

EXHIBIT 17

IN THE 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-1658 (PJH)
SAP AG, a German corporation,)
SAP AMERICA, INC., a Delaware)
corporation, TOMORROWNOW,)
INC., a Texas corporation, and)
DOES 1-50, inclusive,)
)
Defendants.)
_____)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF 30(b)(6) DEPONENTS

MICHAEL A. GARAFOLA and JOHN L. TANNER, III

(Taken by Plaintiffs)

Durham, North Carolina

Thursday, September 17, 2009

Reported in Stenotype by
Dorothy J. M. McGrath, RPR, Shorthand Reporter
Transcript Produced by Computer-aided Transcription

TEXT REMOVED - NOT RELEVANT TO MOTION

21 (EXHIBIT NUMBER 1623 WAS MARKED FOR IDENTIFICATION.)

09:20:38 22 BY MR. ALINDER:

09:20:39 23 Q. The court reporter has handed you an

09:20:40 24 exhibit that's been marked 1623. Can you identify

09:20:48 25 what Exhibit 1623 is for me?

09:20:51 1 A. Appears 1623 is a note sheet specifying
09:20:57 2 customers, prospects, and server names.
09:21:03 3 Q. And did you put this note sheet together?
09:21:06 4 A. I did not draft this, but the information
09:21:09 5 that was -- is represented in this note sheet was
09:21:13 6 discussed during the preparation.
09:21:17 7 Q. Do you know who put this note sheet
09:21:19 8 together?
09:21:25 9 A. I believe counsel.
09:21:28 10 Q. The information, though, came from you and
09:21:30 11 some of your colleagues?
09:21:33 12 A. Yes. This information was -- was
09:21:36 13 discussed and remembered during our preparation
09:21:39 14 sessions which included myself, Anthony Cefola, and
09:21:41 15 John Tanner.
09:21:46 16 Q. So to the best of your understanding and
09:21:49 17 recollection, the information on this note sheet is
09:21:53 18 true and correct?
09:21:55 19 A. To my best of my recollection, yes.
09:22:02 20 Q. And just going through the -- the sheet, I
09:22:05 21 assume the first column is just the number of Siebel
09:22:10 22 customers; is that right?
09:22:13 23 A. Yes.
09:22:14 24 Q. And then the second column is the name of
09:22:16 25 each of those Siebel customers?

09:22:18 1 A. Yes.

09:22:21 2 Q. And is -- can you tell me what the third
09:22:23 3 column is?

09:22:23 4 A. Third column is entitled, "Support dates."
09:22:26 5 It's the dates that the customers were supported by
09:22:29 6 TomorrowNow.

09:22:30 7 Q. How about the fourth column?

09:22:32 8 A. Fourth column is support Web, and this
09:22:34 9 indicates whether or not any downloads were
09:22:38 10 performed.

09:22:47 11 Q. Can you tell me what S, N, and T [slash] S
09:22:50 12 mean?

09:22:52 13 A. S and T are both positive indicators that
09:22:55 14 downloads did occur. S indicates a script of some
09:23:02 15 sort, and T indicates the use of Titan.

09:23:09 16 Q. And can you tell me what the next column
09:23:12 17 is?

09:23:13 18 A. Next column is entitled "Software." It
09:23:15 19 indicates whether or not TomorrowNow had software,
09:23:20 20 specifically Siebel software.

09:23:22 21 Q. And when you say whether they had
09:23:26 22 software, do you mean locally, or do you just mean
09:23:30 23 in general?

09:23:31 24 A. I mean locally, and it's broken down per
09:23:34 25 client.

09:23:37 1 Q. So does that indicate that for those
09:23:40 2 customers there was Siebel software in a local
09:23:45 3 environment at TomorrowNow?

09:23:46 4 MR. FUCHS: Objection, form.

09:23:48 5 THE DEPONENT: It indicates that the
09:23:49 6 software was located somewhere within
09:23:51 7 TomorrowNow, whether on a server, on CD's.

09:24:03 8 BY MR. ALINDER:

09:24:03 9 Q. So for each those of customers with a Y,
09:24:05 10 there was a copy of Siebel software located
09:24:08 11 someplace at TomorrowNow?

09:24:10 12 A. Yes.

09:24:12 13 MR. FUCHS: Objection, form.

09:24:12 14 BY MR. ALINDER:

09:24:12 15 Q. And can you tell me about the next column?

09:24:15 16 A. Next column is entitled, "Virtual
09:24:17 17 machine." It indicates where we found through our
09:24:20 18 prep session an actual virtual machine which is a --
09:24:26 19 which is a -- which would contain -- could -- which
09:24:30 20 contains some element of Siebel software on it.

09:24:36 21 Q. So for each of the customers with a Y,
09:24:40 22 there was a virtual -- virtual machine at
09:24:45 23 TomorrowNow used to help support that customer on
09:24:51 24 their Siebel software?

09:24:54 25 A. That for each column that says yes, there

09:24:56 1 was a virtual machine that had a copy of the
09:24:58 2 customer's Siebel software on it.

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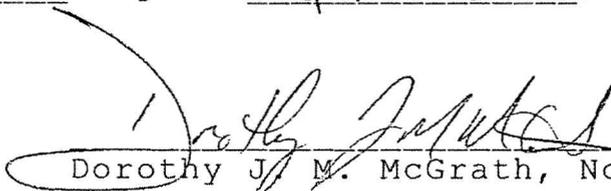
1 STATE OF NORTH CAROLINA
2 COUNTY OF FORSYTH

3 REPORTER'S CERTIFICATE

4 I, Dorothy J. M. McGrath, RPR, a Notary
5 Public, do hereby certify that there came before me
6 on Thursday, September 17, 2009, the person
7 hereinbefore named who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 his or her knowledge concerning the matters in
10 controversy in this cause; that the witness was
11 thereupon examined under oath, the examination
12 reduced to typewriting under my direction, and the
13 deposition is a true record of the testimony given
14 by the witness.

15 I further certify that I am neither
16 attorney or counsel for, nor related to, or employed
17 by any attorney or counsel employed by the parties
18 hereto or financially interested in the action.

19 IN WITNESS WHEREOF, I have hereto set my
20 hand this 21st day of September, 2009.

21
22 
23 _____
Dorothy J. M. McGrath, Notary Public
24 Notary Public Number 20030710028
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