Page Line

498 19

Change: we did have to offer

Reason: grammar

508 18

Change: approve that

Reason: grammar

Change: _____

Reason: _____

Change: _____

Reason: _____

Change: _____

Reason: _____

Change: _____

Reason: _____

Change: _____

Reason: _____

X Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.

Wesley Levent
(signature)

11.11.09
(date)