Oracle Corporation et al v. SAP AG et al
Doc. 783 Att. 11

EXHIBIT K

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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.	)	CASE NO. 07-CV-01658 (MJJ)
SAP AG, A GERMAN CORPORATION, SAP AMERICA, INC., A DELAWARE CORPORATION, TOMORROWNOW, INC., A TEXAS CORPORATION, AND DOES 1-50, INCLUSIVE, Defendants.	)	

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"HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
ORAL VIDEOTAPED DEPOSITION OF
THOMAS ZIEMEN
September 30, 2008 - Volume 1
****

ORAL VIDEOTAPED DEPOSITION OF THOMAS ZIEMEN, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on Tuesday, September 30, 2008 - Volume 1, from 8:45 a.m. to 6:24 p.m., before JAMES M. PLAIR, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of JONES DAY, 717 Texas, Suite 3300, Houston, Texas 77002-2712, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 1603-88906

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(Exhibit 447 marked)

Q. (MS. HOUSE) Could you look at what's been marked Exhibit 447, and while you're looking at it, I'll identify it for the record. Exhibit 447 is a multipage document with a cover e-mail from Thomas Ziemen dated 12/23/2004. It's sent to Leo Apotheker, Shai Agassi, Marty Homlish. It's cc'd to Henning Kagermann. The subject is PeopleSoft Attack Program, and the cover e-mail is SAP-OR00253278. Oh, I'm sorry. Mr. Oswald is also cc'd, and then behind it is a PowerPoint that starts on 253279 and it goes

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01:36 21 Q. (MS. HOUSE) Would you look at Exhibit 454?
01:36 22 Exhibit 454 is an e-mail chain. Again, it was originally
01:36 23 in German with a translation and a certification of the
01:36 24 translation included in the exhibit. It's -- the most
01:36 25 recent e-mail in the chain is dated July 31st, 2006. It's

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01:36 1 between you and Gerd Oswald with a cc to Bernd Welz and
01:37 2 the initial e-mail is titled Q1 Oracle Disruption Plan.
01:37 3 Q. Okay.
01:37 4 A. Okay.
01:37 5 Q. On Page 242, which is the second page of the
01:37 6 exhibit in the original e-mail which is from Marty
01:37 7 Homlish, he indicates: "Hello Everyone. During this
01:37 8 week's FLT meeting, my team committed to delivering a plan
01:37 9 by today that will allow SAP to disrupt Oracle's quarter
01:38 10 over the next 30 days so that they do not meet
01:38 11 expectations of approximately 225 million U.S. dollars in
01:38 12 License Sales," and then he indicates how you're going
01:38 13 to -- how SAP is going to do that and one of the prospect
01:38 14 offers is Total TomorrowNow Lifetime Support with Free
01:38 15 Maintenance. Do you see that?
01:38 16 A. Yes.
01:38 17 Q. Do you recall this program?
01:38 18 A. I recall the Q1 Oracle Disruption Plan.
01:38 19 Q. And do you recall responding as -- to Mr. Oswald
01:38 20 concerning it, as indicated on the first page of
01:38 21 Exhibit 454? You write to him about that first part we've
01:38 22 just talked about, the Total TomorrowNow Lifetime Support
01:38 23 with Free Maintenance, and you indicate: "The free
01:38 24 maintenance for at least 1 year per customer (regardless
01:38 25 of the cancellation notice or renewal period of his Oracle

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01:39 1 maintenance agreement) would mean a loss in sales in the
01:39 2 year 2007 for TomorrowNow in the estimated amount of euros
01:39 3 5 million (according to information received from Andrew),
01:39 4 thus no profitability could be reached in 2007." Did you
01:39 5 write that?
01:39 6 A. Yes.
01:39 7 Q. And despite that, SAP offered that program.
01:39 8 Correct?
01:39 9 MR. COWAN: Objection. Form.
01:39 10 A. That was the decision of the FLT respective SAP
01:39 11 board.
01:39 12 Q. (MS. HOUSE) So even though TomorrowNow was going
01:39 13 to have those kind of losses, the decision was made that
01:39 14 it still makes strategic sense to offer this program.
01:39 15 Correct?
01:39 16 MR. COWAN: Objection. Form.
01:39 17 A. That was a decision by the board and the FLT.
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06:05 10 Q. Okay. Let's look back at Exhibit 450. It was
06:05 11 one of the first things I showed you. It's a
06:05 12 December 1st, 2006, PowerPoint entitled TomorrowNow
06:05 13 Acquisition Monitoring. It should be in --
06:06 14 MR. COWAN: He has it.
06:06 15 MS. HOUSE: It looks like this. It's got
06:06 16 his scribbles on the front.
06:06 17 Q. (MS. HOUSE) And I know we've gone over this
06:06 18 briefly before. This was your report to the SAP board in
06:06 19 connection with monitoring the TomorrowNow acquisition.
06:06 20 Correct?
06:06 21 A. Acquisition monitor and report, yes.
06:06 22 Q. And you, again, attempted to be accurate when
06:06 23 you created this. Yes?
06:06 24 A. Yes.
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06:15 23 Q. And underneath that in the sub bullet you write:
06:15 24 "Take away maintenance revenue from Oracle." Right?
06:15 25 A. Right.

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06:15 1 Q. And then you write: "Create pre-pipeline of
06:15 2 future SAP customers." Right?
06:15 3 A. Right.
06:15 4 Q. And that was the first conclusion that you drew
06:15 5 and presented in connection with this report. Correct?
06:15 6 A. This is a summary.
06:15 7 Q. And you reference in the next bullet point that
06:15 8 TomorrowNow was still operating at a loss in 2006. Right?
06:15 9 A. Correct.
06:15 10 Q. But even though it was operating at a loss, it
06:15 11 was review -- it was perceived by you in your conclusion
06:15 12 as a strategic investment that serves as a strategic
06:15 13 weapon against Oracle. Right?
06:16 14 A. That serves as a strategic investment for SAP.
06:16 15 Q. Right? And as a strategic weapon against
06:16 16 Oracle. Right? That's what your language says. Correct?
06:16 17 MR. COWAN: Objection. Form.
06:16 18 A. Correct.
06:16 19 Q. (MS. HOUSE) So the value of TomorrowNow was not
06:16 20 just associated with it making a profit. Correct?
06:16 21 MR. COWAN: Objection. Form.
06:16 22 A. Its value was not only related to the fact to
06:17 23 become a profitable revenue -- a revenue unit.
06:17 24 Q. (MS. HOUSE) And did anybody who you made this
06:17 25 presentation to disagree with your conclusion?

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06:17 1 MR. COWAN: Objection. Form.
06:17 2 A. I don't know.
06:17 3 Q. (MS. HOUSE) Did you ever hear of any
06:17 4 disagreement with your conclusion?
06:17 5 A. I don't know.
06:17 6 Q. I'm asking you did you hear of any disagreement?
06:17 7 A. No, I never hear -- never heard about any
06:17 8 disagreement.
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STATE OF TEXAS
COUNTY OF HARRIS

I, JAMES M. PLAIR, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that this deposition transcript is a true record of the testimony given by the witness named herein, after said witness was duly sworn by me. The witness was requested to review the deposition.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

I further certify that the amount of time used by each counsel at the time of the deposition is as follows:

Ms. Holly House -(08:10:54)
Attorney for PLAINTIFFS
Mr. Scott W. Cowan -(00:00:00)
Attorney for DEFENDANTS

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 7th day of October, A.D., 2008.

JAMES M. PLAIR, CSR, RPR
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