Oracle Corporation et al v. SAP AG et al
Doc. 800 Att. 22

EXHIBIT 22

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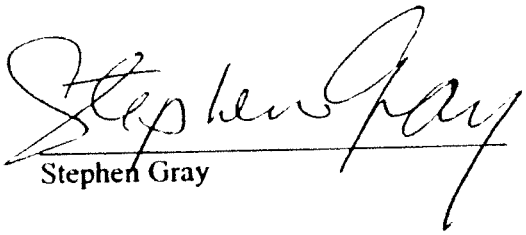
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION

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

EXPERT REPORT OF STEPHEN GRAY

DATE: 6/3/2010



Stephen Gray

10.6.3.2 There is no technical reason why TomorrowNow could not support PeopleSoft and Siebel customers using the limited Oracle database installations TomorrowNow installed and the associated databases

The existing installations of Oracle's database management software are more than ample to support the subset of TomorrowNow customers subscribing to the PeopleSoft and Siebel support services and who used an underlying Oracle database for those applications.

10.6.3.3 There is no technical reason why an Oracle enterprise software user would need more than one Oracle database installation to support multiple databases for their production and demo environments

The Mandiant Report's counts of "copies" of Oracle's database software include counting multiple copies for the same TomorrowNow customer.[163] There is no technical reason that a user of Oracle enterprise software would need more than one Oracle database installation to support multiple databases for their production and demo environments.

10.6.4. TomorrowNow did not provide support for Oracle database products

I am unaware of any Oracle accusation that TomorrowNow provided support for Oracle database management products. Also, I am unaware of any occurrence of TomorrowNow providing support for Oracle database management products.

10.6.5. The Meyer Report's analysis, which relies on the Mandiant Report, does not make technical sense

I have reviewed the February 23, 2010 version of the Supplemental Report of Paul K. Meyer (the "Meyer Report"). The Meyer Report's conclusion that the "value of use of Oracle's database copyright materials of $55.6 million" is allegedly justified, in part, on the flawed analysis found in the Mandiant Report.[164]

[163] Mandiant Report, ¶¶ 282-291.

[164] *See, e.g.*, Meyer Report, ¶¶ 255 and 257.

10.6.5.1 As noted, there is no technical reason for a database installation for each customer

Although the Meyer Report uses different numbers[165] than the Mandiant Report, both are based on the flawed assumption that an instance of an Oracle database should be counted as a copy of Oracle's database management software. As noted above, there is no technical reason that each separate database instance would require a separate database software system installation. Oracle's software is designed to support multiple databases per database management software instance.

10.6.6. Even if the Meyer Report is correct, TomorrowNow was not using the Oracle database installations for production environments. Therefore, TomorrowNow would technically only need a single processor for each

The Meyer Report assumes an eight processor server in calculating some of the license values.[166] Assuming, *arguendo*, that the Meyer Report was correct in the count of database management software installations found on TomorrowNow's servers, there is no technical reason to assume an eight processor configuration for each instance. To the extent that TomorrowNow was using any Oracle database management software in support of its customers, the use was not for production. Thus, for TomorrowNow's purposes, a single processor configuration would have been ample for any instance of Oracle's database management software.[167]

Based on my understanding of TomorrowNow's services, TomorrowNow's selection of server configurations with more than one processor would have had nothing to do with the database management software requirements. These larger configurations were needed to

[165] There is no explanation for the variance between the number of Oracle database installations in the Meyer Report and that reported in the Mandiant Report.

[166] Meyer Report, ¶ 252.

[167] March 10, 2010 conversation with John Baugh.

support the volume of business activity anticipated or performed by TomorrowNow unrelated to the requirements for database management.[168]

Along the same lines, even if the Meyer Report is right in that TomorrowNow would need an instance of Oracle Database Software for each instance of an Oracle database, there would not be a need for more than a single processor server to support it. Assuming an eight processor configuration does not make any technical sense.

10.6.7. The Meyer Report increased the numbers based on the alleged contamination identified in the Mandiant Report

As noted, the counts of supposed "copies" of Oracle database software in the Meyer Report and the Mandiant Report are different. Although the Meyer Report does not address this issue directly, it appears that the difference may be due to different accounting of alleged "contamination." But, there is no explanation in the Meyer Report that accounts for this difference and the Mandiant Report does not include the "contamination" analysis found in the Meyer Report.

Also, I am unaware of any analysis in the Mandiant Report that could be used as a basis for the Meyer Report counts of Oracle Database Software allegedly found on TomorrowNow's servers. And, there is no indication whatsoever in the Meyer Report that either Meyer is qualified to perform, or actually performed, the counts himself independently of Mandiant and the Mandiant Report.

10.6.7.1 The Meyer Report counts are overstated regarding alleged "contamination" and the explanation in the report for the counts makes little technical sense

The Meyer Report offers the opinion that all 172 TomorrowNow PeopleSoft HRMS customers required an Oracle Database Software license.[169] This count is overstated. The

[168] March 10, 2010 conversation with John Baugh.

[169] Meyer Report, ¶ 257.