

EXHIBIT 5

ORACLE USA, INC., ET AL

V.

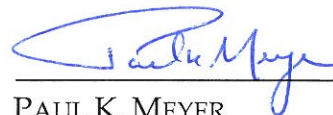
SAP AG, ET AL

CASE NO. 07-CV-01658

SUPPLEMENTAL EXPERT REPORT OF PAUL K. MEYER

TM FINANCIAL FORENSICS, LLC.

FEBRUARY 23, 2010



PAUL K. MEYER

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II. Scope of Opinions/Summary of Damages

20. I understand that much of the software technology accessed, downloaded, copied, distributed, modified and/or used by SAP is protected by Oracle copyright registrations. I understand that SAP had direct access to Oracle products protected by intellectual property rights. I have determined damages and offer opinions on the fair market value of SAP's actual use of Oracle's intellectual property (copyrighted materials), Oracle's lost profits related to support contracts, SAP's infringer profits/unjust enrichment and Oracle's additional costs caused by SAP's alleged actions. I understand, as allowed by the Court, I may also be asked to compute or provide opinions related to pre-judgment interest, attorney's fees and costs and punitive damages. Supporting analyses are described and provided throughout this Report. Table 1 presents a summary of my damages opinions.

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Table 1: Summary of Damages¹⁵
Fair Market Value of SAP's Infringement of Oracle's Copyrights

1. PeopleSoft/J.D. Edwards Fair Market Value ¹⁶	No less than \$2.0 billion
2. Oracle Database Fair Market Value ¹⁷	\$55.6 million
3. Siebel Fair Market Value ¹⁸	No less than \$100 million
4. Oracle's Lost Profits – During TomorrowNow Service Period	\$99.6 million
5. Oracle's Lost Profits – Through May 2015	\$349.0 million
6. SAP's Unjust Enrichment/Avoided Costs	\$1.1 to 3.5 billion
7. SAP's Unjust Enrichment/Database License	\$55.6 million
8. Additional Oracle Costs:	
• Investigation Costs ¹⁹	\$0.3 million
• Damages To Oracle's Data/Systems	Not quantified

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¹⁵ Table 1 reflects the values for elements of damages which I have been asked to quantify to date. I have not included in the table my assessment for infringers profits which is presented in Section X. I may also be asked to provide opinions and/or quantify pre-judgment interest, Oracle's attorney's fees and costs, and punitive damages. Elements in Table 1 represent different remedies for Oracle's allegations and certain elements may not be additive.

¹⁶ See Sections VI.A.-D. and Table 8.

¹⁷ See Section VII and components described in Tables 9, 10 and 10A.

¹⁸ See Section VIII and Table 12.

¹⁹ SCHEDULE 43.SU.

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7. SAP Expanded TomorrowNow Worldwide

71. Backed by SAP's funding, Defendants expanded TomorrowNow's service capabilities across the globe. A February 23, 2005 presentation to the SAP

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Board indicates the expansion of TomorrowNow in Europe and Asia was “to be finalized by early-March.”¹⁹⁵ Henning Kagermann, SAP Executive Board Member and Co-CEO, testified to SAP’s immediate plan to expand TomorrowNow services into Europe and Asia.¹⁹⁶ In addition, electronic data produced by SAP showing TomorrowNow accounts receivable data by customer indicates that revenue was received by TomorrowNow entities in the United States (“TN US”), Netherlands (“TN NL”), United Kingdom (“TN UK”), Singapore (“TN SG”) and Australia (“TN AU”).¹⁹⁷

8. Defendants’ Improper Behavior Originated in the United States

72. In response to interrogatories, TomorrowNow indicated that “Until recently, TomorrowNow conducted the downloads and stored the relevant materials on its computers. The downloads were conducted by TomorrowNow’s employees using certain laptop and desktop computers as well as dedicated download servers located at TomorrowNow’s data center in Bryan, Texas. TomorrowNow then transferred and stored downloaded materials on certain file servers.”¹⁹⁸ Confirmation of this downloading activity to U.S.-based servers is also provided by the analysis of Kevin Mandia with Mandiant, computer forensic and security experts retained by Oracle in this litigation.¹⁹⁹

73. As a result of all of the download activity occurring at the data center in Bryan, Texas, I understand copying, distribution and use of the improperly

¹⁹⁵ “Clear Sailing – Oracle Competitive Program SAP Board Update,” SAP-OR 00299519-533 (Kagermann Exhibit 414), at 525.

¹⁹⁶ Deposition of Henning Kagermann (SAP Executive Board Member and Co-CEO), September 25, 2008, pg. 138.

¹⁹⁷ “TN Customer Report-revised.xls,” TN-OR 06125333.

¹⁹⁸ Defendant TomorrowNow, Inc.’s Eighth Amended and Supplemental Response to Plaintiff Oracle Corporation’s First Set of Interrogatories (Set One), December 4, 2009, pgs. 11-20, at 12.

¹⁹⁹ Discussions with Kevin Mandia, Mandiant; February 12, 2010 Supplemental Expert Report of Kevin Mandia, pg. 34 (IP addresses were registered to SAP TN in Bryan, Texas).

accessed Software and Support Materials occurred out of the Bryan, Texas location including domestic and international distribution of Oracle's Software and Support Materials.

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D. Opinion: Summary of Oracle's Lost Profits

433. As a result of the Defendants' alleged bad acts, it is my opinion that Oracle has experienced lost profits on support revenue lost to TomorrowNow, as summarized in the following table.

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Table 16: Summary of Oracle's Lost Profits

	During TomorrowNow <u>Service Period</u>	Through May 2015
Scenario 1: Total Losses to Oracle		
Based on Total Lost Support Revenue	\$99.6 million	\$349.0 million
Excluding Sales of EnterpriseOne and Siebel in Europe	\$92.7 million	\$318.2 million
Scenario 2: Losses by Plaintiff Entity		
<u>Oracle USA</u>		
Gross of Fees Paid to OIC	\$83.4 million	\$276.9 million
Net of Fees Paid to OIC	\$47.2 million	\$156.9 million
<u>Oracle International Corporation</u>		
Revenue Ultimately Received by OIC	\$37.0 million	\$121.1 million
Including OTC and ORC Revenue	\$42.2 million	\$153.8 million
<u>Oracle EMEA</u>		
Gross of Fees Paid to OTC	\$9.0 million	\$41.0 million
Net of Fees Paid to OTC	\$4.3 million	\$14.1 million

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