

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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ORACLE CORPORATION, a Delaware
Corporation; ORACLE, USA, INC.,
a Colorado Corporation, and
ORACLE INTERNATIONAL CORPORATION,
a California Corporation,

Plaintiffs,

Vs.

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.

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VIDEOTAPED DEPOSITION OF
PAUL PINTO

Wednesday, May 19, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Reported By: WENDY E. ARLEN, CSR #4355, CRR, RMR
Job 427372

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	<p>1 Q. You said you ignored the database. Was that 2 your decision to ignore it or someone else's? 3 A. The decision was made with counsel that I 4 should focus on a conservative subset of the software 09:33 5 that was taken, one that I could analyze and 6 validate, and in doing so it was determined that 7 those four product suites would be the best 8 representative proxy. 9 Q. Representative proxy of what, sir? 09:34 10 A. Of what was taken. 11 Q. And what was your understanding -- I'm sorry. 12 You decided that it would be a conservative subset. 13 Was that your conclusion that it would be 14 conservative or someone else's? 09:34 15 A. It was Bingham's in conjunction with me to 16 determine that those four products would serve as an 17 appropriate proxy. We also determined that in order 18 to maintain a conservative posture that we would not 19 include the database in my analysis. 09:34 20 Q. Why do you want to maintain a conservative 21 posture? 22 A. For some of the exact reasons that you had 23 cited. 24 Q. Which were? 09:35 25 A. It is unknown to me what was taken, what was</p>
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<p>09:32 9 Q. Why did you choose those particular four 10 suites to analyze then? 11 A. In discussions with counsel, we determined 12 that an appropriate subset for my analysis would be 13 the four suite -- four product suites that I 14 analyzed. In doing so, I ignored the database as 09:33 15 being another object to analyze, so intentionally 16 subsetted the products that were reported to have 17 been taken, downloaded, retrofitted. 18 Q. And when you use the word -- you said theft 19 before. I think was a word you used. That's what 09:33 20 you used to mean downloaded and retrofitted by 21 TomorrowNow, that activity? 22 A. Taken, downloaded, copied. 23 Q. Taken is, in your view, downloaded, copied 24 and retrofitted? 09:33 25 A. Yes.</p>	<p>1 downloaded. While it was presented that vast 2 quantities of software and multiple versions of 3 software were taken, it made sense to assume a 4 conservative posture, and in doing so I further 09:35 5 subsetted my analysis to simply focus on the then 6 most current versions of the products. 7 Q. So your understanding was that your 8 conservative position you took was a subset of the 9 materials that TN -- that TomorrowNow was actually 09:35 10 accused of downloading and copying, right? 11 A. I'll restate it in my terms. 12 Q. Sure. 13 A. My understanding was that the four products 14 that were selected represented a subset. It excluded 09:36 15 the database, which was a big portion of the value. 16 I further subsetted from those products to just focus 17 on the then most current version for my analysis. 18 Q. Okay. 19 A. Which again reemphasized the conservative 09:36 20 nature of my analysis.</p>

<p>Page 98</p>	<p>Page 100</p> <p>4 Q. You said you're a big fan of function point 11:12 5 analysis. How many times have you used function 6 point analysis in the past? 7 A. In the method that I've used here? 8 Q. Yes. 9 A. At least 50 times. 11:12 10 Q. Okay. All of those at Sylvan VI or even 11 previously? 12 A. No, previously. 13 Q. Some previous to that, too. 14 A. Yes. So in my previous positions since 2000. 11:12 15 So my five years at NIIT, my two years at Epicor, my 16 one year at Infor, my last one year at Sylvan VI. 17 Q. So in total NIIT, Epicor, Infor, Sylvan about 18 50 times or so. 19 A. Yes. 11:13 20 Q. And that's using the method that you used in 21 your report? 22 A. Yes.</p>
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6 Q. MR. BUTLER: Okay. Do you know what IFPUG
7 is?

8 A. The International Function Point User Group.

9 Q. Are you a member?

11:15 10 A. I am a member.

11 Q. When did you become a member?

12 A. Recently.

13 Q. April 22nd?

14 A. That sounds correct.

11:15 15 Q. You were not a member at the time you wrote
16 your report.

17 A. Correct.

18 Q. Okay. Why did you join recently?

11:15 19 A. In -- well, two reasons. One, in exercising
20 an abundance of caution, I joined IFPUG, but more so
21 so I could research some of the claims by Mr. Garmus.

27 (Pages 102 to 105)

<p>Page 110</p>	<p>Page 112</p> <p>24 Q. Okay. And why did you think that the 81 or 11:25 25 so companies that were used to calibrate the 1997</p>
<p>Page 111</p>	<p>Page 113</p> <p>1 model would give a more appropriate real world answer 2 than the 161 data points that were used to calibrate 3 the 2000 model? 4 MS. HOUSE: Objection, vague. 11:25 5 THE WITNESS: Again, my election to use '97 6 was based on my experience with the model which I 7 have over 50 data points of my own use, proven in the 8 real world, and this is a very relevant point, where 9 when I've conducted the estimate and have won the 11:26 10 client's business, it's then on me to deliver against 11 those estimates, and I am monitored and tracked 12 against them. 13 So I go with the model that I know works and 14 that has been proven to me in the past in the exact 11:26 15 same scenario where estimating an existing code base 16 for a commercial software provider.</p>

Page 122	Page 124
Page 123	Page 125 11:41 10 Q. Okay. But you don't know one way or the 11 other whether that includes all of the software in 12 the four suites or some subset of that. 13 A. Again, represented to me in my understanding 14 that there was vast quantities of copying that 11:41 15 occurred -- 16 Q. I didn't ask you that. 17 A. -- that spanned the products. 18 MS. HOUSE: Let him finish. Do not interrupt 19 his answer. 11:41 20 Q. MR. BUTLER: I didn't ask you that, 21 Mr. Pinto. Please answer my question. 22 You don't know one way or the other whether 23 the vast quantities, to use your term -- although I 24 don't know what you mean by that, maybe I'll ask you 11:41 25 to clarify that -- but you don't know one way or the

<p style="text-align: right;">Page 126</p> <p>1 other whether the software that you think was 2 represented -- that was represented to you as being 3 downloaded, et cetera, is the entirety of the four 4 suites or some subset of that, right? 5 A. No, what's relevant in my analysis is that 6 I've taken a conservative estimate, I've excluded the 7 database, I've taken the then most current versions 8 to serve as a proxy. So I've ignored the costs 9 associated with all other prior versions, 10 enhancements, patches, I've ignored the costs 11 associated with derivative works, I've ignored costs 12 associated with capital outlays, I've ignored costs 13 associated with travel, I have ignored costs 14 associated with risk that one would endure, I've 15 ignored the value associated with gaining instant 16 access to the products to maintain a conservative 17 posture, and in doing so I've assessed the value 18 associated with the four then most current suites.</p>	<p style="text-align: right;">Page 128</p>
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CERTIFICATE OF REPORTER

I, WENDY E. ARLEN, 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 ~~cause~~ and that I am not related to any of the parties hereto.

DATED: May 25, 2010

Wendy E Arlen

WENDY E. ARLEN CSR, No. 4355