

EXHIBIT H

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-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.

*** HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY ***

DEPOSITION OF DAVID GARMUS

June 4, 2010

Reported by:
Natalie Y. Botelho
CSR No. 9897

Page 66		Page 68	
0:46:59		10:50:53	
0:47:02		10:50:58	
0:47:06		10:51:00	
0:47:11		10:51:04	
0:47:13		10:51:07	
0:47:16		10:51:09	
0:47:19		10:51:21	
0:47:22		10:51:22	
0:47:39		10:51:24	9 Q. Have you ever worked as an employee of an
0:47:42		10:51:31	10 enterprise application software company?
0:47:45		10:51:37	11 A. In fact, we owned our own software
0:47:52		10:51:40	12 company, DDB Software.
0:47:55		10:51:43	13 Q. You consider those to be enterprise
0:47:59		10:51:43	14 applications?
0:48:00		10:51:46	15 A. Yes, we did sell enterprise applications
0:48:02		10:51:51	16 for estimating cost of development with a product
0:48:03		10:51:57	17 called Predictor, and a function point tool called
0:48:05		10:52:04	18 Function Point Counter. David Herron and I owned
0:48:23		10:52:12	19 that as a subsidiary, which we sold at the same time
0:48:24		10:52:15	20 as the David Consulting Group.
0:48:29		10:52:20	21 Q. Is that listed on your CV?
0:48:48		10:52:29	22 A. Probably not. It wasn't a major product.
0:49:05		10:52:41	23 And of course CACI, C-A-C-I, where I was the
0:49:06		10:52:45	24 development manager, also sold software, but not in
			25 my individual group. At least we didn't license
Page 67		Page 69	
10:49:12		10:52:55	1 software. We developed and maintained software.
10:49:15		10:52:58	2 Q. What sort of software was that?
10:49:18		10:53:01	3 A. A wide var -- CACI within itself developed
10:49:24		10:53:04	4 a wide variety of software, but mostly business
10:49:28		10:53:07	5 applications that referred to inventory management
10:49:32		10:53:15	6 and financial management.
10:49:37		10:53:17	7 Q. Have you ever worked for a third-party
10:49:39		10:53:21	8 service provider for enterprise software?
10:49:40		10:53:27	9 A. A third-party service provider. You might
10:49:42		10:53:35	10 consider CACI to be a third-party service provider
10:49:44		10:53:36	11 in some instances.
10:49:47		10:53:37	12 Q. For enterprise software?
10:49:50		10:53:39	13 A. For enterprise software, right.
10:49:52		10:53:41	14 Q. Have you ever worked for a third-party
10:50:05		10:53:45	15 service provider for Oracle software applications?
10:50:07		10:53:51	16 A. I've had clients that have used those
10:50:09		10:53:55	17 applications, but I was never an employee of any
10:50:11		10:54:01	18 company that was providing service in that regard
10:50:18		10:54:04	19 for Oracle.
10:50:21		10:54:08	20 Q. So you've had clients who had Oracle
10:50:32		10:54:11	21 applications; is that what you're saying?
10:50:37		10:54:13	22 A. Correct.
10:50:45		10:54:16	23 Q. But you were never an employee of any
10:50:49		10:54:18	24 company that provided service for Oracle
			25 applications?

Page 70		Page 72
10:54:19	1 A. No.	10:58:43
10:54:19		10:58:46
10:55:02		10:58:52
10:55:02	4 MR. ALINDER: Q. Okay. You've been	10:58:55
10:55:07	5 handed what's been marked Exhibit 3037. Is that the	10:58:56
10:55:11	6 CV that was attached to your report?	10:59:00
10:55:22	7 A. Yes.	10:59:07
10:55:28	8 Q. Underneath the "Engagement" heading,	10:59:09
10:55:30	9 second paragraph says, "Most of Mr. Garmus'	10:59:11
10:55:34	10 engagements have centered on the use of Function	10:59:13
10:55:36	11 Points as sizing metrics." See that?	10:59:14
10:55:37	12 A. Yes.	10:59:15
10:55:39	13 Q. Is that true?	10:59:16
10:55:45	14 A. Yes, that is true.	10:59:18
10:55:47	15 Q. And that's what you did for the modules in	10:59:25
10:55:50	16 this case, correct? You sized them?	10:59:27
10:55:52	17 MR. BUTLER: Objection to the form, vague,	10:59:31
10:55:58	18 ambiguous.	10:59:33
10:55:59	19 THE WITNESS: No. In fact, in this	10:59:36
10:56:02	20 particular case, my analysis was to determine	10:59:40
10:56:07	21 whether Mr. Pinto used function point analysis as he	10:59:41
10:56:13	22 claimed as a methodology that was approved by ISO.	10:59:45
10:56:20	23 So this case was not involved with me sizing. The	10:59:45
10:56:22	24 only sizing I did was as an example of how it could	10:59:46
	25 be done.	
Page 71		Page 73
10:56:27		10:59:51
10:56:30		10:59:52
10:56:31		10:59:57
10:57:24		10:59:59
10:57:27		11:00:03
10:57:44		11:00:05
10:57:49		11:00:06
10:57:51		11:00:10
10:57:53		11:00:11
10:57:53		11:00:13
10:57:54		11:00:16
10:58:01		11:00:18
10:58:06		11:00:24
10:58:14		11:00:26
10:58:19		11:00:28
10:58:23		11:00:29
10:58:25		11:00:30
10:58:27		11:00:32
10:58:29		11:00:35
10:58:29		11:00:46
10:58:30		11:00:47
10:58:32		11:00:50
10:58:35		11:00:55
10:58:38		11:01:04

Page 86		Page 88	
11:36:07		11:39:15	
11:36:11		11:39:17	
11:36:14		11:39:22	
11:36:17		11:39:27	
11:36:23		11:39:32	
11:36:25		11:39:47	
11:36:29		11:39:50	
11:36:33		11:39:53	
11:36:36		11:39:54	
11:36:41		11:39:59	
11:36:48		11:40:02	11 Q. You developed the cost estimate for the
11:36:49		11:40:09	12 software that Mr. Pinto looked at?
11:37:00		11:40:12	13 A. No, I did not.
11:37:02		11:40:20	
11:37:07		11:40:23	
11:37:11		11:40:24	
11:37:15		11:40:26	
11:37:18		11:40:31	
11:37:20		11:40:36	
11:37:24		11:40:39	
11:37:26		11:40:46	
11:37:31		11:40:49	
11:37:32		11:40:52	
11:37:33		11:40:55	
Page 87		Page 89	
1:37:40		11:41:03	
1:37:43		11:41:07	
1:37:44		11:41:07	
1:37:45		11:41:09	
1:38:05		11:41:13	
1:38:06		11:41:16	
1:38:09		11:41:18	
1:38:15		11:41:20	
1:38:20		11:41:21	
1:38:22		11:41:24	
1:38:24		11:41:26	
1:38:30		11:41:26	
1:38:37		11:41:27	
1:38:41		11:41:38	
1:38:43		11:41:40	
1:38:47		11:41:43	
1:38:49		11:41:46	
1:38:54		11:41:49	
1:38:57		11:41:54	
1:39:02		11:42:02	
1:39:04		11:42:08	
1:39:06		11:42:13	
1:39:09		11:42:17	
1:39:11		11:42:20	

Page 246		Page 248	
17:06:38		17:09:19	
17:06:41		17:09:25	
17:06:44		17:09:30	
17:06:47		17:09:31	
17:06:50		17:09:36	
17:06:58		17:09:38	
17:06:59		17:09:42	
17:07:01		17:09:45	
17:07:03		17:09:48	
17:07:06		17:09:53	
17:07:10		17:09:57	
17:07:14		17:10:00	
17:07:18		17:10:03	
17:07:21		17:10:08	
17:07:24		17:10:11	
17:07:26		17:10:14	
17:07:30		17:10:16	
17:07:34		17:10:19	
17:07:38		17:10:22	
17:07:40		17:10:22	
17:07:41	21 Q. So you agree, though, that you and the	17:10:25	
17:07:44	22 David Consulting Group use backfiring in certain	17:10:25	
17:07:45	23 situations?	17:10:26	
17:07:47	24 MR. BUTLER: Objection to the form, vague,	17:10:29	
	25 ambiguous, asked and answered.		
Page 247		Page 249	
17:07:55	1 THE WITNESS: Should I repeat the answer I	17:10:38	
17:07:58	2 just gave you?	17:10:40	
17:07:59	3 MR. ALINDER: Q. Well, you could just	17:10:44	
17:08:02	4 say, "Yes, in certain situations, we do do" --	17:10:46	
17:08:04	5 A. No. In very limited situations we do it,	17:10:50	
17:08:09	6 not for most of the sizing that we do. So it's very	17:10:57	
17:08:12	7 limited, and only in the case of application	17:10:59	7 Q. If you feel so strongly about it, why do
17:08:16	8 portfolios and only in conjunction with function	17:11:02	8 you publish your own backfiring tables?
17:08:19	9 point counting. So it's never done on its own.	17:11:04	9 A. It's just like any other software company.
17:08:20	10 Q. You're aware that the David Consulting	17:11:11	10 We provide information when the customers ask it.
17:08:23	11 Group publishes backfiring metrics?	17:11:12	11 Q. So --
17:08:26	12 A. Yes. I'm the one that suggested	17:11:14	12 A. However, they always include the warnings,
17:08:30	13 originally that David Consulting Group on a limited	17:11:16	13 like I said, about the use of them.
17:08:32	14 basis does that, yes.	17:11:18	14 Q. So some people find those backfiring
17:08:41	15 Q. Does David Consulting Group publish	17:11:20	15 tables are useful for what they are trying to
17:08:45	16 conversion tables that convert source lines of code	17:11:21	16 estimate?
17:08:48	17 to function points?	17:11:23	17 MR. BUTLER: Objection; lack of
17:08:50	18 A. Yes, we have published numbers like that	17:11:31	18 foundation, vague and ambiguous.
17:08:55	19 that relate to averages that have been found that	17:11:36	19 MR. ALINDER: Q. You said that the
17:09:00	20 differ with the numbers that Mr. Pinto used as well.	17:11:38	20 customers ask for it.
17:09:05	21 But yes, we develop numbers that -- but we publish	17:11:40	21 A. Yes, some customers have asked for it,
17:09:09	22 them with the knowledge of the users that these have	17:11:42	22 right.
17:09:12	23 a huge range, and I believe that every time they've	17:11:43	
17:09:14	24 been published, that there's a warning against using	17:11:46	
	25 those particular numbers.		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Natalie Y. Botelho, 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.

The said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, 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 [] 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: June 8, 2010

Natalie Y. Botelho
Natalie Y. Botelho, CSR No. 9897