

EXHIBIT CC

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

Page 34	Page 36
09:41 09:41 09:41 09:41 09:41	09:42 09:43 09:43 09:43 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 25 significant piece of work. To go through and count
Page 35	Page 37
09:41 09:42 09:42 09:42	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. 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 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 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. 19 Q. Fresh development, modernization, and 20 maintenance? 21 A. Yes. 22 Q. Does NIIT, as far as you know, analyze, 23 assess the value of software for -- that already has 24 been developed, accepted for purpose of maintenance? 25 I mean, as far as in this case -- let me step back.

Page 38

1 Strike that.
2 In this case you were engaged to analyze and
3 place a value on some software that already has been
4 developed. Four suites you analyzed already exist,
09:45 5 correct?
6 A. Yes.
7 Q. Are you aware of any work by NIIT that is
8 similar to that in nature where NIIT also put a value
9 on, for whatever purpose, a software that already was
09:46 10 in existence?
11 A. So subtle rephrasing if you will. NIIT is a
12 consulting services firm that would perform estimates
13 in order to bid on projects. So these are -- these
14 are not career estimators. These are real world guys
09:46 15 doing real world work. When they estimate a job,
16 it's to win a bid. When they win the bid -- and when
17 I was in the employ there, we won about a quarter of
18 all of our bids -- we would then be tasked with
19 fulfilling that bid against those estimates.
09:46 20 Q. So you were bidding to -- at NIIT when you
21 were there to get software development work.
22 A. Right. And let me go back to answer your
23 question. I'm not sure I did.
24 Q. Okay.
09:47 25 A. As part of those bids, we would bid on new

Page 39

1 software development work which ranged in what we
2 were delivered to estimate from. So sometimes it was
3 functional specifications written in process
4 diagrams, sometimes it was data flow diagrams,
09:47 5 sometimes it was use cases, sometimes it was
6 paragraph formed functions written almost as a user
7 manual. That was for fresh development.
8 For modernization, my term for it, is taking
9 typically a software application, a commercial
09:47 10 software application that's written in a perceivably
11 arcane technology, estimating it to rewrite it into a
12 new technology while maintaining the exact same
13 functionality. That's the second variety of projects
14 bid on.
09:48 15 The third variety is for the purposes of
16 maintenance. So NIIT would also take over the
17 maintenance of products. So we would have to size
18 those products using an estimating method and then
19 determine how much would change each year and factor
09:48 20 that into developing a cost for maintaining the
21 application.
22 Q. Okay. And when these estimated costs were --
23 were created, those costs were then provided to a
24 company which was -- would do the software
09:48 25 development?

Page 40

1 A. No, NIIT was the company who would do the
2 software development.
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Page 41

09:49
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09:50

Page 50	Page 52
10:01	10:04
10:01	10:04
10:02	10:04
10:02	10:04
10:02	10:05
Page 51	Page 53
10:02	10:05
10:03	10:05
10:03	10:05
10:03	10:05
10:04	10:06
	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 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 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 25 they would corroborate. And actually as you can see

<p style="text-align: right;">Page 54</p> <p>1 from the results, there was -- there was quite a 2 variance.</p> <p>10:06</p> <p>10:06</p> <p>10:07</p> <p>10:07</p> <p>10:07</p>	<p style="text-align: right;">Page 56</p> <p>10:09</p> <p>10:09</p> <p>10:09</p> <p>10:09</p> <p>10:10</p>
<p style="text-align: right;">Page 55</p> <p>10:08</p> <p>10:08</p> <p>10:08</p> <p>10:08</p> <p>10:08</p>	<p style="text-align: right;">Page 57</p> <p>10:10</p> <p>10:10</p> <p>10:10</p> <p>10:11</p> <p>10:11</p>

Page 58		Page 60	
10:11	3 A. It's not my ten-step process. It's my 4 description of a process.	10:13	
10:11	5 Q. Okay.	10:13	
10:11	6 A. Okay? I don't -- I don't want you to 7 connote that I built it. This is around in 8 consultancies forever. This is what consultants use 9 to bid on deals.	10:13	
10:11	10 Q. Okay. We'll get to that a little bit later 11 when we talk about the steps that you employed, but 12 your testimony is that you did not devise that -- 13 those ten steps on your own, they came from someone 14 else?	10:13	
10:11	15 A. No, my testimony is that those ten steps 16 exist in consultancies.	10:13	
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10:12		10:14	
Page 59		Page 61	
10:12		10:14	
10:12		10:14	
10:13		10:14	
10:13		10:15	
10:13		10:15	

Page 70	Page 72
<p>10:24 6 Are you aware that Mr. Neuendorf works as a 7 senior consultant for the David Consulting Group? 8 A. I'm not aware. 9 Q. It just so happens that the David Consulting 10:24 10 Group is the company that Mr. Garmus, SAP's function 11 point specialist expert, founded. Do you know that? 12 A. I am aware that Mr. Garmus is a cofounder of 13 DCG. 14 Q. And until now when I mentioned the David 10:24 15 Consulting Group in connection with Mr. Neuendorf, 16 you didn't know that he had a connection with that 17 group? 18 A. I had no idea. He came to me through NIIT. 19 Q. Did you ever see a CV or résumé for him that 10:25 20 mentioned the David Consulting Group? 21 A. I did see a CV for him, but I did not note 22 that he had worked for DCG.</p> <p>10:25</p>	<p>10:26</p> <p>10:26</p> <p>10:27</p> <p>10:27</p> <p>10:27</p>
Page 71	Page 73
<p>10:25</p> <p>10:25</p> <p>10:26</p> <p>10:26</p> <p>10:26</p>	<p>10:27</p> <p>10:27</p> <p>10:27</p> <p>10:27</p> <p>10:27</p>

Page 98

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12 Q. Okay. I was asking a very different
13 question. Although that's interesting what you've
14 told me, it's not my question.

11:10 15 A. Okay.
16 Q. Did you use COCOMO in those instances?
17 A. Sometimes, yes.
18 Q. Okay. Did you sometimes use function point?
19 A. Yes, more often than not function point.

11:10 20 Q. Okay. More often than COCOMO and more often
21 than any other tools?
22 A. Yes.

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Page 99

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Page 100

4 Q. You said you're a big fan of function point
5 analysis. How many times have you used function
6 point analysis in the past?
7 A. In the method that I've used here?
8 Q. Yes.
9 A. At least 50 times.

11:12 10 Q. Okay. All of those at Sylvan VI or even
11 previously?
12 A. No, previously.
13 Q. Some previous to that, too.
14 A. Yes. So in my previous positions since 2000.
15 So my five years at NIIT, my two years at Epicor, my
16 one year at Infor, my last one year at Sylvan VI.
17 Q. So in total NIIT, Epicor, Infor, Sylvan about
18 50 times or so.
19 A. Yes.

11:13 20 Q. And that's using the method that you used in
21 your report?
22 A. Yes.
23 Q. Did you ever use the method that Mr. Garmus
24 used?
11:13 25 A. The hand-counting method?

Page 101

1 Q. I don't know. I don't know what that term --
2 I've never heard that term. The method, the IFPUG
3 method. Have you ever used the IFPUG method?
4 A. No, the hand-counting method.

11:13 5 Q. We'll get to where you're getting that.
6 Where are you getting that terminology hand-counting?
7 That came from Mr. Neuendorf?
8 A. No. No, that came from Mr. Garmus. This is
9 a really important point, Mr. Butler.

11:13 10 Q. Okay. What is that?
11 A. Function point is an expression of a size of
12 an application in normalized terms. You can get to a
13 function point through two different methods, one of
14 which is hand-counting as asserted by Mr. Garmus.
15 The other one is through backfiring which takes a
16 different approach, an automated approach counting
17 the number of source lines of code and applying a set
18 of metrics to estimate the number of function points.
19 Q. Okay.
20 A. So function point is not an estimating
21 methodology. It's a sizing methodology.
22 Q. Okay.
23 A. As it's professed by IFPUG, right, really
24 goes to hand-counting, and this again is an important
11:14 25 point. I realize I'm elaborating a bit further than

Page 102	Page 104
<p>1 you would like me to, but it's important and it's 2 germane. 3 Q. I think I understand your point. 4 MS. HOUSE: No, let him finish. Don't 11:14 5 interrupt. 6 THE WITNESS: You asked me to answer 7 completely. You asked me to answer completely and I 8 want to do that. 9 With regard to IFPUG and its -- its approach 11:14 10 to function point analysis, it espouses 11 hand-counting. So IFPUG's primary revenue streams 12 are associated with training people on hand-counting 13 and certifying hand-counters. The constituency that 14 they serve are hand-counters. So they espouse 11:14 15 hand-counting. 16 There are other schools of thought that shows 17 that you can very accurately obtain the functional 18 size of an application in terms of function point by 19 using backfiring and counting the numbers of lines of 11:15 20 code.</p> <p>11:15</p>	<p>1 Q. Okay. 2 A. I did look at using the hand-counting method. 3 Q. Okay. And you rejected it. 4 A. I did. 11:16 5 Q. Are you skilled in that -- in that method? 6 A. Am I capable in that method? Yes. Am I a 7 certified function point hand-counter? No. 8 Q. No, I didn't say certified. Are you skilled? 9 Do you consider yourself capable of doing that kind 11:16 10 of analysis? 11 A. No, not in a consistent manner. 12 Q. Do you consider yourself skilled and capable 13 of doing the kind of analysis you did, your ten-step 14 program? 11:16 15 A. Yes. 16 Q. You do consider yourself skilled in that 17 process? 18 A. I do. 19 Q. Other than you, do you know of any other 11:16 20 people who have used the ten-step process that's 21 recited in your report to do function point counting? 22 A. Yes, at NIIT it's what they do every day all 23 day.</p> <p>11:17</p>
Page 103	Page 105
<p>11:15</p> <p>11:15</p> <p>11:15</p> <p>11:15</p> <p>11:15</p> <p>11:16 22 Q. Did you consider using the method that 23 Mr. Garmus used when you were conducting your 24 analysis that you called function point? 11:16 25 A. I did.</p>	<p>11:17</p> <p>11:17</p> <p>11:17</p> <p>11:17</p> <p>11:17</p>

Page 166	Page 168
12:37 12:37 12:37 12:37 12:37	12:39 9 Q. Page 14 of your report you entitle heading 10 VI: "Ten-Step Analysis to Determine the Cost of 11 Development Using Function Point." Do you see that? 12 A. I do. 13 Q. When you recited these ten steps here and you 14 list them A, B, et cetera, Step One, Step Two, all 15 the way up to Step Ten, were you copying those steps 16 from some other document or source, or were you 17 simply typing them from what you understood the 18 appropriate ten steps from your brain and memory? 19 A. Well, it's actually neither of those 20 scenarios. 21 Q. Okay. 22 A. So being in the consulting field essentially 23 my entire career, this is acknowledged as a fair 24 description of the process that one goes through in 12:40 25 estimating a new application development effort or a
Page 167	Page 169
12:38 12:38 12:38 12:38 12:39	1 modernization effort, same steps. 2 Q. Acknowledged by whom? 3 A. By consultants. 4 Q. So consultants generally would view these ten 12:40 5 steps as the appropriate steps, you're saying. 6 A. So, yes, in a word, the consulting companies 7 for which I worked pursue these steps or similar 8 steps to these steps. Other steps may appear at 9 differing levels of detail and may include 12:41 10 techniques, so the how to do it versus what to do. 11 So these steps were assembled to provide the reader 12 with insight into how I moved from A to B, B to C and 13 so on. 12:41 12:41 12:41

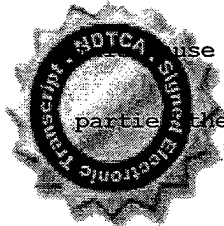
CERTIFICATE OF REPORTER

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 the cause and that I am not related to any of the parties hereto.



DATED: May 25, 2010

Wendy E Arlen

WENDY E. ARLEN CSR, No. 4355