

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.

_____ /

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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	14 How many times have you used COCOMO, any 15 model of it, to estimate software size or cost? 16 A. At least 50 times. 17 Q. And at NIIT and the other employers and at 18 Sylvan just like the list of function point? 19 A. Correct. So since -- since 2001. 20 Q. Since 2001. 21 A. Yes. 22 Q. About 50 times, okay? 23 A. No, at least 50 times. 24 Q. I beg your pardon. At least 50 times. And 25 when you ran the COCOMO model -- I'm sorry. You said

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<p>1 since 2001? 2 A. Yes. 3 Q. Is that right? In the at least 50 times that 4 you've run or analyzed software development using the 11:22 5 COCOMO model, have you always used COCOMO II or have 6 you used some other version of COCOMO? 7 A. No, COCOMO II. 8 Q. Okay. Never any predecessor to COCOMO II? 9 A. Well, COCOMO II includes a number of things 11:22 10 but -- 11 Q. Right. 12 A. No, I had not used the predecessor to COCOMO 13 II. 14 Q. Okay. And in analyzing the software using 11:22 15 the COCOMO model, have you consistently used COCOMO 16 II 1997? 17 MS. HOUSE: Asked and answered. You can 18 answer it again. 19 THE WITNESS: I've used COCOMO II '97, I've 11:22 20 also used COCOMO II 2000.</p>	<p>11:24 8 answered. Why was COCOMO II 1997 better calibrated 9 for this project, do you think? 11:24 10 A. So based on my experience in using both 11 models, I found '97 to produce a more accurate 12 estimation when coupled with backfiring. And that's 13 my experience in using the model again since 2001. 14 Q. How many data points were used in the 15 calibration of the COCOMO II 1997 model? 16 A. It's my understanding that I believe it was 17 81. 18 Q. And how many data points do you believe were 19 used in the -- in the calibration of the COCOMO II 11:25 20 2000 model? Do you know offhand without looking that 21 up? 22 A. I didn't understand this to be a memory test, 23 but it's either 161 or 163. 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>
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<p>11:23 11:23 11:23 11:23 11:23</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. 17 Q. MR. BUTLER: Okay. Are you aware of any 18 publication that supports your -- your own views and 19 findings that the COCOMO II 1997 model is a better 11:26 20 model when -- when backfiring is used? 21 A. What I am aware of is that in the COCOMO 22 manual, you know, you clearly have the ability to 23 calibrate the model as you see fit in order to match 24 the environment in question. It's also understood 11:27 25 that any of these models needs to be backward</p>

<p style="text-align: right;">Page 114</p> <p>1 compatible. 2 The '97 model is the parent model to the 2000 3 model. Just because the 2000 model is newer doesn't 4 warrant my migration from the '97 model when I have 11:27 5 many cases of where I've used it and it's been proven 6 to estimate accurately.</p> <p>11:27</p> <p>11:27</p> <p>11:28</p> <p>11:28</p>	<p style="text-align: right;">Page 116</p> <p>11:30</p> <p>11:30</p> <p>11:30</p> <p>11:30</p> <p>11:31</p>
<p style="text-align: right;">Page 115</p> <p>11:28</p> <p>11:28</p> <p>11:29</p> <p>11:29</p> <p>11:29</p>	<p style="text-align: right;">Page 117</p> <p>11:31</p> <p>11:31</p> <p>11:31</p> <p>11:32</p> <p>11:32</p>

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16:37		16:40	1 Q. Right. 2 A. In doing so, in the first scenario, he ran 3 his purported replica code counter against the USC 4 code counter for a sampling of C code, 58,739 5 physical lines that were part of a flight simulator 6 program called Flight Gear; and as a result of that 7 test, the purported replica code count utility 8 identified 30,215 logical source lines of code, while 9 the USC code counting utility identified 27,585 10 logical lines of code. And Mr. Reifer acknowledged 11 that variance as being a nine and a half percent 12 difference. 13 Q. Okay. 14 A. In his second scenario, he ran the purported 15 replica of my code counter against a hand-selected 16 set of five programs, three C programs and two Java 17 programs, and in doing that it ended up being 935 18 lines of code across five programs. The USC code 19 counter counted 564 lines, and the purported replica 20 of mine counted 623 lines, which he reported as 21 another nine and a half percent variance. But -- but 22 in doing so, he switched what he acknowledged as the 23 denominator in the equation. 24 So Table 2 -- I'm sorry, in the Flight Gear 25 one, depending on which way you want to go. The
16:37		16:41	
16:37		16:41	
16:38		16:41	
16:38	24 Q. Okay. Let's turn to the documents that 25 you -- that your counsel -- that counsel for Oracle	16:41	25
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16:39	1 provided to us earlier this week, please. And I have 2 some specific questions about those without varying 3 my comments and observations made at the beginning of 4 this deposition about the timing issues and so on. 5 A. Very good. 6 Q. The Table 2 -- if you look at 108, and as a 7 matter of fact, specifically you can either look into 8 that book in front of you, Mr. Pinto, if you like or 9 also at Exhibit 2052. 10 A. I'm okay with looking at it in the book. 11 Q. Table 2. What -- where were those -- from 12 where were those numbers retrieved? 13 A. So if you go to the notes on Donald Reifer. 14 Q. Reifer. 15 A. Reifer. Thank you. Mr. Reifer, I'll get it 16 right eventually. 17 MR. REIFER: You have an hour. 18 THE WITNESS: I'll see what I can do. 19 Q. MR. BUTLER: All right. 20 A. If you go to on the first page number 3 where 21 I talk about counting the source lines of code. So 22 Mr. Reifer in his rebuttal report, he ran some 23 analysis on a replica of my code counter as compared 24 to the USC code counter, and he reported his 25 findings.	16:42	1 Flight Gear was actually an 8.7 percent variance. 2 The second one, the five hand-selected C programs, 3 was a nine and a half percent variance. 4 And then he ran a third test of the purported 5 replica of my code counter where he ran it on a hand 6 sampling of JD Edwards EnterpriseOne programs, 1,564 7 programs and as a result, Mr. Reifer reported that my 8 purported replica code counter identified 1,090,825 9 logical lines of code, while the USC code counter 10 identified 932,311, for a 14.5 percent variance. So 11 Table 2, to answer your question, is the corrected 12 math. 13 Q. Oh, okay. Thank you. 14 A. I had a point. 15 Q. All right. Thank you. The corrected -- you 16 were correcting Mr. Reifer's math. 17 A. That's correct. 18 Q. Table 3, and if you could help me, Mr. Pinto, 19 by moving through these quickly. If you need to 20 explain something in a very lengthy way, we will -- 21 I'll try to rephrase my question so we can end the 22 deposition in a timely manner. 23 A. Okay. 24 Q. Table 3. What is the source of the numbers 25 on the right three columns on the right?

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16:43	1 A. So in order to test Mr. Reifer's assertion, I 2 took his replicas of my code counters and ran those 3 against my actual code counters and the USC code 4 counters. And what it shows is -- and, again, if you 5 want to look on page 3 of the notes on Reifer.	16:46	
	6 Q. Reifer.		
	7 A. Reifer.		
	8 Q. I'm not even sure you're consistent in the 9 way you pronounce his name. Page 3, yes, sir.		
16:44	10 A. Page 3. If you look at the bulleted items.	16:46	
	11 Q. Yes, sir.		
	12 A. If you look at the bulleted items, the 13 results of that side-by-side test of Mr. Reifer's 14 purported replica versus my actual versus the USC 15 code counter. Okay? So you'll see as a result of 16 this, and I focused on the C and H files because 17 those are germane to what I counted.	16:47	
16:44	18 So Mr. Reifer's custom built purported 19 replica code counter did not produce the same results 20 as my actual code counter. Mr. Reifer's replica 21 overcounted the SLOC for C and H by 536 source lines 22 of code, or 3.8 percent more. Mr. Reifer's custom 23 built replica code counter counted more logical lines 24 than the USC code counter by 315 source lines of 25 code, for a 3.4 percent variance.	16:47	
16:44		16:47	
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	1 If you then compare my actual code counter to 2 the USC code counter, my actual code counters counted 3 slightly less than the USC code counters, by one-half 4 a percent.		
16:45	5 So what this -- so what's clear is the 6 purported replicas weren't replicas and they counted 7 things differently. I did provide Mr. Reifer with my 8 actual counters, both source code and executable. So 9 it's not clear to me why replicas would need to be 10 built.	16:48	
16:45		16:48	
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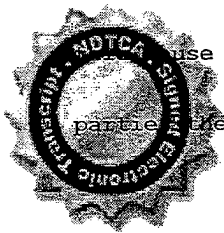
CERTIFICATE OF REPORTER

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 the 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