

EXHIBIT 4

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

TEXT REMOVED - NOT RELEVANT TO MOTION

09:19 5 Q. Okay. Do you know specifically which version
6 of the COCOMO model that reflects?
7 A. I believe this is the COCOMO 2000 model.
8 Q. COCOMO II 2000?
9 A. Yes.
09:20 10 Q. Is that the software that you had run
11 previously when you were preparing your initial
12 report?
13 A. No, it is not.

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8 Q. Okay. When did counsel for Oracle first
9 engage your services to work in this case?
09:29 10 A. Define engage, please.
11 Q. Have you been engaged by Oracle's counsel to
12 work in this case --
13 A. Yes.
14 Q. -- as an expert? You have?
09:29 15 A. Yes.
16 Q. What do you mean by engage? What do you
17 understand that to mean?
18 A. I'm asking you, sir.
19 Q. I just asked you if you've been engaged, and
09:29 20 you answered yes. What do you understand that to
21 mean? Retained as an expert?
22 A. When they contracted for my services.
23 Q. Fair enough. Let's use that. When did they
24 first contract for your services in this case?
09:29 25 A. It would have been in May or June of last

1 year.

2 Q. Of 2009.

3 A. Yes.

4 Q. What were you asked to do?

09:30

5 A. I was asked to opine on the avoided
6 development costs associated with a set of products.

7 Q. Oracle's counsel asked you to opine on the
8 avoided development costs for a set of products?

09:30

9 A. That was the task I was brought in to
10 perform.

11 Q. Did Oracle's counsel use the word "avoided
12 development costs" in engaging your services?

13 A. Yes.

TEXT REMOVED - NOT RELEVANT TO MOTION

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16 Q. Did anyone out of Sylvan VI provided any
17 assistance as reflected in your report?

18 A. As reflected in my report, no, but I did
19 engage a team from a former employer of mine, NIIT
09:42 20 Technologies, to assist me in conducting the
21 analysis.

22 Q. When did you engage this team?

23 A. Very shortly after I was engaged.

24 Q. And what does NIIT stand for?

09:42 25 A. It stands for NIIT.

1 Q. It doesn't -- those letters don't stand for
2 anything, as far as you know?

3 A. As far as I know, they do not stand for
4 anything.

09:42 5 Q. And what -- what did you ask this team of
6 people to do?

7 A. I asked them to support me in estimating the
8 product suites in question.

9 Q. How many people were on the team?

09:43 10 A. At peak it was six.

11 Q. Who was on the team?

12 A. So by name?

13 Q. Yes.

14 A. Keith Banister.

09:43 15 Q. Okay.

16 A. Are you ready for these next ones? Amal
17 Jaiswal, J-a-i-s-w-a-l, Rajiv Chawla, C-h-a-w-l-a,
18 and, I'm sorry, the remainder names are more
19 difficult than those and I don't have those committed
09:43 20 to memory.

21 Q. Okay. What did you -- what specifically did
22 these -- did this team of people do which at one
23 point comprised as many as six people?

24 A. So a little background if I may. This was a
09:44 25 significant piece of work. To go through and count

1 the lines of code, even -- even to sort out the ISO
2 files to get at the source code and then to go ahead
3 and count the lines of code.

09:44 4 So this team is currently employed by NIIT,
5 which is my former employer, and this team's job is
6 to form estimates. So they do this all day. They do
7 this every day, and they've done this, the three
8 gentlemen I mentioned who were in the employ when I
9 was there in year 2001. So I've known them quite a
09:44 10 long time.

11 NIIT is a \$220 million a year company, and
12 this team provides hundreds of estimates each year
13 using a variety of different estimating models,
14 predominately function point and COCOMO, to develop
09:45 15 estimates. The estimates that they build range from
16 fresh development, what I'll call modernization,
17 taking an existing application and rebuilding it on
18 potentially a new platform, and maintenance.

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09:49 20 Q. Okay. So you engaged these -- you engaged
 21 NIIT or those six people?
 22 A. I engaged NIIT.
 23 Q. And what did you provide to them?
 24 A. So for the analysis work they did, I provided
09:49 25 them with the ISO files.

1 Q. Of the four suites.

2 A. Correct. That's not true. Provided them

3 with the ISO files for two --

4 Q. Two?

09:49 5 A. -- of the four suites.

6 Q. Which two?

7 A. JD Edwards EnterpriseOne.

8 Q. Okay.

9 A. And PeopleSoft.

09:50 10 Q. And what else did you provide them?

11 A. Guidance, management, daily discussions.

12 Q. And these people assisted you by conducting

13 what kind of -- did they assist you in your COCOMO

14 analysis?

09:50 15 A. No.

16 Q. Did they assist you in your function point

17 analysis?

18 A. Too broad. Function point analysis is a big

19 term.

09:50 20 Q. Okay. Did they contribute somehow to your

21 function point analysis, your efforts to develop a

22 function point sizing?

23 A. They contributed to the backfiring results.

24 Q. Okay. In what way?

09:50 25 A. They extracted the source code files from the

1 ISO files, which is a laborious task. They sorted
2 them by the various types of source code, stratified
3 them by the types of source code, counted the logical
4 lines of source code and produced those counts.

09:51 5 Q. Did they provide the sorted and stratified
6 code to you in some form?

7 A. They did not provide the code to me. I
8 provided the ISO files to them which contained the
9 code.

09:51 10 Q. Right. And, I'm sorry, then you said they
11 stratified -- they sorted and stratified, et cetera.

12 A. Correct.

13 Q. They actually extracted, say, COBOL code and
14 put that in one file, I assume, and they extracted
09:51 15 maybe, I don't know --

16 A. C.

17 Q. C code?

18 A. Correct.

09:52 19 Q. Did they then provide that COBOL and that C
20 to you in some form?

21 A. They provided me a listing of those file
22 names.

23 Q. Listing of the file names?

24 A. Yes.

09:52 25 Q. Did they provide the files to you?

1 A. No.

2 Q. And did you ask them to?

3 A. No, and again this was voluminous. So these
4 came to me from Bingham on hundred meg external
09:52 5 drives.

6 Q. Right. Okay. As far as you know, does NIIT
7 still have that sorted software and those files for
8 which they provided you lists of the files?

9 A. I know unequivocally that they do not.

09:52 10 Q. What happened to those files?

11 A. So as soon as their task was completed, by
12 virtue of their process standards being a CMM Level 5
13 and ISO certified company, they were immediately
14 forced to disassemble the machines and destroy the
09:52 15 hard drives that contained that software.

16 I know that for two reasons. One, I worked
17 for the company for five years and that was standard
18 protocol. Two, I was -- I was looking for them to
19 conduct further analysis, but I no longer -- they no
09:53 20 longer have access to the source code.

21 Q. So at one point they had the source code on
22 the hard drives of their machines.

23 A. Yes.

24 Q. And to the best of your knowledge, they
09:53 25 disassembled the machines and destroyed the hard

1 drives including those files containing the source
2 code.

3 A. Correct, and they returned the external hard
4 drives to me which I subsequently returned to
09:53 5 Bingham.

6 Q. Okay. At some point, in your view, would it
7 have been possible to download or copy some of or all
8 of the files that were on these hard drives? Would
9 that have been feasible?

09:53 10 A. No.

11 Q. It would not have been possible?

12 A. No, just due to the size.

13 Q. Yeah.

14 A. And due to the fact that they worked in an
09:53 15 isolated lab --

16 Q. Yeah.

17 A. -- with no conductivity outside the lab.

18 Q. No, with the proper machinery of some sort
19 and software, hardware and cables and whatever else,
09:54 20 would it have been possible to make copies of the
21 files that were on the hard drives?

22 A. Physically possible?

23 Q. Yes.

24 A. Yes.

09:54 25 Q. Okay.

1 A. But from a process and procedural
2 perspective, no. Again, NIIT is a CMM Level 5 ISO
3 certified company.

4 Q. Understood.

09:54 5 A. They were actually one of the first 50
6 companies to be assessed at CMM Level 5.

7 Q. Understood. I wasn't asking about their
8 practice. I was asking you, in your opinion, as
9 someone who has been in this industry for some time
09:54 10 would it have been possible to obtain copies,
11 physically possible, and you said, yes.

12 A. Again, you have to define what's meant by
13 possible. You know, and I'm sorry, it's not my
14 intent to stick on the point. It's just, again, I
09:54 15 worked for the company for a number of years.
16 They're very concerned with protocols and procedures.

17 Q. Okay.

18 A. Especially around intellectual property.

19 Q. I think we're maybe two ships passing in the
09:54 20 night here, Mr. Pinto. I'm not asking about what
21 NIIT does and doesn't do, its practice, how good or
22 bad it is in dealing with its procedures. In the
23 real world, in your opinion, do you think it would
24 have been possible with some amount of equipment,
09:55 25 hardware, some amount of software, whatever that

1 might have been, existing software, and some number
2 of cables or other devices or connecting devices, et
3 cetera, to make copies of the files?

4 A. Possible perhaps.

09:55 5 Q. Okay. And when did NIIT have these
6 segregated files of the source code?

7 A. So it would have been from June of last year
8 to November roughly.

9 Q. June to November of 2009?

09:55 10 A. Yes.

11 Q. And the hard drives were sent to you in a
12 disassembled form and you returned them to Bingham.

13 A. The original external hard drives that I
14 provided to NIIT were returned to me. The hard
09:56 15 drives, the physical hard drives that existed on the
16 machines at NIIT were disassembled and the hard
17 drives were destroyed.

18 MR. BUTLER: We would ask that those hard
19 drives be provided to us. I'm puzzled as to why they
09:56 20 weren't already, but at some point it seems as though
21 there was some code that was produced in the course
22 of Mr. Pinto's analysis that was not provided to us.

23 MS. HOUSE: Well, we disagree with that.

24 THE WITNESS: Yeah, you were provided with
09:56 25 everything I was provided with.

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10:02 15 Q. Did you -- did you separately undertake to
16 analyze any of their results or you adopted them
17 without further analysis?
18 A. No, I analyzed all of their results.
19 Q. And you conducted again the same kind of
10:02 20 stratification and sorting and stratification process
21 that they did?
22 A. No, I didn't replicate their results.
23 Q. You reviewed them.
24 A. I managed them throughout the process, I
10:02 25 facilitated the process, provided guidance throughout

1 it, spoke with them on a daily basis. They presented
2 results from tasks to me and then once I was
3 convinced that the answer was -- was adequate and
4 appropriate, I would then adopt it as my own.

10:02 5 Q. Okay. Okay. Now, to -- back to
6 Exhibit 2052, sir. On tab 1 of that document, you
7 see that in front of you?

8 A. I do.

9 Q. It says: "Subjectivity Associated with
10:03 10 Hand-Counting Function Points." Do you see that as
11 the title?

12 A. I do.

13 Q. And on the left-hand -- leftmost column of
14 the three columns there, it says in the middle of the
10:03 15 three entries "Neuendorf's Hand-count." What does
16 that mean?

17 A. Yes. So that was a hand-count of the same
18 documents Mr. Garmus counted as performed by Steve
19 Neuendorf.

10:03 20 Q. And who is he?

21 A. Mr. Neuendorf is a certified function point
22 counting specialist engaged by NIIT.

23 Q. He was engaged by NIIT for work in this case?

24 A. He's -- I don't know if it's for work in this
10:04 25 case. NI -- he's part of NIIT.

1 Q. Okay. You mention here in this document 2050
2 tab 1 Neuendorf's hand-count. He conducted a
3 hand-count for you at your request?

4 A. Yes.

10:04 5 Q. Did you engage him?

6 A. I did as part of my engagement with NIIT,
7 yes.

8 Q. Okay. So he was part of that team that
9 worked with you under your guidance on this project?

10:04 10 A. Well, that team was assembled and
11 disassembled a while ago.

12 Q. Okay. So he's a new addition. He's a new
13 NIIT consultant --

14 A. Correct.

10:04 15 Q. -- working with you for rebuttal purposes.

16 A. Correct.

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2 Q. Are you a certified function point
3 specialist?

4 A. I am not.

10:05 5 Q. Were you at any time a certified function
6 point specialist?

7 A. No.

8 Q. Including at the time you prepared your
9 function point analysis in the report, right?

10:05 10 A. That's correct.

11 Q. Why did you engage Mr. Neuendorf to
12 hand-count the materials that were considered by
13 Mr. Garmus?

14 A. Mr. Garmus had proposed an alternate method
10:05 15 for determining the number of function points,
16 alternate to the method I used, and he contested that
17 it would be quicker and more accurate. So in test of
18 that, I engaged another certified function point
19 specialist to perform the same activity that

10:05 20 Mr. Garmus performed and gave him the exact same
21 inputs with no guidance, no bias from me, and asked
22 him to simply go ahead and perform the exact same
23 task with the exact same inputs so I could gain an
24 understanding if, as Mr. Garmus has asserted, that
10:06 25 they would corroborate. And actually as you can see

1 from the results, there was -- there was quite a
2 variance.

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14 Q. Sure. Did you ask -- did you show
10:10 15 Mr. Neuendorf the ten-step process that you used to
16 develop a function point count?
17 A. I did not.
18 Q. Do you have any -- did you show it to anyone
19 who is a certified function point specialist?
10:11 20 A. No.

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2 Q. Okay. All right. Fair enough. Can you name
3 one certified function point specialist who has used
4 the ten steps that you have put in your report?

10:14

5 A. I can't.

6 Q. You cannot name any such person?

7 A. No.

8 Q. You're not aware of any such person.

9 A. I am not aware of any such person.

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17 Q. MR. BUTLER: Mr. Pinto, do you know offhand
18 based on your experience with function points what
19 the IFPUG rules are for distinguishing between an
10:21 20 output and an inquiry?
21 MS. HOUSE: Objection, overbroad, calls for a
22 narrative. You can answer if you can memorize.
23 THE WITNESS: No, I'm going to pass.
24 Q. MR. BUTLER: Okay. That was my question, do
10:21 25 you know offhand without referring to a document.

1 You would refer to a document if someone would ask
2 you that question.
3 A. I would.

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11 Q. Understood. Have you reviewed
12 Mr. Neuendorf's function point count?

13 A. Yes.

14 Q. Do you believe it to be accurate?

10:23 15 A. I believe it to be his function point count.

16 Q. Right. Do you believe it to be an accurate
17 function point count?

18 A. I believe it to be accurate from his
19 perspective.

10:24 20 Q. You have no independent view on whether it's
21 accurate or not?

22 A. I -- I do not have an independent view on
23 whether it's accurate or not and that wasn't the
24 point of me having him do the analysis.

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10:44 10 Q. And you received a degree from Central
11 Connecticut State University in computer science with
12 a minor in business administration?
13 A. I did.
14 Q. Did you go to graduate school after college?
10:44 15 A. I did not.
16 Q. Do you hold any degrees other than a Bachelor
17 of Science in computer science with a minor in
18 business administration?
19 A. I do not.
10:44 20 Q. During or after college, did you take any
21 classes that discussed size estimation or valuation
22 of computer software?
23 A. I did.
24 Q. Where were those courses?
10:44 25 A. At NIIT.

1 Q. Okay. While you were employed by NIIT?

2 A. While I was employed by NIIT.

3 Q. How many such courses did you take?

4 A. Goodness. Over the course of my five years
10:45 5 with NIIT, you know, we were always required to take
6 at least two weeks of continuing education. So two
7 weeks of classes over each of five years.

8 Q. Were any --

9 A. So.

10:45 10 Q. Sorry.

11 A. So ten weeks of training in that time span.

12 Q. Got you.

13 A. Five years.

14 Q. Were any of those classes specifically on the
10:45 15 COCOMO estimation model?

16 A. Yes.

17 Q. There were courses that dealt solely with
18 COCOMO?

19 A. They dealt with estimating techniques --

10:45 20 Q. Okay.

21 A. -- of which COCOMO was one.

22 Q. Okay. And that was one of the two-week
23 courses.

24 A. I'm sorry. The courses weren't two weeks in
10:45 25 duration. As an employee I was required to take two

1 weeks of continuing education --

2 Q. Oh, okay.

3 A. -- throughout the course of each other. So
4 they would come in a day at a time.

10:45 5 Q. Okay. So how long did the software
6 estimation class last where COCOMO was one of the
7 topics?

8 A. You know, this is going back a little ways.
9 It was either a one-day or a two-day class. They
10:46 10 were never longer than that.

11 Q. Was function point also included in that
12 class?

13 A. Function point was discussed in that class,
14 but there was a separate class on function point
10:46 15 counting.

16 Q. And that also was a one- or two-day class?

17 A. Yes.

18 Q. And other than the -- these classes at NIIT,
19 have you taken any other classes or training in
10:46 20 COCOMO or function point?

21 A. Outside of those classes that I attended as
22 part of being an employee of NIIT, no.

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10:56 13 Q. Other than this case, not this case, in any
 14 other case have you ever analyzed and put a value on
 15 avoided development costs?

 16 MS. HOUSE: Asked and answered.

 17 THE WITNESS: I have not been asked to assess
 18 avoided development costs associated with any other
 19 lawsuits associated with copyright infringement.

10:56 20 Q. MR. BUTLER: How about associated with any
 21 other kind of case other than copyright? Have you
 22 ever developed a value or analyzed avoided
 23 development costs other than in this case?

10:56 24 A. In any other legal matter, I have not been
 25 asked to analyze avoided development costs.

1 Q. Okay. And this was the first time you've
2 been asked to do so was your engagement in this case?

3 A. The first time I've been asked to analyze
4 avoided development costs associated with copyright
5 infringement.

10:57

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

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1 Q. Okay. In your report you used COCOMO II
2 1997.
3 A. That's correct.

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11:27 9 Are you aware of any publication from anyone
10 in the industry who -- that supports the notion that
11 the 1997 COCOMO model is more appropriately used in
12 backfiring -- with respect to backfiring than the
13 2000 model?
14 A. I am not aware of any publication.

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12:48 7 Q. Are you aware of whether those ten steps in
8 that order have been approved by any standard setting
9 group such as the International Software Benchmarking
10 Standards Group?
11 A. But, Mr. Butler -- --
12 Q. Yeah.
13 A. -- these ten steps were specifically written
14 and tailored for this case.

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12:48 24 Q. And there's ten steps going all the way from
25 Step One to Step Ten.

1 A. I see that.

2 Q. Okay. Have those ten steps in that order as
3 you have them on that paper -- page I see you looking
4 at right in front of you, page i of your report, have
12:48 5 those ten steps been approved by any standard setting
6 group such as the International Software Benchmarking
7 Standards Group?

8 MS. HOUSE: And I'm going to object to the
9 word approved as vague.

12:48 10 THE WITNESS: Yeah, I can't say as to whether
11 they've -- they've been approved --

12 Q. MR. BUTLER: Okay.

13 A. -- by those organizations.

14 Q. Okay. Are you -- thank you. Are you aware
12:49 15 of any IFPUG publication that uses this ten-step
16 process?

17 MS. HOUSE: Asked and answered.

18 THE WITNESS: I am not aware.

19 Q. MR. BUTLER: Has this ten-step process listed
12:49 20 here been peer reviewed, as far as you know?

21 A. Yes, it has been peer reviewed.

22 Q. Okay. And you believe it would be
23 publishable in a peer reviewed professional journal?

24 A. Yes, I do.

12:49 25 Q. Have you seen it published in such a journal?

1 A. I have not.

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3 Q. Okay. And you did not count JDE World,
4 right?

13:02

5 A. Correct.

6 Q. And you did not count source lines of code
7 for Seibel either.

8 A. Also correct.

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17 THE WITNESS: Before we start again, just a
18 point of clarification if I may.

19 Q. MR. BUTLER: Okay. On what topic?

14:10 20 A. With regard to the ten-step process.

21 Q. Okay.

22 A. I wanted to make sure that I clearly
23 communicated to you that the ten-step process as
24 described here, I did write down, I authored based on
14:11 25 my knowledge of a number of compendiums that existed

¹ at my former employers.

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12 Q. Are you aware of any certified function point
13 specialists who backfire source lines of code to
14 function point?

14:22 15 A. So in response to the first part, I know of
16 no certified function point hand-counters who perform
17 backfiring.

18 Q. Is there anyone who -- is there a way to be
19 certified in the ten steps that you've used? Excuse,
14:23 20 that you have used?

21 A. No, there isn't.

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14:24 24 MR. BUTLER: Okay. I ask the court reporter
 25 to mark as Exhibit 2055 a document dated December 208

1 entitled PeopleSoft 8.8 eBenefits PeopleBook.

2 (Deposition Exhibit 2055 marked
3 for identification.)

14:25 4 Q. MR. BUTLER: Oh, I'm sorry. I didn't realize
5 you had it in front of you, Mr. Pinto.

6 A. I do.

7 Q. Can you tell me, please, whether you have
8 seen user documentation of this sort in this case
9 with respect to PeopleSoft?

14:25 10 A. I have not seen this specific user
11 documentation.

12 Q. Okay. In your involvement in this case, you
13 mean you have not?

14:25 14 A. In any occurrences I have not seen this
15 specific documentation set.

16 Q. Okay. Does it -- do you recognize it to be a
17 user manual for some particular module or
18 application, in this case PeopleSoft 8.8 eBenefits?

19 A. It -- it appears to be.

14:25 20 Q. Have you seen documents of this sort at any
21 time in your career?

22 MS. HOUSE: Objection, vague.

23 THE WITNESS: I have.

14:26 24 Q. MR. BUTLER: Could you please turn to page 56
25 of document 2055?

1 A. I'm there.

2 Q. Okay. And you see on the top it says
3 Reviewing Dependent and Beneficiary Information?

4 A. Yes.

14:26 5 Q. And then there is a table with four columns
6 and three rows plus a heading?

7 A. Yes.

8 Q. On the right-hand -- rightmost column with
9 the heading Usage, do you see that on the right?

14:26 10 A. I do.

11 Q. And below that there's three entries. The
12 first one says: "Display summary
13 dependent/beneficiary benefit information."

14 A. Yes.

14:27 15 Q. Is that a date function or a -- a data
16 function or a transactional function?

17 MS. HOUSE: Objection, vague.

18 THE WITNESS: The terms you're asking me are
19 specific to hand-counting of function points which --
14:27 20 which is not what I performed, nor do I hold myself
21 out as a hand-counting specialist.

22 Q. MR. BUTLER: Okay. So you don't know the
23 answer to my question, right?

24 A. No. No, I've declined to answer your
14:27 25 question.

1 Q. Okay. You decline to answer it. Okay. Is
2 that text I just read representative of an EI or an
3 EO or an EQ?

14:27 4 A. Again, I would provide you with the same
5 response. The questions you're asking me are
6 specific to hand-counting, which is not the process I
7 conducted.

8 Q. It's not your area of expertise.

9 A. No, I said it's not the process I conducted.

14:28 10 Q. But is it something you know about.

11 MS. HOUSE: Asked and answered.

12 THE WITNESS: Again, it's -- it's not germane
13 to the analysis I conducted.

14 Q. MR. BUTLER: I'm not asking you that, sir.

14:28 15 Do you -- do you know anything about identifying data
16 functions and transaction functions?

17 MS. HOUSE: Asked and answered.

18 THE WITNESS: Once again, I am not a
19 certified function point specialist.

14:28 20 Q. MR. BUTLER: Okay. Right below that it says:
21 "Display a summary of dependent/beneficiary personal
22 information." Do you see that?

23 A. I do.

24 Q. Is that an EI, an EO, or an EQ?

14:28 25 MS. HOUSE: Same objections.

1 THE WITNESS: Again, I provide the same
2 response to you.

3 Q. MR. BUTLER: Which is?

14:28

4 A. That I am not a certified function point
5 specialist and the questions you are asking are
6 specific to hand-counting of function points, which
7 is not what I endeavored to do.

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6 Q. Okay. And you're not qualified to do what
7 you've called hand-counting, which is the IFPUG
8 method, right?

9 A. Actually, what I have said was I am not a
14:30 10 certified function point specialist.

11 Q. Now, answer my question. Are you qualified
12 as an expert in what you called hand-counting, which
13 is the IFPUG method?

14 A. Again, I am not a certified function point
14:31 15 specialist.

16 Q. Do you consider yourself to be an expert in
17 that field, irrespective of whether you're certified
18 as a specialist or not?

19 A. I do not consider myself to be an expert in
14:31 20 the field of hand-counting function points.

21 Q. On the bottom row of that rightmost column it
22 says: "Review and update dependent/beneficiary
23 information." Do you see that?

24 A. I do.

14:31 25 Q. Is that an EI, EO, or EQ?

1 MS. HOUSE: Same objections.

2 THE WITNESS: Again, Counsel, it's the same
3 question.

14:31 4 Q. MR. BUTLER: No, it isn't. It's a different
5 box. Maybe you're looking at the wrong box. The
6 lower rightmost box.

7 A. Thank you for the clarification. Again, the
8 question you're asking is germane were I to have
9 counted a hand-count of function points, which is not
14:31 10 what I did.

11 Q. Can you answer my question?

12 MS. HOUSE: Asked and answered.

13 THE WITNESS: Could you ask your question
14 again?

14:31 15 Q. MR. BUTLER: Sure. Is that text in the lower
16 rightmost box lower right corner that I've just read
17 an EI, an EO -- does it reflect an EI, EO or EQ?

18 A. Again, I'm comfortable with the response I've
19 given you.

14:32 20 Q. Okay. You don't know if that's an EI?

21 A. No, what I've said is I'm comfortable with
22 the prior response I gave you.

23 Q. Good. I'm asking is that an EO.

24 A. Sir, again, it's not relevant to the matter
14:32 25 at hand.

1 Q. I'm just asking you -- I'm entitled to
2 explore the depths of what you purport to consider to
3 be your expertise.

4 A. Yes.

14:32

5 Q. So I'm asking you do you think that text
6 reflects an EO.

7 A. Sir, once again, I am not a certified
8 function point specialist and therefore prefer not to
9 comment.

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17 Q. Do you know one way or another whether IFPUG
18 approves of backfiring?

19 MS. HOUSE: Objection, vague as to approve.

14:33

20 THE WITNESS: It's my understanding as
21 reported that IFPUG does not sanction backfiring,
22 which is entirely understandable given that IFPUG is
23 focused on servicing the hand-counting community.

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11 Q. Okay. What -- if you've identified an
12 elementary process as being an EO or an EQ, if the
13 processing logic of the elementary process creates
14 derived data, would you count the elementary process
14:45 15 as a unique EO or unique EQ or both?

16 MS. HOUSE: Objection, compound, vague.

17 THE WITNESS: That's all right. I'll answer
18 it. Mr. Butler, again, you're asking me questions
19 that are specific to hand-counting, which is not
14:46 20 germane to the analysis I conducted.

21 Q. MR. BUTLER: Are the complexity and
22 contribution rules for transactional functions
23 different from those used for data functions?

24 MS. HOUSE: Objection, vague, compound.

14:46 25 THE WITNESS: Same response, Mr. Butler.

1 Q. MR. BUTLER: Do you know offhand whether the
2 complexity and contribution rules are the same for
3 transactional functions as they are for data
4 functions?

14:46 5 MS. HOUSE: Same objections.

6 THE WITNESS: I'm comfortable with the
7 response I provided you.

8 Q. MR. BUTLER: You don't know.

9 A. I'm comfortable with the response I
14:46 10 provided --

11 Q. I'm asking if you know.

12 A. Again.

13 Q. Do you know, yes or no? It's a very simple
14 question.

14:46 15 A. Again, you're asking questions that are not
16 germane to the analysis I conducted.

17 Q. It has nothing to do with your analysis. I
18 agree you didn't do an IFPUG method. We're all in
19 agreement on that. I'm asking you if you understand
14:46 20 my question and can answer it.

21 A. Again, it is not germane.

22 Q. It might be germane to function points. I
23 think function point specialists would know this.
24 Wouldn't they know the answer to that?

14:47 25 A. A hand-counting function point specialist

1 would answer your question. I am not --

2 Q. Okay. You don't know the answer to the
3 question.

14:47 4 A. No, I am saying I'm not a certified function
5 point specialist.

6 Q. Okay. Do you know the answer to the
7 question?

8 A. Again, not germane to the analysis I
9 conducted.

14:47 10 Q. I didn't ask you about your analysis. Do you
11 know the answer to the question? Very simple
12 question I'm asking. Do you know? I know it, I
13 don't know it, yes, no, very simple.

14 A. Mr. Butler, again, it's not germane.

14:47 15 Q. I didn't ask you if it's germane. That would
16 be a separate question.

17 A. I understand.

18 Q. This question is, Mr. Pinto, do you know
19 whether the complexity rules and contribution rules
14:47 20 for transactional functions are different from those
21 used for data functions?

22 A. Mr. Butler, I've already given you a
23 response.

14:47 24 Q. No, you haven't. That's why I keep asking,
25 because you haven't. I'm asking, Mr. Pinto, do you

1 know. You either know or you don't know. Which one
2 is it?

3 A. Mr. Butler, it's not germane.

14:47 4 Q. It's not up to you to decide what's germane
5 or not. I'm entitled to explore your level of
6 expertise in the world of function points. I'm
7 asking you a question about function points. You
8 either know it or you don't know it.

14:48 9 A. And I have told you. I am not a certified
10 function point specialist. You've asked me several
11 questions that are specifically geared towards
12 hand-counting and certified function point
13 specialists, and I've declined to answer all of
14 those.

14:48 15 Q. So you think someone who uses your ten steps
16 would not know the answer to these questions?

17 A. I'm -- I'm saying that someone who does use
18 my ten steps need not know the answer to those
19 questions. They are not germane to the analysis I
14:48 20 conducted.

21 Q. Okay. What is an FTR?

22 A. Again, it's not germane.

23 Q. I didn't ask you whether anything is germane
24 to anything. I'm asking you what is an FTR.

14:48 25 A. Again --

1 Q. Yeah.

2 A. -- it's not germane to the analysis I
3 conducted.

14:48 4 Q. Gosh. I'm sorry. My question must not be
5 clear. It's a very simple question. Do you know
6 what FTR means?

7 A. Sir, again, it's like asking me the capital
8 of Kentucky. It's irrelevant for this proceeding.

9 Q. Yeah. Do you know what an FTR is? No?

14:49 10 A. Again, I stand by my answer.

11 Q. Okay. You're for some reason refusing to
12 answer my question and I'm entitled to an answer to
13 the question.

14:49 14 A. I understand. I believe I provided you an
15 answer.

16 Q. Okay. What does FTR stand for in the world
17 of hand-counting, as you've called it?

18 A. Again, you've asked me the same question.

14:49 19 Q. What does FTR stand for in the world of
20 hand-counting as you have called that process?

21 A. Again, Mr. Butler --

22 Q. Do you know?

23 A. Sir, it's not germane.

24 Q. Do you know what FTR stands for?

14:49 25 MS. HOUSE: You can answer if you know.

1 THE WITNESS: I'm going to pass --

2 Q. MR. BUTLER: Mr. Pinto, it's okay to say, "I
3 don't know." That's fine. Then we'll move on. I'm
4 entitled to know whether you know or don't know.

14:49

5 A. I understand. For purposes of this
6 discussion, I'll say I don't know to move past the
7 point.

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14:51 20 Q. When counting the same functional transaction
 21 that appears in several places throughout an
 22 application, does that constitute as one functional
 23 transaction or more than one?
 24 A. Again, you're asking me questions that are
14:51 25 specific to hand-counting.

1 Q. Do you know the answer to that question?

2 MS. HOUSE: Objection, vague, compound.

3 THE WITNESS: Again, all of these
4 hand-counting questions are not germane to my
14:52 5 analysis.

6 Q. MR. BUTLER: I didn't ask if they're germane.
7 You want to keep answering it that way, and I'm
8 trying so hard, Mr. Pinto, not to ask you questions
9 that relate to whether your review is germane to
14:52 10 anything or not. I don't know that it is. We're
11 trying to stay with that.

12 Set aside your review. I'm asking you -- I'm
13 entitled to explore your level of expertise. And I'm
14 asking you, do you -- sorry.

14:52 15 When counting the same functional transaction
16 that appears in several places throughout an
17 application, does that constitute one functional
18 transaction or more than one?

19 A. So, I'll help you because I do want to get
14:52 20 past this, I genuinely do. For purposes of our
21 discussion, whenever you want to ask questions
22 specifically around hand-counting, I will simply say
23 that it is not germane and it is not within the realm
24 of my study.

14:52 25 Q. Okay. And when you say that, you will be

1 saying that I don't know. That's how I'm going to
2 interpret it. Okay?

3 A. I'm comfortable with that interpretation for
4 now.

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15:31

25

Q.

But you do agree, though, that at least some

1 of the technical and user documentation is accounted
2 for during the typical software development life
3 cycle.
4 A. Yes.

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16:02 5 Q. Right. And then after making the assumption
6 with respect to JD -- as between JD Edwards EOne and
7 JDE World, you made the assumption that you mentioned
8 before about similar functionality based on your
9 experience and for the reasons you've just said and
16:02 10 then you -- you made an assumption that the same SLOC
11 would apply to World as to EOne.
12 A. I did.
13 Q. Okay. And why is that? Even though they're
14 written in vastly different languages.
16:03 15 A. Well, they are written in different
16 languages. That's a true statement.

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11 Q. Then with respect to Seibel you also did not
12 conduct a function point analysis for the Seibel code
13 and you developed an SLOC count by analogy, right?

14 A. Correct.

16:05 15 Q. And there you did it by assuming that the
16 Seibel product contained 79.4 more functionality than
17 PeopleSoft CRM.

18 A. That's correct.

19 Q. Okay. And how did you come to that
16:06 20 conclusion? That was based on your -- you counted
21 tables?

22 A. Yeah, so a couple points. PeopleSoft CRM and
23 Seibel competed heads up in the market.

24 Q. Right.

16:06 25 A. It was acknowledged that Seibel was a -- a

1 higher feature function product than PeopleSoft. I
2 can't recall what percentage of the market it held,
3 but Seibel was the market leader, and I've got a
4 reference to a Forrester Wave diagram that shows
16:06 5 Oracle Seibel versus PeopleSoft CRM.
6 Q. Okay.
7 A. Okay? So -- so it's fair to say that
8 unequivocally that Seibel is bigger and more feature
9 function rich than PeopleSoft CRM.
16:06 10 Q. Based on market share?
11 A. No, based on the functionality provided. It
12 happens to have a higher market share as a result.
13 Q. And the functionality you're reporting comes
14 from what document?
16:07 15 A. Forrester is an analyst who rates CRM
16 products.
17 Q. Just tell me the number or name of the
18 document.
19 A. 0006. Okay? So it is fair to say it is more
16:07 20 feature function rich.
21 Q. Sure. And you determined the amount of
22 functionality by looking at the number of tables in
23 PeopleSoft CRM versus in Seibel?
24 A. That's correct.
16:07 25 Q. Did you have access to PeopleSoft CRM to

1 assess how many tables there were?

2 A. I did not.

3 Q. Okay. How did you determine how many tables
4 were in PeopleSoft CRM?

16:07 5 A. So that number of unique tables --

6 Q. Yeah.

7 A. -- and that's an important point -- unique
8 tables contained in PeopleSoft CRM was provided to me
9 by an Oracle employee. Her name is Tanya Ishiguro,
10 and it was provided to me via e-mail which I have
11 provided.

16:08

12 Q. Okay. So someone from Oracle named
13 Ms. Ishiguro provided you the number of tables in
14 PeopleSoft CRM?

16:08 15 A. Unique tables.

16 Q. Unique tables, and the number of unique
17 tables in Seibel this person also provided to you?

18 A. No, another Oracle employee, Dan Vernell.

19 Q. Provided that number to you.

16:08 20 A. Correct.

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16:09 19 Q. It's a fair thumbnail, but it's not always
 20 accurate, right?
 21 A. I would say it's a fair thumbnail. I can't
 22 comment on an accuracy rating. It is a more
 23 simplicit means of sizing, that is for sure.

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16:12 5 Q. You did not count source lines of code at any
6 time for Seibel, right?
7 A. That's correct.
8 Q. And you didn't count source lines of code at
9 any time for World.
16:13 10 A. That's also correct.
11 Q. Okay. But you used source lines of code as
12 your starting points for your function point count
13 and for your COCOMO analysis.
14 A. That's also correct.
16:13 15 Q. If your source lines of code count were off,
16 then both your function point count and your COCOMO
17 count -- analysis would have been off also.
18 A. That's correct.
19 Q. So if you were ten percent high, you would
16:13 20 have errors in both your function point and COCOMO by
21 some factor. If they were ten percent low, you would
22 also have an error in both your function point and
23 COCOMO.
24 A. That's a true statement, but it's not linear,
16:13 25 by the way.

1 Q. I tried not to say it in a linear way. It
2 would be off by some amount. If your SLOC number is
3 off, it would throw off both your function point
4 analysis and your COCOMO analysis.

16:13

5 A. It drives the models.

6 Q. It drives the models. Okay.

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6 MR. BUTLER: Okay. Let me ask the court
7 reporter please to mark as Exhibit 2057 a three-page
8 document which I will describe in one moment. 2059.

9 MS. HOUSE: It's three pages.

16:24 10 MR. BUTLER: What did I say?

11 MS. HOUSE: Two.

12 MR. BUTLER: It's a bonus page there.

13 (Deposition Exhibit 2059 marked
14 for identification.)

16:25 15 Q. MR. BUTLER: All right. Mr. Pinto, you have
16 now before you a three-page document, the first one
17 to list something that says Eq. 1 in the right side?

18 A. I do see that.

19 Q. And the next page says Eq. 2 on the right
16:25 20 side?

21 A. Yes.

22 Q. And then Eq. 14?

23 A. Yes.

24 Q. With respect to the page that has Eq. 1 on
16:25 25 it, are you familiar with that equation?

1 A. I am not.

2 Q. Do you know offhand what this equation would
3 be used to calculation?

4 A. I assume the PM stands for person-months.

16:25 5 Q. And the NS?

6 A. I don't know.

7 Q. Do you know what the A stands for there?

8 A. No.

9 Q. How about the EM?

16:25 10 A. Again, no.

11 Q. Okay. On the next page, equation two, what
12 is your understanding of what TDEV and then in
13 subscript NS means?

14 A. Yeah, I don't -- I don't recognize it.

16:26 15 Q. The equation you don't recognize or that
16 particular parameter?

17 A. The equation or the parameter.

18 Q. Okay. So do you know offhand what the C is
19 in that equation?

16:26 20 A. No, I do not.

21 Q. And the SF?

22 A. Also I did not.

23 Q. Okay. And then on page 3 of that document,
24 2059, it says TDEV equals then square brackets C

16:26 25 times, et cetera.

1 A. I see that.

2 Q. Do you know what the SCED percent divided by
3 100 means?

4 A. No.

16:26

5 Q. And do you know what that equation would be
6 used to calculate?

7 A. I do not.

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Page	Line	Change:	Reason:
<u>263</u>	<u>21</u>	<u>"SO" TO "A"</u>	<u>CORRECTION</u>
<u>285</u>	<u>1</u>	<u>"IF COULD" TO "IF I COULD"</u>	<u>CORRECTION</u>
<u>295</u>	<u>15</u>	<u>"IT NOT" TO "IT IS NOT"</u>	<u>CORRECTION</u>
<u>316</u>	<u>17</u>	<u>"CM LEVEL" TO "CMD LEVEL"</u>	<u>CORRECTION</u>
<u>319</u>	<u>18</u>	<u>"143" TO "144"</u>	<u>CORRECTION</u>
<u>325</u>	<u>13</u>	<u>"CHANGES" TO "RATES"</u>	<u>CORRECTION</u>
<u>330</u>	<u>21</u>	<u>OMIT "IS"</u>	<u>CORRECTION</u>

ACB Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.


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6/23/10
 (date)

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 use and that I am not related to any of the parties thereto.



DATED: May 25, 2010

Wendy E Arlen

WENDY E. ARLEN CSR, No. 4355