

EXHIBIT F

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 1658 (PJH)

SAP AG, a German
corporation, SAP AMERICA,
INC., a Delaware
corporation, TOMORROWNOW,
INC., a Texas corporation,
and DOES 1 50, inclusive,

Defendants.

_____ /

Rule 30(b)(6) Deposition of

UYEN NGOC ANN KISHORE

Volume II Pages 250 540

Friday, September 25, 2009

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

REPORTED BY: JOHN WISSENBACH, RDR, CRR, CBC, CCP,
CLR, CSR 6862 01 421907

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09:52:48

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Q. Is it correct that Oracle EMEA is a party

09:52:51 1 to various commissionaire agreements with a group of
09:52:55 2 companies just below, listed in the white box that's
09:52:57 3 labeled "Commissionaires"?
09:52:59 4 MR. POLITO: Compound; vague.
09:53:00 5 THE WITNESS: So the -- the list of
09:53:04 6 entities below is Oracle Deutschland -- which I
09:53:08 7 think that's the German entity you're referring
09:53:11 8 to -- Oracle Netherlands, Oracle UK, Oracle France,
09:53:16 9 Oracle Norway, Oracle Switzerland, Oracle Italy, and
09:53:21 10 Oracle Sweden all have commissionaire agreements
09:53:23 11 with OEMEA.

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11:44:40 17 Q. I want to draw your attention to the
11:44:45 18 commissionaire agreements that are -- at least I've
11:44:49 19 depicted here in the lower right-hand box, under the
11:44:52 20 heading "Commissionaires." Do you see that?
11:44:55 21 A. Uh-huh.
11:44:56 22 Q. And what I'm going to do is ask you some
11:44:58 23 questions about the UK agreement.
11:45:01 24 A. Okay.
11:45:01 25 Q. Is it your understanding in general that

11:45:08 1 Oracle EMEA's commissionaire agreements with each of
11:45:13 2 these entities are basically the same?

11:45:16 3 MR. POLITO: Outside the scope, documents
11:45:18 4 speak for themselves, compound, vague as to time.

11:45:20 5 BY MR. McDONELL:

11:45:20 6 Q. I mean, the rates might differ, or
11:45:22 7 whatever, but they're basically the same structure?

11:45:25 8 MR. POLITO: Same objections.

11:45:27 9 THE WITNESS: I think they're quite
11:45:29 10 similar. Only exception within this group is
11:45:37 11 potentially Italy.

11:45:38 12 BY MR. McDONELL:

11:45:38 13 Q. And in what way -- okay. So let me get
11:45:40 14 that clear. So you believe that the commissionaire
11:45:43 15 agreements between OEMEA on the one hand and Oracle
11:45:48 16 Deutschland, Oracle Netherlands, Oracle UK, Oracle
11:45:53 17 France, Oracle Norway, Oracle Switzerland, and
11:45:56 18 Oracle Sweden are very similar?

11:46:00 19 MR. POLITO: Outside the scope, compound.

11:46:04 20 THE WITNESS: Currently, right?

11:46:06 21 BY MR. McDONELL:

11:46:06 22 Q. Yes.

11:46:07 23 A. Yeah. Okay.

11:46:07 24 Q. But you believe that the -- they may be
11:46:11 25 different in some way from the agreement between

11:46:13 1 Oracle Italy and Oracle EMEA; is that right?

11:46:17 2 MR. POLITO: Compound; outside the scope.

11:46:19 3 BY MR. McDONELL:

11:46:20 4 Q. And my question is what --

11:46:20 5 A. Yeah.

11:46:21 6 Q. -- difference do you have in mind?

11:46:23 7 A. I don't know. I don't recall without
11:46:25 8 looking at the agreements.

11:46:25 9 Q. What may -- what triggers the thought in
11:46:27 10 your mind that there's some difference there?

11:46:29 11 A. I just recalled noticing a difference in
11:46:35 12 the agreement when we went to try to amend the --
11:46:39 13 the commissionaire agreement between Oracle Italy
11:46:42 14 and OEMEA.

11:47:19 15 MR. McDONELL: Will you mark that next in
11:47:20 16 order, please.

11:47:21 17 (Deposition Exhibit 661 was marked for
11:47:22 18 identification.)

11:47:22 19 MR. McDONELL: No man's land.

11:47:24 20 Q. I'm showing you what's been marked as
11:47:25 21 Exhibit 661. And it's another slide that we've
11:47:29 22 prepared. Take one moment to look it over, if you
11:47:31 23 would, please.

11:47:32 24 A. Okay.

11:47:34 25 Q. What this is intended to depict is a flow

11:47:37 1 of royalty payments starting with the agreement
11:47:42 2 between Oracle Corporation UK Limited and Oracle
11:47:46 3 EMEA. Do you see how that's depicted in the lower
11:47:49 4 portion of the slide?
11:47:49 5 A. Uh-huh.
11:47:50 6 Q. Is that a yes?
11:47:51 7 A. Yes.
11:47:51 8 Q. Is it -- is it correct, in your
11:47:55 9 understanding, that payments for Oracle Corporation
11:48:05 10 UK Limited's sublicenses of programs to end users
11:48:10 11 get made first from Oracle Corporation UK Limited to
11:48:15 12 OEMEA? Is that right?
11:48:17 13 MR. POLITO: Outside the scope, compound,
11:48:20 14 assumes facts, document lacks foundation.
11:48:24 15 THE WITNESS: So you have on here a green
11:48:26 16 arrow that says equals "Royalty Payments."
11:48:28 17 BY MR. McDONELL:
11:48:28 18 Q. Yeah. Maybe, actually, a commissionaire --
11:48:31 19 A. Is not the right --
11:48:33 20 Q. Okay. What's the terminology?
11:48:35 21 A. I mean, under a commissionaire
11:48:39 22 arrangement --
11:48:40 23 Q. It's a fee?
11:48:41 24 A. Exactly. And --
11:48:43 25 Q. Okay.

11:48:44 1 A. -- actually, with regards to the UK it's
11:48:46 2 not a commissionaire arrangement. It's an
11:48:49 3 undisclosed agency --

11:48:51 4 Q. Right.

11:48:52 5 A. -- undisclosed agent agreement. And so the
11:48:56 6 revenue -- Oracle EMEA receives the revenue
11:48:59 7 associated with the sale of license and support in
11:49:03 8 the UK. So there's no royalty payment going up.

11:49:07 9 Q. But it's -- is it remitted by Oracle
11:49:11 10 Corporation UK Limited to Oracle EMEA?

11:49:13 11 A. Yes.

11:49:14 12 Q. So Oracle -- Oracle Corporation UK Limited
11:49:18 13 will sublicense software and sales support services
11:49:23 14 to end-user customers. That's step one, right?

11:49:27 15 A. Yeah.

11:49:28 16 Q. Then for its services, Oracle Corporation
11:49:30 17 UK Limited gets paid a commission. Is that right?

11:49:33 18 A. Yes.

11:49:34 19 Q. Okay. And then the net amount is remitted
11:49:38 20 to Oracle EMEA, net of the commission, meaning the
11:49:46 21 main license fee and support fee?

11:49:48 22 MR. POLITO: Assumes facts.

11:49:49 23 THE WITNESS: I don't believe so.

11:49:50 24 BY MR. McDONELL:

11:49:50 25 Q. Okay.

11:49:51 1 A. I mean, like I said, the revenue belongs to
11:49:54 2 OEMEA.
11:49:55 3 Q. From day one?
11:49:56 4 A. From day one.
11:49:56 5 Q. Oh, okay. So Oracle Corporation UK Limited
11:50:01 6 is just the sales agent?
11:50:03 7 A. It's the undisclosed agent in the
11:50:06 8 agreement, yes.
11:50:07 9 Q. So the -- the selling party is actually
11:50:10 10 Oracle EMEA?
11:50:13 11 MR. POLITO: Calls for a legal conclusion,
11:50:15 12 lacks foundation.
11:50:15 13 THE WITNESS: So Oracle Corporation UK is
11:50:18 14 the undisclosed agent, and it sells, you know, on
11:50:22 15 behalf and for the account for OEMEA.
11:50:25 16 BY MR. McDONELL:
11:50:25 17 Q. So you're doing a better job than I am. So
11:50:28 18 let me start over and just ask you, if you will, if
11:50:32 19 you're able to, explain to me what the flow of
11:50:34 20 payments is among the Oracle family of corporations
11:50:37 21 starting with a sale made by Oracle Corporation UK
11:50:42 22 Limited as the undisclosed agent --
11:50:45 23 A. Uh-huh.
11:50:45 24 Q. -- of a software license and support
11:50:47 25 agreement to an end-user customer.

11:50:49 1 MR. POLITO: It's overbroad, is compound,
11:50:50 2 it's vague as to time, it lacks foundation in some
11:50:52 3 cases, it exceeds the scope of the license in some
11:50:55 4 cases.

11:50:56 5 THE WITNESS: Right.

11:50:56 6 MR. POLITO: You can answer if you can.

11:50:57 7 THE WITNESS: So the revenue belongs to
11:50:59 8 OEMEA. But if -- I guess what you're asking for is
11:51:03 9 how does that gets reflected on our books? Is that
11:51:06 10 what you're asking for?

11:51:07 11 BY MR. McDONELL:

11:51:07 12 Q. What I'm really asking for is how does it
11:51:09 13 flow through these Oracle entities. It's -- my
11:51:12 14 understanding is --

11:51:13 15 A. So -- so that maybe that's where I'm a
11:51:16 16 little bit confused. Because when you're talking
11:51:18 17 about flow, are you talking about the legal
11:51:20 18 arrangement or -- or how it's actually reflected in
11:51:22 19 our books?

11:51:23 20 Q. Let's start with the -- the legal
11:51:26 21 arrangement.

11:51:26 22 A. Okay.

11:51:27 23 Q. Okay? So how does the -- how does the
11:51:31 24 revenue, which is software license and support
11:51:37 25 revenue, flow through these entities?

11:51:40 1 And let me tell you what I understand, and
11:51:42 2 then you tell me if I'm right or wrong. My
11:51:44 3 understanding is that Oracle Corporation UK Limited
11:51:47 4 serves as OEMEA's agent for purposes of making a
11:51:53 5 sale. Is that right?
11:51:54 6 MR. POLITO: Vague.
11:51:54 7 THE WITNESS: It's an undisclosed agent,
11:51:56 8 yes.
11:51:56 9 BY MR. McDONELL:
11:51:57 10 Q. Undisclosed agent. And so the end-user
11:51:59 11 customer commits to buy software and support, right?
11:52:03 12 MR. POLITO: Overbroad.
11:52:04 13 THE WITNESS: Yeah. So the end-user
11:52:06 14 customer enters into a contract.
11:52:09 15 BY MR. McDONELL:
11:52:09 16 Q. Yes.
11:52:10 17 A. Okay.
11:52:10 18 Q. And let's say they agree to pay a million
11:52:12 19 dollars.
11:52:12 20 A. Okay.
11:52:13 21 Q. Are you with me?
11:52:14 22 So Oracle UK Corporation -- or I'm sorry.
11:52:17 23 Oracle Corporation UK Limited gets paid a commission
11:52:19 24 for that sale. Is that right?
11:52:22 25 A. Yes.

11:52:22 1 Q. But the revenue belongs to Oracle EMEA?
11:52:29 2 A. Yes.

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I declare under penalty of perjury that the
foregoing is true and correct. Subscribed at

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, California, this day of

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, 2009.

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Signature of the witness

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Uyen Ngoc An Kishore
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