

EXHIBIT J

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.)

No. 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.)

VIDEOTAPED DEPOSITION OF
CHRISTOPHER FAYE

WEDNESDAY, OCTOBER 22, 2008

HIGHLY CONFIDENTIAL

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-413165)

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Q. What were -- when you first came over to
SAP, what was your job?

A. When I first came over to SAP, I think the
title was Senior IP Attorney, something like that.

We -- there were only a few of us, so I had
a small patent docket, I provided transaction

09:20:06 1 advice, general IP counseling.

09:20:12 2 Q. To whom did you report?

09:20:15 3 A. Wayne Jones.

09:20:18 4 Q. Who is he?

09:20:18 5 A. He was our chief IP officer.

09:20:22 6 Q. And how long did you hold that position?

09:20:26 7 A. I think technically, until about a couple

09:20:29 8 of years ago. 2 years or 3 years now. 2 years, I

09:20:33 9 think.

09:20:34 10 Q. So 2004?

09:20:36 11 A. Yeah.

09:20:37 12 Q. What was your next position?

09:20:39 13 A. Director of IP Transactions.

09:20:47 14 Q. How did your role change?

09:20:52 15 A. I stopped having a patent docket; I started

09:20:57 16 managing a couple of attorneys. That's the primary

09:21:07 17 change.

09:21:07 18 Q. What were your duties?

09:21:09 19 A. The duties that were left over. The

09:21:10 20 transactions, of course, and the IP counseling.

09:21:17 21 Q. Anything else?

09:21:20 22 A. Well, we've got a couple major headings

09:21:23 23 which kind of fall under either of those two main

09:21:26 24 buckets. But open source policy, our NDA process,

09:21:37 25 M&A due diligence. Yeah, just a lot of counseling,

09:21:46 1 and then that -- that means a number of things fall

09:21:48 2 underneath.

09:21:49 3 Q. Is that your current position?

09:21:50 4 A. Yes.

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Q. Do you remember the board issued a
directive regarding TomorrowNow's use of Oracle
software?

A. Yes.

Q. Did you talk to any board members about

09:35:54 1 that directive?

09:35:57 2 A. Yes.

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Q. Okay. You were the primary legal adviser to TomorrowNow from the date SAP acquired it until the date of the litigation. Is that correct?

A. Yes, although there was another attorney, I can't remember her name, that supported them on sales. I can't remember her name.

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Q. Was the board's directive that you
delivered to the Nelsons to change the location of
the software at TomorrowNow?

A. Yes.

11:13:31 1 Q. And was that directive supposed to stop
11:13:37 2 TomorrowNow's practice of putting replicas of
11:13:41 3 customer system landscapes on their servers?

11:13:45 4 MR. LANIER: There's ambiguity in the
11:13:45 5 question, so let me give you this instruction:

11:13:48 6 You should not disclose what you understood
11:13:51 7 to be the board's motivations or the legal analysis
11:13:53 8 leading up to the directive. But your understanding
11:13:55 9 of the directive itself, you can answer the question
11:13:57 10 from that perspective, what the directive was.

11:14:03 11 THE WITNESS: So the directive was to move
11:14:09 12 the software off of TomorrowNow's servers.

11:14:18 13 MR. PICKETT: Q. And you would check from
11:14:19 14 time to time to see whether that had happened.
11:14:21 15 Correct?

11:14:21 16 A. Yes.

11:14:22 17 Q. And each time you checked, you learned that
11:14:25 18 it had not happened. Correct?

11:14:30 19 MR. LANIER: Let me think for a second.

11:14:33 20 I think the way that question is phrased,
11:14:36 21 I've got to instruct you not to answer that one.
11:14:38 22 You're inquiring into the substance of a particular
11:14:41 23 communication, and you've already got to the
11:14:44 24 underlying facts anyway.

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11:41:40 10 Q. You've given me some testimony about the
11:41:43 11 board directive to move location of the software. I
11:41:57 12 just want to introduce the topic.

11:41:59 13 A. Yes.

11:41:59 14 Q. Do you understand the topic? And you've
11:42:01 15 told me that happened sometime in January, perhaps
11:42:06 16 into February?

11:42:07 17 A. Yes. I don't remember exactly when.

11:42:10 18 Q. Do you know if there were both business and
11:42:14 19 legal reasons for that? I don't want to know what
11:42:17 20 the reasons are now. I just want to know whether
11:42:19 21 there are both or whether it's one or the other.

11:42:32 22 A. I believe it's only one.

11:42:34 23 Q. Which one?

11:42:35 24 A. Legal.

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Q. Were you aware that business people within

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SAP had concluded prior to the acquisition that the

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form of delivery of regulatory updates may be

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subject to Oracle challenge?

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A. Again, you're asking on their own and

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without legal advice?

11:57:01 19

Q. Correct.

11:57:02 20

A. No, I wasn't aware of that.

11:57:03 21

Q. Were you aware that that -- that the

11:57:05 22

business people had concluded that with legal

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advice?

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MR. LANIER: Now, there I instruct you not

11:57:11 25

to answer that.

11:57:15 1 MR. PICKETT: Q. And I assume the same
11:57:16 2 instruction for each of those topics?
11:57:19 3 MR. LANIER: Yes.
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MR. PICKETT: Q. Did you ever give legal

13:03:52 1 advice on the topic of developing customer fixes
13:03:56 2 individually in their own environment?
13:03:59 3 MR. LANIER: You can answer that yes or no.
13:04:01 4 THE WITNESS: Yes.
13:04:02 5 MR. PICKETT: Q. To whom?
13:04:07 6 A. To at least Greg Nelson.
13:04:10 7 Q. Did you ever ascertain whether TomorrowNow
13:04:12 8 complied with that advice?
13:04:15 9 MR. LANIER: You can answer that yes or no.
13:04:18 10 THE WITNESS: Yes.
13:04:19 11 MR. PICKETT: Q. Did they comply?
13:04:20 12 MR. LANIER: I instruct you not to answer
13:04:22 13 that question.
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14:01:39 15 Q. The next topic is downloads.

14:01:42 16 Did you discuss downloads with Mr. Nelson?

14:01:44 17 A. Yes.

14:01:44 18 Q. Was that a conversation separate from your

14:01:48 19 conversations about compliance with the board

14:01:50 20 directive?

14:01:59 21 A. Yes.

14:02:00 22 Q. What was the general subject matter of

14:02:02 23 those conversations?

14:02:04 24 MR. LANIER: If you want any more detail

14:02:08 25 than the topic of downloads, I instruct him not to

14:02:11 1 answer.

14:02:13 2 MR. PICKETT: Q. Was it a legal

14:02:14 3 discussion?

14:02:15 4 A. Yes.

14:02:16 5 Q. And so you were giving him advice about

14:02:19 6 whether a true downloading practice was legal or

14:02:22 7 not?

14:02:23 8 MR. LANIER: It's too specific. I instruct

14:02:24 9 you not to answer that.

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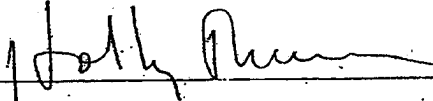
CERTIFICATE OF REPORTER

I, HOLLY THUMAN, 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 down 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 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 October 24, 2008


HOLLY THUMAN, CSR No. 6834