

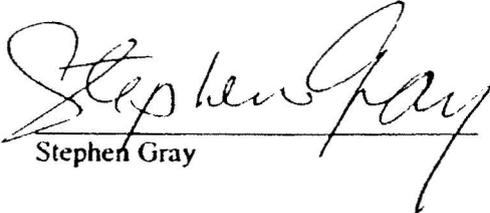
EXHIBIT H

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE USA, INC., et al,)	
)	
Plaintiff)	
)	
v.)	Case No.: 07-CV-1658 PJH (EDL)
)	Jury Trial Demanded
SAP AG, et al.,)	
)	
Defendants)	

EXPERT REPORT OF STEPHEN GRAY

DATE: 6/3/2010



Stephen Gray

8.2.6. Limited discussion of Copyright Registrations

As discussed below in Sections 9, 10, and 11 of my Report, the Mandiant Report only references 65 Copyright Registrations of the 120 Copyright Registrations put at issue by Oracle in this case. The Mandiant Report does not discuss any other registrations.⁸⁷

8.3 There is no evaluation of whether the customers received any software they had not paid Oracle for regardless of the source of the software

The Mandiant Report identifies instances of TomorrowNow's alleged acquisition of Oracle software on behalf of its customers. The Mandiant Report, relying on the opinions of Oracle employees, states that at least some of the allegedly acquired software allegedly contained material protected by Copyrights asserted in the matter. What the Mandiant Report fails to disclose is whether TomorrowNow's customers were entitled to the allegedly Copyright protected software that TomorrowNow allegedly acquired by on their behalf. In other words, the Mandiant Report does not address whether TomorrowNow's customers were entitled to the software regardless of the source of the software. Determining whether the TomorrowNow customer was entitled to the software requires a customer by customer, license by license analysis. This analysis is not contained in the Mandiant Report and I am unaware of any document produced in this matter that presents this analysis.

⁸⁶ See Appendix 4, which contains the "Non-Accused Conduct" spreadsheet and is bates labeled SAP-GRA-000001 and Appendix 5, which contains the "Non-Accused Conduct" Methodology Document and is bates labeled SAP-GRA-000002-13. See also September 17, 2009 Deposition of Michael Garafola, at 173:16-175:14 and Pls. Depo Exs. 1623 and 1628 (indicating that only 6 customers had local environments on TomorrowNow's network and that the remaining customers were serviced remotely with the use of environments on the customer network). Further, this analysis does not count TomorrowNow customer EDF Energy, which as noted on Pls. Depo. Ex. 1623, was a consulting only customer. See also TN-OR04446719, TN (Hard Drive).75 at Siebel View 1.Support\1. All\By Customer>Select EDF Energy>Select Service.

⁸⁷ A summary of the registrations mentioned, and the places where they can be found in the Mandiant Report, is contained in Appendix 6, which is bates labeled SAP-GRA-000014.

APPENDIX 6

Registration No.	Title of Work	Page Number Where Registration Referenced in Mandiant Report (MR) and Mandiant Appendices (MA)
TX 6-541-033	Initial release of JD Edwards EnterpriseOne XE	MR - p. 72, para. 270
TX 6-541-051	ESU for JD Edwards EnterpriseOne Xe	MR - p. 57-58, para. 224-226
TX 6-541-048	Cumulative Update 8 for JD Edwards EnterpriseOne Xe	MR - p. 72, para. 270
TX 6-541-046	ESU for JD Edwards EnterpriseOne 8.0	MR - p. 57-58, para. 224-226
TX 6-541-036	ESU for JD Edwards EnterpriseOne 8.9	MR - p. 57-58, para. 224-226
TX 6-541-037	ESU for JD Edwards EnterpriseOne 8.10	MR - p. 57-58, para. 224-226
TX 6-541-035	ESU for JD Edwards EnterpriseOne 8.11	MR - p. 57-58, para. 224-226
TX 6-541-027	ESU for JD Edwards EnterpriseOne 8.11 SP1	MR - p. 57-58, para. 224-226
TX 6-541-045	ESU for JD Edwards EnterpriseOne 8.12	MR - p. 57-58, para. 224-226
TX 6-541-029	Initial release of JD Edwards World A7.3	MR - p. 73, para. 274
TX 6-541-043	Code Change for JD Edwards World A7.3	MR - p. 57-58, para. 224-226; p. 73, para. 274
TX 6-541-031	Cumulative Update 16 for JD Edwards World A7.3	MR - p. 73, para. 274
TX 6-541-047	Initial release of JD Edwards World A8.1	MR - p. 73, para. 274
TX 6-541-044	Code Change for JD Edwards World A8.1	MR - p. 57-58, para. 224-226
TX 6-545-421	Cumulative Update 6 for JD Edwards World A8.1	MR - p. 73, para. 274
TX 6-541-020	ECRM89: Common Errors on Mobile Sales	MR - p. 57-58, para. 224-226
TX 6-541-023	EAP WTHD06: 1099 IRS changes for the year 2006	MR - p. 57-58, para. 224-226
TX 6-541-026	JD Edwards World -- 1099 Changes for Tax Year 2006	MR - p. 57-58, para. 224-226
TX 6-541-024	E1: 1099: Year 2006 1099 ESUs	MR - p. 57-58, para. 224-226
TX 6-541-025	Changes to Daylight Savings Time for 2007 (DST)	MR - p. 57-58, para. 224-226
TX 6-541-022	E1: 07/77: Quantum for Payroll Tax v.280	MR - p. 57-58, para. 224-226
TX 6-541-021	GM--Grants issues resolved by FMS ESA 8.9 Bundle #10-653723 (Oct 06)	MR - p. 57-58, para. 224-226
TX 6-541-019	PeopleTools Third Party Daylight Saving Time Required Modifications	MR - p. 57-58, para. 224-226
TX 6-541-018	PeopleTools Third Party Daylight Saving Time Required Modifications (Revised)	MA - p. 127; ORCLX-MAN-000145
TX 6-838-549	PeopleSoft 8.01 & 8.31 Payroll Tax Update 05-F Year-End Processing: Canada	MA - p. 127; ORCLX-MAN-000145
TX 6-838-537	PeopleSoft Payroll 1200457000 - User Documentation	MA - p. 127; ORCLX-MAN-000145
TX 6-838-544	PeopleSoft Application Update Installation Instructions (UPD595817)	MA - p. 127; ORCLX-MAN-000145
Txu 1-607-454	Database of Documentary Customer Support Materials for PeopleSoft Software	MR - p. 56-57, para. 219-222
Txu 1-607-455	Database of Documentary Customer Support Materials for J.D. Edwards Software	MR - p. 56-57, para. 219-222
TX 6-941-989	Siebel 6.3 Initial Release and Documentation	MR - p. 74, para. 280-281
TX 6-941-988	Siebel 7.0.5 Initial Release and Documentation	MR - p. 74, para. 280-281
TX 6-941-990	Siebel 7.5.2 Initial Release and Documentation	MR - p. 74, para. 280-281

Registration No.	Title of Work	Page Number Where Registration Referenced in Mandiant Report (MR) and Mandiant Appendices (MA)
TX 6-941-993	Siebel 7.7.1 Initial Release and Documentation	MR - p. 74, para. 280-281
TX 6-941-995	Siebel 7.8 Initial Release and Documentation	MR - p. 74, para. 280-281
TXu 1-607-453	Database of Documentary Support Materials for Siebel Software	MR - p. 56-57, para. 219-222
TX 5-222-106	Oracle 8i Enterprise Edition, release 2 (8.1.6)	MR - p. 77, para. 291
TX 5-392-842	Oracle Relational Database Management System (RDBMS): Release 8.0.4	MR - p. 77, para. 291
TX 5-392-861	Oracle Relational Database Management System (RDBMS): Release 8.0.5	MR - p. 77, para. 291
TX 5-673-281	Oracle9i Database Enterprise : Edition Release 1 (9.0.1)	MR - p. 77, para. 291
TX 5-673-282	Oracle9i Database Enterprise : Edition Release 2 (9.2.0.1)	MR - p. 77, para. 291
TX 6-938-648	Oracle Database 10g: Release 1	MR - p. 77, para. 291
TX 6-942-003	Oracle Database 10g: Release 2	MR - p. 77, para. 291
TX 4-792-578	PeopleTools 7.5	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-266-222	PeopleTools 8.0	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-266-221	PeopleTools 8.10	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-586-248	PeopleTools 8.4	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 4-792-577	PeopleSoft HRMS 7.0	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 4-792-575	PeopleSoft HRMS 7.5	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-291-440	PeopleSoft HRMS 8.0	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-501-312	PeopleSoft HRMS 8 SP1	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-469-032	PeopleSoft HRMS 8.3	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 6-093-947	PeopleSoft HRMS 8.8	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 4-792-576	PeopleSoft Financials, Distribution and Manufacturing 7	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 4-792-574	PeopleSoft Financials 7.5	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-431-289	PeopleSoft Student Administration Solutions 8	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10

Registration No.	Title of Work	Page Number Where Registration Referenced in Mandiant Report (MR) and Mandiant Appendices (MA)
TX 5-456-777	PeopleSoft Customer Relationship Management 8	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-493-450	PeopleSoft Customer Relationship Management 8.1	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 6-015-317	PeopleSoft Customer Relationship Management 8.8	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-291-439	PeopleSoft Financials and Supply Chain Management Enterprise 8	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-501-313	PeopleSoft Financials and Supply Chain Management 8 SP1 Rev 1	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-456-780	PeopleSoft Financials and Supply Chain Management 8 SP2	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-586-247	PeopleSoft Financials and Supply Chain Management 8.4	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-345-698	PeopleSoft Enterprise Performance Management 8 SP3	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-485-839	PeopleSoft Enterprise Performance Management 8.3 Rev 1	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10
TX 5-993-616	PeopleSoft Enterprise Performance Management 8.8	MR - p. 59, para. 231, p. 68, para. 254, p. 70, para. 261; MA - p. 17-18, Table 10