

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
- SAN FRANCISCO 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
DANIEL LEVY, PH.D.

FRIDAY, APRIL 30, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-427360)

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09:36:12 24 Q. And you're not a copyright expert.

09:36:14 25 Correct?

09:36:15 1 A. That's not the expertise I'm using here,
09:36:18 2 anyway.
09:36:18 3 Q. And you're not a licensing expert here
09:36:21 4 either. Right?
09:36:21 5 A. No, I'm not.
09:36:23 6 Q. Okay. And you're not a software expert.
09:36:25 7 Right?
09:36:26 8 A. I do a lot of work in software, but I'm
09:36:28 9 not using that expertise in that regard here.
09:36:35 10 Q. Have you ever written any PeopleSoft code?
09:36:39 11 A. No, I haven't written PeopleSoft code.
09:36:42 12 Q. Any JD Edwards code?
09:36:45 13 A. I don't think so.
09:36:46 14 Q. Any Siebel code?
09:36:48 15 A. Any what?
09:36:49 16 Q. Siebel?
09:36:53 17 A. No.

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10:07:48 4 Q. And how did you make a determination that
10:07:50 5 that -- what you looked at was actually
10:07:53 6 contaminated?
10:07:54 7 A. I didn't do that.

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10:09:43 10 Q. You're not providing any opinions
10:09:44 11 regarding the ultimate determination of whether or
10:09:46 12 not Defendants infringed any of Plaintiffs'
10:09:50 13 copyrights. Is that correct?
10:09:51 14 MR. PICKETT: Objection. Ambiguous.
10:09:54 15 THE WITNESS: I'm providing a
10:09:54 16 quantification of the number of times that
10:10:06 17 contamination or impermissible cross-use were found
10:10:11 18 in the data that Mr. Mandia looked at. And so in
10:10:14 19 that, I'm providing information that's related to
10:10:19 20 that.
10:10:20 21 MR. WILKES: Q. And you didn't do
10:10:20 22 anything to check Mandia's data. Is that correct?
10:10:24 23 A. I didn't do anything to check his what?
10:10:27 24 Q. Data.
10:10:33 25 A. Well, I received his data, and the data I

10:10:37 1 received I looked at.

10:10:41 2 Q. Other than receiving it, you didn't do
10:10:43 3 anything to independently verify the numbers that
10:10:45 4 he had arrived at. Is that correct?

10:10:47 5 A. Ah, sorry. I didn't understand what you
10:10:49 6 were saying.

10:10:51 7 No. We didn't go and redo Mr. Mandia's
10:10:54 8 analysis.

10:10:56 9 Q. And so is it --

10:10:57 10 A. To check that.

10:10:58 11 Q. Is it fair to say that you were assuming
10:11:00 12 contamination based on your discussion with Mandia?

10:11:04 13 A. No. I don't think I am. What I'm doing
10:11:07 14 is, I'm quantifying what the -- the measures are
10:11:11 15 that Mr. Mandia provided. And I am in some cases
10:11:16 16 counting them up in total, and in some cases I'm
10:11:20 17 extrapolating to a broader population based on
10:11:23 18 those numbers.

10:11:24 19 I'm not really making an assumption either
10:11:26 20 way.

10:11:28 21 Q. And you're not making an assumption, then,
10:11:30 22 either way on cross-use, either. Same thing?

10:11:33 23 A. Similar -- similar answer for cross-use.

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15:38:58 14 Q. Back on page 8, number 6, it says:
15:39:02 15 Specifically, Dr. Levy offered the wrong
15:39:04 16 interpretation of confidence intervals.
15:39:07 17 Do you see that?
15:39:10 18 A. Yes.
15:39:11 19 Q. Do you disagree with that statement?
15:39:16 20 A. Let me see precisely what he is trying to
15:39:19 21 get at there. 6 point ...
15:40:00 22 Well, in that paragraph, I -- he's --
15:40:06 23 sorry, on 6.25, he's saying on page 2 -- 24, that
15:40:19 24 the underlying variation in the -- well, no, it's
15:40:23 25 not sampling error.

15:40:43 1 Well, the point is, sort of combined,
15:40:46 2 maybe, there are a couple -- I can't really tell.
15:40:50 3 But there's some discussion here of whether or not
15:40:53 4 the -- I could know that the data provided to me by
15:41:00 5 Mr. Mandiant is accurate.

15:41:06 6 It's my understanding that the data that
15:41:09 7 Mr. Mandiant provided took a lot of work on his
15:41:13 8 part and among his team. I didn't independently go
15:41:17 9 and redo the task that he did, which took many
15:41:22 10 months, and I believe a large amount of dollars.
15:41:26 11 That wasn't my job here. So I didn't -- as we
15:41:31 12 talked about earlier, I didn't assume or -- that he
15:41:35 13 was right or wrong in that. I took the numbers,
15:41:37 14 though, and calculated what they represented.

15:41:41 15 So I used those numbers as the information
15:41:47 16 that I reported.

15:41:52 17 The second thing is, I think, in this
15:41:54 18 statement here, I believe that the description of
15:41:57 19 true and population value is something that I
15:42:01 20 quoted to page numbers out of a book by I think
15:42:08 21 it's -- I think it's Paul Levy and Lemeshow. And
15:42:13 22 it's the terminology that they used there.

15:42:16 23 And so in order to -- in referencing what
15:42:18 24 I was doing, I was trying to use the same language
15:42:21 25 so that it was easy to reference in the material

15:42:25 1 that I was citing.

15:42:27 2 So I think the statement that my
15:42:29 3 confidence intervals are wrong because there may be
15:42:37 4 some issue about the quality of data that
15:42:41 5 Mr. Mandiant used is a very confusing statement at
15:42:49 6 least, and one that, if there's any issue about the
15:42:52 7 quality of the data in the case, it's beyond the
15:42:57 8 tasks I was hired to address. Someone else would
15:43:01 9 address them in the case.

15:43:03 10 If there were changes, those changes could
15:43:08 11 certainly be put through the process that I
15:43:11 12 constructed, and new calculations in my report
15:43:17 13 would occur.

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17:03:08 1 recall that there was an error in it. I can't say
17:03:12 2 that there isn't.

17:03:14 3 MR. WILKES: That's all the questions we
17:03:15 4 have for now.

17:03:17 5 MR. PICKETT: Okay. Thank you.

17:03:19 6 THE VIDEO OPERATOR: Going off the record,
17:03:20 7 the time now is 5:03. This also is the conclusion
17:03:24 8 of Tape 4.

17:03:26 9 (Time noted, 5:03 p.m.)

17:03:32 10 --o0o--

17:03:32 11 I declare under penalty of perjury that
17:03:32 12 the foregoing is true and correct. Subscribed at
17:03:32 13 San Francisco, California, this 30 day of
17:03:32 14 April 2010.

17:03:32 15
17:03:32 16 
17:03:32 17 DANIEL LEVY, PH.D.

18 Errata signed June 10, 2010

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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: May 12, 2010
Holly Thuman
HOLLY THUMAN, CSR