

# EXHIBIT K

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. )

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"HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"  
ORAL VIDEOTAPED DEPOSITION OF  
THOMAS ZIEMEN  
September 30, 2008 - Volume 1  
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ORAL VIDEOTAPED DEPOSITION OF THOMAS ZIEMEN, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on Tuesday, September 30, 2008 - Volume 1, from 8:45 a.m. to 6:24 p.m., before JAMES M. PLAIR, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of JONES DAY, 717 Texas, Suite 3300, Houston, Texas 77002-2712, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 1603-88906

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Q. Do you remember prior to this meeting if you had

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had any other discussions about the demo environments

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usage by TomorrowNow prior to that meeting? We talked

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about the e-mail from Mr. Zepecki. We've talked about the

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business case which references the demo environments.

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Between the business case which was -- you

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received on January 7th, 2005, and this meeting on

02:16 1 January 25th and 26th, 2005, what, if anything, more had  
02:16 2 you learned about the TomorrowNow business delivery model,  
02:16 3 service delivery model?

02:16 4 A. What do you mean by "learned"?

02:16 5 Q. Learned, as in found out about, explored, were  
02:16 6 told about.

02:16 7 A. The topic was mentioned in one conference call,  
02:16 8 I recall.

02:17 9 Q. And when was that conference call?

02:17 10 A. I can't recall the exact date.

02:17 11 Q. But it was after the business case and before  
02:17 12 the visit to Bryan, Texas. Is that correct?

02:17 13 A. I can't recall.

02:17 14 Q. Who was on the conference call?

02:17 15 A. Werner Brandt.

02:17 16 Q. Who else?

02:17 17 A. Gerd Oswald.

02:17 18 Q. Anybody else?

02:17 19 A. Christian Walter, and I just recall  
02:17 20 representatives from the SAP IP department.

02:18 21 Q. Do you remember who they were?

02:18 22 A. I can't recall the name.

02:18 23 Q. And what was the purpose of this call? What was  
02:18 24 discussed?

02:18 25 MR. COWAN: Objection to the extent it

02:18 1 invades the attorney-client and attorney work product  
02:18 2 privileges. Mr. --

02:18 3 MS. HOUSE: He hasn't named any attorneys.

02:18 4 MR. COWAN: He said the IP -- the global IP  
02:18 5 department's made up of lawyers. To the extent you can  
02:18 6 answer her question without revealing any content of any  
02:18 7 communications involving SAP's lawyers, you may do so. If  
02:18 8 in answering her question it calls for revealing any  
02:18 9 communications you've had with SAP's attorneys regarding  
02:18 10 any of those matters, I on behalf of the company request  
02:18 11 that you not disclose that information.

02:18 12 A. Not as I've been involved.

02:18 13 Q. (MS. HOUSE) That's not the question, though.  
02:18 14 This is a conference call.

02:18 15 MR. COWAN: You asked what was discussed on  
02:18 16 the call.

02:18 17 MS. HOUSE: I am and I'm trying to  
02:18 18 establish why this is an amazing objection.

02:19 19 Q. (MS. HOUSE) Was there a lawyer on this call,  
02:19 20 sir?

02:19 21 A. Yes.

02:19 22 Q. Who was on the call?

02:19 23 A. Michael Yeoman[phonetic].

02:19 24 Q. And he was on the entire call?

02:19 25 A. Yes.

02:19 1 Q. And were -- was he providing legal advice or was  
02:19 2 this discussion with the IP department related to --

02:19 3 A. Legal advice was discussed.

02:19 4 Q. Were there any facts that were not related to  
02:19 5 legal advice discussed with the IP department?

02:19 6 A. I don't recall.

02:19 7 MS. HOUSE: I just think you may want to  
02:19 8 reconsider whether you want me to inquire into this  
02:19 9 because we will have to make a motion and we'll have to  
02:19 10 get him back, but that's your choice. You can think about  
02:19 11 it later.

02:19 12 MR. COWAN: My instruction remains the  
02:19 13 same. Mr. Ziemen, if you can answer Mrs. House's  
02:20 14 questions --

02:20 15 MS. HOUSE: I'm not a Mrs.

02:20 16 MR. COWAN: -- Ms. House's questions  
02:20 17 without revealing any communications that you had with any  
02:20 18 SAP lawyer, you may do so, if -- if you can. If you  
02:20 19 cannot answer her question without revealing  
02:20 20 communications you had with SAP's lawyers, on behalf of  
02:20 21 the company I request that you do not do so.

02:20 22 A. I was just in the listening mode. I wasn't  
02:20 23 participating in the call actively.

02:20 24 Q. (MS. HOUSE) And the call -- what was being  
02:20 25 discussed?

02:20 1                                      MR. COWAN: The same objection, the same  
02:20 2 instruction.

02:20 3                      A. It was an update call on the -- from the due  
02:20 4 diligence team of TomorrowNow.

02:20 5                      Q.. (MS. HOUSE) And it was concerning the issues  
02:20 6 around the service Method of Delivery of TomorrowNow?

02:20 7                                      MR. COWAN: Same objection and the same  
02:21 8 instruction.

02:21 9                      A. (No verbal response).

02:21 10                      Q. (MS. HOUSE) Did anybody relay that they had done  
02:21 11 an investigation as to how exactly TomorrowNow delivered  
02:21 12 service?

02:21 13                                      MR. COWAN: Same objection, same  
02:21 14 instruction.

02:21 15                                      MS. HOUSE: That's a fact. That's not  
02:21 16 legal advice.

02:21 17                                      MR. COWAN: If the facts -- if the  
02:21 18 content --

02:21 19                                      MS. HOUSE: That's not a -- that's not  
02:21 20 legal advice.

02:21 21                                      MR. COWAN: Holly, I'm not going to get  
02:21 22 into a discussion in this deposition on how the legal  
02:21 23 privileges apply. I'll make my objections and I'll  
02:21 24 instruct the witness and you can ask your question.

02:21 25                      Q. (MS. HOUSE) My question remains the same. Had

02:21 1 anybody indicated in this call any investigation as to how  
02:21 2 TomorrowNow delivered service?

02:21 3 MR. COWAN: That's a yes-or-no question.

02:21 4 You can answer.

02:21 5 A. Yes.

02:21 6 Q. (MS. HOUSE) And you had that information as you  
02:21 7 went into your meetings with TomorrowNow later in the  
02:21 8 month. Correct?

02:21 9 A. I don't recall the date of this conference call.

02:22 10 Q. And what exactly was told or what was said about  
02:22 11 how TomorrowNow delivered service in this call?

02:22 12 MR. COWAN: Same objection, same  
02:22 13 instruction, and let me restate it to be clear,  
02:22 14 Mr. Ziemen.

02:22 15 The objection is based on the extent the  
02:22 16 question invades attorney-client and attorney work product  
02:22 17 privileges. If you can answer Mrs. House's question --  
02:22 18 Ms. House's question without revealing anything that was  
02:22 19 communicated to the lawyers for the purposes of obtaining  
02:22 20 legal advice or given by the lawyers in giving that  
02:22 21 advice, you may do so. If you can't, on behalf of the  
02:22 22 company I would request that you not disclose that  
02:22 23 information.

02:22 24 Q. (BY MS. HOUSE) This is a fact. This is a  
02:22 25 simple fact, "yes" or "no." What was discussed in terms



02:23 1 of how TomorrowNow delivered service?

02:23 2 MR. COWAN: Same objection, same

02:23 3 instruction, because that was not a yes-or-no question.

02:23 4 A. I can't answer that.

02:23 5 Q. (MS. HOUSE) So there was discussion about how

02:23 6 TomorrowNow delivered service, but you're not answering

02:23 7 it. Is that -- is that my understanding?

02:23 8 A. Yes.

02:23 9 Q. Coming out of this -- how long was this

02:23 10 conference call?

02:23 11 A. I can't recall.

02:23 12 Q. Was it over an hour?

02:23 13 A. I'm not sure, but I don't think so.

02:23 14 Q. And were there technical individuals involved in

02:23 15 terms of individuals who -- who were discussing this

02:23 16 technical specificity of how TomorrowNow was providing?

02:24 17 A. Not to my knowledge.

02:24 18 Q. So who from the SAP IP department when you

02:24 19 reference that? Is that only a lawyer or is that somebody

02:24 20 else that you're thinking of?

02:24 21 A. I can't recall the names.

02:24 22 Q. And when you say "IP", do you mean intellectual

02:24 23 property?

02:24 24 A. That's correct.

02:24 25 Q. Was anybody from TomorrowNow on the call?

02:24 1 A. No.

02:24 2 Q. And what was -- what was the end result coming  
02:24 3 out of the call? What was supposed to happen next in  
02:24 4 connection with the IP issues being discussed?

02:24 5 MR. COWAN: Same objection, same  
02:24 6 instruction.

02:24 7 Q. What was supposed to happen next?

02:24 8 MR. COWAN: Same objection, same  
02:24 9 instruction.

02:24 10 Q. You can't answer?

02:24 11 A. I can't answer.

02:25 12 MR. COWAN: Are you answering because you  
02:25 13 don't know or because of my instruction?

02:25 14 THE WITNESS: Because of the instruction.

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1 STATE OF TEXAS  
2 COUNTY OF HARRIS

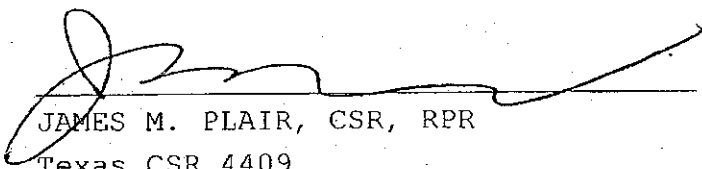
3 I, JAMES M. PLAIR, a Certified Shorthand Reporter in  
4 and for the State of Texas, do hereby certify that this  
5 deposition transcript is a true record of the testimony  
6 given by the witness named herein, after said witness was  
7 duly sworn by me. The witness was requested to review the  
8 deposition.

9 I further certify that I am neither attorney nor  
10 counsel for, nor related to or employed by, any of the  
11 parties to the action in which this deposition is taken;  
12 and, further, that I am not a relative or employee of any  
13 attorney or counsel employed by the parties hereto or  
14 financially interested in the action.

15 I further certify that the amount of time used by  
16 each counsel at the time of the deposition is as follows:

17 Ms. Holly House -(08:10:54)  
18 Attorney for PLAINTIFFS  
19 Mr. Scott W. Cowan -(00:00:00)  
20 Attorney for DEFENDANTS

21 GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the  
22 7th day of October, A.D., 2008.

23   
24 JAMES M. PLAIR, CSR, RPR  
25 Texas CSR 4409

Expiration: 12/31/2009  
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