

# **EXHIBIT E**

WERNER BRANDT - HIGHLY CONFIDENTIAL  
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. )

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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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08:52:02 2

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08:52:12 6 Q. Let's look at some of the  
08:52:13 7 specifics. If you turn to the second page,

08:52:16 8 2184, this is titled "Litigation by

08:52:21 9 Oracle." It goes on to say, quote:

08:52:23 10 Condition: Oracle may claim that

08:52:25 11 TomorrowNow's support service provision to

08:52:29 12 its customers breaches intellectual

08:52:32 13 property rights of Oracle/PeopleSoft.

08:52:38 14 Consequence: A successful claim in this

08:52:40 15 regard could expose SAP to liabilities and

08:52:43 16 brand damage; even an unsuccessful claim

08:52:47 17 could result in significant defense cost."

08:52:50 18 Then the document goes on to say "Comment:

08:52:53 19 Risk identified and analyzed by Arlen

08:52:57 20 Shenkman. Primary Analysis Comment," and

08:53:01 21 then he says, "Given the increased

08:53:02 22 competition between Oracle/PeopleSoft and

08:53:05 23 SAP, the initiation of a corresponding

08:53:08 24 litigation claim by Oracle cannot be ruled

08:53:11 25 out. Nevertheless, SAP has carefully

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08:53:15 2 analyzed TomorrowNow's support model and is  
08:53:18 3 convinced that it does not interfere with  
08:53:20 4 third-party intellectual property rights,  
08:53:22 5 and thus the likelihood of a successful  
08:53:25 6 claim is considered remote at this time."

08:53:28 7 Could you explain to me what  
08:53:30 8 was the careful analysis that he  
08:53:31 9 references?

08:53:43 10 MR. LANIER: Mr. Brandt, I just  
08:53:44 11 caution you, Ms. House's question asks  
08:53:47 12 for the analysis of Mr. Shenkman or  
08:53:49 13 the analysis he referenced. You may  
08:53:51 14 disclose that, but don't disclose the  
08:53:53 15 analysis of the lawyers.

08:53:55 16 Q. If you know.

08:53:56 17 MR. LANIER: Obviously, if you  
08:53:57 18 don't know the answer to the question,  
08:53:58 19 you can't answer it, but don't  
08:54:00 20 disclose the analysis of any lawyers.

08:54:01 21 Go ahead.

08:54:09 22 A. According to my understanding,  
08:54:13 23 he refers to the activities that were  
08:54:14 24 undertaken in the course of due diligence.

08:54:17 25 Q. And that's the due diligence

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08:54:19 2 that occurred in the time frame between the  
08:54:21 3 approval of the letter of intent and the  
08:54:24 4 closing of the deal; is that correct?

08:54:37 5 A. Yes.

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

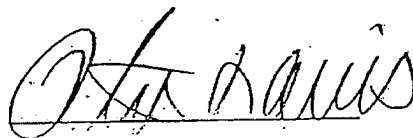
COUNTY OF NEW YORK )

I, 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