

EXHIBIT 5

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-01658-PJH (EDL)

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
PAUL PINTO

Wednesday, May 19, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Reported By: WENDY E. ARLEN, CSR #4355, CRR, RMR
Job 427372

TEXT REMOVED - NOT RELEVANT TO MOTION

09:51 5 Q. Did they provide the sorted and stratified
6 code to you in some form?

7 A. They did not provide the code to me. I
8 provided the ISO files to them which contained the
9 code.

09:51 10 Q. Right. And, I'm sorry, then you said they
11 stratified -- they sorted and stratified, et cetera.

12 A. Correct.

13 Q. They actually extracted, say, COBOL code and
14 put that in one file, I assume, and they extracted

09:51 15 maybe, I don't know --

16 A. C.

17 Q. C code?

18 A. Correct.

09:52 19 Q. Did they then provide that COBOL and that C
20 to you in some form?

21 A. They provided me a listing of those file
22 names.

23 Q. Listing of the file names?

24 A. Yes.

09:52 25 Q. Did they provide the files to you?

1 A. No.

2 Q. And did you ask them to?

3 A. No, and again this was voluminous. So these
4 came to me from Bingham on hundred meg external
5 drives.

09:52

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11 Q. Understood. Have you reviewed
12 Mr. Neuendorf's function point count?

13 A. Yes.

14 Q. Do you believe it to be accurate?

10:23 15 A. I believe it to be his function point count.

16 Q. Right. Do you believe it to be an accurate
17 function point count?

18 A. I believe it to be accurate from his
19 perspective.

10:24 20 Q. You have no independent view on whether it's
21 accurate or not?

22 A. I -- I do not have an independent view on
23 whether it's accurate or not and that wasn't the
24 point of me having him do the analysis.

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6 Q. MR. BUTLER: Okay. Do you know what IFPUG
7 is?

8 A. The International Function Point User Group.

9 Q. Are you a member?

11:15 10 A. I am a member.

11 Q. When did you become a member?

12 A. Recently.

13 Q. April 22nd?

14 A. That sounds correct.

11:15 15 Q. You were not a member at the time you wrote
16 your report.

17 A. Correct.

18 Q. Okay. Why did you join recently?

19 A. In -- well, two reasons. One, in exercising
11:15 20 an abundance of caution, I joined IFPUG, but more so
21 so I could research some of the claims by Mr. Garmus.

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11:34 8 Q. Your assessment here is what it would have
9 cost SAP and TomorrowNow to develop the four suites
10 of products. Did you consider whether they would
11 develop -- and it's a hypothetical, right?

12 A. Yes.

11:34 13 Q. Okay. And in that hypothetical, the suites
14 of products that would be produced after this effort
15 would be identical, in your view, the code would?
16 Not identical to the suites of products that you've
17 recited.

18 A. I can't answer if it would be identical or
19 not.

11:34 20 Q. Do you believe, in your experience, that it
21 would be possible to undertake a development effort
22 of this magnitude and end up with code that's
23 identical to the four suites of products?

24 A. No, I don't believe that would be the case.

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12 Q. Are you aware of any certified function point
13 specialists who backfire source lines of code to
14 function point?

14:22 15 A. So in response to the first part, I know of
16 no certified function point hand-counters who perform
17 backfiring.

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17 Q. Do you know one way or another whether IFPUG
18 approves of backfiring?

19 MS. HOUSE: Objection, vague as to approve.

14:33

20 THE WITNESS: It's my understanding as
21 reported that IFPUG does not sanction backfiring,
22 which is entirely understandable given that IFPUG is
23 focused on servicing the hand-counting community.

14:33

24 Q. MR. BUTLER: Okay. Do you know -- so your
25 testimony is that you believe that IFPUG does not

1 sanction backfiring, right?

2 A. That is my belief.

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| Page | Line | |
|------------|-----------|--|
| <u>263</u> | <u>21</u> | Change: <u>"SO" TO "A"</u> Reason: <u>CORRECTION</u> |
| <u>285</u> | <u>1</u> | Change: <u>"IF COULD" TO "IF I COULD"</u> Reason: <u>CORRECTION</u> |
| <u>295</u> | <u>15</u> | Change: <u>"IT NOT" TO "IT IS NOT"</u> Reason: <u>CORRECTION</u> |
| <u>316</u> | <u>17</u> | Change: <u>"CM LEVEL" TO "CMD LEVEL"</u> Reason: <u>CORRECTION</u> |
| <u>319</u> | <u>18</u> | Change: <u>"143" TO "144"</u> Reason: <u>CORRECTION</u> |
| <u>325</u> | <u>13</u> | Change: <u>"CHANGES" TO "RATES"</u> Reason: <u>CORRECTION</u> |
| <u>330</u> | <u>21</u> | Change: <u>OMIT "IS"</u> Reason: <u>CORRECTION</u> |

RCB Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.


(signature)

6/23/10
(date)

CERTIFICATE OF REPORTER

I, WENDY E. ARLEN, 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 stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision.

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



DATED: May 25, 2010

Wendy E. Arlen

WENDY E. ARLEN CSR, No. 4355