

EXHIBIT 3

ORACLE USA, INC., ET AL

V.

SAP AG, ET AL

CASE NO. 07-CV-01658

SUPPLEMENTAL EXPERT REPORT OF PAUL K. MEYER

TM FINANCIAL FORENSICS, LLC.

FEBRUARY 23, 2010



PAUL K. MEYER

TEXT REMOVED - NOT RELEVANT TO MOTION

15. In addition to software code, Defendants allegedly provided illegally obtained Oracle instruction manuals, guides, notes and other support documentation to customers including rebranded “essentially identical” and “virtually verbatim with small changes” Oracle documentation.¹⁰

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¹⁰ Oracle USA, Inc. et al v SAP AG et al, Fourth Amended Complaint in Case No. 07-CV-01658 dated August 18, 2009, pgs. 8-9.

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c. Estimated Costs To Independently Create PeopleSoft/J.D. Edwards Copyrighted Materials in Suit

150. I understand that Oracle's expert Paul Pinto was retained to estimate the costs that Defendants would have had to incur to independently develop the Oracle copyrighted materials in suit that Defendants allegedly illegally accessed, copied and misused. I understand that Mr. Pinto has concluded that it would have cost Defendants approximately \$1.275 billion with a range of \$936 million to \$2.903 billion to develop 7 specific PeopleSoft and J.D. Edwards software applications.³⁴⁸

151. Additionally, I understand that Mr. Pinto has concluded that, if it were possible to be completed in two years, it would take Defendants 2,374 appropriately-trained personnel to complete the development of the 7 PeopleSoft/J.D. Edwards software applications he analyzed.³⁴⁹ As explained in section IV.B.2 of this Report, the timing of SAP's offering of TomorrowNow support services was critical to its overall strategy to disrupt Oracle's business and convert Oracle's PeopleSoft, J.D. Edwards and Siebel customer base over

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³⁴⁸ Discussion with Paul Pinto (Sylvan VI, Inc.); November 16, 2009 Expert Report of Paul Pinto, pg. 43 (\$320 million for JDE Enterprise One + \$707 million for PeopleSoft + \$248 million for JDE World = \$1.275 billion. \$221 million + \$543 million + 172 million = \$936 million. \$749 million + \$1,573 million + 581 million = \$2.903 billion).

³⁴⁹ Discussion with Paul Pinto (Sylvan VI, Inc.); November 16, 2009 Expert Report of Paul Pinto, pgs. 42 and 44. 67,863 total person months effort, less 10,890 Siebel person months, divided by 24 months = 2,373.9. According to Mr. Pinto, "A development effort of this scope and complexity would be an extremely large project, very aggressive, and of high-risk to be pursued within this timeframe." [November 16, 2009 Expert Report of Paul Pinto, pg. 7].

to SAP (i.e., it was critical for SAP to announce its offering of support on Oracle products immediately following Oracle's acquisitions of PeopleSoft and Siebel). If faced with a multi-year development timeframe in lieu of using Oracle's copyrighted property, SAP may have determined that offering TomorrowNow support services as an integral part of its Safe Passage program was not an attractive business decision. Therefore, SAP would likely be willing to pay more than the cost to independently develop the intellectual property in order to receive a time to market advantage and to avoid the risk of unsuccessful development.

d. Summary: Fair Market Value Using Cost Approach

152. In my opinion, the cost approach would indicate a fair market value of SAP's use of Oracle's copyrighted materials in suit of no less than \$936 million, with other considerations indicating that development costs, and the risks of development failure, would be much higher. I am relying on Mr. Pinto, who has estimated the costs to independently develop certain software applications that were accessed by TomorrowNow and SAP.³⁵⁰

B. Summary: "Value of Use" of PeopleSoft/J.D. Edwards Copyrighted Materials Based on Market, Income and Cost Approaches

153. Table 8 summarizes the fair market values of the PeopleSoft/J.D. Edwards copyrighted materials in suit based on the market, income and cost approaches. In my opinion, these metrics and the valuation analysis previously described indicate that no less than \$2 billion is the fair market value for the PeopleSoft/J.D. Edwards copyrighted materials in suit.

³⁵⁰ Discussions with Paul Pinto; November 16, 2009 Expert Report of Paul Pinto (see Mr. Pinto's explanation of his assignment and summary of opinions at pgs. 1-2).

**Table 8: Copyrighted Software and Support Materials
PeopleSoft/J.D. Edwards
Fair Market Values
With Projections of Up To 3,000 Oracle Lost Customers
(\$ In Millions)**

<u>Market Approach</u>	
Based on PeopleSoft Acquisition	\$1,780 - \$2,670
<u>Income Approach</u>	
Oracle Potential Losses	\$1,979 - \$3,762
SAP Potential Gains	\$881 - \$2,690
SAP Projected Impact On Oracle Profits	\$1,468
<u>Cost Approach</u>	
Avoided Development Costs (Mr. Pinto)	\$ 936 - \$2,903
Fair Market Value	No less than \$2,000

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iii. Profitability Credited to the Copyrighted Materials In Suit As Opposed to Elements Contributed by SAP/TomorrowNow

228. I understand that neither SAP nor TomorrowNow made significant improvements to the copyrighted materials, relying instead on Oracle's copyrighted materials to create derivative TomorrowNow-branded support materials."⁴⁸⁹

3. Hypothetical Negotiation Approach Summary (Georgia-Pacific Factor 15)

229. My conclusions and opinion as to the outcome of a hypothetical negotiation based on consideration of the financial, economic and other relevant factors discussed above is set forth in the following section.

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⁴⁸⁹ Oracle USA, Inc., et al v. SAP AG, et al, Fourth Amended Complaint in Case No. 07-CV-01658, August 18, 2009, pgs. 5-9.

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b. Summary: Fair Market Value Using The Market Approach

274. SAP was projecting obtaining 200 Siebel support customers, or approximately 5%, of Siebel's 4,000 customers.⁵⁶⁸ After considering the transactions described above, and providing particular focus on the Siebel acquisition, in my opinion, the market approach indicates a fair market value of SAP's use of Oracle's Siebel copyrighted materials in suit of no less than

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⁵⁶⁸ "Apollo Competitive Program Office Program Playbook," SAP-OR00790353-387 (Hurst Exhibit 1597), at 355; Email from Christian Klein to Thomas Ziemen and Bernd Welz (Vice President System Service Solution Management), dated October 25, 2005 with attached Business Case files, SAP-OR00250204-225, (Hurst Exhibit 1601), at 223 and 225.

\$170 million, computed as 5% of the \$3.4 billion in intangible asset value related to support revenues, customer relationships and goodwill.⁵⁶⁹ Additionally, using the \$1.525 million average cost per customer resulting from the Siebel acquisition described above, extended to the 200 potentially lost customers, indicates a value of \$305 million.

2. Income Approach

275. In determining SAP's "value of use" of the Siebel copyrighted material in suit, I have employed the income approach by determining the incremental net cash flows Oracle would expect to lose to SAP as a result of licensing the copyrighted materials. I have also considered analyses performed contemporaneously by SAP or TomorrowNow indicating the revenues they expected to receive and/or the amount of Oracle's business they expected to displace.

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⁵⁶⁹ \$3.4 billion intangible asset value times 5% (200/4,000 customers = 5%). $\$3.4 * 5\% = \170 million.