

EXHIBIT 14

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.) 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.)
_____)

VIDEOTAPED DEPOSITION OF
RICHARD ALLISON

THURSDAY, NOVEMBER 12, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-424330)

TEXT REMOVED - NOT RELEVANT TO MOTION

09:17:11	22	Q. Now, you say that you looked at various
09:17:13	23	terms-of-use documents, but that you also looked at
09:17:18	24	agreements for PeopleSoft, JD Edwards, Siebel, and
09:17:21	25	Oracle. Is that right?

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09:17:23 1 A. Yes.

09:17:23 2 Q. Are you talking about end-user customer

09:17:25 3 license and support agreements?

09:17:27 4 A. Yes. I was given examples -- obviously not

09:17:29 5 all of the agreements between all of us and our

09:17:32 6 customers, but I was given examples of customer

09:17:34 7 agreements --

09:17:35 8 Q. Yes.

09:17:35 9 A. -- to review for license agreements.

09:17:38 10 Q. Who gave you those examples?

09:17:39 11 A. Legal.

09:17:40 12 Q. Okay. Have you brought them with you here

09:17:41 13 today?

09:17:42 14 A. I have.

09:17:43 15 Q. Are they in that binder?

09:17:44 16 A. They are.

09:17:45 17 MR. McDONELL: Okay. May I see it,

09:17:47 18 Counsel?

09:17:48 19 MR. HIXSON: Sure. That's fine.

09:17:49 20 THE WITNESS: (Handing document.)

09:17:51 21 I believe these are documents that have

09:17:52 22 been previously provided to you as well.

09:17:55 23 MR. HIXSON: Yes, we did.

09:17:57 24 MR. McDONELL: Q. Do you know how these

09:17:57 25 documents were selected?

09:18:01 1 A. I do not.

09:18:02 2 Q. Do you know who selected them?

09:18:05 3 A. I just received them as a bundle from
09:18:07 4 legal, so I do not know who selected them.

09:18:09 5 Q. Did you draw any conclusions about the
09:18:13 6 significance of the documents that were selected for
09:18:15 7 you?

09:18:16 8 MR. HIXSON: Objection. Vague.

09:18:22 9 THE WITNESS: They were just examples.
09:18:24 10 Every agreement between the customer and Oracle or
09:18:27 11 the acquired companies could be unique, so you
09:18:30 12 couldn't possibly read every one. So these are just
09:18:32 13 examples to get an idea of what kind of terms are
09:18:35 14 included.

09:18:36 15 MR. McDONELL: Q. Why would every
09:18:37 16 agreement be unique between Oracle and its
09:18:39 17 customers?

09:18:39 18 MR. HIXSON: Objection. Vague. But go
09:18:41 19 ahead.

09:18:41 20 THE WITNESS: They're often negotiated. So
09:18:44 21 there are lawyers on the other side that negotiate
09:18:46 22 specific terms or changes to the agreements. So you
09:18:48 23 could have a standard agreement, but obviously, you
09:18:51 24 could have a unique agreement for each customer
09:18:53 25 depending on what changes were made to their

09:18:55 1 particular order.

09:18:56 2 MR. McDONELL: Q. So at any given point in
09:18:57 3 time, without going to look at all the agreements
09:19:00 4 and study them, one couldn't generalize about
09:19:04 5 exactly what the terms are in any particular
09:19:06 6 agreement?

09:19:07 7 MR. HIXSON: Objection. Vague, overbroad.

09:19:10 8 THE WITNESS: I think you can generalize
09:19:11 9 what the material terms of an agreement are and what
09:19:14 10 is normally included in an agreement. I think
09:19:16 11 you -- I couldn't quantify for you the exact
09:19:19 12 exception that might occur for each individual
09:19:22 13 customer.

TEXT REMOVED - NOT RELEVANT TO MOTION

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09:42:33	23	MR. McDONELL: Q. Okay. I want to now
09:42:49	24	turn to the subject of agreements between Oracle or
09:42:55	25	its various affiliates -- so right now I'm talking

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09:42:59 1 about Oracle Corporation, Oracle USA, Siebel
09:43:04 2 Systems, Inc., et cetera; the Oracle family of
09:43:09 3 companies -- and their end-user customers, customers
09:43:14 4 that enter into software license and support
09:43:16 5 agreement.

09:43:17 6 Do you have that in mind?

09:43:18 7 A. Yes.

09:43:19 8 Q. Do you have an idea of approximately how
09:43:20 9 many such customers there are today?

09:43:24 10 A. Several hundred thousand.

09:43:32 11 Q. You said Oracle has several hundred
09:43:34 12 thousand software customers as of today?

09:43:38 13 A. Yes.

09:43:43 14 Q. Now, you indicated previously that it's not
09:43:46 15 uncommon for customers to negotiate the terms of
09:43:50 16 their software and support agreements with Oracle.
09:43:53 17 Is that true?

09:43:53 18 A. True.

09:43:56 19 Q. How frequently do customers in your
09:43:59 20 experience actually negotiate terms?

09:44:02 21 MR. HIXSON: Vague, calls for speculation.

09:44:05 22 MR. McDONELL: Q. As opposed to just
09:44:06 23 accept whatever Oracle proposes.

09:44:09 24 MR. HIXSON: Same objections.

09:44:11 25 THE WITNESS: In my position, I tend to see

09:44:12 1 the exceptions. And I don't focus on -- as much on
09:44:17 2 the nonexceptions. So it's difficult for me to
09:44:20 3 characterize the percentage of actual transactions
09:44:22 4 overall that have changes versus don't have changes,
09:44:26 5 because, again, I'm only seeing those that do.

09:44:29 6 So as a percentage, I couldn't guess for
09:44:31 7 you.

09:44:32 8 MR. McDONELL: Q. What is the threshold
09:44:33 9 that makes something an exception so that it would
09:44:35 10 come to your attention?

09:44:40 11 A. A discount exceeding a certain percentage,
09:44:43 12 or changes to the license agreement or ordering
09:44:49 13 document that are outside the options that we make
09:44:51 14 available for the field and legal to use.

09:44:53 15 Q. What are those options?

09:44:56 16 A. About 3 inches thick in a binder, so I
09:44:59 17 couldn't ...

09:45:01 18 Q. So there are many, many options?

09:45:03 19 A. Yeah. Examples of, you know, customer
09:45:07 20 includes majority-owned subsidiaries, that's one
09:45:10 21 option, to add majority-owned subsidiaries, things
09:45:13 22 like that. So there can be changes to customer
09:45:16 23 definition, price hold options, things like that,
09:45:18 24 that are standard that are available.

09:45:20 25 Q. So it's fair to say you've not seen all of

09:45:24 1 the existing Oracle software and support agreements.
09:45:26 2 True?
09:45:27 3 A. True. I don't think anybody has.
09:45:32 4 Q. Are the terms of Oracle's software and
09:45:35 5 support agreements publicly available?
09:45:40 6 A. We do publish our standard agreement. You
09:45:47 7 can get it via the Oracle store.
09:45:49 8 Q. What's the Oracle store?
09:45:51 9 A. It's an e-commerce site to buy Oracle
09:45:55 10 software, license Oracle software.
09:45:58 11 Q. And what agreement is publicly available
09:46:02 12 there?
09:46:02 13 A. The OLSA, which is the Oracle License and
09:46:04 14 Services Agreement. A form of it, I think
09:46:08 15 substantially similar to the one that's used off
09:46:10 16 line.
09:46:11 17 Q. How long has that been publicly available?
09:46:15 18 A. Well, the store has been available for over
09:46:18 19 10 years.
09:46:20 20 Q. So the Oracle standard form license and
09:46:25 21 support agreement has been publicly available for 10
09:46:28 22 years?
09:46:28 23 A. For over.
09:46:32 24 Q. How about the -- did PeopleSoft have a
09:46:35 25 standard form license and support agreement?

09:46:38 1 A. They did.

09:46:38 2 Q. Was that publicly available?

09:46:40 3 A. I do not know if that was publicly

09:46:42 4 available.

09:46:42 5 Q. Did Siebel Systems have a standard form

09:46:45 6 license and support agreement?

09:46:46 7 A. They did.

09:46:47 8 Q. Was that publicly available?

09:46:48 9 A. I do not know.

09:46:50 10 Q. Did JD Edwards have a standard form license

09:46:52 11 and support agreement?

09:46:53 12 A. They did.

09:46:54 13 Q. Was that publicly available?

09:46:56 14 A. Not that I know -- I do not know.

09:47:03 15 Q. As a general proposition, once Oracle and a

09:47:07 16 customer enter into a software license and support

09:47:10 17 agreement, is it Oracle's general practice to

09:47:15 18 require a provision in that agreement that requires

09:47:17 19 the customer to keep the terms confidential?

09:47:20 20 A. Yeah.

09:47:20 21 MR. HIXSON: Objection. Overbroad.

09:47:23 22 THE WITNESS: Yes. Most of our ordering

09:47:24 23 documents and license agreements have a

09:47:26 24 confidentiality term, both for the customer --

09:47:29 25 customer and us.

09:47:31 1 MR. McDONELL: Q. Do those customer -- I'm
09:47:33 2 sorry, do those confidentiality agreements that are
09:47:36 3 included in your software license agreements
09:47:39 4 typically require both Oracle and the customers to
09:47:43 5 keep the terms confidential?

09:47:44 6 MR. HIXSON: Vague, overbroad.

09:47:48 7 THE WITNESS: I know the ordering document
09:47:49 8 for the order of licenses does. As far as the
09:47:51 9 confidentiality in the master agreement, there is a
09:47:56 10 confidentiality, and I'm not sure if it covers
09:47:58 11 specifically the agreement.

09:48:01 12 MR. McDONELL: Q. But we'll take a look at
09:48:03 13 some throughout the course of the day.

09:48:04 14 A. That's fine.

09:48:19 15 Q. For long-term customers of Oracle, do the
09:48:26 16 terms of agreements with customers change over time?

09:48:29 17 MR. HIXSON: Objection. Vague, overbroad.

09:48:35 18 THE WITNESS: There are -- so we sign term
09:48:39 19 agreements typically with our customers, you know,
09:48:42 20 for a 2-, 3-, 4-year term. And at the end of that
09:48:45 21 term, they'll typically sign another agreement.
09:48:48 22 That's our current practice.

09:48:51 23 MR. McDONELL: Q. By term agreement, are
09:48:52 24 you talking about software licenses?

09:48:54 25 A. No. I'm talking about the -- the licensing

09:48:57 1 agreement itself. Not the software licenses, which
09:49:00 2 you gain under the -- you know, an ordering
09:49:02 3 document, which refers back to the license
09:49:04 4 agreement, but the license agreement itself is a
09:49:05 5 term agreement.

09:49:06 6 Now, it's term for purposes of continuing
09:49:10 7 orders, but it's not term in that it doesn't -- it
09:49:13 8 does continue to apply in perpetuity for the
09:49:15 9 licenses already acquired under it, obviously. So
09:49:18 10 it just ends for your right to use going forward.

09:49:21 11 Q. I'm not sure I understand that. When
09:49:24 12 Oracle sells a software license, the license of that
09:49:26 13 software is typically perpetual. Right?

09:49:30 14 A. Typically.

09:49:31 15 Q. And then Oracle also typically sells a
09:49:33 16 support services agreement that goes with the
09:49:37 17 software. Correct?

09:49:39 18 A. Correct.

09:49:39 19 Q. And it's the normal practice that Oracle
09:49:43 20 sells software together with the first year of
09:49:46 21 support at the same time?

09:49:48 22 A. Yes.

09:49:48 23 Q. And thereafter, Oracle sells renewal
09:49:51 24 support agreements on a year-by-year basis.

09:49:55 25 A. Correct.

09:49:56 1 Q. What is the part of the agreement that you
09:49:57 2 said is typically 3 or 4 years?

09:50:00 3 A. So it's -- your ability to acquire
09:50:04 4 additional -- so it's a term for your right to
09:50:06 5 acquire a license against that agreement. So it's a
09:50:10 6 term for that purpose. And what it -- you know,
09:50:13 7 because industry -- there's changes to how people
09:50:15 8 use and buy software, so it makes sense to kind of
09:50:17 9 take a look at it again in 4 years and see if things
09:50:20 10 have changed.

09:50:20 11 So they can acquire licenses during the
09:50:22 12 term of that agreement. After that, they typically
09:50:24 13 sign another agreement. But that doesn't change the
09:50:26 14 fact that the agreement that was originally used
09:50:28 15 applies to any licenses required under that. We
09:50:31 16 don't changes terms on existing licenses.

09:50:32 17 Q. I see. But the typical contract provides
09:50:34 18 that in addition to the software the customer is
09:50:36 19 buying on day one, they've got the rights to
09:50:38 20 purchase other software on various terms and
09:50:41 21 conditions during the course of that agreement?

09:50:43 22 A. Yeah. Usually it's created so that you can
09:50:45 23 place multiple orders against it rather than have to
09:50:48 24 sign an ordering document -- a license agreement
09:50:50 25 each time.

09:50:50 1 Q. I see.

09:50:53 2 A. It's a master ordering vehicle, is a way to
09:50:56 3 describe it. And that's true of us and the acquired
09:50:58 4 companies.

09:51:05 5 Q. Are there -- so the answer to my question
09:51:07 6 is that for long-term Oracle customers, contracts do
09:51:13 7 change over time. Right?

09:51:14 8 MR. HIXSON: Vague, overbroad.

09:51:16 9 THE WITNESS: Generally that's the case.

09:51:20 10 MR. McDONELL: Q. And generally they get
09:51:22 11 negotiated each time they come up for renegotiation.
09:51:25 12 Right?

09:51:25 13 MR. HIXSON: Calls for speculation,
09:51:26 14 overbroad.

09:51:30 15 THE WITNESS: Again, some customers do sign
09:51:32 16 agreements without negotiation. But typically, your
09:51:36 17 largest customers you will have a renegotiation at
09:51:39 18 renewal time.

09:51:41 19 MR. McDONELL: Q. Is it fairly common for
09:51:43 20 Oracle to have customers who have more than one
09:51:48 21 license agreement at any given time with Oracle or
09:51:51 22 an Oracle entity?

09:51:53 23 MR. HIXSON: Vague as to "fairly common."

09:51:57 24 THE WITNESS: Well, typically, a customer
09:51:58 25 has one Oracle agreement, but they may have other

09:52:01 1 agreements that were from acquired companies. So
09:52:03 2 they could have a PeopleSoft license agreement and
09:52:05 3 also have an Oracle license agreement that they
09:52:07 4 purchased database for the programs under, so they
09:52:11 5 could have multiple agreements. But it would not be
09:52:13 6 multiple agreements applying to the same license.

09:52:15 7 MR. McDONELL: Q. I understand.

09:52:16 8 A. Okay.

09:52:17 9 Q. So at any given point in time, like a large
09:52:19 10 Oracle customer might have a license agreement with
09:52:21 11 Oracle for some Oracle software product, but they
09:52:26 12 might simultaneously have an existing license
09:52:29 13 agreement for a PeopleSoft product, and another
09:52:31 14 license agreement for a JD Edwards product, and they
09:52:33 15 could even have yet another license agreement for a
09:52:36 16 Siebel product. Is that possible?

09:52:38 17 A. Correct. You could add 30 more companies
09:52:41 18 to that example.

09:52:56 19 Q. Do the Oracle -- and by Oracle here, I'm
09:53:01 20 talking about Oracle, PeopleSoft, JD Edwards,
09:53:05 21 Siebel, all of those companies -- do the agreements
09:53:09 22 for those companies with various customers vary from
09:53:14 23 customer to customer with respect to the rules
09:53:18 24 governing third-party access to software?

09:53:22 25 MR. HIXSON: Objection. Overbroad.

09:53:26 1 THE WITNESS: They do vary.

09:53:28 2 MR. McDONELL: Q. Do the rules in those
09:53:30 3 contracts for those type of customers vary from
09:53:33 4 customer to customer with respect to the issue of
09:53:36 5 the customer's right to make modifications to
09:53:40 6 software?

09:53:40 7 MR. HIXSON: Overbroad.

09:53:47 8 THE WITNESS: Again, there will be cases
09:53:49 9 where they differ. I can't tell you the percentage.

09:53:52 10 MR. McDONELL: Q. I understand. It's a
09:53:53 11 hundred thousand customers. You're not going to
09:53:56 12 know them all.

09:53:57 13 But my point is, they do vary. It's not
09:54:00 14 one size fits all for all hundred thousand
09:54:03 15 customers?

09:54:03 16 A. Well, no, because you have three different
09:54:05 17 companies. If you said generally for Oracle did we
09:54:07 18 have standard terms that apply for the majority of
09:54:09 19 the cases, yes. Did PeopleSoft generally have terms
09:54:11 20 that applied, yes. But there's multiple iterations
09:54:14 21 of agreements over a period, so if you're talking
09:54:16 22 about now or 30 years ago, you know, there's -- so
09:54:18 23 there's a lot of variables here.

09:54:20 24 Q. I understand. And even within a company,
09:54:22 25 there are variables in the contracts because of

09:54:27 1 individual negotiations. Correct?

09:54:28 2 A. Correct.

09:54:30 3 Q. Did these contracts vary over time with
09:54:32 4 respect to the definition of what's considered
09:54:36 5 confidential information under the agreements?

09:54:38 6 MR. HIXSON: Objection. Overbroad.

09:54:44 7 THE WITNESS: I do not know specifically
09:54:47 8 what changes took place from one agreement to the
09:54:49 9 next regarding confidentiality terms.

09:54:50 10 MR. McDONELL: Q. But is it your
09:54:51 11 assumption based on what you know that there are
09:54:53 12 likely changes -- I'm sorry, variations in the terms
09:54:58 13 defining confidential information as between, say, a
09:55:00 14 PeopleSoft agreement and an Oracle agreement and a
09:55:03 15 Siebel agreement?

09:55:04 16 A. The variation is -- normally in
09:55:06 17 confidentiality is regarding what information of the
09:55:09 18 customer's is confidential. I see very little
09:55:12 19 variability in people discussing confidentiality of
09:55:14 20 the agreement as an issue. That doesn't come up as
09:55:16 21 an exception. It's normally, they want their
09:55:18 22 personally identifiable information to be held to
09:55:21 23 high confidentiality, or specific business plans.
09:55:23 24 It's more about customer confidentiality; not about
09:55:26 25 confidentiality of the agreement.

09:55:28 1 Q. And the agreement itself is typically
09:55:30 2 confidential?

09:55:31 3 A. Yeah. And people don't negotiate that
09:55:34 4 fact, generally.

09:55:38 5 Q. Because of this variability we're talking
09:55:39 6 about, when you have to make a determination in your
09:55:43 7 work about whether a certain practice is or isn't
09:55:49 8 permitted, do you have to actually go look at the
09:55:53 9 applicable contract?

09:55:57 10 MR. HIXSON: Overbroad.

09:56:01 11 THE WITNESS: Typically, somebody sends a
09:56:02 12 request to us with the standard language and the
09:56:06 13 exception to the language, with legal analysis on
09:56:08 14 that change.

09:56:10 15 MR. McDONELL: Q. So you're talking about
09:56:11 16 exceptions that come to your attention. Right?

09:56:13 17 A. Correct.

09:56:14 18 Q. Okay. Let me -- talking about a slightly
09:56:17 19 different concept here.

09:56:19 20 Generally speaking, if an issue comes to
09:56:22 21 your attention like whether a customer -- you know,
09:56:28 22 whether Rimini Street was within the customer's
09:56:30 23 rights in downloading Oracle software in a
09:56:32 24 particular way, in order to analyze that issue, one
09:56:37 25 thing you have to do is go look at the customer's

09:56:39 1 agreements. Isn't that right?

09:56:40 2 MR. HIXSON: Objection. Overbroad, vague,
09:56:42 3 as to "you."

09:56:46 4 THE WITNESS: I would personally look at
09:56:47 5 the agreement.

09:56:48 6 MR. McDONELL: Q. Why would you do that?

09:56:49 7 A. Because those are the terms of the rights
09:56:51 8 of use.

09:56:52 9 Now, in this case, Rimini -- we're not
09:56:56 10 looking at an agreement between us and Rimini.
09:56:59 11 We're looking at an agreement between us and the
09:57:00 12 customer.

09:57:01 13 Q. And why would you look at an agreement
09:57:02 14 between Oracle and the customer?

09:57:04 15 A. Well, I think you asked me would I look at
09:57:06 16 the agreement between us and Rimini, was what I
09:57:08 17 thought your first question was.

09:57:11 18 Q. Well, is there any agreement between Oracle
09:57:13 19 and Rimini Street?

09:57:14 20 MR. HIXSON: Objection.

09:57:15 21 THE WITNESS: No. But if you're looking at
09:57:16 22 a situation with a customer, you asked me would I
09:57:18 23 like at the agreement. I would look at the
09:57:20 24 agreement between us and the customer.

09:57:21 25 MR. McDONELL: Q. That's what I was

09:57:22 1 asking. And why would you look at that agreement?

09:57:24 2 A. Because those are the terms between the two
09:57:26 3 companies.

09:57:26 4 Q. Okay. And again, because they vary over
09:57:29 5 time and from customer to customer, you've got to
09:57:31 6 know in order to do that analysis what the actual
09:57:35 7 terms were between Oracle and that customer. Isn't
09:57:38 8 that right?

09:57:39 9 MR. HIXSON: Objection. Vague, overbroad.

09:57:44 10 THE WITNESS: Yes.

TEXT REMOVED - NOT RELEVANT TO MOTION

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I declare under penalty of perjury that

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the foregoing is true and correct. Subscribed at

16:13:43

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Redwood City, California, this 10th day of

16:13:43

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December 2009.

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RICHARD ALLISON

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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, 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 state, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition review of the transcript [X] 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 this cause, and that I am not related to any of the parties thereto.

DATED: 11.19.09
Holly Thuman
HOLLY THUMAN, CSR