

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE CORPORATION, a)
Delaware corporation,)
ORACLE USA, INC., a)
Colorado corporation, and)
ORACLE INTERNATIONAL)
CORPORATION, a California)
corporation,)
)
Plaintiffs,)
)
vs.) No. 07-CV-1658 (PJH)
)
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
BRUCE SPENCER, PH.D.

FRIDAY, JUNE 4, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-427339)

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10:07:50		10:10:37
10:07:54	2 THE WITNESS: Well, if we had estimates of	10:10:38
10:07:56	3 measurement error, it would be quantifiable.	10:10:42
10:07:58	4 MR. PICKETT: Q. But you don't?	10:10:57
10:08:00	5 A. Not at this time, I don't.	10:11:00
10:08:02		10:11:05
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10:08:20	14 Q. Have you concluded that any measurement	10:11:35
10:08:23	15 errors in fact occur?	10:11:38
10:08:25	16 MR. WILKES: Objection. Form.	10:11:42
10:08:29	17 THE WITNESS: I've concluded that	10:11:44
10:08:30	18 measurement errors have the potential to have	10:11:48
10:08:33	19 occurred.	10:11:53
10:08:34	20 MR. PICKETT: Q. So the answer to my	10:11:55
10:08:35	21 question is, no, Mr. Pickett, I have not concluded	10:11:58
10:08:38	22 that any specific measurement errors in fact occur.	10:11:59
10:08:41	23 Right?	10:12:00
10:08:41	24 MR. WILKES: Objection. Form.	10:12:03
10:08:42	25 Argumentative, harassing, asked and answered.	10:12:06
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10:08:54	1 THE WITNESS: I don't have an opinion	10:12:12
10:08:58	2 about the magnitude of measurement error.	10:12:14
10:09:01	3 MR. PICKETT: Q. Or even the existence of	10:12:16
10:09:02	4 a single one. Correct?	10:12:23
10:09:04	5 MR. WILKES: Objection. Form.	10:12:26
10:09:14	6 THE WITNESS: I don't have evidence of a	10:12:27
10:09:16	7 measurement error that has occurred.	10:12:30
10:09:19		10:12:33
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21 MR. PICKETT: Q. So this particular
22 criticism had no impact on the results. Correct?
23 MR. WILKES: Objection. Form.
24 THE WITNESS: Not as calculated by
25 Dr. Levy, that's correct.

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10:48:21
10:48:22 2 MR. PICKETT: Q. You don't know how the
10:48:23 3 numbers tie into the case. Is that your testimony?
10:48:26 4 A. That's my testimony, yes.
10:48:29 5 Q. Therefore, you don't know whether any of
10:48:31 6 your criticisms of Dr. Levy make a difference in
10:48:36 7 the case. Right?
10:48:38 8 MR. WILKES: Objection. Form, asked and
10:48:39 9 answered, overly broad, compound, vague and
10:48:41 10 ambiguous.
10:48:45 11 THE WITNESS: I'm uncertain. My opinion
10:48:48 12 is that they do have some consequences for the
10:48:53 13 case.
10:48:57 14 MR. PICKETT: Q. What?
10:48:58 15 A. I don't know.
10:49:01
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19 Q. Do you have any information at all with
20 respect to how the summary statistics from
21 Dr. Levy's report translate into damages
22 calculations or other kinds of arguments in the
23 case?
24 A. I have nothing explicit or concrete in the
25 way of understanding.

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18 Q. What did you mean when you said, "This is
19 quite a large range of uncertainty to deliberately
20 aim for in a case where Plaintiffs' allegations
21 place large sums of money at stake?"
22 A. Right. So I'm making an implicit
23 assumption that there's some link that I don't know
24 about, but that there exists one between the
25 statistics computed by Dr. Levy and damages claims.

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11:28:03	6 Q. Well, it could or it could not. You don't	11:30:09	
11:28:06	7 know one way or the other.	11:30:12	
11:28:08	8 A. I don't know what the links are between	11:30:12	
11:28:12	9 Dr. Levy's statistics and any damages claims.	11:30:14	
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11:28:55	22 A. What I know about this case is, I was	11:30:47	
11:28:57	23 asked to review and evaluate Dr. Levy's report and	11:30:51	
11:29:02	24 his work, and that's what I know about. And I'm	11:30:53	
11:29:08	25 pretty myopic about the rest of the case. So --	11:30:56	
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11:29:21	6 MR. PICKETT: Q. Do you understand that	11:31:09	
11:29:22	7 there is a burden of proof in the trial?	11:31:12	
11:29:27	8 MR. WILKES: Objection. Form.	11:31:14	
11:29:29	9 THE WITNESS: I would expect that there	11:31:16	
11:29:30	10 is, yes.	11:31:18	
11:29:31	11 MR. PICKETT: Q. Do you know what that	11:31:20	
11:29:32	12 burden of proof is?	11:31:20	
11:29:34	13 MR. WILKES: Objection. Form.	11:31:22	
11:29:35	14 THE WITNESS: Not exactly.	11:31:24	
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12:53:42	2 Dr. Vandaele chose his seed?		12:56:25
12:53:45	3 A. No, I don't.		12:56:26
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14:00:31	2 Q. Based on the discrepancy analysis, you	14:02:43	
14:00:33	3 don't know whether Dr. Levy's random set of numbers	14:02:54	
14:00:37	4 are random or not?	14:02:56	
14:00:39	5 MR. WILKES: Objection. Form.	14:03:02	
14:00:40	6 Argumentative, asked and answered.	14:03:03	
14:00:41	7 THE WITNESS: The discrepancy analysis by	14:03:06	
14:00:42	8 itself does not prove with absolute certainty that	14:03:11	
14:00:51	9 Dr. Levy's sample was selected in a manner other	14:03:12	
14:00:55	10 than how he claims.	14:03:13	
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14:01:09		14:03:32	
14:01:13		14:03:36	
14:01:13		14:03:37	18 Q. Is your z statistic analysis a hypothesis
14:01:15		14:03:43	19 test?
14:01:16		14:03:48	20 A. I haven't set it up that way.
14:01:16		14:03:53	21 Q. Well, isn't the hypothesis you're testing
14:01:17		14:03:56	22 that Dr. Levy did not perform a random sampling of
14:01:18		14:03:58	23 the Critical Support population?
14:01:18		14:04:03	24 A. I just said I didn't set it up as a
14:01:19		14:04:05	25 hypothesis test.
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14:01:24		14:04:06	1 Q. Isn't that your hypothesis that you're
14:01:28		14:04:09	2 trying to test, whether you set it up that way or
14:01:29		14:04:11	3 not? Isn't that what you did?
14:01:30		14:04:12	4 MR. WILKES: Objection. Form.
14:01:32		14:04:14	5 THE WITNESS: I'm not doing a formal
14:01:33		14:04:16	6 hypothesis test in this analysis.
14:01:39		14:04:18	
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14:01:51		14:04:21	
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14:01:53	12 MR. PICKETT: Q. On the basis of the	14:04:27	
14:01:54	13 discrepancy of 8 you find for Mr. Levy's sample,	14:04:29	
14:01:57	14 you cannot say on that basis alone that his sample	14:04:31	
14:02:00	15 is not random?	14:04:33	
14:02:02	16 MR. WILKES: Objection. Form.	14:04:34	
14:02:04	17 THE WITNESS: On the basis of that alone,	14:04:34	
14:02:07	18 I do not say that his sample is not random.	14:04:36	
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16:38:31 16:38:33 16:38:34 16:38:35 16:38:36 16:38:44 16:38:44 16:38:48 16:38:51 16:38:53 16:38:54 16:38:55 16:38:57 16:39:00 16:39:00 16:39:02 16:39:03 16:39:04 16:39:08 16:39:10 16:39:14 16:39:14 16:39:16 16:39:18 16:39:21	16:40:54 16:40:57 16:41:05 16:41:06 16:41:07 16:41:10 16:41:13 16:41:15 16:41:17 16:41:17 16:41:22 16:41:23 16:41:26 16:41:30 16:41:59 16:42:00 16:42:10 16:42:14 16:42:17 16:42:21 16:42:25 16:42:28 16:42:30 16:42:31 16:42:33 4 MR. PICKETT: Q. Okay. Let me ask you 5 this more simply. What is the probability of A or 6 B occurring if the probability of A is 10 percent 7 and the probability of B is 10 percent? 8 MR. WILKES: Objection. Form. Incomplete 9 hypothetical, calls for speculation, vague and 10 ambiguous. 11 THE WITNESS: Well, it's the sum of the 12 probabilities minus the probability of the joint 13 event. So it would be -- if my mental arithmetic 14 is right, it would be 19 percent.

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17:10:06	13 Q. Let me ask you, please, to turn to	17:13:55
17:10:08	14 paragraph 8.1 of your report, on page 42.	17:13:58
17:10:44	15 On page 43, continuing on with paragraph	17:14:02
17:10:49	16 8.1, you state that some of Dr. Levy's statements	17:14:06
17:11:07	17 are, quote, "misleading statements about	17:14:09
17:11:10	18 percentages." Do you see that?	17:14:14
17:11:16	19 A. I see that.	17:14:18
17:11:16	20 Q. What did you mean by that?	17:14:21
17:11:21	21 A. What I meant was that Dr. Levy is offering	17:14:23
17:11:25	22 his percentages as unconditional truth, while he's	17:14:28
17:11:31	23 ignoring sampling error and any even potential for	17:14:31
17:11:35	24 measurement error by Mandiant. He's just offering	17:14:35
17:11:38	25 them as, this is what the actual true percentages	17:14:36
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18:01:23 18:01:25 18:01:29 18:01:33 18:01:36 18:01:37 18:01:40 18:01:44 18:01:45 18:01:53 18:01:59 18:02:01 18:02:05 18:02:07 18:02:11 18:02:13 18:02:16 18:02:24 18:02:27 18:02:29 18:02:30 18:02:31 18:02:35 18:02:40 18:02:43	18:03:56 18:03:59 18:04:22 18:04:28 18:04:31 18:04:33 18:04:33 18:04:36 18:04:37 18:04:39 18:04:42 18:04:44 18:04:46 18:04:51 18:04:54 18:04:57 18:05:01 18:05:05 18:05:07 18:05:10 18:05:13 18:05:17 18:05:19 18:05:21 24 Q. Why did you ask to have fewer samples done 18:05:23 25 in the bootstrap?

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18:05:24	1 A. Because the computations were taking too	18:08:26	
18:05:27	2 long, and we wanted to get you the results before	18:08:28	
18:05:31	3 my deposition.	18:08:31	
18:05:33	4 Q. So you did it to reduce the time and	18:08:35	
18:05:36	5 effort that was put into the exercise?	18:08:38	
18:05:38	6 A. Yes. We were under a significant time	18:08:41	
18:05:41	7 constraint.	18:08:43	
18:05:42		18:08:44	
18:05:45		18:08:46	
18:05:48		18:08:47	
18:05:49		18:08:49	
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18:05:53		18:08:55	
18:05:55		18:08:59	
18:05:56		18:09:03	
18:05:58		18:09:06	
18:06:00		18:09:07	
18:06:02		18:09:09	
18:06:08		18:09:14	
18:06:10		18:09:15	
18:06:16		18:09:20	
18:06:19		18:09:21	
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18:06:37		18:09:54	
18:06:40		18:09:56	
18:07:03		18:09:58	
18:07:05		18:10:00	
18:07:08		18:10:02	
18:07:10		18:10:03	
18:07:10		18:10:03	
18:07:14		18:10:04	
18:07:16		18:10:05	
18:07:21		18:10:09	
18:07:28		18:10:10	
18:07:31		18:10:12	
18:07:59		18:10:14	
18:08:08		18:10:15	
18:08:11		18:10:16	
18:08:12		18:10:18	
18:08:16		18:10:20	
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18:08:22		18:10:32	
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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, 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 state, and that the testimony of 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 this cause, and that I am not related to any of the parties thereto.

DATED: June 8, 2010
Holly Thuman
HOLLY THUMAN, CSR