EXHIBIT B

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

PAUL K. MEYER

VOLUME 1; PAGES 1 - 331

WEDNESDAY, MAY 12, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-427362)

	Page 62			Page 64
10:42:17	1490 02	10-44-50		1490 01
		10:44:50		
10:42:19		10:44:54		
10:42:23		10:45:00		
10:42:25		10:45:02		
10:42:28		10:45:05		
10:42:28		10:45:12		
10:42:30		10:45:17		
10:42:34		10:45:21		
10:42:36		10:45:23		
10:42:36		10:45:27		
10:42:38		10:45:35		
10:42:40		10:45:46		
10:42:44		10:45:48	13	Q. So for the 2 billion 156 million dollar
10:42:48		10:45:50	14	amount that you've listed for a value of use, is
10:42:52		10:45:54	15	that your opinion of damages that are being claimed
10:42:59		10:45:56	16	in this case?
10:43:04		10:46:02	17	A. Some of the lawyers for Oracle will
10:43:08		10:46:04	18	address that. But if someone were to ask me what's
10:43:10		10:46:07	19	the most appropriate measure of the lost value of
10:43:15		10:46:09	20	the license, I would say it's the 2.156 billion
10:43:20		10:46:14	21	dollars as measured under this value-of-use
10;43:22		10:46:16	22	calculation and determination.
10:43:23		10:46:18	23	Q. Does that and that's based on a
10:43:32		10:46:21	24	hypothetical license negotiation analysis. True?
10:43:33		10:46:27	25	A. There's two levels. There's as laid
1				
	Page 63			Page 65
10:43:35	Page 63	10:46:29		Page 65 out in my report, there's an analysis by Siebel and
10:43:35 10:43:38	Page 63	10:46:29 10:46:36	1 2	_
l .	Page 63			out in my report, there's an analysis by Siebel and
10:43:38	Page 63	10:46:36	2	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a
10:43:38 10:43:40	Page 63	10:46:36 10:46:41	2	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor
10:43:38 10:43:40 10:43:43	Page 63	10:46:36 10:46:41 10:46:46	2 3 4	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those
10:43:38 10:43:40 10:43:43 10:43:45	Page 63	10:46:36 10:46:41 10:46:46 10:46:50	2 3 4 5	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result.
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53	2 3 4 5 6	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48 10:43:49	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53	2 3 4 5 6 7	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities — or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48 10:43:49 10:43:54	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:00	2 3 4 5 6 7 8	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48 10:43:49 10:43:54 10:43:57	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:00	2 3 4 5 6 7 8	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48 10:43:49 10:43:54 10:43:57 10:44:00	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:00 10:47:04	2 3 4 5 6 7 8 9	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation.
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48 10:43:54 10:43:57 10:44:00 10:44:07	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:00 10:47:06 10:47:06	2 3 4 5 6 7 8 9 10	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities — or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08	Page 63	10:46:36 10:46:41 10:46:50 10:46:53 10:46:57 10:47:00 10:47:04 10:47:07 10:47:10	2 3 4 5 6 7 8 9 10 11	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:09	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:00 10:47:04 10:47:06 10:47:10 10:47:10	2 3 4 5 6 7 8 9 10 11 12	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:09 10:44:11	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:00 10:47:04 10:47:06 10:47:10 10:47:10 10:47:12 10:47:16	2 3 4 5 6 7 8 9 10 11 12 13	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:09 10:44:11 10:44:13	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:00 10:47:04 10:47:06 10:47:10 10:47:10 10:47:10 10:47:11 10:47:12	2 3 4 5 6 7 8 9 10 11 12 13 14 15	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into.
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:11 10:44:13 10:44:24	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:04 10:47:06 10:47:07 10:47:10 10:47:12 10:47:16 10:47:22 10:47:24	2 3 4 5 6 7 8 9 10 11 12 13 14 15	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into. Q. So what I understand you're saying is
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:11 10:44:13 10:44:24 10:44:25	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:04 10:47:06 10:47:07 10:47:10 10:47:12 10:47:16 10:47:22 10:47:24 10:47:27	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into. Q. So what I understand you're saying is the your analysis of a hypothetical license was
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:11 10:44:13 10:44:24 10:44:25 10:44:27	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:04 10:47:06 10:47:07 10:47:10 10:47:12 10:47:16 10:47:22 10:47:24 10:47:27 10:47:31	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into. Q. So what I understand you're saying is the your analysis of a hypothetical license was done using Factor 15, and there you're referring to
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:11 10:44:13 10:44:24 10:44:25 10:44:27 10:44:30	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:04 10:47:06 10:47:07 10:47:10 10:47:12 10:47:16 10:47:22 10:47:24 10:47:27 10:47:31 10:47:35	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into. Q. So what I understand you're saying is the your analysis of a hypothetical license was done using Factor 15, and there you're referring to the Georgia Pacific factors. Is that right?
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:11 10:44:13 10:44:24 10:44:25 10:44:27 10:44:30 10:44:32	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:04 10:47:06 10:47:07 10:47:10 10:47:12 10:47:16 10:47:22 10:47:24 10:47:27 10:47:31 10:47:35 10:47:38	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into. Q. So what I understand you're saying is the your analysis of a hypothetical license was done using Factor 15, and there you're referring to the Georgia Pacific factors. Is that right? A. Well, I gave you both sides of it. It's
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:11 10:44:13 10:44:24 10:44:25 10:44:27 10:44:30 10:44:32 10:44:36	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:04 10:47:06 10:47:07 10:47:10 10:47:12 10:47:16 10:47:22 10:47:24 10:47:27 10:47:31 10:47:35 10:47:38 10:47:41	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into. Q. So what I understand you're saying is the your analysis of a hypothetical license was done using Factor 15, and there you're referring to the Georgia Pacific factors. Is that right? A. Well, I gave you both sides of it. It's done through the hypothetical negotiation, and it's
10:43:38 10:43:40 10:43:43 10:43:45 10:43:49 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:11 10:44:13 10:44:25 10:44:25 10:44:30 10:44:36 10:44:40	Page 63	10:46:36 10:46:41 10:46:46 10:46:53 10:46:57 10:47:04 10:47:06 10:47:07 10:47:10 10:47:12 10:47:16 10:47:22 10:47:24 10:47:27 10:47:31 10:47:35 10:47:38 10:47:41 10:47:44	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into. Q. So what I understand you're saying is the your analysis of a hypothetical license was done using Factor 15, and there you're referring to the Georgia Pacific factors. Is that right? A. Well, I gave you both sides of it. It's done through the hypothetical negotiation, and it's also done, as I mentioned, looking at traditional
10:43:38 10:43:40 10:43:43 10:43:45 10:43:48 10:43:54 10:43:57 10:44:00 10:44:07 10:44:08 10:44:11 10:44:13 10:44:24 10:44:25 10:44:27 10:44:30 10:44:36 10:44:40 10:44:45	Page 63	10:46:36 10:46:41 10:46:46 10:46:50 10:46:53 10:46:57 10:47:04 10:47:06 10:47:07 10:47:10 10:47:12 10:47:16 10:47:22 10:47:24 10:47:27 10:47:31 10:47:35 10:47:38 10:47:41 10:47:44 10:47:49	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	out in my report, there's an analysis by Siebel and by PeopleSoft of the results of conducting a hypothetical negotiation and summarized in factor 15 for both of those entities or both of those copyrighted properties, that's the result. There's also a separate analysis I do of the value of the copyrights under the market and income and cost approaches, which I believe is supportive of what occurs in the hypothetical negotiation. And so I do it both ways, and they do work together. But ultimately, that is the determination of what one would come up with if a license for the infringing property was entered into. Q. So what I understand you're saying is the your analysis of a hypothetical license was done using Factor 15, and there you're referring to the Georgia Pacific factors. Is that right? A. Well, I gave you both sides of it. It's done through the hypothetical negotiation, and it's also done, as I mentioned, looking at traditional valuation approaches under market and income and

17 (Pages 62 to 65)

		Page 66				Page	68
10:47:55	1	first tell the Court that I think the hypothetical	10:50:24				
10:47:57	2	negotiation is the most relevant; but to the	10:50:32				
10:48:01	3	standpoint you want to look at the value of the	10:50:35				
10:48:03	4	property separately, here's another way of looking	10:50:37				
10:48:05	5	at it.	10:50:40				
10:48:06	6	Q. But just so I'm clear, the hypothetical	10:50:42				
10:48:08	7	negotiation analysis you've done is the one that	10:50:48				
10:48:11	8	you've done applying the Georgia Pacific factors.	10:50:52				
10:48:15	9	Is that right?	10:50:53				
10:48:15	10	A. Yes.	10:50:55				
10:48:16			10:50:57				
10:48:18			10:50:58				
10:48:22			10:51:00				
10:48:25			10:51:07				
10:48:27			10:51:09				
10:48:28			10:51:12				
10:48:33			10:51:14				
10:48:34			10:51:16				
10:48:36			10:51:19				
10:48:44			10:51:24				
10:48:48			10:51:25				
10:48:49	•		10:51:27				
10:48:53			10:51:29				
10:48:59			10:51:30				
10:49:04			10:51:38				
			10.51.50				
		Page 67			***************************************	Page	69
hausta ma muunaman an oo oo ah in ahaa in ah		Page 67		is all the state of the state o	**************************************	Page	69
10:49:05		Page 67	10:51:44			Page	69
10:49:05		Page 67	10:51:44 10:51:50			Page	69
10:49:05 10:49:09 10:49:13		Page 67	10:51:44 10:51:50 10:51:56			Page	69
10:49:05	-	Page 67	10:51:44 10:51:50			Page	69
10:49:05 10:49:09 10:49:13 10:49:20		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23	•	Page 67	10:51:44 10:51:50 10:51:56 10:51:57			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28	•	Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:31 10:49:36 10:49:39 10:49:41 10:49:44		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:31 10:49:36 10:49:39 10:49:41 10:49:44 10:49:46		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:31 10:49:36 10:49:39 10:49:41 10:49:46 10:49:50		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:21			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:31 10:49:36 10:49:39 10:49:41 10:49:46 10:49:50 10:49:51		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:21 10:52:25			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:39 10:49:41 10:49:44 10:49:46 10:49:50 10:49:51 10:49:53		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:21 10:52:21 10:52:23 10:52:24			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39 10:49:41 10:49:44 10:49:46 10:49:50 10:49:51 10:49:53 10:49:53		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:25 10:52:23 10:52:34 10:52:37			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39 10:49:41 10:49:44 10:49:46 10:49:50 10:49:51 10:49:53 10:49:55 10:49:57		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:25 10:52:34 10:52:37 10:52:41			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39 10:49:41 10:49:44 10:49:50 10:49:51 10:49:55 10:49:57 10:50:01		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:25 10:52:34 10:52:37 10:52:41 10:52:44			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39 10:49:41 10:49:44 10:49:50 10:49:51 10:49:55 10:49:55 10:49:57 10:50:01 10:50:03		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:25 10:52:30 10:52:34 10:52:37 10:52:41 10:52:44			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39 10:49:41 10:49:44 10:49:50 10:49:51 10:49:55 10:49:57 10:50:01 10:50:03		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:25 10:52:34 10:52:37 10:52:41 10:52:44 10:52:47 10:52:50			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39 10:49:41 10:49:46 10:49:50 10:49:51 10:49:55 10:49:57 10:50:01 10:50:03 10:50:04		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:07 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:25 10:52:30 10:52:34 10:52:41 10:52:44 10:52:47 10:52:50 10:52:53			Page	69
10:49:05 10:49:09 10:49:13 10:49:20 10:49:23 10:49:28 10:49:31 10:49:36 10:49:39 10:49:41 10:49:46 10:49:50 10:49:51 10:49:55 10:49:57 10:50:01 10:50:03 10:50:04 10:50:07		Page 67	10:51:44 10:51:50 10:51:56 10:51:57 10:52:00 10:52:02 10:52:11 10:52:13 10:52:16 10:52:20 10:52:21 10:52:25 10:52:30 10:52:34 10:52:37 10:52:41 10:52:44 10:52:47 10:52:50 10:52:53			Page	69

18 (Pages 66 to 69)

·		<u> </u>			
1		Page 98			Page 10
11:36:47			11:39:43	1	Q. Okay. Can you explain
11:36:48			11:39:46	2	THE WITNESS: Ms. Dean, can I also receive
11:36:49			11:39:48	3	this schedule? Can you provide it to me? It's
11:36:52			11:39:51	4	42.2.DU.
11:36:56			11:39:55	5	I'm sorry?
11:36:57			11:39:56	6	MR. McDONELL: Q. With respect to what's
11:37:00			11:39:58	7	been marked as Exhibit 2020, can you tell us the
11:37:05			11:40:01	8	general purpose of the document?
11:37:05			11:40:06	9	A. Yes. The general purpose was, there's
11:37:07			11:40:08	10	listed out, I believe it's 86 customers, and I've
11:37:09			11:40:13	11	gone through and categorized them and provided
11:37:11			11:40:17	12	information by column.
11:37:12			11:40:19	13	So I note whether they're a Safe Passage
11:37:18			11:40:22	14	customer or not
11:37:22			11:40:24	1.5	Q. And what is the significance of noting
11:37:25			11:40:26	16	whether they're a Safe Passage customer?
11:37:29			11:40:28	17	A. Well, ultimately from my perspective if
11:37:31			11:40:31	18	they're found to have become a Safe Passage
11:37:33			11:40:33	19	customer. I would then leave them in the
11:37:35			11:40:35	20	determination of the infringer's profits, so
11:37:38			11:40:38	21	Q. And why would you do that?
11:37:40			11:40:40	22	A. Because from my perspective, it would
			11:40:40	23	
11:37:45					relate to the marketing, solicitation, the business
11:37:48		•	11:40:49	24	efforts that were taken by SAP in conjunction with
11:37:51			11:40:53	25	TomorrowNow to improve and change and upgrade the
		Page 99			Page 10
11:37:53			11:41:01	1	service that was being provided to one of these
11:37:56			11:41:06	2	customers.
11:37:58			11:41:07	3	Q. What is the next column, the "Mr. Clarke
11:38:01			11:41:10	4	Exclusion - Joined SAP Prior to TN; Product
11:38:01 11:38:03			11:41:10 11:41:14	4	Exclusion - Joined SAP Prior to TN; Product Extensions"?
					Extensions"?
11:38:03			11:41:14	5	Extensions"? A. Well, Mr. Clarke and we can go into his
11:38:03 11:38:06 11:38:07			11:41:14 11:41:17	5 6	Extensions"?
11:38:03 11:38:06		·	11:41:14 11:41:17 11:41:19	5 6 7	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26			11:41:14 11:41:17 11:41:19 11:41:22 11:41:27	5 6 7 8 9	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27			11:41:14 11:41:17 11:41:19 11:41:22	5 6 7 8	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that.
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:29	12	MR McDONELL: O Mr Mever I'm showing	11:41:14 11:41:17 11:41:19 11:41:22 11:41:27 11:41:34	5 6 7 8 9 10	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:29 11:38:42	12	MR. McDONELL: Q. Mr. Meyer, I'm showing you what's been marked as Exhibit 2020. And I'll	11:41:14 11:41:17 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35	5 6 7 8 9 10 11	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:29 11:38:42 11:38:43	. 13	you what's been marked as Exhibit 2020. And I'll	11:41:14 11:41:17 11:41:19 11:41:22 11:41:27 11:41:34 11:41:40 11:41:46	5 6 7 8 9 10 11 12	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:42 11:38:43 11:38:47	13	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we	11:41:14 11:41:17 11:41:19 11:41:22 11:41:27 11:41:34 11:41:46 11:41:46	5 6 7 8 9 10 11 12 13	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:42 11:38:43 11:38:47 11:38:49	13 14 15	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on	11:41:14 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:56 11:42:07	5 6 7 8 9 10 11 12 13 14	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:42 11:38:43 11:38:44 11:38:49 11:38:49	13 14 15 16	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week.	11:41:14 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:41:56 11:42:07 11:42:15	5 6 7 8 9 10 11 12 13 14 15	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out.
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:42 11:38:43 11:38:47 11:38:49 11:38:52 11:38:54	13 14 15 16	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week. Can you identify it, please?	11:41:14 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:42:07 11:42:15 11:42:16	5 6 7 8 9 10 11 12 13 14 15 16 17	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out. So if they were older customers that were
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:42 11:38:43 11:38:47 11:38:49 11:38:52 11:38:54	13 14 15 16 17	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week. Can you identify it, please? A. Yes. This is a schedule that's in	11:41:14 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:41:56 11:42:07 11:42:16 11:42:16	5 6 7 8 9 10 11 12 13 14 15 16 17 18	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out. So if they were older customers that were part of Safe Passage, I left them in. But if they
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:42 11:38:43 11:38:47 11:38:49 11:38:52 11:38:54 11:38:54	13 14 15 16 17 18	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week. Can you identify it, please? A. Yes. This is a schedule that's in response to Mr. Clarke's analysis of certain	11:41:14 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:41:56 11:42:07 11:42:15 11:42:19 11:42:21	5 6 7 8 9 10 11 12 13 14 15 16 17 18	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out. So if they were older customers that were part of Safe Passage, I left them in. But if they were older customers and they did not become part
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:29 11:38:42 11:38:43 11:38:47 11:38:49 11:38:52 11:38:54 11:38:54 11:38:54	13 14 15 16 17 18 19	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week. Can you identify it, please? A. Yes. This is a schedule that's in response to Mr. Clarke's analysis of certain customers that he excludes from the infringer's	11:41:14 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:41:56 11:42:07 11:42:15 11:42:11 11:42:21 11:42:21	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Extensions"? A. Well, Mr. Clarke — and we can go into his details later on — he had a variety of categories that he used to — to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that — that I looked at and provided — provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out. So if they were older customers that were part of Safe Passage, I left them in. But if they were older customers and they did not become part of Safe Passage, I made that adjustment.
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:49 11:38:43 11:38:49 11:38:52 11:38:54 11:38:51 11:39:00 11:39:05 11:39:13 11:39:20	13 14 15 16 17 18 19 20 21	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week. Can you identify it, please? A. Yes. This is a schedule that's in response to Mr. Clarke's analysis of certain customers that he excludes from the infringer's profits as measured by SAP's profits and the	11:41:14 11:41:17 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:42:07 11:42:15 11:42:19 11:42:21 11:42:24 11:42:26	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out. So if they were older customers that were part of Safe Passage, I left them in. But if they were older customers and they did not become part of Safe Passage, I made that adjustment. Q. And what about the second part of it, the
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:49 11:38:49 11:38:49 11:38:52 11:38:54 11:39:00 11:39:05 11:39:05 11:39:13 11:39:20 11:39:23	13 14 15 16 17 18 19 20 21	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week. Can you identify it, please? A. Yes. This is a schedule that's in response to Mr. Clarke's analysis of certain customers that he excludes from the infringer's profits as measured by SAP's profits and the deduction of costs.	11:41:14 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:42:07 11:42:15 11:42:16 11:42:19 11:42:21 11:42:24 11:42:26 11:42:30	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out. So if they were older customers that were part of Safe Passage, I left them in. But if they were older customers and they did not become part of Safe Passage, I made that adjustment. Q. And what about the second part of it, the product extensions?
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:42 11:38:43 11:38:47 11:38:49 11:38:52 11:38:54 11:39:00 11:39:05 11:39:05 11:39:05 11:39:20 11:39:23 11:39:25	13 14 15 16 17 18 19 20 21 22 23	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week. Can you identify it, please? A. Yes. This is a schedule that's in response to Mr. Clarke's analysis of certain customers that he excludes from the infringer's profits as measured by SAP's profits and the deduction of costs. And so Schedule 42.2.DU is my	11:41:14 11:41:17 11:41:19 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:42:07 11:42:15 11:42:16 11:42:21 11:42:24 11:42:26 11:42:30 11:42:31	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out. So if they were older customers that were part of Safe Passage, I left them in. But if they were older customers and they did not become part of Safe Passage, I made that adjustment. Q. And what about the second part of it, the product extensions? A. And then Mr. Clarke did some analysis, and
11:38:03 11:38:06 11:38:07 11:38:08 11:38:26 11:38:27 11:38:42 11:38:43 11:38:47 11:38:49 11:38:52 11:38:54 11:39:00 11:39:05 11:39:05 11:39:13 11:39:20 11:39:23	13 14 15 16 17 18 19 20 21	you what's been marked as Exhibit 2020. And I'll represent to you that it's my understanding that we received this from you through your counsel on Monday of this week. Can you identify it, please? A. Yes. This is a schedule that's in response to Mr. Clarke's analysis of certain customers that he excludes from the infringer's profits as measured by SAP's profits and the deduction of costs.	11:41:14 11:41:19 11:41:22 11:41:27 11:41:34 11:41:35 11:41:40 11:41:46 11:42:07 11:42:15 11:42:16 11:42:19 11:42:21 11:42:24 11:42:26 11:42:30	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Extensions"? A. Well, Mr. Clarke and we can go into his details later on he had a variety of categories that he used to to exclude customers that were in the 86. And they're in his report, and we can go look at that. There was two categories that that I looked at and provided provided information to me that I adopted. And that was that if customers had been customers of SAP before TomorrowNow, and they did not become part of Safe Passage, I took them out. So if they were older customers that were part of Safe Passage, I left them in. But if they were older customers and they did not become part of Safe Passage, I made that adjustment. Q. And what about the second part of it, the product extensions?

26 (Pages 98 to 101)

		Page 102			Page 104
11:42:39	1	why he categorized it that way, but say the	11:45:09	1	A. On the third page, I'm sorry.
11:42:42	2	there had been a license that was based on a	11:45:11	2	Q. Third page, subtotal, second column from
11:42:44	3	certain amount of volume per seat or something, and	11:45:13	3	the right.
11:42:49	4	that license was extended for some reason, he then	11:45:14	. 4	A. Yes.
11:42:51	5	said, well, exclude that customer.	11:45:15	5	Q. Can you explain that number, please.
11:42:53	6	From my perspective, if that was his	11:45:19	6	A. Yes. So yeah. So once I have all the
11:42:56	7	finding and they were not part of Safe Passage,	11:45:24	7	revenue by the by for all the customers after
11:42:58	8,	then I excluded them also. If they were part of	11:45:27	8	the TomorrowNow start date, I then made an
11:43:01	9	Safe Passage, I left them in.	11:45:34	9	adjustment that relates to what you can call the
11:43:03	10	Q. Okay. So is it correct that you basically	11:45:43	10	level of relationship revenue that was being earned
11:43:07	11	agreed with those two categories of Mr. Clarke,	11:45:45	11	by SAP prior to TomorrowNow.
11:43:11	12	unless the customer was also designated somewhere	11:45:49	12	And so I think Mr. Clarke calls it ongoing
11:43:13	13	as a Safe Passage customer?	11:45:52	13	revenue. I would call it sort of the baseline
11:43:17	14	A. You know, these were where we get into the	11:45:55	14	revenue.
11:43:20	15	situations that you have to describe.	11:45:56	15	And so I I've taken that revenue for
11:43:24	16	From my perspective, I was provided this	11:46:01	16	those customers that were preexisting, and then
11:43:27	17	calculation by Mr. Clarke, I reviewed it, I made	11:46:05	17	basically and this is revenue that is incurred
11:43:31	18	some adjustments that I felt were appropriate at	11:46:10	18	after TomorrowNow, but sort of has this nature that
11:43:34	19	the logic level. But at the same point in time,	11:46:14	19	it was being earned before. So I've adjusted the
11:43:37	20	I'm sort of making them at a level that's grosser	11:46:16	20	total revenue for the baseline revenue. So if you
11:43:42	21	than I would want to make them out. So I have to	11:46:19	21	look at that 145, and that's deducted from the 722,
11:43:45	22	sort of rely upon it a little bit, but then I say,	11:46:24	22	the revenue without the baseline net of that is 577
11:43:48	23	by the way, I'm not going to back down from the	11:46:28	23	million dollars.
11:43:51	24	importance that I see of Safe Passage, but I'll	11:46:28	24	Q. So the 577 million is the total SAP
11:43:53	25	adopt these exclusions. But it doesn't mean that	11:46:33	25	revenue that you are then considering for your
		Page 103			Page 105
	_			_	
11:43:55	1	I'm going to adopt the other ones. And so those	11:46:36	1	disgorgement analysis. Is that true?
11:43:58	2	were two that I thought if the way I	11:46:38	2	A. It would be that revenue
11:44:02	3	described it was the way Mr. Clarke had analyzed	11:46:43	3	Q. And then if you look at page 4 of 4
11:44:04	4	it, I would accept.	11:46:45	4	MS. HOUSE: I think he was not done.
11:44:06	5	Q. So then quickly, if you would, please,	11:46:47	5	THE WITNESS: Let me finish.
11:44:08	6	just explain to me the last three columns in	11:46:48	6	For the total disgorgement, it's that
11:44:12	7	Exhibit 2020 on the first page.	11:46:51	7	revenue plus the 577 plus the additional 126 on
11:44:14	8	A. Well, the revenue I focused on was always	11:46:55	8	page 4. Maybe you were going to get there. So
11:44:16	9	the SAP revenue after the TomorrowNow service start	11:46:58	9	your total is let me back up.
11:44:21	10	date. Okay?	11:47:01	10	Now, excuse me. The 577 is the amount
11:44:22	11	So that basically is the revenue that was	11:47:03	11	that relates to the disgorgement revenue. I was
11:44:27	12	what I'll call earned, or associated, or basically	11:47:08	12	showing you the reconciliation to the total. So it
11:44:31	13	earned after that point in time for the data period	11:47:11	13	is 577.
11:44:35	.14	we had.	11:47:12	14	MR. McDONELL: Q. Okay. So on page 4 of
11:44:35	15	So basically, the total that is a	11:47:13	15	4 on Exhibit 2020, your infringer's profits
11:44:40	16	combination of 722 million and the and the	11:47:17	16	calculation takes the 577 million, deducts or
11:44:48	17	178 million, it's about 899 million dollars of	11:47:22	17	applies a 50 percent profit margin, and then it
11:44:51	18	revenue after that point in time.	11:47:24	18	comes up with a total of 288 million. Is that
11:44:54	19	Q. If you turn to Exhibit 2020, the third	11:47:26	19	right?
11:44:58	20	page, page 3 of 4.	11:47:27	20	A. That's correct.
11:45:01	21	A. Yes.	11:47:28	21	Q. And then on page 3 of 4, Exhibit 2020,
11:45:02	22	Q. Do you see there the 145 million dollar	11:47:33	22	under that heading, "Adjustment to SAP Infringer's
11:45:05	23	number?	11:47:36	23	Profits," do you see that?
11:45:06	24	A. I'm sorry	11:47:39	24	A. Yes,
11:45:07	25	Q. It's a subtotal.	11:47:41	25	Q. Without giving me all the detail,

27 (Pages 102 to 105)

1		Page 106		Page 108
11:47:43	1	generally what's included in that section of the	12:03:09	
11:47:45	2	document?	12:03:15	
11:47:47	3	A. These were the in this section, these	12:03:18	
11:47:51	4	were the customers that basically fall into the	12:03:19	
11:47:57	5	category I'll just read the footnote; it'll say	12:03:25	
11:48:02	6	it better than I can.	12:03:28	
11:48:03	7	Adjusted customers include those customers	12:03:32	
11:48:05	8	listed on Mr. Clarke's disgorgement exclusions	12:03:36	
11:48:08	9	pools, and there's two categories: Decided to join	12:03:37	
11:48:12	10	SAP prior to joining TomorrowNow; and product	12:03:39	
11:48:14	11	extensions, unless those customers were also Safe	12:03:41	
11:48:18	12	Passage.	12:03:44	
11:48:19	13	So these are the ones that I'm pulling out	12:03:47	
11:48:21	14	for prior relationships or for the product	12:04:01	
11:48:25	15	extensions.	12:04:07	
11:48:26	16	MR. McDONELL: Q. That's it on that.	12:04:28	
11:48:28	17	Thank you.	12:04:29	
11:48:42			12:04:33	
11:48:44			12:04:37	
11:48:46			12:04:41	
11:48:47			12:04:45	
11:48:48			12:04:46	
11:48:49			12:04:47	
11:48:50			12:04:49	
11:49:10			12:04:54	
***************************************	····	Page 107		Page 109
11:49:12		_	12:04:59	_
11:57:08			12:05:01	
12:01:28			12:05:03	
12:01:30			12:05:08	
12:01:33			12:05:11	
12:01:34			12:05:15	
12:01:36			12:05:19	
12:01:40			12:05:22	
12:01:45			12:05:26	
12:01:45			12:05:26	
12:01:45 12:01:46			12:05:26 12:05:30	
12:01:45 12:01:46 12:01:56			12:05:26 12:05:30 12:05:35	
12:01:45 12:01:46 12:01:56 12:02:03			12:05:26 12:05:30 12:05:35 12:05:39	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:48	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13 12:02:19			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:48 12:05:50	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13 12:02:19 12:02:25			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:48 12:05:50 12:05:53	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13 12:02:19 12:02:25 12:02:29			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:48 12:05:50 12:05:53	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13 12:02:19 12:02:25 12:02:29 12:02:32			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:48 12:05:50 12:05:53 12:05:56 12:06:01	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13 12:02:19 12:02:25 12:02:29 12:02:36			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:48 12:05:50 12:05:53 12:05:56 12:06:01 12:06:04	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13 12:02:19 12:02:25 12:02:29 12:02:32 12:02:36 12:02:43			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:50 12:05:53 12:05:56 12:06:01 12:06:04 12:06:05	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13 12:02:19 12:02:25 12:02:29 12:02:32 12:02:36 12:02:43 12:02:46			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:50 12:05:53 12:05:56 12:06:01 12:06:04 12:06:05	
12:01:45 12:01:46 12:01:56 12:02:03 12:02:06 12:02:13 12:02:19 12:02:25 12:02:29 12:02:32 12:02:36 12:02:43 12:02:46 12:02:49			12:05:26 12:05:30 12:05:35 12:05:39 12:05:43 12:05:48 12:05:50 12:05:53 12:05:56 12:06:01 12:06:04 12:06:05 12:06:06	

28 (Pages 106 to 109)

Page 122		Page 124
12:22:54	12:25:31	J
12:22:56	12:25:35	
12:22:59	12:25:39	
12:23:01	12:25:42	
12:23:03	12:25:45	
12:23:04	12:25:45	
12:23:04	12:25:47	
12:23:03	12:25:50	
12:23:10	12:25:55	
12:23:12	12:25:59	
12:23:14	12:26:01	
12:23:17	12:26:19	
12:23:18	12:26:20	
12:23:19	12:26:23	·
12:23:20	12:26:26	
12:23:23	12:26:27	
12:23:27	12:26:30	
12:23:29	12:26:32	
12:23:32	12:26:33	
12:23:34	12:27:25	
12:23:35	12:27:27	
12:23:37	12:27:33	
12:23:39	12:27:38	
12:23:42	12:27:44	
12:23:45	12:27:48	
Page 123	And the second s	Page 125
12:23:48	12:27:52	
•		
12:23:50	12:27:59	
12:23:50	12:27:59 12:28:04	
12:23:53	12:28:04	
12:23:53 12:23:56	12:28:04 12:28:06	
12:23:53 12:23:56 12:23:59	12:28:04 12:28:06 12:28:10	
12:23:53 12:23:56 12:23:59 12:24:02	12:28:04 12:28:06 12:28:10 12:28:13	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:08	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:08 12:24:10	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:08 12:24:10 12:24:12	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:10 12:24:12 12:24:15	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:10 12:24:12 12:24:15 12:24:16	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:33	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:08 12:24:10 12:24:15 12:24:16 12:24:16	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:33 12:28:35	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:08 12:24:10 12:24:12 12:24:15 12:24:17 12:24:20	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:33 12:28:35 12:28:37	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:08 12:24:10 12:24:12 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:33 12:28:35 12:28:37 12:28:41	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:10 12:24:12 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:33 12:28:37 12:28:41 12:28:44	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:10 12:24:12 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21 12:24:24	12:28:04 12:28:06 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:33 12:28:37 12:28:44 12:28:44	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:10 12:24:12 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21 12:24:24 12:24:27 12:24:30	12:28:04 12:28:10 12:28:13 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:33 12:28:35 12:28:44 12:28:44 12:28:44	
12:23:53 12:23:56 12:24:02 12:24:05 12:24:10 12:24:12 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21 12:24:24 12:24:27 12:24:30 12:24:35	12:28:04 12:28:10 12:28:10 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:35 12:28:37 12:28:41 12:28:44 12:28:44 12:28:46 12:28:50	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:08 12:24:10 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21 12:24:21 12:24:24 12:24:35 12:24:35 12:25:13	12:28:04 12:28:10 12:28:10 12:28:16 12:28:18 12:28:21 12:28:26 12:28:30 12:28:35 12:28:37 12:28:41 12:28:44 12:28:44 12:28:46 12:28:50 12:28:50	
12:23:53 12:23:56 12:24:02 12:24:05 12:24:08 12:24:10 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21 12:24:21 12:24:21 12:24:24 12:24:35 12:24:35 12:24:35	12:28:04 12:28:10 12:28:10 12:28:13 12:28:16 12:28:18 12:28:26 12:28:30 12:28:33 12:28:35 12:28:37 12:28:41 12:28:44 12:28:44 12:28:46 12:28:50 12:28:52	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:08 12:24:10 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21 12:24:21 12:24:24 12:24:35 12:24:35 12:25:13 12:25:14	12:28:04 12:28:10 12:28:10 12:28:13 12:28:18 12:28:21 12:28:26 12:28:30 12:28:35 12:28:37 12:28:41 12:28:44 12:28:44 12:28:46 12:28:50 12:28:50	
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:10 12:24:12 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21 12:24:21 12:24:30 12:24:35 12:24:35 12:25:13 12:25:14 12:25:17	12:28:04 12:28:10 12:28:10 12:28:13 12:28:18 12:28:21 12:28:26 12:28:30 12:28:35 12:28:37 12:28:41 12:28:44 12:28:44 12:28:46 12:28:50 12:28:56 12:28:58 12:28:58	23 (Deposition Exhibit 2028 was marked for
12:23:53 12:23:56 12:23:59 12:24:02 12:24:05 12:24:10 12:24:12 12:24:15 12:24:16 12:24:17 12:24:20 12:24:21 12:24:21 12:24:24 12:24:35 12:24:35 12:25:13 12:25:14	12:28:04 12:28:10 12:28:10 12:28:13 12:28:18 12:28:21 12:28:26 12:28:30 12:28:35 12:28:37 12:28:41 12:28:44 12:28:44 12:28:46 12:28:50 12:28:50	23 (Deposition Exhibit 2028 was marked for identification.) 25 MR. McDONELL: Q. Showing you what's been

32 (Pages 122 to 125)

		Page 126			Page	128
12:29:16	1	marked as Exhibit 2028, another document that was	12:32:24			
12:29:18	2	delivered to us this on Monday of this week by	12:32:28			
12:29:22	3	your side, entitled "SAP Management -	12:32:32			
12:29:26	4	TomorrowNow/SAP - Strategic/Projections."	12:32:36			
12:29:31	5	Can you identify it for the record,	12:32:39			
12:29:32	6	please?	12:32:43			
12:29:33	7.	A. Yes. It's a very involved rebuttal, but	12:32:47			
12:29:37	8	Mr. Clarke takes the position that one cannot rely	12:32:53			
12:29:42	9	upon the projections that were provided to SAP's	12:32:57			
12:29:48	10	Board and that were relied upon in coming up with	12:33:03			
12:29:52	11	the strategy to acquire TomorrowNow, execute with	12:33:05			
12:29:58	12	TomorrowNow, release the Safe Passage program with	12:33:07			
12:30:01	13	TomorrowNow, and to use, in December and January,	12:33:09			
12:30:04	14	data about the potential service revenues and	12:33:15			
12:30:11	15	ability to convert PeopleSoft and JDE customers to	12:33:21			
12:30:18	16	the mySAP ERP platform.	12:33:24			
12:30:20	17	And these this is a very brief but I	12:33:27			
. 12:30:24	18	think first step in laying out the how in-depth	12:33:32			
12:30:30	19	the planning was and how many senior people were	12:33:34			
.12:30:34	20	involved, and basically what was being launched by	12:33:39			
12:30:37	21	SAP/TomorrowNow as a strategic initiative to impact	12:33:44			
12:30:42	22	the acquisition of PeopleSoft by Oracle.	12:33:48			
12:30:44	23	So I wanted to put in one place some of	12:33:52			
12:30:47	24	those key documents and the people involved who	12:33:54			
12:30:50	25	were senior people at SAP.	12:34:00			
### P0# 500 0 E0 # 10 0 0 10 0 10 0 10 0 10 0 10					D	100
		Page 127			Page	129
12:30:53	1	So that's why I pulled it together, and	12:34:03			
12:30:55	2	there's many more records that back this up.	12:34:07			
12:30:59		•	12:34:10			
12:31:01			12:34:13			
12:31:16 12:31:17			12:34:17			
			12:34:19			
12:31:20			12:34:21			
12:31:24			12:34:23			
12:31:25			12:34:26			
12:31:26		***************************************	12:34:30			
12:31:31			12:34:33			
12:31:35 12:31:39			12:34:36			
12:31:39			12:34:38			
			12:34:42			
12:31:46			12:34:47			
12:31:50 12:31:54		PO COLOR	12:34:53			
12:31:54			12:34:57			
12:31:55			12:34:59			
12:32:01			12:35:02			
12:32:04		20 miles	12:35:06			
12:32:07			12:35:10			
12:32:11			12:35:17			
12:32:13			12:35:21			
		***	12:35:25			
12:32:22		I I	12:35:27	•		

33 (Pages 126 to 129)

Page 150			Page 152
14:00:40 .	14:02:50		
14:00:41	14:02:51		
14:00:44.	14:02:52		·
14:00:46	14:02:53	4	Q. And you claim to have applied each of
14:00:48	14:02:56	5	those four approaches in this case?
14:00:50	14:02:58	6	A. That's what I've done, that's correct.
14:00:52	14:02:59	7	Q. In your opinion, are each of those
14:00:54	14:03:01	8	approaches equally appropriate in this case?
14:00:56	14:03:07	9	A. No, no, I wouldn't say that. I certainly
14:00:59	14:03:09	10	have done the analyses, and I believe I point out
14:01:00	14:03:13	11	in the report some of the issues, like with the
14:01:02	14:03:15	12	cost approach. But I believe that the market
14:01:07	14:03:18	13	approach and the income approach can be looked very
14:01:08	14:03:22	14	closely in conjunction with the hypothetical
14:01:12	14:03:24	15	negotiation.
14:01:14	14:03:25	16	The cost approach is a little more is a
14:01:23	14:03:25	17	little different. Just because you're looking at
14:01:25	14:03:27	18	cost it would take to design different software
14:01:26	14:03:30	19	· ·
14:01:28			systems, you're not always looking at the future
	14:03:37	20	value, so there are probably some more limits on
14:01:30	14:03:40	21	that. But it's still an approach that should be
14:01:31	14:03:42	22	considered.
14:01:33	14:03:42	23	Q. Okay. Which of these approaches do you
14:01:34	14:03:44	24	consider the best?
14:01:35	14:03:47	25	MS. HOUSE: Objection. Assumes facts not
Page 151			Page 153
14:01:36	14:03:48	1	in evidence.
14:01:37	14:03:50	2	THE WITNESS: In this situation, I
14:01:37	14:03:51	3	certainly think that the hypothetical negotiation
14:01:39	14:03:54	4	brings together the results of all the analyses, so
14:01:41	14:03:57	5	it's probably the most comprehensive. But the
14:01:45	14:04:00	6	market approach and the income approach I would say
14:01:47	14:04:02	7	also have aspects that are very valuable to
14:01:49	14:04:07	8	figuring out the value of the copyrighted
14:01:51	14:04:09	9	materials.
14:01:53	14:04:09	10	MR. McDONELL: Q. Okay. Why do you think
14:01:56	14:04:10	11	the hypothetical license approach is the best?
14:01:57	14:04:12	12	A. Because basically, in Factor 15, you get
14:01:58	14:04:16	13	to look back at what you did in the first 14
14:02:02	14:04:18	14	factors or 13 factors, and you get to also address
14:02:06	14:04:18	15	market and income and cost in those approaches and
14:02:15	14:04:26	16	techniques in the entire analysis.
14:02:19	14:04:30	17	And so in some respects, you get the
14:02:19		18	- · · · -
·	14:04:34		benefits of all that to figure out the value of the
14:02:30	14:04:40	19	copyrighted materials that are in suit here.
14:02:31	14:04:42		
14:02:32	14:04:44		
14:02:33	14:04:47		
14:02:40	14:04:48		
14:02:43	14:04:50		
14:02:47	14:04:52		

39 (Pages 150 to 153)

		Page 154			Page 156
14:04:53	-	J	14:08:58	1	been able to intercept with the Oracle lawyers and
14:04:56		·	14:09:05	2	technical experts to come to understand the breadth
14:04:57			14:09:08	3	of what was actually taken and used as covered by
14:05:01			14:09:11	4	the copyrights, and I'm comfortable that the
14:05:04			14:09:16	5	assumption of the scope of the license fits with
14:05:06			14:09:18	6	the technical analysis of the infringing works, and
14:05:08			14:09:21	7	that becomes the scope of the hypothetical.
14:05:11			14:09:24	8	So it's the copyrighted property. And
14:05:48			14:09:28	9	some of these copyrighted properties are, you know,
14:05:49			14:09:31	10	more prevalent and more valuable than others. But
14:05:52			14:09:35	11	whatever the combination is to allow the servicing
14:05:54			14:09:36	12	of those Peoplesoft of JDE products is what's in
1			14:09:38		•
14:05:57		•		13	the scope of the license.
14:06:00			14:09:41	14	MR. McDONELL: I move to strike as
14:06:04			14:09:42	15	nonresponsive.
14:06:05			14:09:43	16	Q. This is one of those situations where I'm
14:06:08			14:09:44	17	trying to ask you limited questions. Please listen
14:06:11			14:09:47	18	to my question.
14:06:20			14:09:48	19	In coming up with your value-of-use
14:06:22			14:09:50	20	calculation, did you assume that all of the
14:06:24			14:09:52	21	copyrighted materials listed on pages 52 through 56
14:06:30			14:09:57	22	of the First Fourth Amended Complaint were
14:06:32			14:10:01	23	actually infringed by the defendants?
14:06:36			14:10:02	24	MS. HOUSE: Asked and answered. And
14:06:39			14:10:05	25	argumentative.
		Page 155			Page 157
14:07:16			14:10:09	1	THE WITNESS: I believe I've given you a
14:07:18			14:10:10	2	complete answer on that. And basically, as I said,
14:07:20			14:10:12	3	it's the it's the registrations in this
14:07:21			14:10:16	4	complaint and in the I believe it's
14:07:27			14:10:18	5	Interrogatory 13 or 14 response, whatever that may
14:07:31			14:10:20	6	be, that is sufficient for SAP/TomorrowNow to carry
14:07:35			14:10:27	7	out their business plans as documented in January
14:07:37			14:10:30	. 8	2005, the 1-2-3 document, the phone call, and then
14:07:42	9	O. So I believe this is a list of	14:10:36	.9	matching that up with ultimately the property that
14:07:43	10	approximately 120 copyright registrations.	14:10:38	10	was actually taken and used.
14:07:46	11	My question for you is, in calculating	14:10:40	11	And from my perspective, that's the scope
14:07:49	12	value of use in this case, did you assume that all	14:10:43	12	of the license, and that's what I've assigned a
14:07:51	13	of the copyrighted materials listed here were	14:10:45	13	value to.
14:07:54	14	actually infringed by the defendants?	14:10:46	14	Q. Okay. Which copyrights were taken and
14:07:59	15	A. In the the scope of the license, what I	14:10:50	15	used?
14:08:02	16	did was, I adopted a scope that basically would say	14:10:53	16	MS. HOUSE: Objection. Outside of the
14:08:02	17	that it would cover the software and the updates	14:10:54	17	scope of this expert.
14:08:19	18	and the other documentation and derivative products	14:10:58	18	THE WITNESS: That's
14:08:22	19	that are under registration sufficiently extensive	14:10:59	19	MR. McDONELL: Q. Well, let me put it
14:08:27	20	to allow SAP/TomorrowNow to carry out its January	14:11:00	20	this way: What was your assumption about which
14:08:27	21	2005 plans for TomorrowNow and SAP/TomorrowNow in	14:11:00	21	specific copyrights were taken and used?
14:08:33	22	the Safe Passage program as it relates to servicing	14:11:03	22	MS. HOUSE: Asked and answered.
14:08:42	23	PeopleSoft and IDE products and the product	14:11:05	23	THE WITNESS: I've already responded to
14:08:46	24	families of those companies, consistent with their	14:11:05	24	that twice. I've told you that whatever copyrights
l .	25	business records in 2005 January, and then I've		25	on this listing that would be sufficient for
14:08:55	23	ousmoss records in 2003 January, and then I ve	14:11:10	45	on my name mar wound be surreight to

40 (Pages 154 to 157)

		Page 158		Page 1	.60
14:11:14	1	SAP/TomorrowNow to execute on their plans from	14:13:21		
14:11:17	2	2005, January time frame, that's the group of	14:13:23		
14:11:20	3	copyrights.	14:13:27		
14:11:21	4	I understand those copyrighted properties	14:13:29		
14:11:23	5	have been analyzed by Oracle's technical experts,	14:13:31		
14:11:26	6	its lawyers, and there's a matching up of the	14:13:33		
14:11:30	7	copyrighted properties that are pled in the case	14:13:33		
14:11:32	8	with that technical analysis.	14:13:34		
14:11:36	9	That infringing property that relates to	14:13:37		
14:11:37	10	the products of the of PeopleSoft and JDE and	14:13:39		
14:11:40	11	ultimately at some point Siebel is what's in the	14:13:41		
14:11:43	12	scope of use.	14:13:44		
14:11:44	13.	Q. Okay. But	14:13:46		
14:11:45	14	A. And it contemplates the downloading, the	14:13:49		
14:11:49	15	creation of environments, the copying, the	14:13:49		
14:11:52	16	distribution, the sharing amongst customers, all	14:13:53		
14:11:55	17	those activities that are laid out in are the	14:13:58		
14:11:57	18	complaint, I believe, you know, extensively, that's	14:14:01		
14:12:01	19	what it covers.	14:14:03		
14:12:01	20	Q. Okay. But what I'm trying to understand	14:14:16		
14:12:03	21	is whether you have an opinion about whether the	14:14:50		
14:12:08	22	copyright registrations listed at pages 52 to 56 of	14:14:52		
14:12:11	23	the Fourth Amended Complaint were actually	14:14:52		
14:12:14	24	infringed.	14:14:54		
14:12:15	25	Do you have an opinion?	14:14:57		
		Page 159		Page 1	61
14:12:18	1	MS. HOUSE: That's outside of the scope of	14:15:00		
14:12:20	2	his opinion.	14:15:05		
14:12:22	3	THE WITNESS: It's beyond my expertise and	14:15:06		
14:12:24	4	certainly my retention and expertise to do an	14:15:07		
14:12:27	5	analysis of infringement.	14:15:08		
14:12:29	6	What I am able to do is to adopt a	14:15:11		
14:12:31	7	definition of scope. And that scope, I've told	14:15:13		
14:12:34	8	you, is the copyrighted property that would be	14:15:16		
14:12:36	9	sufficient to go out and compete for the 4,000	14:15:20		
14:12:41	10	customers initially that SAP wanted to compete for,	14:15:23		
14:12:44	11	and to look at the 1-2-3 document and to look at	14:15:26		
14:12:47	12	the phone call and the understanding that SAP had	14:15:29		
14:12:50	13	of its installed base and the makeup of the	14:15:33		
14:12:53	14	products between where they were and the same	14:15:37		
14:12:56	15	installations with JD Edwards or PeopleSoft.	14:15:41		
14:12:58	16	I looked at all that, I contemplated all	14:15:44		
14:13:00	17	that, I saw what they expected. And my	14:15:47		
14:13:02	18	understanding is that that's now being proven up by	14:15:50		
14:13:05	19	the technical experts of Oracle, and it matches up	14:15:55		
14:13:07	20	to the scope of the license I have adopted with	14:15:55		
14:13:10	21	what the technical findings are on infringement.	14:15:57		
14:13:12	22	And that ties back to the copyrighted work.	14:15:59		
14:13:15	23	So whatever that showing is, I'm	14:16:02		
14:13:16	24	comfortable that the two match up.	14:16:07		
14:13:19			14:16:10		ı

41 (Pages 158 to 161)

		Page 170			Page 17
14:25:39		5	14:28:05	1	SAP's understanding of the PeopleSoft software and
14:25:40			14:28:08	2	the joint facilities with SAP and PeopleSoft and
14:25:41			14:28:12	3	JDE, and then it's how that's actually then from
14:25:42			14:28:16	4	2005 to 2008 carried out in the marketplace for
14:25:44			14:28:16		•
14:25:44			1	5	internal and external use.
			14:28:22	6	Q. One more time, just identify for me use
14:25:48			14:28:28	7	that TomorrowNow made of the alleged copyrighted
14:25:52			14:28:30	8	materials that was unrelated to delivering support
14:25:58			14:28:32	9	to the 358 customers. Just
14:26:02			14:28:35	10	MS. HOUSE: Asked and answered.
14:26:03			14:28:36	11	MR. McDONELL: Q be as specific as
14:26:05			14:28:37	12	you can.
14:26:05			14:28:38	13	A. Okay. I'm going to read from the notes I
14:26:08			14:28:41	14	provided to you several hours ago. Okay?
14:26:13			14:28:44	15	And some of this may not be specific
14:26:15			14:28:46	16	customer use, and you can decide that with
14:26:17			14:28:49	17	technical experts and have those discussions.
14:26:20			14:28:53	18	To create fixes in a customer environment
14:26:23			14:28:55	19	or a generic environment, distributed those fixes
14:26:23			14:28:58	20	across as many customers as possible.
14:26:26			14:29:00	21	Q. Let me just so it doesn't get too long,
14:26:29			14:29:03	22	you can read something to me, then I'm going to ask
14:26:31			14:29:04	23	you a question about it.
14:26:34			14:29:05		
14:26:36			14:29:06		
		Page 171			Page 17
14:26:39	1	Q. Okay. Tell me as specifically as you can	14:29:09		
14:26:42	2	what actual use TomorrowNow made of the copyrighted	14:29:10		
14:26:47	3	material that did not relate to providing support	14:29:11		
14:26:51	4	for the 358 customers.	14:29:12		
14:26:53			14.25.12		
14:70:23	_		14-20-12		
	5	MS. HOUSE: Asked and answered.	14:29:13		
14:26:58	6	THE WITNESS: I've answered that already.	14:29:14		
14:26:58 14:26:59	6 7	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in	14:29:14 14:29:16		
14:26:58 14:26:59 14:27:06	6 7 8	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what	14:29:14 14:29:16 14:29:18		
14:26:58 14:26:59 14:27:06 14:27:09	6 7 8 9	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes	14:29:14 14:29:16 14:29:18 14:29:20		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12	6 7 8 9 10	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that	14:29:14 14:29:16 14:29:18 14:29:20 14:29:22		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12	6 7 8 9 10	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also	14:29:14 14:29:16 14:29:18 14:29:20 14:29:22 14:29:24		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17	6 7 8 9 10 11	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle	14:29:14 14:29:16 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:26	6 7 8 9 10 11 12	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the	14:29:14 14:29:16 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:26	6 7 8 9 10 11 12 13	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle.	14:29:14 14:29:16 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:26 14:27:33 14:27:37	6 7 8 9 10 11 12 13 14	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the	14:29:14 14:29:16 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:30		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:26 14:27:33 14:27:37	6 7 8 9 10 11 12 13 14 15	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that.	14:29:14 14:29:16 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:30 14:29:32		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:26 14:27:33 14:27:37 14:27:40 14:27:41	6 7 8 9 10 11 12 13 14 15 16	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that. But my understanding is, that's the scope.	14:29:14 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:30 14:29:32		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:26 14:27:33 14:27:37 14:27:40 14:27:41	6 7 8 9 10 11 12 13 14 15 16 17	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that. But my understanding is, that's the scope. And much of that scope does not relate to customer	14:29:14 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:28 14:29:30 14:29:33 14:29:34		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:26 14:27:33 14:27:37 14:27:40 14:27:44 14:27:46	6 7 8 9 10 11 12 13 14 15 16 17 18	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that. But my understanding is, that's the scope.	14:29:14 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:30 14:29:32		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:26 14:27:33 14:27:37 14:27:40 14:27:41	6 7 8 9 10 11 12 13 14 15 16 17	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that. But my understanding is, that's the scope. And much of that scope does not relate to customer	14:29:14 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:28 14:29:30 14:29:33 14:29:34	20	Q. Sir, I want you to tell me as specifically
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:26 14:27:33 14:27:37 14:27:40 14:27:44 14:27:46	6 7 8 9 10 11 12 13 14 15 16 17 18	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that. But my understanding is, that's the scope. And much of that scope does not relate to customer use. And so I can read that into the record, you can look at that, but that's the scope I've adopted. I've tied it back to the analysis of	14:29:14 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:30 14:29:30 14:29:33 14:29:34 14:29:36	20	Q. Sir, I want you to tell me as specifically as you can what use TomorrowNow made of the alleged
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:33 14:27:37 14:27:40 14:27:44 14:27:44 14:27:46 14:27:48 14:27:51 14:27:53	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that. But my understanding is, that's the scope. And much of that scope does not relate to customer use. And so I can read that into the record, you can look at that, but that's the scope I've	14:29:14 14:29:16 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:30 14:29:32 14:29:33 14:29:33		
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:33 14:27:37 14:27:40 14:27:41 14:27:48 14:27:48	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that. But my understanding is, that's the scope. And much of that scope does not relate to customer use. And so I can read that into the record, you can look at that, but that's the scope I've adopted. I've tied it back to the analysis of	14:29:14 14:29:16 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:30 14:29:32 14:29:33 14:29:33 14:29:33	21	as you can what use TomorrowNow made of the alleged
14:26:58 14:26:59 14:27:06 14:27:09 14:27:12 14:27:17 14:27:20 14:27:33 14:27:37 14:27:40 14:27:41 14:27:44 14:27:48 14:27:48 14:27:51	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	THE WITNESS: I've answered that already. And, you know, I copied for you today my notes in my report. And if you go to my paragraph 162, what I copied for you today, I've jotted down some notes about the scope of the infringing activities that go into the scope of the license, and I've also taken some notes I have from counsel for Oracle about the extensive alleged improper use of the software and SSMs and other properties of Oracle. And I can read that to you, you can open up the notes and look at that. But my understanding is, that's the scope. And much of that scope does not relate to customer use. And so I can read that into the record, you can look at that, but that's the scope I've adopted. I've tied it back to the analysis of Mr. Mandia, and my paragraph 162 and associated	14:29:14 14:29:16 14:29:18 14:29:20 14:29:22 14:29:24 14:29:26 14:29:28 14:29:30 14:29:32 14:29:33 14:29:33 14:29:34 14:29:34 14:29:38 14:29:38 14:29:39	21 22	as you can what use TomorrowNow made of the alleged copyrighted materials that was unrelated to

44 (Pages 170 to 173)

		Page 174			Page 176
14:29:57	1	So what's the first use of that nature	14:31:42	1	what I've already told you at this point, but I
14:29:59	2	that you can think of?	14:31:44	2	will endeavor to be responsive to your question.
14:30:00	3	A. I'm going to respond in this fashion	14:31:47	3	Internal use: To keep its own copies of
14:30:02	4	again. I've already referred to 5 minutes ago you	14:31:49	.4	environments, fixes, patches and updates let me
14:30:04	5	can go to the notes we provided this morning, and	14:31:54	5	finish.
14:30:06	6	we can look at it together. You already have a	14:31:55	6	MS. HOUSE: Let him finish.
14:30:08	7	copy of that. Because as I mentioned a while back,	14:31:56	7	THE WITNESS: These copies allow for the
14:30:11	8	ultimately, a technical expert and the lawyers will	14:31:57	8	research, training, and other non-customer-specific
14:30:14	9	address this issue, and I'm very comfortable that	14:32:01	9	development in testing that SAP/TomorrowNow did
14:30:17	10	the scope that I have put into my hypothetical	14:32:05	10	using its customers', and even some non-customers',
14:30:20	11	negotiation, into my valuations, matches up with	14:32:09	11	software for convenience.
14:30:24	12	these definitions. And I have it right here, and I	14:32:12	12	To the extent some of the use is
14:30:26	13	can read it to you.	14:32:14	13	interference and not copyright infringement,
14:30:27	14	Q. One at a time. Give me the first one	14:32:16	14	SAP/Tomorrow Now first made infringing
14:30:29	15	first.	14:32:18	15	non-specific non-customer-specific copies to
14:30:29	16	A. Let me finish my answer. And I will read	14:32:21	16	facilitate that interference.
14:30:31	17	that to you, and then you can do what you want.	14:32:23	17	So that's the first piece of the
14:30:33	18	But if you want, we can go to the document so you	14:32:25		-
14:30:36	19	can actually see what I'm reading. Because in	14:32:26		
14:30:38	20	large part, this is well beyond the scope of my	14:32:27		
14:30:40	21	inquiry and expertise. I have to rely upon other	14:32:29		
14:30:43	22	experts and other inputs for what ultimately	14:32:34		
14:30:47	23	happened. And that's been provided to me, and I'm	14:32:35		· · · · · · · · · · · · · · · · · · ·
14:30:50	24	comfortable that I matched up with the business	14:32:35		
14:30:52	25	plans of SAP.	14:32:35		
		Page 175		**************************************	Page 177
14:30:53	1	So I'il go through, if you allow me	14:32:36		
14:30:55	2	Q. One at a time, please.	14:32:37		
14:30:57	. 3	A without interrupting, I'll read that to	14:32:39		
14:30:59	4	you. And I can't represent that every one of these	14:32:40		
14:31:01	5	represents non-customer use. But I'll read to	14:32:44		
14:31:03	6	you	14:32:46		
14:31:04	7	Q. I only want the ones that are not related	14:32:48		
14:31:07	8	to providing support to the 358 TomorrowNow	14:32:50		
14:31:11	9	customers. Please give me only those.	14:32:54		
14:31:12	10	MS. HOUSE: Calls for I'm sorry, sir.	14:32:57		
14:31:14	11	That is outside the scope of his expertise. Do you	14:32:59		
14:31:16	12	want him to give you what he has, or do you not	14:33:06		
14:31:19	13	want him to give it to you?	14:33:07		
14:31:20	14	MR. McDONELL: I want him to answer my	14:33:08		·
14:31:21	15	question if he can. If he cannot, I want him to	14:33:09		
14:31:24	16	tell me that he cannot.	14:33:11		
14:31:25	17	MS. HOUSE: That's an incomplete question,	14:33:12		
14:31:26	18	and you're making this more difficult than is	14:33:13		
14:31:28	19	necessary.	14:33:15		
14:31:29	20	MR. McDONELL: Q. Okay. Can you give me	14:33:17		
14:31:30	21	the first one, please?	14:33:18		
14:31:31	22	A. Without being a technical expert, I will	14:33:20		
1	23	endeavor to provide my best answer on this to you.	14:33:22		
14:31:33					
14:31:33	24	I've said a couple of times, it's beyond my	14:33:25		•

45 (Pages 174 to 177)

		Page 194			Page 196
14:51:19		-	14:53:38		
14:51:22			14:53:40		
14:51:26			14:53:44		
14:51:28			14:53:46		
14:51:30			14:53:49		•
14:51:34			14:53:52		,
14:51:36			14:53:52		
14:51:30			14:53:55		
14:51:39			14:53:57		
14:51:42					
			14:54:02		
14:51:46			14:54:05		
14:51:49			14:54:07		
14:51:52			14:54:12		
14:51:56			14:54:14		•
14:52:01			14:54:15		
14:52:04			14:54:17		
14:52:06			14:54:19		
14:52:08			14:54:22		
14:52:10			14:54:24		
14:52:13			14:54:26		
14:52:16			14:54:27	21	Q. Okay. So what I understand you did here
14:52:18			14:54:30	22	is, you looked at Oracle's acquisition of
14:52:19			14:54:32	23	PeopleSoft, and you took certain parts of the
14:52:24			14:54:36	24	valuation that were listed in the purchase price
14:52:27			14:54:39	25	allocation. Is that right?
**************************************		Page 195			Page 197
14:52:31	1	Q. Okay. But in this case, you just got done	14:54:42	1	A. No. What I did what I basically did
14:52:35	2	telling us that your primary comp that you looked	14:54:45	2	was, I knew that 11 billion dollars had been spent
14:52:38	3	at to start is the PeopleSoft acquisition by	14:54:48	3	in cash for an entire entity. And I was interested
14:52:42	4	Oracle. Do you recall that?	14:54:51	4	in drilling into that to see how much that related
14:52:44	5	MS. HOUSE: Misstates his testimony.	14:54:54	5	to the tangible assets and everything else that was
14:52:46	6	THE WITNESS: You it's not what I said.	14:54:57	6	paid for. Because the company paid 11 billion
14:52:48	7	Because what I've done is taken that transaction.	14:55:00	7	dollars.
14:52:49	8	and I've broken it down and only focused on the	14:55:00	8	And the tangible assets, I determined,
14:52:53	9	intangible assets that are within that transaction.	14:55:03	9	were basically they were fixed assets were
14:52:56	10	And it's laid out clearly in my report and all my	14:55:17	10	539 million dollars, and the rest of the value had
14:52:56	11	work papers. I have schedules on this. I've taken	14:55:17	11	
14:53:00	12		14:55:21		been assigned to either identified intangible
	13	the overall value, come back to the intangibles		12	assets, or basically the premium that Oracle had to
14:53:06		that are in there, spent a lot of time analyzing	14:55:29	13	pay for PeopleSoft over and above the tangibles and
14:53:08	14	those intangibles, and I've done my valuation.	14:55:33	14	the intangibles.
14:53:11	15	So it's not using the acquisition of a	14:55:35	15	And so I looked for information to help
14:53:13	16	company, the overall value. It's looking at those	14:55:37	16	get back to these underlying pieces of the
14:53:16	17	components, and you have information that allows	14:55:41	17	acquisition that related to the intellectual
14:53:17	18	you to get to what we have here, which is the	14:55:42	18	property in this case. And if you really focus on
14:53:20	19	subject intellectual property. That's a proper	14:55:45	19	what I did is, those valuations of these
14:53:22	20	analysis.	14:55:48	20	intangibles for like the the maintenance on the
14:53:22			14:55:52	21	customers were all based on looking at discounted
14:53:24			14:55:56	22	cash flow models and other projections. And so you
14:53:27		SERVICE STATE OF THE SERVICE STATE STATE OF THE SER	14:56:00	23	actually can look at the value of the intellectual
14:53:30			14:56:04	24	property and the overall transaction based on the
14:53:35		\$	14:56:07	25	number of customers and the annual maintenance

50 (Pages 194 to 197)

		Page 198			Page 200
14:56:08	1	charges you have and the ability to upsell and	14:57:57		3
14:56:10	2	cross-sell those customers. So you use traditional	14:57:59		
14:56:13	3	techniques to do these subset analyses.	14:58:02		
14:56:16	4	But you know that overall you paid 11	14:58:02		
14:56:19	5	billion dollars for a company, and a big part of	14:58:04		
14:56:21	6	the value of these intangibles in this case, the	14:58:11		•
14:56:23	7	intellectual property in this case is well	14:58:11		
14:56:25	8	beyond what you look at on these discounted cash	14:58:17		
14:56:28	9	flow bases.	14:58:17		
14:56:29	10	And that's what I did. It's really very	14:58:25		
14:56:31	11	extensive analysis of an overall transaction. But	14:58:27		
14:56:34	12	it's not the overall transaction; it's those	14:58:29		
14:56:36	13	components. That's what I analyzed, those	14:58:32		
14:56:38	14	components.	14:58:35		
14:56:39	**	components.	14:58:35		
14:56:43			14:58:41		
14:56:44			14:58:41		
14:56:47			14:58:45		
14:56:47		·	14:58:45		
14:56:51			14:58:50		
14:56:54			14:58:50		
14:56:54			14:58:52		
14:56:57			14:58:54		
14:57:01					
14:57:07			14:58:57 14:58:59		
14.37.10			14.30.33		
		Page 199			Page 201
14:57:13			14:59:05		
14:57:14		,	14:59:10		
14:57:15			14:59:11		
14:57:18			14:59:14		
14:57:19			14:59:17		
14:57:21		,	14:59:20		
14:57:21			14:59:26		
14:57:23			14:59:29	8	Q. Are you aware of any treatise that
14:57:24			14:59:32	9	suggests using the acquisition price of a company
14:57:26			14:59:35	10	as a basis for determining the fair market value of
14:57:28			14:59:39	11	a license to copyrighted material?
14:57:30			14:59:43	12	A. Well, you keep asking about the
14:57:32			14:59:45	13	acquisition cost of a company. I'm aware of
14:57:34			14:59:47	14	analytical techniques to take the overall value of
			14:59:51	15	a company and break it down to its subcomponents
14:57:36					
14:57:36 14:57:37			14:59:54	16	through traditional financial models, and then from
14:57:36 14:57:37 14:57:39			14:59:54 14:59:57	17	there, make certain determination of intellectual
14:57:36 14:57:37 14:57:39 14:57:41			14:59:54 14:59:57 14:59:58	17 18	there, make certain determination of intellectual property value.
14:57:36 14:57:37 14:57:39 14:57:41 14:57:43			14:59:54 14:59:57 14:59:58 14:59:59	17 18 19	there, make certain determination of intellectual property value. Q. Would you agree that it would be
14:57:36 14:57:37 14:57:39 14:57:41 14:57:43 14:57:46			14:59:54 14:59:57 14:59:58 14:59:59 15:00:02	17 18 19 20	there, make certain determination of intellectual property value. Q. Would you agree that it would be preferable in this case if you had comparable
14:57:36 14:57:37 14:57:39 14:57:41 14:57:43 14:57:46 14:57:47			14:59:54 14:59:57 14:59:58 14:59:59 15:00:02	17 18 19 20 21	there, make certain determination of intellectual property value. Q. Would you agree that it would be preferable in this case if you had comparable licenses to look at as opposed to having to
14:57:36 14:57:37 14:57:39 14:57:41 14:57:43 14:57:46 14:57:47 14:57:51			14:59:54 14:59:57 14:59:58 14:59:59 15:00:02 15:00:05	17 18 19 20 21 22	there, make certain determination of intellectual property value. Q. Would you agree that it would be preferable in this case if you had comparable licenses to look at as opposed to having to indirectly do your calculation by looking at the
14:57:36 14:57:37 14:57:39 14:57:41 14:57:43 14:57:46 14:57:47 14:57:51 14:57:53			14:59:54 14:59:57 14:59:58 14:59:59 15:00:02 15:00:05 15:00:09	17 18 19 20 21 22 23	there, make certain determination of intellectual property value. Q. Would you agree that it would be preferable in this case if you had comparable licenses to look at as opposed to having to indirectly do your calculation by looking at the purchase of PeopleSoft by Oracle?
14:57:36 14:57:37 14:57:39 14:57:41 14:57:43 14:57:46 14:57:47 14:57:51			14:59:54 14:59:57 14:59:58 14:59:59 15:00:02 15:00:05	17 18 19 20 21 22	there, make certain determination of intellectual property value. Q. Would you agree that it would be preferable in this case if you had comparable licenses to look at as opposed to having to indirectly do your calculation by looking at the

51 (Pages 198 to 201)

		Page 202			Page 204
15:00:18	1	license transaction is so large, and it's actually	15:02:21		
15:00:21	2	on the same day or same week as the PeopleSoft	15:02:23		
15:00:25	3	transaction, that we have virtually the perfect	15:02:26		
15:00:28	4	metric. We have a fair market value transaction	15:02:29		
15:00:30	5	between two large companies to acquire a series of	15:02:40		
15:00:34	6	assets, but one of the most important assets was	15:02:41		
15:00:36	7	the customer relationships and the related premium	15:02:45		
15:00:40	8	that was paid to get those relationships, and that	15:02:46		•
15:00:42	9	ties back to being protected by the software and	15:02:47		
15:00:44	10	the copyrighted property.	15:02:50		
15:00:46	. 11	That's a very compelling metric to use.	15:17:53		
15:00:48	12	And what you have to do is break it down. And if	15:17:55		
15:00:52	13	you break it down properly, you're in a great place	15:17:58		
15:00:54	14	to be, and it's much better data than trying to	15:18:00		
15:00:57	15	take license agreements to don't look at really the	15:18:04		
15:00:59	16	total value of what happened here.	15:18:05		•
15:01:01	17	MR. McDONELL: Q. Okay. Would you agree	15:18:08		
15:01:02	18	with me that if you had a comparable out there that	15:18:10		
15:01:04	19	was a license for the actual use that TomorrowNow	15:18:11		
15:01:09	20	made of this material, but with a different	15:18:16		
15:01:12	21	company, that that would be preferable to the	15:18:18		
15:01:14	22	approach you used?	15:18:34		
15:01:15	23	MS. HOUSE: Incomplete hypothetical,	15:18:37		
15:01:16	24	vague.	15:18:40		
15:01:17	25	THE WITNESS: I would have to take what	15:18:43		
<u> </u>		Page 203			Page 205
15:01:18	1	you just said and break it down and really vent	15:18:44		
15:01:20	2	that, because we have to go back to the scope of	15:18:45		
15:01:23	3	the license and all the other terms. And also,	15:18:47	•	
15:01:27	-				
	4		15:18:51		
	4 5	you'd have to deal with the dynamics of the two			
15:01:30	5	you'd have to deal with the dynamics of the two parties here, because we're looking at once again	15:18:51		
15:01:30 15:01:32		you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're	15:18:51 15:18:54		·
15:01:30	5 6	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another	15:18:51 15:18:54 15:18:55		·
15:01:30 15:01:32 15:01:35	5 6 7	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're	15:18:51 15:18:54 15:18:55 15:18:56		·
15:01:30 15:01:32 15:01:35 15:01:38	5 6 7 8	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57		÷
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40	5 6 7 8 9	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets.	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41	5 6 7 8 9	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:42	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:42 15:01:45	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:42 15:01:45	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:40		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:42 15:01:45 15:01:46 15:01:47	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:40 15:19:43		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:42 15:01:45 15:01:47 15:01:50	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:40 15:19:43 15:19:43		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:42 15:01:45 15:01:46 15:01:47 15:01:50 15:01:53	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:40 15:19:43 15:19:58 15:20:01		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:45 15:01:45 15:01:46 15:01:50 15:01:53 15:01:57	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:39 15:19:40 15:19:43 15:19:58 15:20:01 15:20:16		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:45 15:01:46 15:01:47 15:01:50 15:01:57 15:01:57	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:39 15:19:40 15:19:43 15:19:58 15:20:01 15:20:16 15:20:17		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:45 15:01:46 15:01:47 15:01:50 15:01:57 15:01:57 15:02:00 15:02:03	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:39 15:19:40 15:19:43 15:19:58 15:20:01 15:20:16 15:20:17 15:20:21		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:45 15:01:46 15:01:47 15:01:50 15:01:57 15:02:00 15:02:03 15:02:05	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:39 15:19:40 15:19:43 15:19:58 15:20:01 15:20:16 15:20:17 15:20:21 15:20:29		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:45 15:01:46 15:01:47 15:01:50 15:01:57 15:02:00 15:02:03 15:02:05 15:02:07	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:39 15:19:40 15:19:43 15:19:58 15:20:01 15:20:16 15:20:17 15:20:21 15:20:29 15:20:33		
15:01:30 15:01:32 15:01:35 15:01:38 15:01:40 15:01:41 15:01:45 15:01:46 15:01:47 15:01:50 15:01:53 15:01:57 15:02:00 15:02:05 15:02:05 15:02:07 15:02:10	5 6 7 8 9 10	you'd have to deal with the dynamics of the two parties here, because we're looking at once again value between two large companies, and we're looking at value that Oracle just paid for another large company, which included those intangible assets. And so I don't believe that what you proffered would necessarily be anything	15:18:51 15:18:54 15:18:55 15:18:56 15:18:57 15:18:59 15:19:13 15:19:15 15:19:39 15:19:40 15:19:43 15:19:58 15:20:01 15:20:16 15:20:17 15:20:21 15:20:29 15:20:33 15:20:37		

52 (Pages 202 to 205)

		Page 206		Page 208
15:21:01			15:23:53	
15:21:25			15:23:53	
15:21:27			15:23:55	•
15:21:27			15:23:57	
15:21:27			15:24:00	
15:21:27			15:24:05	
15:21:27			15:24:07	
15:21:27			15:24:07	
15:21:27			15:24:12	
15:21:27			15:24:14	
15:21:29			15:24:21	
15:21:31			15:24:24	
15:21:32		· ·	15:24:27	
15:21:33	14	In paragraph 122, you're that's part of	15:24:30	
15:21:36	15	your analysis in the market approach. Right?	15:24:36	
15:21:39	16	A. That's correct.	15:24:39	
15:21:40	17	Q. And in the third bullet point of paragraph	15:24:40	
15:21:44	18	122, there's the number 8,85 billion. Do you see	15:24:40	
15:21:48	19	that?	15:24:42	
15:21:49	20.	A. Yes.	15:24:54	
15:21:49	21	Q. And that consists of 2.12 billion of the		
15:21:49	22	•	15:24:56	
		PeopleSoft support agreements and related customer	15:25:00	
15:21:59	23	relationships at the time of the acquisition.	15:25:05	
15:22:01	24	Correct?	15:25:13	
15:22:02	25	A. Yes.	15:25:17	
		Page 207	·	Page 209
. 15:22:03	1	Q. It also consists of 250 million dollars of	15:25:21	
15:22:06	2	the avoided cost of developing certain new customer	15:25:28	
15:22:09	3	relationships. Correct?	15:25:31	
15:22:10	4	A. Yes.	15:25:34	
15:22:11	5	Q. And it also consists of 6.5 billion of	15:25:37	
15:22:15	6	Oracle's recorded goodwill.	15:25:41	
15:22:18	7	All true?	15:25:43	
15:22:23	8	A. That is correct.	15:25:49	
15:22:27	9	Q. And you summarized those numbers as the	15:25:52	
15:22:29	10	8.85 billion, which is a number that you use as	15:25:56	
15:22:38	11	part of your analysis under the market approach.	15:25:59	
15:22:42	12	Right?	15:26:02	
15:22:43	13	A. That number is part of the analysis under	15:26:02	
15:22:45	14	the market approach. It's some components within	15:26:04	
15:22:49	15	the overall 11 billion dollars.	15:26:08	
15:23:18			15:26:13	
15:23:20		To a contract of the contract	15:26:18	
			15:26:20	
15:23:25			15:26:25	•
15:23:25 15:23:26		***************************************	15:26:31	
		ž.		
15:23:26		· ·	15:26:37	
15:23:26 15:23:33			15:26:37 15:26:40	
15:23:26 15:23:33 15:23:35				
15:23:26 15:23:33 15:23:35 15:23:36			15:26:40	

53 (Pages 206 to 209)

	•••••	Page 210			Page 212
15:26:54			15:29:30	1	The 2.67 billion dollar number that you
15:26:57		<u>-</u>	15:29:32	2	calculated includes a value for Oracle's future
15:27:00			15:29:36	3	upsell and cross-sales. Correct?
15:27:05			15:29:40	4	A. As I mentioned a moment ago, the reason
15:27:09			15:29:42	5	why you pay 11 billion dollar for
15:27:13			15:29:44	6	Q. I didn't ask you the reason. I did not
15:27:16			15:29:46	7	ask you that.
15:27:16			15:29:47	8	MS. HOUSE: Let him answer, please. Don't
15:27:18			15:29:48	9	interrupt him.
15:27:23			15:29:50	10	MR. McDONELL: No. He's got to answer my
15:27:28		•			,
			15:29:51	11	question, or we don't finish. Answer my question.
15:27:35			15:29:55	12	THE WITNESS: I'm going to give you the
15:27:41			15:29:55	13	complete answer.
15:27:45			15:29:55	14	MR. McDONELL: Q. Does the 2.67 billion
15:27:47			15:29:56	15	dollar calculation include a calculation for
15:27:50			15:29:59	16	Oracle's upsells and cross-sells?
15:27:52			15:30:01	17	MS. HOUSE: Answer how you feel is
15:27:54		•	15:30:02	18	appropriate.
15:27:58			15:30:02	19	THE WITNESS: It allows Oracle to maximize
15:28:01			15:30:04	20	the value of that customer relationship, which
15:28:02			15:30:06	21	includes a lot of things, including upsell and
15:28:04			15:30:08	22	cross-sell opportunities, and selling more service.
15:28:05	23	Q. Okay. The goodwill, the 6.5 billion	15:30:11		
15:28:08	24	dollar number, is Oracle's opportunity to make	15:30:13		
15:28:11	25	upsell and cross-sell sales. Is that right?	15:30:15		
		Page 211			Page 213
15:28:15	1	A. There's two pieces. The first piece would	15:30:18		
15:28:17	2	be to the existing customers to come in.	15:30:27		
15:28:21	3	There's an opportunity to upsell and cross-sell,	15:30:30		
15:28:23	4	and then over time, there's an opportunity to	15:30:31		
15:28:25	5	actually beat the transaction value and to even	15:30:34		
15:28:29	6	sell more products across more platforms from the	15:30:37		
15:28:34	7	Oracle perspective.	15:30:41		
15:28:35	8	So you actually can do better than the 11	15:30:43		
15:28:38	9	billion.	15:30:46		
15:28:38	10	So but the reason why you pay that	15:31:04		
15:28:40	11	premium is to have access to those customers and to	15:31:04		
15:28:40	12	make additional product sales beyond the servicing.	15:31:07		
15:28:43	1.3	that's absolutely correct.	15:31:11		
15:28:48	14	Q. So the 2.67 billion dollar number you	15:31:15		
15:28:50	15	calculated includes dollars for Oracle's future	15:31:20		
15:28:53	16				
	16 17	upsell and cross-sell. Correct?	15:31:22		
15:29:04 15:29:08		A. The goodwill would relate to amounts that	15:31:27		
15:29:08	18 .	you've paid for more than the current tangible	15:31:33		
	19	assets, the currently identified intangible assets.	15:31:38		
15:29:16	20	And that would be a chance to expand your business	15:31:43		
15:29:18	21	to the basic customers that you now have acquired,	15:31:45		
15:29:20	22	and you can now license and service and use your IP	15:31:49		
15:29:23	23	to their advantage.	15:31:51		
15:29:26	24	Q. So I think you've answered the question,	15:31:54		
15:29:29	25	but let me make sure.	15:31:57		

54 (Pages 210 to 213)

		Page 218			Page 220
15:37:05		, 5	15:39:31	1	relationships and the service contracts.
15:37:11		·	15:39:33	2	Q. Oracle didn't have to start from scratch
15:37:13			15:39:35	3	and go out and try to win those PeopleSoft
15:37:15			15:39:37	4	customers and convince them to leave PeopleSoft and
15:37:16			15:39:40	5	come to Oracle. Right?
15:37:18			15:39:40	6	A. Well, we need to break down your question,
15:37:28			15:39:41	7	
					because you say starting from scratch. Let's break it down.
15:37:35			15:39:46	8	
15:37:37			15:39:48	9	SAP and TomorrowNow would have to go to
15:37:40			15:39:50	10	the 4,000 joint customers where it already has
15:37:41			15:39:53	11	relationship and would have to work with them and
15:37:45			15:39:55	12	convince them to convert their service to
15:37:49			15:39:58	13	TomorrowNow, and then ultimately to take more
15:37:51			15:40:01	14	product. They would have to go down that path.
15:37:52			15:40:03	15	Q. Right. But the distinction I'm trying to
15:37:53			15:40:05	16	draw here is a pretty basic one.
15:37:58			15:40:07	17	When Oracle acquired PeopleSoft, it
15:38:03			15:40:09	18	acquired the whole company. Right?
15:38:06			15:40:11	19	A. It acquired the company, that's correct.
15:38:11		•	15:40:12	20	Q. So to the extent that PeopleSoft had
15:38:14			15:40:14	21	customers signed up to customer relationships,
15:38:15	22	THE WITNESS: Could that be read back,	15:40:17	22	Oracle became the owner of those. Right?
15:38:17	23	please?	15:40:21	23	A. Well, we got to break it down. I mean,
15:38:17	24	(Record read as follows:	15:40:24	24	Oracle what Oracle acquired was the company, and
15:38:18	25	Question: Would you agree with me that	15:40:28	25	there was 9,000-plus customers, and they had
		Page 219		arran/a.u.irr	Page 221
15:38:18	1	under the license that you're contemplating	15:40:31	1	service agreements.
15:38:18	2	in your hypothetical license, Oracle would	15:40:32	2	Q. Right.
15:38:18	3	not be transferring a portion of the	15:40:33	3	A. And but those service agreements are
15:38:18	4	PeopleSoft/JD Edwards customer base to the	15:40:36	4	also year-to-year, for the most part let me
15:38:18	5	defendants?)	15:40:38	5	finish so they get to acquire that. And at the
15:38:35	6	THE WITNESS: As part of the license, that	15:40:41	6	same time, Oracle has to go out and, you know,
15:38:36	7	is correct. They would be giving them the	15:40:44	7	nurture those customers and make sure they stay
15:38:42	8	opportunity to go out and compete for that	15:40:48	8	with them and in the fold. So that's what they
	9		15:40:50	9	have to do. And if someone wants to come in and
15:38:43		business, but it would not be a contractual	15:40:52	10	compete, and compete legally, they have to set up
15:38:45	10	transfer as part of the license.	15:40:55	11	that and also then go out and see if they can have
15:38:47	11	MR. McDONELL: Q. So under the			
15:38:48	12	hypothetical license that you're assuming, the	15:40:58	12	But I think the difference is at that
15:38:52	13	Oracle customers would continue to be Oracle	15:41:00	13	But I think the difference is that
15:38:56	14	customers supported by Oracle, unless the	15:41:01	14	you're leaving out of your questions is that
15:38:59	15	defendants managed to persuade them to switch to	15:41:04	15	PeopleSoft and SAP had a combined customer base of
15:39:01	16	TomorrowNow for support. Correct?	15:41:08	16	about 4,000 customers.
15:39:04	17	A. They would be Oracle customers until they	15:41:10	17	Q. What do you think is more valuable:
15:39:07	18	decided to switch on support, that's correct.	15:41:13	18	Oracle's acquisition of a PeopleSoft customer
15:39:09	19	••	15:41:15	19	relationship with an existing customer contract in
15:39:10	20	in Oracle's acquisition of PeopleSoft. Right?	15:41:19	20	place, or a license to TomorrowNow and SAP to use
15:39:16	21	A. I don't know what you're talking about.	15:41:25	21	the subject IP to try to obtain that customer?
15:39:17	22	Q. When Oracle when Oracle acquired	15:41:30	22	A. Well, based on the facts in this case, we
15:39:19	23	PeopleSoft, Oracle became the owner of those	15:41:32	23	can have discussion about that, because obviously
15.20.22	24	customer relationships. True?	15:41:35	24	Oracle has the service contracts at various points
15:39:23		-			

56 (Pages 218 to 221)

1			i		· · · · · · · · · · · · · · · · · · ·
		Page 222			Page 224
. 15:41:43	1	have attrition rates and they have a history on	15:43:58		
15:41:45	2	that and they're hopeful for that.	15:44:04		
15:41:46	3	But SAP has 4,000 of those same customers	15:44:08		
15:41:49	4	also under contract for various products, and of	15:44:09		
15:41:54	5	the regular license to go out and take those	15:44:11		·
15:41:57	6	customers who they are already are in their IT shop	15:44:14		
15:42:00	7	with relationships, and unveil this very, you know,	15:44:16		
15:42:03	8	aggressive, heavily discounted program to convert.	15:44:20		
15:42:07	9	So in some respects, you have Oracle,	15:44:22		
15:42:09	10	who's been through almost 2 years of trying to	15:44:25	10	Q. But what you did you think that the use
15:42:11	11	acquire a company with the associated press, and	15:44:29	11	of the 3,000-customer number was reasonable and
15:42:13	12	they have to overcome that. And then I'll	15:44:32	12	appropriate?
15:42:16	13	recognize that SAP, under Safe Passage, has to go	15:44:33	13	A. Based on my studying of the December and
15:42:19	14	out and also convert customers.	15:44:36	14	January business records, the involvement of senior
15:42:21	15	So I'm not certain it's as clear as you	15:44:42	15	Board officials, the testimony that those officials
15:42:23	16	are drawing the distinction, but I will recognize	15:44:45	16	gave, the number of documents that referenced the
15:42:26	17	if there are some ongoing contracts, certainly with	15:44:51	17	desire and initiative of SAP to disrupt Oracle, all
15:42:29	18	Oracle and PeopleSoft, and the other side of it is	15:44:57	18	those all those focused plans over a very short
15:42:32	19	just a license.	15:45:04	19	period of time to acquire TomorrowNow to match it
15:42:33			15:45:06	20	up with the closing of the PeopleSoft deal, from my
15:42:35		•	15:45:10	21	perspective, that was the position of management in
15:42:40			15:45:13	22	January 2005, and they and they that's what
15:42:46			15:45:16	23	they wanted to do and expected to do.
15:42:47			15:45:19	24	And I think that's what I'll tell the
15:42:49			15:45:20	25	court is, it's their projections. And if you read
		Page 223			Page 225
15:42:50			15:45:23	1	the phone call of Mr. Agassi as he talked to the
15:42:51			15:45:26	2	world about the Safe Passage deal, it's a very
15:42:53			15:45:29	3	illuminating series of pages.
15:42:55			15:45:31	4	Q. Do you believe you're qualified to draw -
		· ·			1 to 1 to 1 to 1 to 1 to 1 to 1
15:42:56			15:45:35	5	conclusions about what SAP thought from looking at
15:42:56 15:42:58			15:45:35 15:45:40	5 6	the documents of SAP's internal deliberations?
15:42:58			15:45:40	6	the documents of SAP's internal deliberations?
15:42:58 15:43:01			15:45:40 15:45:44	6	the documents of SAP's internal deliberations? A. Those documents in combination with the
15:42:58 15:43:01 15:43:05			15:45:40 15:45:44 15:45:47	6 7 8	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he
15:42:58 15:43:01 15:43:05 15:43:09			15:45:40 15:45:44 15:45:47 15:45:50	6 7 8 9	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I
15:42:58 15:43:01 15:43:05 15:43:09 15:43:12			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53	6 7 8 9	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and
15:42:58 15:43:01 15:43:05 15:43:09 15:43:12 15:43:15			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53 15:45:55	6 7 8 9 10	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations.
15:42:58 15:43:01 15:43:05 15:43:09 15:43:12 15:43:15 15:43:16			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53 15:45:55 15:45:58	6 7 8 9 10 11	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let
15:42:58 15:43:01 15:43:05 15:43:09 15:43:12 15:43:15 15:43:16 15:43:20			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53 15:45:55 15:45:58	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:09 15:43:12 15:43:15 15:43:16 15:43:20 15:43:23			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53 15:45:55 15:45:58 15:46:00 15:46:02	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:12 15:43:15 15:43:16 15:43:20 15:43:23 15:43:26			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53 15:45:58 15:46:00 15:46:02 15:46:04	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:12 15:43:15 15:43:16 15:43:20 15:43:23 15:43:26 15:43:29			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53 15:45:55 15:46:00 15:46:04 15:46:06	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:12 15:43:15 15:43:16 15:43:20 15:43:23 15:43:29 15:43:31			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53 15:45:55 15:45:58 15:46:00 15:46:02 15:46:04 15:46:06 15:46:10	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:12 15:43:15 15:43:16 15:43:20 15:43:23 15:43:23 15:43:21 15:43:21 15:43:21			15:45:40 15:45:44 15:45:47 15:45:50 15:45:53 15:45:55 15:46:00 15:46:02 15:46:04 15:46:10 15:46:11	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:12 15:43:15 15:43:16 15:43:20 15:43:23 15:43:26 15:43:29 15:43:31 15:43:32			15:45:40 15:45:44 15:45:50 15:45:53 15:45:55 15:45:58 15:46:00 15:46:02 15:46:04 15:46:10 15:46:11 15:46:13	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:12 15:43:15 15:43:16 15:43:20 15:43:23 15:43:26 15:43:31 15:43:31			15:45:40 15:45:44 15:45:50 15:45:53 15:45:55 15:45:58 15:46:00 15:46:02 15:46:04 15:46:10 15:46:11 15:46:13 15:46:13	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:09 15:43:15 15:43:16 15:43:20 15:43:23 15:43:26 15:43:31 15:43:31 15:43:32 15:43:31			15:45:40 15:45:44 15:45:50 15:45:53 15:45:55 15:45:58 15:46:00 15:46:02 15:46:04 15:46:10 15:46:11 15:46:13 15:46:13 15:46:16	6 7 8 9 10 11 12	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but
15:42:58 15:43:01 15:43:05 15:43:09 15:43:15 15:43:16 15:43:20 15:43:23 15:43:26 15:43:31 15:43:32 15:43:31 15:43:32 15:43:32 15:43:34 15:43:39 15:43:45			15:45:40 15:45:44 15:45:50 15:45:53 15:45:55 15:45:58 15:46:00 15:46:02 15:46:04 15:46:10 15:46:11 15:46:13 15:46:13 15:46:16 15:46:18	6 7 8 9 10 11 12 13 14	the documents of SAP's internal deliberations? A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations. And I'll put that forward, and I'll let others in the record speak to the projections, but that's my perspective on it.

57 (Pages 222 to 225)

		Page 226			Page 228
15:46:34	1	contracts, wouldn't it be more valuable to Oracle	15:48:43	1	the 2.67 billion dollars. From my perspective,
15:46:40	2	such that you should make some adjustment to that	15:48:47	2	there was obviously a range of potential customers.
15:46:43	3	number?	15:48:49	3	And also, I knew that the head of technology, the
15:46:44	4	A. Well, I think that I've done that. I	15:48:53	4	CTO, Mr. Agassi, thought it could be as high as
15:46:46	5	mean, the 30 percent calculation actually comes out	15:48:56	5	6,000 customers.
15:46:49	6	to 2 almost 2.7 billion dollar, and I'm at 2	15:48:57	6	So from my perspective, I backed it down
15:46:54	7	billion dollars.	15:48:59	7	to account for things like you're mentioning.
15:46:55	8	And so it's not like you're talking about	15:49:01	8	Obviously, I understand that it's better to have
15:46:57	9	SAP's outside the facility of the 4,000 customers.	15:49:03	9	9,000 customers under contract than to have none
15:47:02	10	They're already there, and they're providing	15:49:07	10	under contract. But let's not forget the 4,000
15:47:05	11	enterprise systems, and PeopleSoft's providing	15:49:10	11	that are joint customers.
15:47:07	12	human resource. And in fact, they may have 80	15:49:11	12	So I made an adjustment. It wasn't
15:47:10	13	percent of the data shop.	15:49:12	13	specific for that, but I wanted to back it down to
15:47:11	14	Q. So	15:49:15	14	say, okay, I know there will be some issues about
15:47:12	15	A. Let me finish. So they may be the	15:49:17	15	how you apportion the goodwill and the opportunity
15:47:14	16	incumbent, and all they have to then do is say,	15:49:20	16	to upsell and cross-sell these customers over time,
15:47:17	17	now, let's go down the hall and see the folks that	15:49:23	17	and to earn their service contracts.
15:47:21	18	are in charge of human resources, and if we can	15:49:27	18	Q. Well, as you sit here today, can you tell
15:47:21	19	convince them to give us that maintenance contract,	15:49:29	19	me specifically what adjustment you made to the
15:47:26	20	we can maybe convince them to convert the human	15:49:32	20	2.67 billion dollar number to take into account the
	21	resource function over to SAP.	15:49:35	21	fact that PeopleSoft owned the customer
15:47:29			15:49:37	22	relationships and SAP and TomorrowNow did not?
15:47:31	22	So that's the dynamic that's occurring,	15:49:40	23	MS. HOUSE: Asked and answered.
15:47:32	23	and that's what's in all these Safe Passage	15:49:42	24	THE WITNESS: Well, the market value, I've
15:47:35	24	documents. It's not a couple documents. It's many	15:49:42	25	said, is at least billion dollars. And so the
15:47:37	25	documents, and it's testimony.	13.47.44		
		Page 227			Page 229
15:47:39	1	Q. So are you saying that you made an	15:49:47	1	simple math is, you know, 670 million dollars. But
15:47:41	2	adjustment from your 2.67 billion dollar	15:49:51	2	from my perspective and I've done many of these
15:47:46	3	calculation to 2.1 billion to take into account the	15:49:54	3	analyses I didn't need to be that precise,
15:47:49	4	fact that Oracle actually owned the PeopleSoft	15:49:57	4	because I could have also run a calculation at
15:47:53	5	customer relationships and SAP and TomorrowNow did	15:50:00	5	6,000 customers, or probably the 4,000 customers,
15:47:57	6	not?	15:50:02	6	because that's the joint IT shop, and that's
15:47:57	7	MS. HOUSE: I think you misspoke. It's	15:50:05	7	probably the number that has as much traction as
15:47:59	8	2.0, not 2.1.	15:50:09	8	any other number.
15:48:02	9	THE WITNESS: Not specifically. I	15:50:10		
15:48:03	10	think	15:50:12		
15:48:04	11	MR. McDONELL: Q. Hold on, I'm sorry.	15:50:21		
15:48:05	12	Did I misspeak?	15:50:23		
15:48:08	13	A. It's 2 billion for the market value.	15:50:26		
15:48:10	14	Q. No, but what I'm asking you about is	15:50:34		
	15	okay, thank you, Counsel.	15:50:36		
15:48:17		-	15:50:38		
15:48:17 15:48:18	16	So are you saying let me restate the			
	16 17	So are you saying let me restate the question.	15:50:39		
15:48:18		, , ,			
15:48:18 15:48:20	17	question.	15:50:39		
15:48:18 15:48:20 15:48:20	17 18	question. Are you saying that you made an adjustment	15:50:39 15:50:40		
15:48:18 15:48:20 15:48:20 15:48:22	17 18 19	question. Are you saying that you made an adjustment from the 2.67 billion dollar calculation to the 2	15:50:39 15:50:40 15:50:43		
15:48:18 15:48:20 15:48:20 15:48:22 15:48:27	17 18 19 20	question. Are you saying that you made an adjustment from the 2.67 billion dollar calculation to the 2 billion dollar calculation to take into account the	15:50:39 15:50:40 15:50:43 15:50:46		
15:48:18 15:48:20 15:48:20 15:48:22 15:48:27 15:48:29	17 18 19 20 21	question. Are you saying that you made an adjustment from the 2.67 billion dollar calculation to the 2 billion dollar calculation to take into account the fact that Oracle actually owned the PeopleSoft	15:50:39 15:50:40 15:50:43 15:50:46 15:50:49		
15:48:18 15:48:20 15:48:20 15:48:22 15:48:27 15:48:29 15:48:31	17 18 19 20 21 22	question. Are you saying that you made an adjustment from the 2.67 billion dollar calculation to the 2 billion dollar calculation to take into account the fact that Oracle actually owned the PeopleSoft customer relationships, and SAP and TomorrowNow did	15:50:39 15:50:40 15:50:43 15:50:46 15:50:49 15:50:52		

		Page 238		Page	24
16:02:29			16:04:45		
16:02:32		***************************************	16:04:48		
16:02:34		**.	16:04:50		
16:02:40		700	16:04:54		
16:02:41	5	Q. But you also have then the opportunity to	16:04:54		
16:02:43	6	upsell and cross-sell to them. Correct?	16:04:56		
16:02:45	. 7	A. That's right. But that's a different	16:05:04		
16:02:46	8	value.	16:05:05		
16:02:47	9	Q. Where is that value reflected?	16:05:07		
16:02:49	10	A. That's in the amount you pay over and	16:05:23		
16:02:51	11	above the identified assets.	16:05:25		
16:02:54	12	So all you can quantify in the transaction	16:05:34		
16:02:55	13	is the tangible assets, the hard assets, and the	16:05:36		
16:02:59	14	identifiable intangible assets.	16:05:40		
16:02:33	15	So the value over and above that, the	16:05:44		
			16:05:48		
16:03:04	16	6 1/2 billion dollars of goodwill, is because of			
16:03:06	17	the opportunities to sell more product and more	16:05:53		
16:03:09	18	service to those existing customers.	16:05:57		
16:03:12		7	16:06:01		
16:03:14		# # # # # # # # # # # # # # # # # # #	16:06:04		
16:03:16		# # STATE	16:06:06		
16:03:20		Production	16:06:14		
16:03:23			16:06:17		
16:03:25		-	16:06:22		
16:03:38			16:06:24		
		Page 239		Page	24
16:03:38			16:06:27		
16:03:38		***************************************	16:06:30		
16:03:38			16:06:34		
16:03:40			16:06:36		
16:03:41			16:06:38		
16:03:43			16:06:41		
16:03:45			16:06:46		
16:03:46			16:06:49		
16:03:47			16:06:53		
16:03:49			16:06:55		
16:03:51			16:07:00		
16:03:54			16:07:02		
16:04:11			16:07:03		
16:04:13			16:07:05		
16:04:14		***************************************	16:07:07		
16:04:15		***************************************	16:07:10		
16:04:18			16:07:12		
16:04:24			16:07:15		
16:04:27			16:07:19		
16:04:29			16:07:21		
16:04:29		POSITION	16:07:24		
16:04:30			16:07:30		
16:04:32		Parameter	16:07:32		
16:04:36		·	16:07:32		
10.04:31			16:07:36		
16:04:42					

61 (Pages 238 to 241)

Page 242	Page 244
16:07:55	16:11:03
16:07:57	16:11:03
16:08:02	16:11:07
16:08:04	16:11:15
16:08:08	16:11:19
16:08:10	16:11:21
16:08:12	16:11:21
16:08:42	16:11:23
16:08:44	16:11:27
16:08:46	16:11:30
16:08:49	16:11:34
16:08:52	16:11:37
16:08:55	16:11:40
16:08:58	16:11:42
16:09:02	16:11:45
16:09:05	16:11:48
16:09:07	16:11:52
16:09:10	16:11:55
16:09:13	16:11:59
16:09:14	16:12:01
16:09:17	16:12:05
16:09:19	16:12:07
16:09:25	16:12:11
16:09:31	16:12:12
16:09:37	16:12:14
Page 243	Page 245
	16:12:19
16:09:41	16:12:22
16:09:43	16:12:22
16:09:47	16:12:32
16:09:52	16:12:32
16:09:56	16:12:34
16:09:56	16:12:39
16:09:57	16:12:39
16:10:01	16:12:42
16:10:05	16:12:49
16:10:08	16:12:49 16:12:51 1 Q. Is it true that by definition, goodwill
16:10:12	16:12:56 12 isn't an asset that can be itself separately
16:10:13 16:10:21	16:12:59 13 valued. It has to be generated indirectly?
16:10:21	16:13:03 14 MS. HOUSE: Objection. Vague.
16:10:32	16:13:05 14 MS. HOUSE. Objection. Vague.
one of the state o	16:13:06 15 111E WITNESS. Well, in this case, it was
16:10:39	16:13:10 17 because we have a transaction in January 2005.
16:10:41 16:10:42	16:13:10 17 because we have a transaction in January 2003. 16:13:13 18 I will agree, though, that what goodwill
	16:13:15 16 19 with agree, though, that what goodwin
16:10:44	16:13:16 19 is by hattie is the amount that you have to pay for 16:13:19 20 something over the identified tangible and
16:10:48	
16:10:49	
16:10:51	
16:10:54	
16:10:56	16:13:32 24 prudent investor, and so they had to pay 11 billion
16:11:00	16:13:35 25 to get the company. And that was the fair market

62 (Pages 242 to 245)

		Page 246			Page	248
16:13:38	1	value price at the time, and that premium was paid	16:16:04			
16:13:40	2	to have the opportunity to service, cross-sell, and	16:16:09			
16:13:47	3	upsell those customers with Oracle's expertise.	16:16:13			
16:13:50		·	16:16:16			
16:13:53			16:16:20			
16:14:01			16:16:22			
16:14:05			16:16:23			
16:14:08		•	16:16:23			
16:14:09			16:16:25			
16:14:10			16:16:27			
16:14:14			16:16:29			
16:14:18			16:16:31			
16:14:25			16:16:35			
16:14:26			16:16:38			
16:14:29			16:16:39			
16:14:31			16:16:42			
16:14:33			16:16:45			
16:14:38			16:16:47			
16:14:41			16:16:49			
16:14:47			16:16:52			
16:14:49			16:16:56			
16:14:52			16:17:00			
16:14:52			16:17:00			
16:14:54			16:17:05			
			16:17:05			
16:14:59	·,		10:17:09	Description of the second seco		
		Page 247		'	Page	245
		 .			3 -	
16:15:01		- · · · · ·	16:17:12		5 -	
16:15:01 16:15:03			16:17:12 16:17:13		5-	
					5-	
16:15:03			16:17:13			
16:15:03 16:15:06			16:17:13 16:17:16			
16:15:03 16:15:06 16:15:08			16:17:13 16:17:16 16:17:20			
16:15:03 16:15:06 16:15:08 16:15:11			16:17:13 16:17:16 16:17:20 16:17:22		. .	
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17			16:17:13 16:17:16 16:17:20 16:17:22 16:17:24		. .	
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18			16:17:13 16:17:16 16:17:20 16:17:22 16:17:24 16:17:28		. .	
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19			16:17:13 16:17:16 16:17:20 16:17:22 16:17:24 16:17:28		J -	
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21			16:17:13 16:17:16 16:17:20 16:17:22 16:17:24 16:17:28 16:17:31			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25			16:17:13 16:17:16 16:17:20 16:17:22 16:17:24 16:17:31 16:17:36 16:17:39			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28			16:17:13 16:17:16 16:17:20 16:17:22 16:17:24 16:17:31 16:17:36 16:17:39			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:22 16:15:28 16:15:31			16:17:13 16:17:16 16:17:20 16:17:22 16:17:24 16:17:31 16:17:36 16:17:39 16:17:42 16:17:50			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:23 16:15:31 16:15:34			16:17:13 16:17:20 16:17:22 16:17:24 16:17:28 16:17:31 16:17:36 16:17:39 16:17:42 16:17:50 16:17:52			
16:15:03 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:31 16:15:34 16:15:37			16:17:13 16:17:20 16:17:22 16:17:24 16:17:28 16:17:31 16:17:36 16:17:39 16:17:50 16:17:52 16:17:52			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28 16:15:31 16:15:34 16:15:37 16:15:40			16:17:13 16:17:20 16:17:22 16:17:24 16:17:28 16:17:31 16:17:36 16:17:39 16:17:50 16:17:50 16:17:54 16:17:54			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28 16:15:31 16:15:34 16:15:37 16:15:40 16:15:44			16:17:13 16:17:20 16:17:22 16:17:24 16:17:28 16:17:36 16:17:36 16:17:50 16:17:54 16:17:55 16:17:56			
16:15:03 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28 16:15:31 16:15:34 16:15:40 16:15:44 16:15:46 16:15:48			16:17:13 16:17:20 16:17:22 16:17:24 16:17:28 16:17:36 16:17:39 16:17:50 16:17:55 16:17:56 16:17:56			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28 16:15:31 16:15:34 16:15:40 16:15:44 16:15:46 16:15:48 16:15:48			16:17:13 16:17:20 16:17:22 16:17:24 16:17:36 16:17:36 16:17:39 16:17:50 16:17:55 16:17:56 16:17:56 16:17:58 16:18:00			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28 16:15:31 16:15:34 16:15:37 16:15:40 16:15:44 16:15:44 16:15:48 16:15:48			16:17:13 16:17:20 16:17:22 16:17:24 16:17:36 16:17:36 16:17:39 16:17:50 16:17:50 16:17:55 16:17:56 16:17:58 16:18:00 16:18:05			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28 16:15:31 16:15:34 16:15:40 16:15:44 16:15:46 16:15:48 16:15:48			16:17:13 16:17:20 16:17:22 16:17:24 16:17:36 16:17:39 16:17:50 16:17:50 16:17:55 16:17:56 16:17:56 16:17:58 16:18:00 16:18:05 16:18:09			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28 16:15:31 16:15:34 16:15:37 16:15:40 16:15:44 16:15:46 16:15:48 16:15:51 16:15:51			16:17:13 16:17:20 16:17:22 16:17:24 16:17:28 16:17:36 16:17:39 16:17:50 16:17:50 16:17:52 16:17:54 16:17:55 16:17:56 16:18:00 16:18:05 16:18:09 16:18:14			
16:15:03 16:15:06 16:15:08 16:15:11 16:15:17 16:15:18 16:15:19 16:15:21 16:15:25 16:15:28 16:15:31 16:15:34 16:15:37 16:15:40 16:15:44 16:15:44 16:15:48 16:15:51 16:15:51			16:17:13 16:17:20 16:17:22 16:17:24 16:17:28 16:17:36 16:17:39 16:17:50 16:17:50 16:17:55 16:17:54 16:17:55 16:18:00 16:18:05 16:18:09 16:18:14 16:18:16			

63 (Pages 246 to 249)

1		Page 250			Page	252
16:18:25			16:20:30		5-	
16:18:26			16:20:32			
16:18:27	3	Q. Okay. So I mean, employees have value.	16:20:35			
16:18:30	4	Right?	16:20:38			
16:18:30	5	A. Right. But we're talking not in abstract.	16:20:40			
16:18:33	6	We're talking about a transaction.	16:20:41			
16:18:35	7	Q. Sure.	16:20:44			
16:18:35	8	A. And I met with the two most important	16:20:47			
16:18:37	9	people in the company at Oracle that approved this	16:20:51			
16:18:40	10	transaction, and they told me the premium was paid	16:20:54			
16:18:44	11	for the ability to cross-sell and upsell and for	16:20:56			
16:18:47	12	the customers. That's what they told me.	16:20:58			
16:18:49	12	the customers. That's what they told me.	16:21:03			
16:18:50			16:21:04			
16:18:54			16:21:09			
16:18:58			16:21:13			
16:19:00			16:21:15			
16:19:03			16:21:19			
16:19:05			16:21:23			
16:19:07			16:21:27			
16:19:09			16:21:31			
16:19:03			16:21:35			
16:19:15			16:21:37			
16:19:17			16:21:38			
16:19:19			16:21:41			
		Page 251	nadio ginapay, manada adii yala yala adiada adiba adia adiba da kata a saassa a ina arrawa a saassa a saassa a		Page	253
		. rage 231	36.01.42		rage	200
16:19:21			16:21:43			
16:19:22			16:21:46			
16:19:23			16:21:48			
16:19:26			16:21:50			
16:19:28						
			16:21:51			
16:19:30			16:21:53			
16:19:35			16:21:53 16:21:56			
16:19:35 16:19:38			16:21:53 16:21:56 16:21:58			
16:19:35 16:19:38 16:19:40			16:21:53 16:21:56 16:21:58 16:22:00			
16:19:35 16:19:38 16:19:40 16:19:42			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:46			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:07			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:46			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:07 16:22:11			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:46 16:19:49 16:19:53			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:07 16:22:11 16:22:14			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:46 16:19:49 16:19:53			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:11 16:22:14			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:46 16:19:49 16:19:53 16:19:58			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:07 16:22:11 16:22:14 16:22:17 16:22:18			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:46 16:19:53 16:19:58 16:20:00 16:20:01			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:11 16:22:14 16:22:18 16:22:20			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:46 16:19:53 16:19:58 16:20:00 16:20:01			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:14 16:22:14 16:22:18 16:22:20 16:22:22			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:49 16:19:53 16:19:58 16:20:00 16:20:01			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:14 16:22:17 16:22:18 16:22:20 16:22:22			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:49 16:19:53 16:19:58 16:20:00 16:20:01 16:20:04 16:20:06			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:14 16:22:17 16:22:18 16:22:20 16:22:22 16:22:25 16:22:28			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:49 16:19:53 16:19:58 16:20:00 16:20:01 16:20:04 16:20:04			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:14 16:22:17 16:22:18 16:22:20 16:22:22 16:22:25 16:22:28 16:22:31			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:49 16:19:53 16:19:58 16:20:00 16:20:01 16:20:04 16:20:04 16:20:12 16:20:14 16:20:17			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:14 16:22:17 16:22:18 16:22:20 16:22:22 16:22:22 16:22:22 16:22:23 16:22:36			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:49 16:19:53 16:19:58 16:20:00 16:20:01 16:20:04 16:20:12 16:20:14 16:20:17 16:20:21			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:14 16:22:17 16:22:18 16:22:20 16:22:22 16:22:22 16:22:23 16:22:31 16:22:36 16:22:38			
16:19:35 16:19:38 16:19:40 16:19:42 16:19:45 16:19:49 16:19:53 16:19:58 16:20:00 16:20:01 16:20:04 16:20:04 16:20:12 16:20:14 16:20:17			16:21:53 16:21:56 16:21:58 16:22:00 16:22:03 16:22:06 16:22:11 16:22:14 16:22:17 16:22:18 16:22:20 16:22:22 16:22:22 16:22:22 16:22:23 16:22:36			

64 (Pages 250 to 253)

		Page 254			Page 256
16:22:44			16:25:08		
16:22:46			16:25:10		
16:22:48			16:25:13		
16:22:50			16:25:16		
16:22:51			16:25:18		
16:22:53			16:25:19		
16:22:57			16:25:21		
16:23:02			16:25:23		
16:23:03			16:25:26		
16:23:05			16:25:29		
16:23:09			16:25:32		
16:23:12			16:25:33		
16:23:16			16:25:34	13	Q. So is it your understanding that the
16:23:19			16:25:35	14	activities of the defendants in this case harmed
16:23:21			16:25:40	15	Oracle's ability to make upsell and cross-sells of
16:23:24			16:25:46	16	its products?
16:23:24			16:25:49	17	A. Ultimately what I believe happened in
16:23:29			16:25:51	18	January of 2005 is that S&P SAP had a plan to
16:23:23			16:25:56	19	make cross-sell and upsell to Oracle's customers by
16:23:35			16:25:59	20	using TomorrowNow, and that would be basically the
16:23:36			16:26:03	21	other side of the losses to Oracle.
16:23:39			16:26:03		outer side of the 105505 to Oracle.
16:23:41			16:26:07		
16:23:46			16:26:09		
16:23:48			16:26:12		
		Page 255			Page 257
16:23:51			16:26:17		
16:23:58			16:26:19		
16:24:01			16:26:21		
16:24:03			16:26:22		
16:24:05			16:26:27		
16:24:07		•	16:26:29		
16:24:11			16:26:33		
16:24:14			16:26:35		
16:24:15	9	Q. Do you believe that as a result of the	16:26:37		
16:24:17	10	events giving rise to this case, there was any	16:26:38		
16:24:20	11	damage done to Oracle's goodwill?	16:26:42		
16:24:26	12	A. Well, that's a very complicated	16:26:42		
16:24:28	13	discussion, because you can talk about accounting	16:26:44		
16:24:30	14	goodwill, and what I'm dealing with really is not	16:26:44		•
16:24:30	15	accounting goodwill. I'm dealing with paying a	16:26:47		
16:24:35	16	premium for access to the customers protected by	16:26:50		
16:24:38	17	copyrights at PeopleSoft.	16:26:51		
16:24:38	18	And so in January 2005, if the extent of	16:26:52		
16:24:40	19	·			
16:24:47	20	the copying and illegal activities of SAP/TomorrowNow was known to the public at that	16:26:58		
		1	16:27:01		
16:24:55	21	point in time, at the same time that Oracle had	16:27:01		
16:25:00	22	closed on a transaction for \$11 billion, if the	16:27:03		
16:25:03	23	extent of that was known to the public, there would	16:27:07		
16:25:05	24	have been I believe a tremendous impact on Oracle	16:27:10		
16:25:08	25	publicly.	16:27:13		

65 (Pages 254 to 257)

Page 270	Page 272
16:58:29	17:01:05
16:58:31	17:01:08
16:58:33	17:01:10
16:58:38	17:01:12
16:58:40	17:01:16
16:58:48	17:01:18
16:58:48	17:01:21
16:58:49	17:01:26
16:58:51	17:01:29
16:58:54	17:01:31
16:58:57	17:01:33
16:59:00	17:01:36
16:59:02	17:01:41
16:59:04	17:01:55
16:59:07	17:01:57
16:59:10	17:02:00
16:59:11	17:02:02
16:59:21	17:02:05
16:59:23 19 Q. Are you saying here that the 6.5 billion	17:02:09
16:59:28 20 goodwill amount is entirely related to the	17:02:14
16:59:31 21 copyright materials?	17:02:15
16:59:32 22 A. What I'm saying is that and I think	17:02:16
16:59:34 23 this is pretty clear that from my perspective,	17:02:19
16:59:38 24 understanding the nature of the copyrighted	17:02:23
. 16:59:40 25 materials, is that the copyrighted materials	17:02:28
Page 271	Page 273
16:59:45 1 basically protect and provide for the foundation	17:02:30
16:59:54 2 for providing maintenance services to the 9,920	17:02:33
17:00:00 3 customers. And so that's the intellectual property	17:02:36
17:00:02 4 that's owned by PeopleSoft, and now, in the	17:02:38
17:00:03 5 transaction, Oracle. And that protects that	17:02:42
17:00:06 6 revenue stream, because those customers have	17:02:48
17:00:09 7 invested in licenses, and now they need	17:02:54
17:00:12 8 maintenance, and that maintenance in large part is	17:02:57
17:00:15 9 enabled by the copyrighted materials.	17:03:00
17:00:18 10 And that's what I'm saying. And so when	17:03:04
17:00:20 11 you pay for a company like PeopleSoft, one reason	17:03:07
17:00:24 12 why you can pay a premium of 6 1/2 billion over the	17:03:09
17:00:28 13 identified assets is because you know that if	17:03:10
17:00:31 14 people observe and respect your intellectual	17:03:12
17:00:33 15 property rights, particularly with the PeopleSoft	17:03:16
17:00:36 16 maintenance stream, there's not a lot of switching	17:03:20
17:00:39 17 out, because you basically have the technology that	17:03:23
17:00:44 18 is needed to provide the Level 3 support.	17:03:24
17:00:48 19 So I'm saying in large part, that premium	17:03:28
17:00:50 20 fade by Oracle management for this company was in	17:03:36
17:00:53 21 large part due to and protected by the copyrighted	17:03:38
17:00:56 22 property in this lawsuit.	17:03:40
17:00:57	17:03:43
17:01:00	17:03:45
17:01:03	17:03:48

69 (Pages 270 to 273)

	Page 278 Page 280
17:09:27 1 Q. Okay. So in the goodwill,	-
17:09:31 2 related in part to the future value of	
17:09:36 3 technology. Right?	17:11:51
17:09:37 4 A. I don't believe that's correct	
17:09:39 5 you basically have already gone the	
17:09:41 6 the patents. You've also deducted	-
17:09:45 7 analyzed the customer relationshi	
17:09:47 8 the royalties for the patents in those	
17:09:51 9 calculations. So what's left over i	1
17:09:53 10 value of having the ability to retai	
17:09:55 11 customers, and to cross-sell and u	
17:09:59 12 customers a variety of products:	
17:10:03 13 license, middleware, just all kinds	
17:10:08 14 And so from my perspective	· ·
17:10:10 15 protected by the copyrights in this	
17:10:14	17:12:25
17:10:17	17:12:26
17:10:20	17:12:28
17:10:21	17:12:30
17:10:23	17:12:31
17:10:24	17:12:34
17:10:25	17:12:36
17:10:26	17:12:40
17:10:30	17:12:43
17:10:36	17:12:46
	Page 279 Page 281
17:10:40	17:12:49
17:10:43	17:12:50
17:10:45	17:12:55
17:10:49	17:12:57
17:10:51	17:12:58
17:10:54	17:12:59
17:10:56	17:13:00 17:13:02
17:10:59	- ·
17:11:00	17:13:02
17:11:02	17:13:05
17:11:06 17:11:08	17:13:07 17:13:15
17:11:08	17:13:15
17:11:10	17:13:16
17:11:12	17:13:19
17:11:15	17:13:23
17:11:21	17:13:30
17:11:21	17:13:33
17:11:25	17:13:38
17:11:29	17:13:44
17:11:29	17:13:46
17:11:32	17:13:40
17:11:34	17:13:49
17:11:40	17:13:52
17:11:40	17:13:54
	1 2/12/3/

71 (Pages 278 to 281)

Page 2	Page 284
17:13:58	17:16:15 1 all based on what you have right now, you're paying
17:13:59	17:16:18 2 that in net today's dollars.
17:14:00	17:16:20
17:14:01	17:16:24
17:14:02	17:16:28
17:14:05	17:16:32
17:14:08	17:16:34
17:14:12	17:16:36
17:14:14	17:16:38
17:14:16	17:16:42
17:14:17	17:16:46
17:14:19	17:16:47
17:14:24	17:16:49
17:14:25	17:16:52
17:14:26	17:16:55
17:14:31	17:16:57
17:14:37	17:17:00
17:14:40	17:17:01
17:14:42	17:17:03
17:14:43	17:17:05
17:14:49	17:17:09
17:14:56	17:17:10
17:14:58	17:17:11
	17:17:13
17:15:00	*
17:15:00	17:17:16
Page 2	Page 285
17:15:03	17:17:19
17:15:08	17:17:53
17:15:11	17:17:54
17:15:14	17:17:56
17:15:15	17:17:58
17:15:16	17:18:00
17:15:23	17:18:58
17:15:27	17:18:59
17:15:28 9 Q. But the goodwill number includes new	17:19:02
17:15:30 10 customers. It doesn't include the existing	17:19:04
17:15:33 11 customers at the time of the acquisition. Right?	17:19:06
17:15:36 12 A. I think you're getting your mathematics	17:19:08
17:15:39 13 crossed.	17:19:09
17:15:39 14 The good the premium that you pay for	17:19:18
17:15:41 15 the customers represents the net present value	17:19:39
17:15:45 16 amount you have to pay over and above the other	17:19:46
17:15:48 17 assets to buy the company. And then basically,	17:19:48
17:15:51 18 your strategy is that over time, you would be able	17:19:51
17:15:55 19 to recover some return on the 11 billion dollars.	17:19:52
17:15:59 20 And so it's in present value terms. And	17:19:54
17:16:01 21 so your expectation is that particularly at Oracle	17:19:59
17:16:04 22 they're going to be able to service and sell to	17:20:00
17:16:06 23 those customers, plus add more it would actually	17:20:02
17:16:09 24 take them above the 11 billion, because you need to	17:20:10
17:16:13 25 make return. And so that's how it works. But it's	17:20:11

72 (Pages 282 to 285)

		Page 286			Page 288
17:20:15		-	17:22:05	1	on?
17:20:26			17:22:05	2	A. I wouldn't say there's not other ones, but
17:20:28		***************************************	17:22:08	. 3	certainly and I have them in this binder if you
17:20:28			17:22:10	4	want to go through them, we have all the documents
17:20:31			17:22:12	5	that have the projections in this binder. But this
17:20:32			17:22:15	6	is one of them, and this is a key document.
17:20:32			17:22:17	-	
17:20:37			17:22:22		
17:20:39			17:22:25		
17:20:40			17:22:27		
17:20:42	11	Q. And in particular, did you use this	17:22:29		
17:20:43	12	document as the source for your assumption that SAP	17:22:31		
17:20:46	13	would convert 3,000 customers from PeopleSoft to	17:22:35		
17:20:50	14	SAP?	17:22:40		•
17:20:51	15	A. In one of the calculations, that's right,	17:22:47		
17:20:54	16	this is one of the sources for the 3,000 customers.	17:22:50		
17:20:56	17	Q. And in particular, on this table	17:22:52		
17:20:58	18	MS, HOUSE: Let him finish, please. Don't	17:22:55		
17:21:00	19	talk over him.	17:22:58		•
17:21:00	20	MR. McDONELL: He was finished.	17:23:01		
17:21:02	21	MS. HOUSE: No, he wasn't. You were	17:23:03		
17:21:03	22	talking over him.	17:23:05		
17:21:04	23	MR. McDONELL: Q. Were you finished?	17:23:07		•
17:21:05	24	Were you finished, sir?	17:23:09		
17:21:08	25	A. I am now.	17:23:13		•
		Page 287			Page 289
17.21.00	1	Q. Okay. In particular, the row under the	17:23:16		-
17:21:09 17:21:13	2	assumptions entitled "Maintenance," do you see	17:23:20		
17:21:13	3	that?	17:23:23		
17:21:17	4	A. Yes.	17:23:25		
17:21:17	± 5	Q. And then for 2007, there's a number of	17:23:30		
17:21:10	6	customers with the number 3,000 in it.	17:23:36		
17:21:23	7	A. That's correct.	17:23:40		
17:21:24	8	Q. That's your source for your 3,000-customer	17:23:45		
17:21:24	9	assumption?	17:23:47		
17:21:27	. 10	A. It's one of the sources, that's correct.	17:23:48		
17:21:29	11	Q. Is there another source for that	17:23:49		
17:21:30	12	particular 3,000 number?	17:23:51		
17:21:31	13	A. Well, there's a variety of sources that	17:23:56		
17:21:33	14	corroborate that. So this would be what I would	17:24:02		
17:21:35	15	say is one of the foundational sources, but other	17:24:07		
17:21:39	16	sources corroborate the 3,000.	17:24:09		
17:21:44	17	Q. But is there another source that	17:24:12		
17:21:45	18	specifically has the number 3,000 that you've	17:24:16		
17:21:47	19	relied on?	17:24:19		
17:21:49	20	A. I haven't memorized that, but there are	17:24:23		
17:21:51	21	sources that range from 2,000, there's 4,000,	17:24:27		
17:21:54	22	there's 6,000. And certainly this is one of the	17:24:32		
1 1/:41:54	2.7	important sources, because it went to senior	17:24:33		
17:21:54	23	important sources, section is well to serve	1		
	23	management. This is the 3,000.	17:24:35		

73 (Pages 286 to 289)

	Page 306		Page 308
17:42:40	17:45:05	1	felt that 3,000 was a reasonable assumption. And
17:42:43	17:45:09	2	certainly I think it's laid out well in the report
17:42:46	17:45:13	3	and in all the work papers, really relying upon SAP
17:42:48	17:45:16	4	management.
17:42:50	17:45:17	5	Q. So it was your conclusion that the use of
17:42:54	17:45:20	6	3,000 customers was the most reasonable assumption?
17:42:58	17:45:22	7	A. That's correct.
17:43:02	17:45:24	8	Q. Then in paragraph 123, you do another
17:43:07	17:45:29	9	calculation, Correct?
17:43:09	17:45:32	10	A. Well, 123, I think I just summarized there
17:43:11	17:45:36	11	and say basically, I provided analysis and
17:43:14	17:45:38	12	perspective and metrics, and I would make the
17:43:16	17:45:41	13	determination that the value would be no less than
17:43:19	17:45:44	14	2 billion.
17:43:20	17:45:45	15	Q. Okay. Let's look at the last bullet point
17:43:20	17:46:26	16	in paragraph 122 on page 85.
17:43:22	17:46:30	17	A. Okay.
17:43:28	17:46:31	18	Q. There you use the 2,000-customer
17:43:26	17:46:34	19	assumption. Isn't that right?
	17:46:36	20	A. I'm just providing a perspective. I think
17:43:34	17:46:38	21	it's clear if you read the report in the section,
17:43:35	17:46:41	22	in the paragraph in totality, the flow of this,
17:43:36	17:46:45	23	saying, by the way, if it's at 2000, that's 2
17:43:39	17:46:48	24	billion dollars.
17:43:42	17:46:48	24	difficil dollars.
17:43:44			
	Page 307		Page 309
17:43:46	17:46:51		
17:43:48	17:46:54		
17:43:52	17:46:57		
17:43:53	17:46:59		
17:43:55	17:47:00		
17:43:57	17:47:02		
17:44:01	17:47:04		
17:44:04	17:47:10		
17:44:07	17:47:10		
17:44:10	17:47:13		
17:44:14	17:47:15		
17:44:17	17:47:17		
17:44:23 13 On page 84 to 85, you do so			
17:44:30 14 and you use the 3,000-customer as	1		
. 17:44:37 15 number, and then you use the a 2,0			
17:44:42 16 assumption for another.	17:47:30		
17:44:43 17 The 2,000-customer assumpt			
17:44:45 18 1.78 billion dollar number. Do yo			
17:44:48 19 A. Yes.	17:47:37		
17:44:49 20 Q. Why didn't you use that nur			
17:44:52 21 damages claim?	17:47:41		
17:44:53 22 A. I think for a wide variety of			
17:44:55 23 mostly focusing on the positions o	f SAP management 17:47:48		
17:44:59 24 in all the records I brought here to			
17:45:01 25 the projections up to 6,000 potenti	al customers, I 17:47:51		

78 (Pages 306 to 309)

	· · · · · · · · · · · · · · · · · · ·	Page 310			Page :	312
17:47:53		3	17:50:37		J	
		80 00 00 00 00 00 00 00 00 00 00 00 00 0	17:50:38			
17:47:57			17:50:38			
17:48:01			17:50:40			
17:48:02			17:50:40	*		
17:48:05		PAGE AND	17:50:49			
17:48:08		***************************************		,		
17:48:09		Property and the second	17:50:52			
17:48:12			17:50:55			
17:48:14		***************************************	17:50:58			
17:48:17		PA AND AND AND AND AND AND AND AND AND AN	17:51:00			
17:48:21		90000	17:51:01			
17:48:23		· ·	17:51:04			
17:48:27			17:51:06			
17:48:31		And the state of t	17:51:09			
17:48:32		***************************************	17:51:13			
17:48:33			17:51:18			
17:48:37			17:51:20	•		
17:48:40			17:51:23			
17:48:43			17:51:25			
17:48:46			17:51:29			
17:48:47			17:51:33			
17:48:48			17:51:36			
17:48:51		,	17:51:39			
17:48:53			17:51:41			
17:48:57			17:51:44			
	<u> </u>	Page 311			Page	313
17:49:04			17:51:47			
17:49:04			17:51:49			
			17:51:51			
17:49:24			17:51:54			
17:49:34		Q. On this slide, sir, do you see any	17:51:56			
17:49:37	5	reference to TomorrowNow?	17:51:58			
17:49:39	6		17:51:58			
17:49:43	7	A. No, there's not a reference. I believe,	17:51:58			
17:49:45	8	in fact, I'm very confident that Mr. Ziemen	17:51:39			
17:49:48	9	testified that TomorrowNow was contemplated when				
17:49:51	1.0	this was prepared. That's my understanding.	17:52:01			
17:49:54			17:52:02			
17:49:56			17:52:03			
17:50:02			17:52:04	·		
17:50:08			17:52:06			
17:50:14			17:52:07			
17:50:15		•	17:52:09			
17:50:16			17:52:12			
17:50:17			17:52:15			
17:50:18		•	17:52:18			
17:50:18			17:52:20			
			17:52:23			
17:50:18			17:52:28			
17:50:18 17:50:18			17:52:31			
I						
17:50:18			17:52:34 17:52:39			

79 (Pages 310 to 313)

	Page 318		Page 320
17:57:53	18:00:13	. 1	people were deposed at SAP, and they said that they
17:57:54	18:00:14		saw these projections, they were provided to them,
17:57:55	18:00:1		they approved the transaction. And so I can turn
17:58:01	18:00:1		you to that. I would have to defer to those at SAP
17:58:06	18:00:2		that were chartered with the Board at SAP to bring
17:58:09	18:00:2		to them the information about this transaction and
17:58:11	18:00:2		why they should do this and why they should develop
17:58:14	18:00:30		this program.
17:58:14	18:00:3		And, I would turn you to the information
17:58:19	18:00:3		that was provided to analysts on the January 19th
	18:00:3		phone call when the technology world was told about
17:58:25	18:00:3		Safe Passage and the acquisition of TomorrowNow and
17:58:26	18:00:4		the 4,000 customers and the platform that was laid
17:58:29	18:00:4		out with those customers. And when an analyst,
17:58:31			·
17:58:34	18:00:4 18:00:4		asks, how many of these customers will you convert, and Mr. Agassi sort of backed off and said, hey,
17:58:38	1		-
17:58:43	18:00:5		I'll let you guys make that determination. So I
17:58:45	18:00:5		would turn you to that, and that's the information
17:58:48	18:00:5		that your client would have in the records.
17:58:50	18:00:5		MR. McDONELL: Okay. I move to strike
17:58:53	18:00:5		that as completely nonresponsive. I'm going to ask
17:58:56	18:01:0		the question again.
17:58:58	18:01:0		Q. Do you know what analysis if any was done
17:59:01	18:01:0		to come up with the 3,000-customer number in
17:59:06	18:01:0	3 25	Exhibit 447?
	Page 319		Page 321
17:59:09	18:01:1) 1	MS. HOUSE: Asked and answered.
17:59:11	18:01:1	2 2	MR. McDONELL: It's been asked; it has not
17:59:13	18:01:1	1 3	been answered.
17:59:15	18:01:1	4 4	MS. HOUSE: Would you like to turn to all
17:59:18	18:01:1	5 5	the pages he said to go to to look for that? Do
17:59:21	18:01:1	9 6	you want to pull out the depos he referenced?
17:59:23	18:01:2	2 7	MR. McDONELL: Counsel, that's
17:59:25	18:01:2	3 8	inappropriate.
17:59:28	18:01:2		MS. HOUSE: You're you know, you're
.17:59:32	18:01:2		wasting time, Jason.
17:59:35	18:01:2		THE WITNESS: I have in this binder all
17:59:39	18:01:3		the projections, and I have the testimony behind
17:59:41	18:01:3		the projections as to who saw the documents in
17:59:41	18:01:3		here. You can look at these documents. You've
17:59:43	18:01:3		seen them before.
17:59:47	18:01:3		I would defer to SAP and the project team
	18:01:4		that did the projections and gave them to the Board
17:59:52	18:01:4		of Directors and to Mr. Agassi, who's on the Board,
17:59:54	18:01:4		who told the public about the potential ability to
17:59:57			cross- and upswitch. I would defer to those
18:00:00	18:01:4		•
18:00:00 21 Q. Okay. Tell me specifically what	1		individuals for all the details, but I would accept
18:00:02 22 was done that you're referring to to com	· ·		their projections in 2005. MR. McDONELL: Q. But do you know what
18:00:04 23 the 3,000-customer number?	18:01:5		
18:00:06 24 A. I can't turn you to the exact analy	I		analysis was done that led to the 3000-customer
18:00:08 25 can turn you to the depositions when the	e senior 18:01:5	9 25	number in Exhibit 447?

81 (Pages 318 to 321)

	i.			
		Page 322		Page 324
18:02:02	1	MS. HOUSE: Same objections. Asked and	18:04:08	
18:02:04	2	answered.	18:04:13	, W.
18:02:05	3	THE WITNESS: I've already answered that.	18:04:14	
18:02:06	. 4	I've said I don't have all those details. I would	18:04:15	***************************************
18:02:08	5	turn to the individuals at your client that did	18:04:15	•
18:02:11	6	those projections and worked them up for the Board,	18:04:15	
18:02:15	7	who approved those numbers.	18:04:15	
18:02:17	8	MR. McDONELL: Q. What was the analysis	18:04:15	**************************************
18:02:17	9	that was done?	18:04:15	
18:02:18	10	MS. HOUSE: Same objection.	18:04:30	
18:02:19	11	MR. McDONELL: Q. Just say you don't	18:04:32	
18:02:20	12	know, if you don't know, sir.	18:04:34	
18:02:21	13	MS. HOUSE: That would be misstating his	18:04:36	
18:02:23	14	prior testimony.	18:04:39	
18:02:24	15	MR. McDONELL: Q. Do you know?	18:04:42	Yes
18:02:24	16	A. I've already said that I would defer to	18:04:44	
18:02:26	17	the people at SAP that worked up those numbers, and	18:04:45	
18:02:28	18	they're the ones responsible for those, so I don't	18:04:46	
18:02:30	19	know how they actually put those numbers together.	18:05:01	
18:02:32	20	Q. So those people would know. Is that what	18:05:03	
18:02:34	21	you're saying?	18:05:04	100 100
18:02:35	22	A. The people that did the projections	18:05:04	## 25 P
18:02:36	23	obviously would know. They're the ones that were	18:05:05	2 2
18:02:39	24	chartered by the Board to do the projections, and	18:05:07	
18:02:41	25	they would have the information on that.	18:05:08	<u> </u>
		' Page 323		Page 325
10.00.40			18:05:10	
18:02:42	1	Q. So one more time: Do you know what	18:05:11	
18:02:44	2	analysis was done to come up with the	18:05:12	
18:02:46	3	3,000-customer assumption in Exhibit 447? MS. HOUSE: Asked and answered.	18:05:20	
18:02:49	4 5	THE WITNESS: I can't talk to those	18:05:21	
18:02:49	6	specifics. I have to defer to the people that did	18:05:26	
18:02:50	7	the projections.	18:05:28	
18:02:53	,	the projections.	18:05:30	
18:03:10			18:05:31	
18:03:11			18:05:34	1
18:03:12			18:05:35	
18:03:12			18:05:38	
18:03:14			18:05:45	
18:03:15			18:05:50	
18:03:17		•	18:05:53	
18:03:18			18:05:54	
18:03:20			18:05:55	
18:03:21			18:05:57	
18:03:35			18:05:59	
18:03:37			18:06:25	
18:03:42			18:06:29	in the state of th
18:03:50			18:06:36	_
18:03:53			18:06:49	
18:04:00			18:06:50	
18:04:05			18:06:52	
L	Albacan in the	And the second s		

82 (Pages 322 to 325)

Page 326			Page 328
18:06:53	18:09:36	1	trying to measure in your value-of-use calculation
18:06:55	18:09:40	2	is the fair market value of the intellectual
18:06:59	18:09:43	3	property assets that Oracle claims were infringed?
18:06:59	18:09:49	4	A. What I'm trying to what I have
18:07:01	18:09:51	5	attempted to do and I have done, I believe very
18:07:05	18:09:54	6	accurately, is value the use of those copyrighted
18:07:12	18:09:57	7	properties that extend and enable the provision of
18:07:13	18:10:02	8	software maintenance. That's what I've done, and
18:07:15	18:10:02	9	that's what I've focused on, the revenue that
	18:10:05	10	relates to the maintenance revenue stream that's
18:07:23	18:10:09	11	protected by the copyrights.
18:07:27	•	· TT	protected by the copyrights.
18:07:30	18:10:12		
18:07:33	18:10:14		
18:07:36	18:10:18		
18:07:39	18:10:21		
18:07:46	18:10:25		
18:07:51	18:10:27		
18:07:56	18:10:30		
18:07:59	18:10:33		
18:08:01	18:10:36		
18:08:06	18:10:39		,
18:08:07	18:10:42		
18:08:10	18:10:44		
18:08:13	18:10:47		
18:08:19	18:10:48		
Page 327			Page 329
18:08:23	18:10:50		
18:08:27	18:10:53		
18:08:30	18:11:01		
18:08:32	18:11:04		
18:08:36	18:11:06		
18:08:39	18:11:08		
18:08:42	18:11:09		
18:08:46	18:11:11		
18:08:48	18:11:13		
18:08:49	18:11:14		
18:08:53	18:11:14		
18:08:56	18:11:18		
18:08:57	18:11:27		
18:09:08			
18:09:12			
18:09:12 18:09:17	***		
18:09:19			
18:09:20			
18:09:22			
18:09:23			
18:09:25	3		
18:09:26	None and the second of the sec		
18:09:30	***		
18:09:32			
18:09:34 25 Q. Would you agree, though, that what you're			

83 (Pages 326 to 329)

CERTIFICATE OF REPORTER

23.

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 $[\chi]$ 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: may 19, 2010

HOLLY THUMAN, CSR

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

PAUL K. MEYER

VOLUME 2; PAGES 332 - 647
THURSDAY, MAY 13, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-427374)

Page 337			Page 339
09:02:57	09:06:30		- 450 000
09:02:59	09:06:31		
09:03:02	09:06:37		
09:03:05	09:06:46		
•	09:06:48		
09:03:07			
09:03:08	09:07:17		
09:03:12	09:07:19		
09:03:15	09:07:36		
09:03:18	09:08:01		
09:03:21	09:08:09		
09:03:22	09:08:13		
09:03:24	09:08:17		
09:03:30	09:08:18		
09:03:33	09:08:20		
09:03:35	09:08:23		
09:03:36	09:08:27		
09:03:38	09:08:30		•
09:03:39	09:08:31		
09:03:42	09:08:33	19	Q. And I asked you whether the goodwill value
09:03:44	09:08:38	20	that was recorded included future revenues for new
09:03:48	09:08:45	21	customers, as opposed to existing PeopleSoft
09:03:51	09:08:48	22	customers.
09:03:55	09:08:49	23	And I'm trying to clarify this, because as
09:03:57	09:08:52	24	I read the record, at one point you said no, and at
09:03:59	09:08:55	25	one point you said yes.
Page 338			Page 340
09:04:01	09:08:56	1	So what is your understanding of that?
09:04:03	09:08:58	2	A. My understanding is that the goodwill we
09:04:06	09:09:00	3	were discussing, the 6.5 billion, generally would
09:04:14	09:09:04	4	relate to Oracle's ability to execute on upselling
09:04:18	09:09:10	5	and cross-selling to the PeopleSoft customers that
09:04:21	09:09:14	6	were being acquired. That would be my general
09:04:27	09:09:18	7	understanding.
09:04:35	09:09:19	8	I think what I said after that was that I
09:04:41	09:09:23	9	understood also that Oracle would would also see
09:04:46	09:09:26	10	that there would be opportunities to sell beyond
09:04:53	09:09:29	11	returns on the 11 billion dollars, and that would
09:05:01	09:09:32	12	be additional products to new customers.
09:05:05	09:09:32	13	But from my perspective, I didn't take any
09:05:07	09:09:36	14	particular position about that other than to accept
09:05:09	09:09:41	15	that there would be more benefits over and above
09:05:18	09:09:41	16	the 11 billion dollars for additional sales.
09:05:16	09:09:44	17	Q. But it's not over and above the 11.1
	09:09:46	18	billion. It's included in the 11.1 billion.
09:05:24		19	
09:05:56	09:09:55		Right?
09:05:57	09:09:55	20	A. Right. But the the purchase goodwill I
09:06:18	09:09:58	21	was talking about, the premium paid, would be for
09:06:21	09:10:00	22	the customer, as we mentioned yesterday, the 99
09:06:23	09:10:04	23	the 9,920 customers were the focus of the amount
09:06:26	09:10:08	24	that was paid over and above the identified assets.
09:06:27	09:10:11	25	So it would be the existing customers for

3 (Pages 337 to 340)

09:10:14 09:10:17 09:10:20 09:10:24	1	the 6 1/2 billion, then there would be other I			
09:10:17 09:10:20			09:13:24	1	identified asset.
09:10:20	2	guess I would call it growth and other expansion	09:13:25	2	You wouldn't want to put growth of the
	3	above the 11 billion to maximize the value of the	09:13:27	3	customer base in this maintenance calculation.
	4	transaction totally.	09:13:29	4	because you would overstate the current value which
09:10:24	5.	Q. So what you're saying is, the value of	09:13:32	5	you acquired and assigned to that intangible asset.
09:10:27	6 .	future revenues attributable to Oracle Sales to new	09:13:36	6	Q. So is it your understanding that in
09:10:34	7	PeopleSoft customers not the existing customers,	09:13:39	7	agreeing to pay 11.1 billion dollars for
09:10:36	8	but to new ones is not included in the 6.5	09:13:42	8	PeopleSoft, Oracle placed zero value on the
09:10:40	9	billion?	09:13:48	9	opportunity to get new customers in the future?
09:10:41	10	A. My understanding is that the goodwill	09:13:50	10	A. No, I'm not saying that. What I'm saying
09:10:44	11	that or the premium that's paid over the	09:13:53	11	is that they would view the premium paid over the
09:10:46	12	identified assets, the way that Oracle analyzes it,	09:13:55	12	identified assets as one valuable asset acquired,
09:10:52	13	is that they're looking to the value of what	09:14:01	13	which is the ability to cross-sell and upsell to
09:10:55	14	they're purchasing today, and saying, what's the	09:14:04	14	the existing customer base. And then I've made the
09:10:57	15	value of those customers, and able to execute and	09:14:08	15	point that my understanding is that they also don't
09:11:00	16	cross-sell and upsell those customers and sell for	09:14:10	16	do deals just at a certain price saying, that's all
09:11:05	17	maintenance also, and that's the 6 1/2 billion.	09:14:13	17	we can do. They have expectations to beat the 11
09:11:08	18	And then they also have plans to do better	09:14:16	18	billion dollars and to bring more value, and that's
09:11:11	19	than that, but that would be over and above the 11	09:14:18	19	the additional increment.
09:11:13	20	billion.	09:14:19	20	And also you can call it another
09:11:13	21	Q. So the plans to do better than that is	09:14:22	21	premium. It's obviously, you're planning to beat
09:11:16	22	what's not included in the 6.5 billion?	09:14:26	22	what you actually had to pay for the asset.
09:11:19	23	A. That's my understanding.	09:14:29	23	Q. So let me try one more time.
09:11:20	24	Q. Okay. Please take a look at Exhibit 403.	09:14:31	24	Does the 11-billion-dollar purchase price
09:11:48	25	A. Okay.	09:14:34	25	include within it the value of the opportunity to
***************************************		Page 342	***************************************		Page 344
09:12:07	1	Q. Okay. Please take a look at page 26. And	09:14:39	1	
09:12:07	2	I direct your attention to the first full paragraph	09:14:39	2	sell to new customers in the future? A. From my perspective, it would not. I
09:12:10	3	on page 26 of Exhibit 403, and to the first	09:14:45	3	would not view it that way.
09:12:28	4	sentence, which reads:	09:14:56	3	would not view it that way.
09:12:29	5	We have excluded maintenance revenue	09:14:58		
09:12:31	6	related to new customers (acquired after the	09:15:04		
09:12:35	7	valuation date) as that income stream is	09:15:08		
09:12:40	8	considered a component of goodwill.	09:15:16		
09:12:42	9	Do you see that?	09:15:18		
09:12:42	10	A. Yes.	09:15:20		
09:12:42	11	Q. So does that indicate to you that future	09:15:25		
09:12:47	12	income related to new customers is in fact included	09:15:28		
09:12:53	13	in goodwill?	09:15:31		
09:12:54	14	A. No. This just makes it clear that in the	09:15:33		
09:12:54	15	calculation of the value of the maintenance	09:15:36		
09:12:58	16	agreements, they're taking the 9,920 customers and	09:15:38		
09:12:30	17	not growing that, and that would that makes	09:15:40		
09:13:05	18	total economic sense.	09:15:42		
09:13:03	19	Q. But what does it mean when it says, that	09:15:47		
09:13:00	20	income stream is considered a component of	09:15:50		
09:13:10	21	goodwill?	09:15:54		
09:13:13	22	A. Well, then on the growth, certainly that	09:15:56		
09:13:14	23	would relate to it's not in the existing	09:16:00		
09:13:18	24	maintenance, and so they're viewing — that would	09:16:00		
	24	mannenance, and so mey ie viewing that would	07.10.00		•

Pag	e 361		Page 363
09:36:03	09:37:43		
09:36:07	09:37:46		
09:36:08	09:38:06		
09:36:12	09:38:13		
09:36:16	09:38:15		
09:36:17	09:38:24		
09:36:20	09:38:25	7	Q. So one way you get to your opinion as to
09:36:21	.09:38:30	8	the value of use of the PeopleSoft copyrighted
09:36:25	09:38:33	9	works is, no less than 2 billion dollars is by
09:36:27	09:38:36	10	
09:36:29	09:38:38		applying certain percentages to the
		11	8.85-billion-dollar number that we've discussed.
09:36:32	09:38:41	12	But another way is by using a value of
09:36:33	09:38:43	13	approximately a million dollars per customer. Is
09:36:34	09:38:45	14	that right?
09:36:36	09:38:47	15	A. I wouldn't say it that way. Basically, I
09:36:38	09:38:49	16	rely upon what I've already described as my
09:36:39	09:38:52	17	methodology, and then from an overall just check of
09:36:41	09:38:56	18	reasonableness, I understood that, you know,
09:36:44	09:38:59	19	11-billion-dollar transaction, it's basically
09:36:47	09:39:02	20	paying a million dollars per customer. So these
09:36:48	09:39:04	21	are sort of gut checks. I wouldn't say it's
09:36:50	09:39:06	22	it's not a basis I would use to calculate the
09:36:50	09:39:10	23	number. It's more just a check.
09:36:53	09:39:12	24	Q. What is a reasonableness check?
09:36:54	09:39:13	25	A. Just to make certain that the result I
Pag	e 362		Page 364
09:36:55	09:39:16	1	came up with made economic sense. And I think it's
09:36:57	09:39:19	2	very important in these circumstances to tell the
09:36:57	09:39:21	3	judge and jury that basically, if SAP wanted to do
09:36:58	09:39:25	4	this, they could have gone to PeopleSoft and
09:36:59	09:39:27	5	acquired PeopleSoft or a portion of PeopleSoft,
09:37:00	09:39:30	6	just like they acquired Cybase yesterday. They can
09:37:01	09:39:33	7	go do that and spend 5 billion dollars or 2 billion
09:37:02	09:39:37	8	dollars or whatever to acquire those customers.
09:37:03	09:39:40	9	That's something they could have done in a fair
09:37:04	09:39:42	10	market value transaction and avoided illegal
09:37:05	09:39:45	1.1	activities.
09:37:08	09:39:45	12	Q. Mr. Meyer, I asked you what is a
09:37:14	09:39:46	13	reasonableness check, and you gave me an answer
09:37:17	09:39:49	14	about Cybase.
09:37:18	09:39:50	15	Now, would you please try to answer my
09:37:21	09:39:51	16	questions today?
09:37:25	09:39:52	17	MS. HOUSE: He just did.
09:37:27	09:39:53	18	MR. McDONELL: He did not. What does
09:37:29	09:39:55	19	Cybase have to do with my question?
09:37:30	09:39:55	20	Q. What is a reasonableness check? What is
09:37:30		20	it?
09:37:32	09:39:58	22	MS. HOUSE: Asked and answered.
•	09:40:00	23	
N9·37·34		2.1	THE WITNESS: It's a check on the
09:37:34	09:40:00		
09:37:34 09:37:35 09:37:37	09:40:00 09:40:01 09:40:04	24 25	marketplace to make certain my values made sense. And you asked why I do a reasonableness check. I

9 (Pages 361 to 364)

		Page 365			Page 367
09:40:06	1	go to see in the marketplace what's the value of a	09:42:03	1	at Oracle at times, they'll say the value of a
09:40:08	2	customer, and we know from the data in this case	09:42:05	2	customer could be 5 or 10 million dollars,
09:40:12	3	what the value of a customer is at PeopleSoft, and	09:42:07	3	depending on the customer. In fact, I think
09:40:14	4	you can do the same thing with the Cybase	09:42:09	4	Mr. Phillips at one point said it could be 10 or 20
09:40:17	5	transaction.	09:42:12	5	million dollars.
09:40:17	6	That's a fair market value to get a	09:42:12	6	So these are very reasonable gut checks,
09:40:18	7	customer relationship. And that's a gut check.	09:42:15	7	and it doesn't say that's a million dollars just
09:40:22	8	MR. McDONELL: Q. So reasonableness	09:42:17	8	for this, but it's something that says we can do
09:40:22	9	checks are just another way of looking at	09:42:19	9	this and make certain we're in the proper range of
09:40:25	10	information to see if your approach makes sense.	09:42:23	10	determining the value.
09:40:29	11	Is that right?	09:42:25	11	Q. Did Mr. Phillips pay 20 million dollars a
09:40:29	12	A. In an overall sense, that's correct.	09:42:27	12	customer for PeopleSoft?
09:40:34	13	Q. Now, did you believe that your approach of	09:42:28	13	A. No, but for certain customers
09:40:37	14	looking at the 1 million dollar per customer value	09:42:30	14	Q. So what does that have to do with this?
09:40:41	15	was a reasonable a you know, a legitimate	09:42:32	15	MS. HOUSE: Don't interrupt him.
09:40:44	16	reasonableness check?	09:42:33	16	MR. McDONELL: I'm just trying to figure
09:40:45	17	A. It was a check that made sense from my	09:42:33	17	out what that had to do with this.
09:40:47	18	perspective, because I understood from Oracle's	09:42:35	18	MS. HOUSE: He's trying to tell you.
09:40:49	19	management that at times they'll look at the value	09:42:36	19	THE WITNESS: Well, you've asked about
09:40:51	20	of an acquired customer, just to make certain it's	09:42:37	20	these gut checks. Well, part of when you get the
09:40:54	21	within the proper range of what they can find	09:42:40	21	results is, you circle back to the people that run
09:40:57	22	utility and value on.	09:42:42	22	a business like Oracle and you say, give us a sense
09:40:59	23	Q. Okay. And the 1 million dollar per	09:42:44	23	for what how you view a customer's value.
09:41:02	24	customer number that you came up with is basically	09:42:46	24	And at times, they will sit back and say,
09:41:02	25	dividing the purchase price by the number of	09:42:49	25	having a customer and being in there and being able
		Page 366			Page 368
09:41:06	1	customers?	09:42:51	1	to cross-sell and upsell the new products, is very
09:41:09	2	A. That's right. In a very simple fashion,	09:42:54	2	valuable. And whether it's a million and we saw
09:41:11	3	that's correct.	09:42:57	. 3	in the 86 customers, those values were I think
09:41:12	4	Q. And by doing that, you included as part of	09:43:00	4	a million to 4 million dollars per year. And you
09:41:14	5	the value any real property assets owned by	09:43:02	5	get a 10-year annuity, those are very valuable
09:41:18	6	PeopleSoft?	09:43:05	6	customers. These are very reasonable metrics.
09:41:20	7	A. It would include that and the other	09:43:11	7	MR. McDONELL: Q. The bottom line is, if
09:41:21	8	assets, that's right.	09:43:13	8	you're confronted with a legitimate reasonableness
09:41:22	9	Q. The fixed assets?	09:43:16	9	check to find out if one of your opinions of value
09:41:24	10	A. Very gross, that's correct.	09:43:19	10	is reasonable, you would consider the
09:41:26	11	Q. It would include IP assets that are not at	09:43:20	11	reasonableness check, would you not?
09:41:28	12	issue in this case, such as patents and trademarks?	09:43:25	12	A. I don't understand that question.
09:41:31	13	A. I would agree with that, that's correct.	09:43:26	13	Q. Okay. I mean, reasonableness checks are
09:41:33	14	Q. It would include other assets not at issue	09:43:28	14	important in your view.
09:41:35	15	here, like accounts receivable?	09:43:31	15	A. It's important to have a perspective
	16	A. Right, I think that's exactly	09:43:32	16	overall of your results. And so you want to be
09:41:37		Q. Cash?	09:43:36	17	mindful of things, and if information's brought up,
09:41:37 09:41:38	17	`			
	17 18	A. That's correct. We can go back to the	09:43:40	18	you would want to consider that against your
09:41:38		-	09:43:41	18 19	results, if that's what you're doing.
09:41:38 09:41:39	18	A. That's correct. We can go back to the			
09:41:38 09:41:39 09:41:40	18 19	A. That's correct. We can go back to the balance sheet and look at all those items, that's	09:43:41		
09:41:38 09:41:39 09:41:40 09:41:43	18 19 20	A. That's correct. We can go back to the balance sheet and look at all those items, that's correct. Q. And you're not suggesting that those types of assets that I just listed should be part of the	09:43:41 09:43:44		
09:41:38 09:41:39 09:41:40 09:41:43 09:41:50	18 19 20 21	A. That's correct. We can go back to the balance sheet and look at all those items, that's correct. Q. And you're not suggesting that those types	09:43:41 09:43:44 09:43:44		
09:41:38 09:41:39 09:41:40 09:41:43 09:41:50 09:41:52	18 19 20 21 22	A. That's correct. We can go back to the balance sheet and look at all those items, that's correct. Q. And you're not suggesting that those types of assets that I just listed should be part of the	09:43:41 09:43:44 09:43:44 09:43:48		

10 (Pages 365 to 368)

		Page 373		**	Page 375
09:50:31		3 *	09:54:30	1	MR. McDONELL: Q of using 30 percent
09:50:43			09:54:33	2	of the support customers to come up with the
09:52:17			09:54:37	3	3.3-billion-dollar valuation?
09:52:19			09:54:39	4	MS. HOUSE: Asked and answered.
09:52:20			09:54:41	5	THE WITNESS: You've already asked that
09:52:20			09:54:43	6	question, and I gave you my response that basically
09:52:22			09:54:46	7	it was a dynamic conversation and it quickly
09:52:27		•	09:54:48	8	centered on once they understood the scope of the
09:52:30			09:54:51	9	access and the scope of the materials that they
09:52:33			09:54:53	10	would be providing in the license, that the group
09:52:34	11	Q. And please identify these notes. What are	09:54:55	11	at large felt the losses could be as high as 50
09:52:36	12	they?	09:54:58	12	percent.
09:52:37	13	A. These are the notes that at a high level	09:54:59	13	And I sort of reigned them back to their
09:52:42	14	address the major points that were provided to us	09:55:02	14	lower end, which is 30 to 50, and worked from
09:52:44	15	by Mr. Ellison, Ms. Catz, and Mr. Phillips in our	09:55:06	15	there. But they felt this would be a devastating
09:52:49	16	conversation on November 4th of 2009.	09:55:08	16	impact on their company, which was consistent with
09:52:52	17	Q. Okay. Which one of them expressed the	09:55:11	17	
09:52:54	18	opinion that the fair market value of the loss of	09:55:14	18	their prior thoughts as to why this value could be, you know, tens of billions.
09:53:00	19.	30 percent of support customers would be	09:55:15	19	•
09:53:00	20	approximately 3.3 billion, or 30 percent of	09:55:18	20	So we focused on this 30 to 50 percent
09:53:07	21	PeopleSoft's acquisition price?	09:55:19	21	range, and that's how the conversation progressed.
09:53:09	22	A. Well, the conversation was involved	09:55:22	22	And then we moved to what was important to them,
09:53:13	23	everybody. And so if you walk through the the	09:55:25	23	which was the value of what they had just paid for PeopleSoft, the 11 billion. And that's when we had
09:53:20	24	notes, basically, we had discussions about the		24	* *
09:53:20	25	potential losses, customer losses. And from their	09:55:28 09:55:32	25	this discussion that worked through the notes about
09.93.23	23	potential losses, customer losses. And from then	09:35:32	45	basically, they paid a million dollars per
		Page 374			Page 376
09:53:29	1	perspective, as they understood the scope of the	09:55:34	1	customer, they understand the customers are enabled
09:53:32	2	license, they would think that the loss could be as	09:55:36	2	and protected by the technology that they have just
09:53:35	3	high as 50 percent, 30 to 50.	09:55:41	3	paid for. And at the bottom of page 2, the impact
09:53:40	4	And so we were talking about this issue of	09:55:45	4	of licensing would be greater than 3 billion
09:53:42	5	30 percent, although Mr. Ellison and Ms. Catz and	09:55:47	5	dollars if lost at least 3,000 PeopleSoft
09:53:46	6	Mr. Phillips felt it could be more based on the	09:55:51	6	customers.
09:53:49	7	significant access that was provided through the	09:55:51	7	And so we worked from that perspective of
09:53:51	8	copyrighted property to SAP in this negotiation.	09:55:54	8	the greater than 3, 30 percent, against the 11
09:53:58	9	And so we talked about the value that was	09:56:00	9	billion dollars.
09:53:59	10	paid for PeopleSoft	09:56:00	10	But there was large sentiment that the
09:54:01	11	Q. Okay. Who came up with that concept?	09:56:03	11	losses could be much larger, as high as 50 percent,
09:54:04	12	MS. HOUSE: Let him finish.	09:56:06	12	probably sort of nearing Mr. Agassi's thoughts on
09:54:05	13	MR. McDONELL: Well, I don't know what	09:56:08	13	the other side of the table that they could gain as
09:54:06	14	he's answering. I asked him who expressed the	09:56:11	14	much as 60.
09:54:08	15	opinion, and he's starting to go on a long	09:56:12	15	So that was the dynamic conversation with
09:54:10	16	explanation of all these other things.	09:56:14	16	three very savvy people that were sort of talking
09:54:12	17	MS. HOUSE: Every time you do it, Jason,	09:56:16	. 17	in unison about these. They were in unison on
09:54:14	18	it's inappropriate. Let him finish his answer.	09:56:20	18	these issues.
09:54:18	19	MR. McDONELL: Q. I said, who came up	09:56:22	19	MR. McDONELL: Q. So you're saying that
	20	with the concept?	09:56:23	20	all three of the Oracle senior executives
09:54:19	21	MS. HOUSE: And he's answering it.	09:56:25	21	Mr. Ellison, Mr. Phillips and Ms. Catz all came
09:54:19 09:54:20		100 1000 1001	09:56:28	22	up with the idea and explained to you that their
	22	MR. McDONELL: Let me try again.			
09:54:20		Q. Did one of these individuals come up with	09:56:31	23	losses could be as high as 30 percent, or 3.3
09:54:20 09:54:25	22		09:56:31 09:56:36	23 24	-

12 (Pages 373 to 376)

					-	
		Page 377			Page	379
09:56:38	1	so and I'm not going to give testimony that	09:58:49			
09:56:40	2	doesn't reflect the conversation.	09:58:50			
09:56:42	3	Basically, they came together on and	09:58:52			
09:56:45	4	were consistent on the impact, which could be up to	09:58:56			
09:56:48	5	50 percent. And from there, the conversation, I	09:58:58			
09:56:51	6	can't exactly recall all the voices, but it sort of	09:59:01			
09:56:54	7	came together that and Mr. Ellison was involved	09:59:02			
09:56:57	8	in this saying that it could be devastating to	09:59:04			
09:57:00	9	the company with this license, but if we had to do	09:59:07			
09:57:02	10	it and then we forced them back towards the 30	09:59:09			
09:57:04	11	percent just to sort of see if that was the lower	09:59:12			
09:57:07	12	end of the range. And then from there we talked	09:59:14			
09:57:09	13	about the value of the PeopleSoft deal, how	09:59:17			
09:57:11	14	important it was, they paid per customer. And then	09:59:18			
09:57:15	15	basically the 30 percent brings you up to 3.3	09:59:20			
09:57:17	16	billion.	09:59:21			
09:57:18	17	So we talked around that, even though you	09:59:23			
09:57:20	18	could feel the sentiment that it could be much,	09:59:27			
09:57:24	19	much higher. And so from my perspective, I was	09:59:29			
09:57:27	20	trying to get their most conservative view on what	09:59:32			
09:57:30	21	would happen if you licensed.	09:59:35			
09:57:32	22	And it wasn't like the conversation you	09:59:36			
09:57:34	23	can't always tell sort of who's saying what, but it	09:59:38	•		
09:57:36	24	was basically a consistent message that is now I	09:59:40			
09:57:39	25	believe laid out with the highlights in these	09:59:43			
						200
		Page 378			Page	380
09:57:42	1	notes.	09:59:46			
09:57:42			09:59:46			
09:57:47			09:59:47			
09:57:51			09:59:52			
09:57:52		•	09:59:54			
09:57:55			09:59:56			
09:57:56			09:59:58			
09:58:02			09:59:58			
09:58:05			10:00:00			
09:58:07			10:00:01		•	
. 09:58:08			10:00:01			
09:58:11			10:00:03			
09:58:13			10:00:04			
09:58:15			10:00:07			
09:58:20			10:00:09			
09:58:24			10:00:10			
09:58:26			10:00:11			
09:58:30			10:00:12			
09:58:34			10:00:13			
09:58:36			10:00:14			
			10:00:16			
09:58:37			10:00:17			
09:58:37 09:58:39						
			10:00:19			
09:58:39			10:00:19			

13 (Pages 377 to 380)

Page 437	Page 439
11:31:39	11:33:52
11:31:39	11:33:53
11:31:40	11:33:55
11:31:42	11:33:57
11:31:43	11:34:00
11:31:45	11:34:03
11:31:48	11:34:06
11:31:50	11:34:07
11:31:50	11:34:07
<u> </u>	
11:32:06	11:34:09
11:32:09	11:34:09
11:32:12	11:34:11
11:32:16	11:34:14
11:32:19	11:34:17
11:32:22	11:34:20
11:32:25	11:34:22
11:32:25	11:34:23
11:32:28	11:34:25
11:32:28	11:34:26
11:32:30	11:34:29
11:32:34	11:34:48
11:32:36	11:34:50
11:32:40	11:34:50
11:32:42	11:34:51
11:32:43	11:34:52
Page 438	Page 440
11:32:45	11:34:53 1 Q. So there you say that the overall
11:32:46	11:34:59 2 valuation of Oracle's PeopleSoft acquisition was
11:32:49	11:35:01 3 measured using a discounted cash flow model for
11:32:53	11:35:05 4 revenues and profits from PeopleSoft support
11:32:58	11:35:09 5 customers lost to TomorrowNow and SAP, post-October
11:33:04	11:35:14 6 2008, lost incremental license revenue, upsell, and
11:33:06	11:35:22 7 related support, and lost new license revenue,
11:33:08	11:35:26 8 cross-sell, and related support.
1	
11:33:09 11:33:12	11:35:28 9 Do you see that? 11:35:29 10 A. Yes.
11:33:12	
I I	
11:33:18	11:35:34 12 overall valuation considered support customers lost
11:33:21	11:35:40 13 to TomorrowNow and SAP?
11:33:23	11:35:42 14 A. What I did there and to clarify, there
11:33:25	11: 35: 45 15 was the framework basically, there was something
11:33:25	11:35:50 16 called Project Spice, which was done — it was a
11:33:28	11:35:53 17 discounted cash flow to support the acquisition of
11:33:31	11:35:56 18 PeopleSoft by Oracle. It was the discounted cash
11:33:34	11:35:58 19 flow model that S&P used.
11:33:36	11:36:00 20 And so what I did was, I took that
11:33:37	11:36:03 21 MS. HOUSE: Slow down.
11:33:38	11:36:08 22 THE WITNESS: So what I did was, I took
11:33:41	11:36:09 23 that model from Project Spice, and I worked with
11:33:45	11:36:13 24 some data from that, and then S&P because we're
11:33:49	11:36:18 25 focusing on the Oracle losses now and then I

28 (Pages 437 to 440)

	Page 44	1	Page 443
11:36:21	1 inserted into that model the information that was	11:39:24	
11:36:25	2 from SAP's strategic plans.	11:39:27	
11:36:29	3 And so I basically took the potential lost	11:39:30	
11:36:34	4 customers for maintenance, cross-sell and upsell,	11:39:32	
11:36:38	5 from SAP's strategic plans, and then put that back	11:39:35	
11:36:43	6 into Oracle's models. And so that's the intercept	11:39:38	
11:36:46	7 that's being described there in the first sentence.	11:39:42	
11:36:48	Ç	11:39:45	
11:36:49		11:39:48	
11:36:52		11:39:52	
11:36:55		11:39:55	
11:36:56		11:39:58	
11:37:13		11:40:00	
11:37:21		11:40:05	
11:37:25		11:40:08	
11:37:29		11:40:11	
11:37:33		11:40:15	
11:37:35		11:40:17	
11:37:38		11:40:20	
11:37:41		11:40:22	
11:37:46		11:40:27	
11:37:50		11:40:30	
11:37:54		11:40:38	
11:37:57		11:40:42	
11:38:00		11:40:45	
	Page 44	2	Page 444
11:38:04		11:40:46	2
11:38:04		11:40:50	
11:38:12	· ·	11:40:52	
11:38:12		11:40:56	
11:38:15		11:41:00	
11:38:18	•	11:41:03	
11:38:22		11:41:06	
11:38:22		11:41:08	
11:38:29		11:41:10	
11:38:33		11:41:16	
11:38:35		11:41:21	
11:38:40		11:41:25	
11:38:47		11:41:28	
11:38:47		11:41:30	
11:38:49		11:41:32	
11:38:52		11:41:37	
11:38:55		11:41:41	
11:39:00		11:41:44	
11:39:00		11:41:46	
11:39:02		11:41:50	
11:39:05		11:41:53	
11:39:08		11:41:58	
11:39:10		11:42:01	
		11:42:03	
11.20.15			
11:39:15 11:39:20		11:42:05	

29 (Pages 441 to 444)

Page 4	Page 455
12:07:08	12:09:19
12:07:11	12:09:21
12:07:16	12:09:22
12:07:18	12:09:24
12:07:22	12:09:27
12:07:25	12:09:30
12:07:27	12:09:32
12:07:31	12:09:35
12:07:32	12:09:38
12:07:34	12:09:41
12:07:37	12:09:45
12:07:40	12:09:46
12:07:43	12:09:48
12:07:47	12:09:49
12:07:50	12:09:52
12:07:50 16 MR. McDONELL: Q. But why don't you jus	ist 12:09:57
12:07:52 17 use the income approach to value the actual events	
12:07:55 18 that occurred? The actual number of customers tha	- I
12:07:58 19 left, the actual revenues that were generated or	12:10:06
12:08:00 20 not. Why don't you do that?	12:10:09
12:08:02 21 A. That's not the income approach. It's	12:10:12
12:08:03 22 inconsistent. What we're talking about doing is	12:10:15
12:08:05 23 valuing the asset at a point in time using the	12:10:18
12:08:07 24 currently understood and best projections of in	12:10:21
12:08:10 25 this case, SAP was a very savvy software company	y 12:10:22
Page 4	Page 456
12:08:14 1 with lots of experience developing budgets and	12:10:23
12:08:16 2 looking at business plans and projections and	12:10:28
12:08:19 3 licensing software. And they run those models, and	nd 12:10:30
12:08:21 4 they're very good at it and taking their data and	12:10:31
12:08:24 5 making those determinations.	12:10:36
12:08:28	12:10:40
12:08:31	12:10:41
12:08:33	12:10:44
12:08:36	12:10:48
12:08:39	12:10:54
12:08:41	12:10:58
12:08:49	12:11:01
12:08:52	12:11:02
12:08:52	12:11:04
12:08:53	12:11:04
12:08:55	12:11:08
12:08:58	12:11:11
12:08:59	12:11:13
12:09:00	12:11:15
12:09:03	12:11:18
12:09:07	12:11:21
12:09:11	12:11:24
12:09:13	12:11:26
12:09:14	12:11:29
12:09:16	12:11:32

32 (Pages 453 to 456)

Page 457	Page 459
12:11:34	12:13:41
12:11:36	12:13:43
12:11:37	12:13:45
12:11:39	12:13:48
12:11:43	12:13:49
12:11:47	12:13:50
12:11:49	12:13:53
12:11:49	12:13:57
12:11:49	12:13:57
	12:14:01
12:11:55	12:14:01
12:11:57	
12:11:58	12:14:05
12:12:01	12:14:07
12:12:03	12:14:08
12:12:07	12:14:10
12:12:10	12:14:13
12:12:14	12:14:15
12:12:17	12:14:16
12:12:19	12:14:21
12:12:23	12:14:22
12:12:25	12:14:23
12:12:28	12:14:35
12:12:31	12:14:37
12:12:35	12:14:42
12:12:38	12:14:48
Page 458	Page 460
12:12:40	12:14:49
12:12:42	12:14:51
12:12:44	12:14:52
12:12:46	12:14:55
12:12:48	12:14:58
12:12:51	12:15:00
12:12:53	12:15:01
12:12:54	12:15:03
12:12:56	12:15:05
12:12:58	12:15:07
12:13:01	12:15:12
12:13:03	12:15:14
12:13:05	12:15:18 13 MR. McDONELL: Q. I mean, you could have
12:13:08	12:15:19 14 calculated a reasonable I mean, a royalty rate,
12:13:11	12:15:22 15 right, that would then apply to an actual revenue
12:13:13	12:15:24 16 stream. That's one approach you've used many
12:13:15	12:15:28 17 times, isn't it?
12:13:20	12:15:29 18 A. I think you're asking a different
12:13:22	12:15:30 19 question. And if you're starting to go down the
12:13:26	12:15:33 20 path of a paid-up license versus a reasonable
12:13:27	12:15:37 21 royalty, that's a whole 'nother discussion, and I
12:13:29	12:15:39 22 have very strong thoughts why in these
12:13:34	12:15:41 23 circumstances the amount would be paid up. It's a
12:13:37	12:15:42 24 tremendous risk to Oracle in a transaction like
12:13:39	12:15:46 25 this to give a license like this of this magnitude,
	and to give a needed rice this of this magnitude,

33 (Pages 457 to 460)

		Page 461			Page 46
12:15:50	1	and Oracle would have to have a paid-up license,	12:17:48		
12:15:52	2	because once the license is given, they're going to	12:17:52		
12:15:55	3	have a huge impact on their business, and they	12:17:57		
12:15:58	4	can't sit back and hope for some kind of royalty	12:17:58		
12:16:02	5	stream that's never going to make them whole.	12:18:01		
12:16:04	6	And it's also a big issue, too, because	12:18:03		
12:16:07	7	once you enter into that license, if you're SAP,	12:18:06	,	
12:16:10	8	then you can decide how you want to execute on	12:18:07		
12:16:13	9	that. And if you're successful in fact, think	12:18:07		
12:16:16	10	about this dynamic: The more you're successful if	12:18:13		
12:16:19	11	it's a running royalty, the worse off it is for	12:18:17		
12:16:21	12	Oracle. So when you have the two major companies	12:18:19		
12:16:23	13	in the industry that are head-to-head, the last	12:18:22		
12:16:26	14	thing that Oracle would want to do is to have a	12:18:25		
12:16:28	15	running royalty, because the more successful SAP	12:18:27		
12:16:30	16	is, the more sales it's going to lose.	12:18:33	·	
12:16:32	17	And so we can't take that risk on at the	12:18:36		
12:16:34	18	same time. Once it enters into that running	12:18:38		
12:16:36	19	royalty and gives that license up, there's a huge	12:18:41		
12:16:39	. 20	impact on Oracle in the present value. So they're	12:18:44		
12:16:42	21	going to need to have a lump sum to make certain	12:18:47		
12:16:45	22	that they've protected their shareholders from the	12:18:52		
12:16:46	23	11 billion dollars they just spent. That's a very	12:18:54		
12:16:49	24	important consideration.	12:19:02		
12:16:49			12:19:07		
	******	Page 462		то дом то всеня на санитель антельных офторущей детельностью столого сто стой такжений заходений образований о	Page 46
12:16:51		3 .	12:19:08		150 10
12:16:53			12:19:11		
12:16:56			12:19:14		
12:16:58			12:19:17		
12:17:00		***************************************	12:19:26		
12:17:01			12:19:31		
12:17:04		***	12:19:36		
12:17:07		Person	12:19:40		
12:17:12			12:19:44		
12:17:13			12:19:48		
12:17:15		2000	12:19:53		
12:17:15		Occasion	12:19:58		
12:17:17		economic de la constanta de la	12:20:03		
12:17:18		· .	12:20:03		
12:17:20		control	12:20:05		
12:17:21			12:20:06		
12:17:22			12:20:09		
12:17:24			12:20:11		
12:17:26			12:20:14		
12:17:29		COMMENTAL	12:20:16		
12:17:31			12:20:20		
12:17:33			12:20:23		
12:17:36		-	12:20:25		
12:17:36			12:20:26	•	
12:17:46			12:20:28		

34 (Pages 461 to 464)

Dage 165	*		Page 467
Page 465	•		Page 467
12:20:31	12:23:06		
12:20:34	12:23:08		
12:20:36	12:23:15		
12:20:38	12:23:17		
12:20:39	12:23:20		
12:20:41	12:23:25		
12:20:42	12:23:27		
12:20:42	12:23:28		
12:20:43	12:23:30		
12:20:45	12:23:34	10	Q. Okay. So the that's my question,
12:20:46	12:23:36	11	though.
12:20:48	12:23:37	12	In your scenario in which you assume 3,000
12:20:50	12:23:40	13	PeopleSoft customers would leave PeopleSoft, go to
12:20:51	12:23:45	14	TomorrowNow for support, and completely replace
12:20:54	12:23:49	15	their PeopleSoft applications with SAP
12:21:04	12:23:50	16	applications, what is your basis for that
12:21:08	12:23:53	17	assumption?
12:21:10	12:23:54	18	A. Well, there's two bases. One, the this
12:21:14	12:23:57	19	document, 447, takes us through 2007. So I would
12:21:18	12:24:02	20	add another year onto that, and basically, at these
12:21:20	12:24:05	21	switch rates, if you switch the 750 in 2007, and
12:21:24	12:24:10	22	you switch another 750, you're at 3,000 by 2008.
12:21:28	12:24:14	23	But if you ask what the support is for that last
12:21:30	12:24:16	24	scenario, which is the it was just the highest
12:21:35	10 04 10		
	12:24:19	25	scenario, then I would turn back to the phone call
Page 466	12:24:19	25	scenario, then I would turn back to the phone call
Page 466			Page 468
12:21:36	12:24:21	1	Page 468 and the other projections that are done by SAP in
12:21:36 12:21:41	12:24:21 12:24:25		Page 468
12:21:36 12:21:41 12:21:44	12:24:21	1	Page 468 and the other projections that are done by SAP in
12:21:36 12:21:41 12:21:44 12:21:48	12:24:21 12:24:25	1 2	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest
12:21:36 12:21:41 12:21:44 12:21:48 12:21:49	12:24:21 12:24:25 12:24:28	1 2 3	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers.
12:21:36 12:21:41 12:21:44 12:21:48 12:21:49 12:21:50	12:24:21 12:24:25 12:24:28 12:24:29	1 2 3 4	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:54	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:54	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:33	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:56	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:33 12:24:36	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:33 12:24:36 12:24:39	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:33 12:24:36 12:24:39 12:24:41	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:33 12:24:36 12:24:39 12:24:41	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10 12:22:14	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:36 12:24:39 12:24:41 12:24:44	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:36 12:24:39 12:24:41 12:24:44	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10 12:22:14	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:36 12:24:36 12:24:41 12:24:41 12:24:44 12:24:44	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:44 12:21:48 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10 12:22:14	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:36 12:24:36 12:24:41 12:24:44 12:24:44 12:24:46 12:24:58 12:24:58 12:25:04	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10 12:22:14 12:22:19	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:36 12:24:39 12:24:41 12:24:44 12:24:46 12:24:54 12:24:58 12:24:58	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:14 12:22:19 12:22:19 12:22:21	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:36 12:24:36 12:24:41 12:24:44 12:24:46 12:24:54 12:24:54 12:25:04 12:25:09 12:25:12	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:14 12:22:19 12:22:19 12:22:21 12:22:27 12:22:31	12:24:21 12:24:28 12:24:29 12:24:31 12:24:36 12:24:36 12:24:41 12:24:44 12:24:46 12:24:54 12:24:54 12:25:04 12:25:09 12:25:12	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:14 12:22:19 12:22:11 12:22:21 12:22:27 12:22:36	12:24:21 12:24:28 12:24:29 12:24:31 12:24:36 12:24:36 12:24:39 12:24:41 12:24:44 12:24:46 12:24:54 12:24:54 12:25:04 12:25:09 12:25:12 12:25:18 12:25:22	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10 12:22:14 12:22:19 12:22:21 12:22:27 12:22:36 12:22:39	12:24:21 12:24:28 12:24:29 12:24:31 12:24:36 12:24:36 12:24:39 12:24:41 12:24:44 12:24:46 12:24:54 12:24:58 12:25:04 12:25:04 12:25:18 12:25:18 12:25:22 12:25:30	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10 12:22:14 12:22:19 12:22:21 12:22:27 12:22:31 12:22:39 12:22:41	12:24:21 12:24:28 12:24:29 12:24:31 12:24:36 12:24:36 12:24:39 12:24:41 12:24:44 12:24:46 12:24:54 12:25:04 12:25:04 12:25:12 12:25:18 12:25:22 12:25:30 12:25:33	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10 12:22:14 12:22:19 12:22:21 12:22:27 12:22:31 12:22:36 12:22:39 12:22:41 12:22:42	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:36 12:24:36 12:24:39 12:24:41 12:24:44 12:24:46 12:24:54 12:25:04 12:25:09 12:25:12 12:25:18 12:25:22 12:25:30 12:25:33 12:25:34	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of
12:21:36 12:21:41 12:21:48 12:21:49 12:21:50 12:21:56 12:21:57 12:22:06 12:22:08 12:22:10 12:22:14 12:22:19 12:22:21 12:22:27 12:22:31 12:22:39 12:22:41 12:22:44	12:24:21 12:24:25 12:24:28 12:24:29 12:24:31 12:24:36 12:24:39 12:24:41 12:24:44 12:24:46 12:24:54 12:24:58 12:25:04 12:25:12 12:25:18 12:25:18 12:25:30 12:25:33 12:25:34	1 2 3 4 5	Page 468 and the other projections that are done by SAP in that month that talk about upwards of 4,000 or 6,000 customers. But I would agree, that's the highest scenario, and so it's there for consideration, but I would probably, you know, focus on all three of

35 (Pages 465 to 468)

Page 473	Page 475
12:33:19	12:36:09
12:33:22	12:36:12
12:33:27	12:36:14
12:33:29	12:36:16
12:33:32	12:36:21
12:33:33	12:36:24
12:33:37	12:36:28
12:33:43	12:36:31
12:33:47	12:36:36
12:33:50	12:36:39
12:33:52 11 Q. Thank you, Okay.	12:36:45
12:33:55 12 In paragraph 133 of your report, you	12:36:50
12:33:58 13 describe how you've used the income approach to	12:36:56
12:34:01 14 calculate SAP's expected gains. Correct?	12:37:00
12:34:05 15 A. Yes.	12:37:14
12:34:07 16 Q. And in doing so, you've used the same	12:37:21
12:34:09 17 three scenarios of 1,375, 2,000, and 3,000 upswitch	12:37:27
12:34:13 18 customers. Is that correct?	12:37:31
12:34:37 19 A. It's generally similar, but now we're	12:37:37
12:34:40 20 focusing on the gains of SAP, the benefits, as	12:37:40
12:34:42 21 opposed to Oracle's losses. And we we use one	12:37:43
12:34:47 22 calculation with 1,375 switched customers, and then	12:37:46
12:34:52 23 we do two calculations at the 2,000 switched	12:37:48
12:34:57 24 customers,	12:37:50
12:34:59	12:37:53
Page 474	Page 476
12:35:01	12:37:59
12:35:06	12:38:03
12:35:12	12:38:07
12:35:13	12:38:27
12:35:15	12:38:37
12:35:20	12:38:40
12:35:22	12:38:42
12:35:23	12:38:46
12:35:25	12:38:47
12:35:29	12:38:49
12:35:33	12:38:51
12:35:36	12:38:55
12:35:36	12:38:57
12:35:38	12:39:00
12:35:41	12:39:04 12:39:07
12:35:41	12:39:07
12:35:43	12:39:18
12:35:46	12:39:29
12:35:48	12:39:30
12:35:51	12:39:34
12:35:57	12:39:36
12:36:00	12:39:38
12:36:03	. 12:40:54
12:36:05	12:40:55

37 (Pages 473 to 476)

		Page 489				Page	491
14:03:43			14:05:54	1	benefits. There's not any question ab	out that.	
14:03:44			14:05:57				
14:03:46			14:06:00				
14:03:50			14:06:05				
14:03:56			14:06:08				
14:03:58			14:06:12				
14:04:01			14:06:13				
14:04:03			14:06:14				
14:04:04			14:06:16				
14:04:06			14:06:19				
14:04:07		·	14:06:22				
14:04:09			14:06:25				
14:04:12		######################################	14:06:29				
14:04:14		***************************************	14:06:31				
14:04:18			14:06:34				
14:04:18	16	Q. And you used to 10-to-1 ratio in	14:06:37				
14:04:22	17	performing your income approach analysis. Correct?	14:06:39				
14:04:26	18	A. What I did was, I used that as I	14:06:42				
14:04:28	19	mentioned about the market approach, this was a way	14:06:45				
14:04:30	20	for me to do a reasonableness check on the income	14:06:52				
14:04:33	21	approach. It was sort of let me finish it	14:06:57				
14:04:35	22	was a way for me to check whether or not my results	14:07:01		•		
14:04:39	23	were reasonable.	14:07:03				
14:04:40			14:07:09				
14:04:42		### P	14:07:11				
		Page 490				Page	492
14:04:45		-	14:07:16			5 -	
14:04:48		on each of the control of the contro	14:07:10				
14:04:51		Property	14:07:20				
14:04:52			14:07:25				
14:04:59		000	14:07:28				
14:05:01		>>>	14:07:30				
14:05:01		***************************************	14:07:32				
14:05:02		·	14:07:32				
14:05:04		A A CONTRACTOR OF THE CONTRACT	14:07:39				
14:05:04			14:07:41				
14:05:07	11	Q. And did you see there that he was simply	14:07:43				
14:05:09	12	stating as a matter of math that over a 9-year	14:07:46				
14:05:13	13	period, if you assume the customer would otherwise	14:07:48				
14:05:18	14	have stayed with Oracle for that entire period of	14:07:51				
14:05:20	15	time, if the customer instead went to TomorrowNow,	14:07:52				
14:05:26	16	Oracle was getting \$18 less than it would have, and	14:07:54				
14:05:31	17	that's just the mathematical fact. Right?	14:07:57				
14:05:34	18	A. I don't accept that. It's a lot more than	14:07:59				
14:05:36	19	math. It's the relationships, it's the value	14:08:03				
14:05:38	20	proposition. And the two documents together, 1018	14:08:06				
14:05:41	21	and 1019, show the billion dollar numbers, they tie	14:08:09				
14:05:44	22	right into the revenue stream.	14:08:11				
14:05:46	23	He's absolutely, absolutely saying, here's	14:08:11				
14:05:49	24	how we impact Oracle, and their acquisition, and	14:08:14				
14:05:51	25	the 10 billion dollars, and here's how SAP	14:08:17				
Colorada de la colorada del colorada de la colorada del colorada de la colorada del la colorada de la colorada	· · · · · · · · · · · · · · · · · · ·	Market Transport		SIN MARKATA			

41 (Pages 489 to 492)

		Page 549			Dago	<u> </u>
	•	rage 549			Page	221
15:38:57			15:41:11			
15:39:00			15:41:11			
15:39:03			15:41:15			
15:39:04			15:41:21			
15:39:04			15:41:22			
15:39:07			15:41:26	·		
15:39:09			15:41:30			
15:39:13			15:41:33			
15:39:17			15:41:36			
15:39:19			15:41:38			
15:39:21		•	15:41:41			
15:39:24			15:41:43			
15:39:26			15:41:45			
15:39:29			15:41:48			
15:39:31			15:41:51			
15:39:34			15:41:54			
15:39:38			15:41:56			
15:39:41			15:42:01			
15:39:44			15:42:01			
15:39:45			15:42:03			
15:39:49	21	Q. Would there have been any risks to SAP in	15:42:07			
15:39:53	22	entering into a paid-up license of the nature you	15:42:08			
15:39:56	23	proposed?	15:42:10			
15:39:59	24	A. You say risks. What do you mean by risks?	15:42:14			
15:40:03	25	Q. You know, economic risk.	15:42:15	•		
		Page 550	-		Page	552
15:40:05	1	A. Well, there's economic risks in every	15:42:18		5	
15:40:07	2	transaction. Obviously, Oracle has significant	15:42:21			
15:40:09	3	economic risk paying 11 billion dollars for a	15:42:23			
15:40:12	4	company, and then we flip that around to SAP, and	15:42:25			
15:40:14	5	if they enter into a license for 2 billion dollars,	15:42:27			
15:40:17	6	they would take the risk on, and executing on that	15:42:30			
15:40:19	7	payment on a license, just like Oracle did on 11	15:42:32	·		
15:40:22	8	billion dollars.	15:42:32			
15:40:23	9	Q. Okay. So	15:42:34			
15:40:24	10	A. Let me finish. So when you buy a company,	15:42:39			
15:40:26	11	it's not dissimilar to a license. You buy a	15:42:41			
15:40:28	12	company, you're taking a risk that the company will	15:42:42			
15:40:30	13	not produce the way you were thinking.	15:42:42			
15:40:32	14	It happens every day. It happened today	15:42:43			
15:40:35	15	in the Cybase transaction with SAP. You have to	15:42:51			
15:40:37	16	size it up, whenever you buy a company, you enter a	15:42:51			
15:40:39	17	license, you have to take the risk on to perform.	15:42:52			
15:40:42	18	And that happens all the time.	15:42:57			
15:40:45		террия ин инсите	15:42:59			
15:40:51		9900000	15:43:01			
15:40:54			15:43:01			
15:40:56			15:43:04			
15:40:58		RECEIVED	15:43:08			
15:41:04		***************************************	15:43:12			
15:41:08		The state of the s	15:43:15			
13.41.00			T3:43:TQ	Anna di Sa		

56 (Pages 549 to 552)

		Page 553			Page 55
15:43:20			15:46:00	1	THE WITNESS: I would agree that they
15:43:23			15:46:02	. 2	would have risk there, but they also had the
15:43:24			15:46:03	3	opportunity to get more customers. They could get
15:43:28			15:46:08	4	4,000 customers, 6,000 customers, and they have to
15:43:33			15:46:10	5	balance that.
15:43:36			15:46:11		
15:43:38			15:46:12		
15:43:41			15:46:14		
15:43:44			15:46:18	•	
15:43:46			15:46:23		
15:43:52			15:46:30		•
15:44:01			15:46:33		
15:44:07			15:46:37		
15:44:10			15:46:41		
15:44:12			15:46:43		
15:44:13			1		
15:44:13			15:46:44 15:46:49		
15:44:17 15:44:18			15:46:52		
1			15:46:54		
15:44:23			15:46:56		
15:44:28			15:46:59		
15:44:32			15:47:01		
15:44:37			15:47:03		
15:44:39			15:47:04		
15:44:43			15:47:08	***************************************	
		Page 554			Page 55
15:44:46			15:47:11		
15:44:50			15:47:14		
15:44:52			15:47:15		
15:44:55			15:47:19		
15:44:57			15:47:20		
			13.47.20		
15:44:59			15:47:22		
15:44:59 15:45:00			1		
1			15:47:22		
15:45:00			15:47:22 15:47:26		
15:45:00 15:45:06			15:47:22 15:47:26 15:47:30		
15:45:00 15:45:06 15:45:11			15:47:22 15:47:26 15:47:30 15:47:34		
15:45:00 15:45:06 15:45:11 15:45:14			15:47:22 15:47:26 15:47:30 15:47:34 15:47:35		
15:45:00 15:45:06 15:45:11 15:45:14 15:45:20			15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36		
15:45:00 15:45:06 15:45:11 15:45:14 15:45:20 15:45:23			15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36		
15:45:00 15:45:06 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26	15	THE WITNESS: Can you read that back,	15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36		
15:45:00 15:45:06 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29	15 16	THE WITNESS: Can you read that back, please.	15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36 15:47:36		
15:45:00 15:45:06 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29 15:45:31			15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36 15:47:36 15:47:46		
15:45:00 15:45:06 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29 15:45:31 15:45:32	16	please.	15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36 15:47:36 15:47:46 15:47:47		
15:45:00 15:45:06 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29 15:45:31 15:45:32 15:45:56	16 17	please. (Record read as follows:	15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36 15:47:46 15:47:46 15:47:47		
15:45:00 15:45:06 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29 15:45:31 15:45:32 15:45:32	16 17 18	please. (Record read as follows: Question: Would you agree that a risk to SAP of paying a 2-billion-dollar license to	15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36 15:47:36 15:47:46 15:47:47 15:47:50 15:47:54		
15:45:00 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29 15:45:31 15:45:32 15:45:57 15:45:57	16 17 18 19	please. (Record read as follows: Question: Would you agree that a risk to	15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36 15:47:36 15:47:47 15:47:47 15:47:50 15:47:54		
15:45:00 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29 15:45:31 15:45:32 15:45:57 15:45:57 15:45:57	16 17 18 19 20	please. (Record read as follows: Question: Would you agree that a risk to SAP of paying a 2-billion-dollar license to Oracle, paid up, would be that they might not	15:47:22 15:47:26 15:47:30 15:47:34 15:47:36 15:47:36 15:47:36 15:47:36 15:47:46 15:47:47 15:47:50 15:47:57 15:47:57 15:48:00		
15:45:00 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29 15:45:31 15:45:32 15:45:57 15:45:57 15:45:57	16 17 18 19 20	please. (Record read as follows: Question: Would you agree that a risk to SAP of paying a 2-billion-dollar license to Oracle, paid up, would be that they might not get 3,000 PeopleSoft customers to leave	15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36 15:47:36 15:47:36 15:47:36 15:47:46 15:47:47 15:47:50 15:47:54 15:47:57 15:48:00 15:48:02 15:48:05		
15:45:00 15:45:11 15:45:14 15:45:20 15:45:23 15:45:26 15:45:29 15:45:31 15:45:32 15:45:56 15:45:57 15:45:57 15:45:57 15:45:57	16 17 18 19 20 21	please. (Record read as follows: Question: Would you agree that a risk to SAP of paying a 2-billion-dollar license to Oracle, paid up, would be that they might not get 3,000 PeopleSoft customers to leave PeopleSoft altogether, replace their	15:47:22 15:47:26 15:47:30 15:47:34 15:47:35 15:47:36 15:47:36 15:47:36 15:47:46 15:47:46 15:47:47 15:47:54 15:47:54 15:47:57 15:48:00 15:48:02		

57 (Pages 553 to 556)

Page 561	
1	Page 563
15:52:08	15:54:07
15:52:10	15:54:09
15:52:13	15:54:11
15:52:15	15:54:14
15:52:18	15:54:17
15:52:21	15:54:20
15:52:23	15:54:26
15:52:25	15:54:28
15:52:27	15:54:30
15:52:29	15:54:32
15:52:30	15:54:36
15:52:32	15:54:38
15:52:35	15:54:42
15:52:37	15:54:45
15:52:40	15:54:45
15:52:42	15:54:49
15:52:42	15:54:49
15:52:45	
15:52:45	15:54:54
15:52:47 15:52:49	15:54:58
	15:55:00
15:52:52	15:55:04
15:52:56	15:55:06
15:52:58	15:55:09
15:52:59	15:55:10
15:53:01	15:55:11
Page 562	Page 564
•	I control of the cont
15:53:05	15:55:12
15:53:05 15:53:07	15:55:12 15:55:13
	15:55:13
15:53:07	15:55:13 15:55:15
15:53:07 15:53:07	15:55:13 15:55:15 15:55:17
15:53:07 15:53:10	15:55:13 15:55:15 15:55:17 15:55:18
15:53:07 15:53:07 15:53:10 15:53:13	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23
15:53:07 15:53:07 15:53:10 15:53:13 15:53:17	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23	15:55:13 15:55:15 15:55:17 15:55:23 15:55:24 15:55:42
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28	15:55:13 15:55:15 15:55:17 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30	15:55:13 15:55:15 15:55:17 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32	15:55:13 15:55:15 15:55:17 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53
15:53:07 15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:30 15:53:32 15:53:36	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:36 15:53:38	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:38 15:53:38	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:53 15:55:55 15:55:55
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:36 15:53:38 15:53:38 15:53:38	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:53 15:55:55 15:56:03 15:56:04
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:38 15:53:38 15:53:38 15:53:341 15:53:41	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:55 15:56:03 15:56:04 15:56:07
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:36 15:53:38 15:53:38 15:53:41 15:53:43 15:53:45	15:55:13 15:55:15 15:55:17 15:55:18 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54 15:55:55 15:56:03 15:56:07 15:56:09
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:36 15:53:38 15:53:41 15:53:44 15:53:45	15:55:13 15:55:15 15:55:17 15:55:18 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54 15:55:55 15:56:03 15:56:07 15:56:09 15:56:10 19 Q. Would you agree that one way SAP could
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:36 15:53:38 15:53:41 15:53:45 15:53:49 15:53:51	15:55:13 15:55:15 15:55:17 15:55:18 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54 15:55:55 15:56:03 15:56:04 15:56:07 15:56:09 15:56:10 19 Q. Would you agree that one way SAP could 15:56:12 20 minimize risk in this negotiation is by negotiating
15:53:07 15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:36 15:53:38 15:53:41 15:53:43 15:53:45 15:53:45 15:53:49 15:53:51	15:55:13 15:55:15 15:55:17 15:55:18 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54 15:55:55 15:56:03 15:56:04 15:56:10 19 Q. Would you agree that one way SAP could 15:56:12 20 minimize risk in this negotiation is by negotiating 15:56:16 21 a running royalty rate that would be tied to some
15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:28 15:53:30 15:53:32 15:53:38 15:53:38 15:53:41 15:53:43 15:53:45 15:53:45 15:53:51 15:53:55	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54 15:55:55 15:56:03 15:56:04 15:56:07 15:56:10 19 Q. Would you agree that one way SAP could 15:56:12 20 minimize risk in this negotiation is by negotiating 15:56:16 21 a running royalty rate that would be tied to some 15:56:20 22 level of revenue actually obtained through the use
15:53:07 15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:36 15:53:38 15:53:41 15:53:43 15:53:45 15:53:45 15:53:51 15:53:57 15:53:58	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54 15:55:55 15:56:03 15:56:04 15:56:07 15:56:10 19 Q. Would you agree that one way SAP could 15:56:12 20 minimize risk in this negotiation is by negotiating 15:56:16 21 a running royalty rate that would be tied to some 15:56:20 22 level of revenue actually obtained through the use 15:56:24 23 of the copyrighted material?
15:53:07 15:53:07 15:53:10 15:53:13 15:53:17 15:53:20 15:53:23 15:53:25 15:53:28 15:53:30 15:53:32 15:53:36 15:53:38 15:53:41 15:53:43 15:53:45 15:53:45 15:53:51 15:53:57	15:55:13 15:55:15 15:55:17 15:55:18 15:55:23 15:55:24 15:55:42 15:55:45 15:55:49 15:55:52 15:55:53 15:55:54 15:55:55 15:56:03 15:56:04 15:56:07 15:56:10 19 Q. Would you agree that one way SAP could 15:56:12 20 minimize risk in this negotiation is by negotiating 15:56:16 21 a running royalty rate that would be tied to some 15:56:20 22 level of revenue actually obtained through the use

59 (Pages 561 to 564)

		Page 565		Page	567
15:56:31	1	Oracle's investment in PeopleSoft for 11 billion	15:59:23		
15:56:34	2	dollars. So you can't even get to that assumption,	15:59:27		
15:56:37	3	because Oracle has already made the commitment, and	15:59:29		
15:56:39	4	now you want to assume that SAP can take a license	15:59:30		
15:56:42	5	and not make the commitment, and that doesn't make	15:59:34		
15:56:44	6	any economic sense. Just doesn't make any sense.	15:59:36		
15:56:47	7	Q. Are you saying there's no royalty rate at	15:59:39		
15:56:50	8	which a running royalty would make sense in this	15:59:42		
15:56:53	9	case?	15:59:46		
15:56:53	10	A. That's correct.	15:59:50		
15:56:54			15:59:53		
15:57:14			15:59:55		
15:57:32			15:59:59		
15:57:33		•	16:00:03		
15:57:34			16:00:08		
15:57:55			16:00:11		
15:57:57			16:00:11		
15:57:57			16:00:16		
15:57:59			16:00:20		
15:58:05		·	16:00:21		
15:58:08			16:00:26		
15:58:10			16:00:28		
15:58:15			16:00:32		
15:58:15			16:00:35		
15:58:17			16:00:37		
	······································	75.5.5.5.C.		· · · · · · · · · · · · · · · · · · ·	
		Page 566		Page	568
15:58:21			16:00:39		
15:58:25		*	16:00:42		
15:58:29			16:00:47		
15:58:35			16:00:47		
15:58:38			16:00:49		
15:58:39			16:00:52		
15:58:43			16:00:54		
15:58:47			16:00:55		
15:58:50			16:00:57		
15:58:51			16:00:59		
15:58:56			16:01:01		
15:58:56		-	16:01:04		
15:58:57 15:58:59			16:01:06		
		POSITION	16:01:11		
15:59:01 15:59:05		State of the state	16:01:13		
15:59:05			16:01:16		
15:59:06		***************************************	16:01:19		
			16:01:21		
15:59:10 15:59:11			16:01:26		
		٠.	16:01:28		
15:59:12		***************************************	16:01:32		
15:59:15		·	16:01:34		
15:59:16 15:59:19			16:01:36		
15.59.19			16:01:37		
15:59:21			16:01:40		

60 (Pages 565 to 568)

Page 609			Page 611
17:21:24	17:26:08		J
17:21:28	17:26:12		
17:21:31	17:26:17		
17:21:32	17:26:19		
17:22:36	17:26:22		
17:22:39	17:26:22		
17:22:40	17:26:26		
17:22:40	17:26:26		•
17:22:44	17:26:33		
17:22:49	17:26:35		
17:23:25	17:26:36		
17:23:26	17:26:39		
17:23:27	17:26:43		
17:23:31	17:26:46		
17:23:32	17:26:48		
17:23:34	17:26:50		
17:23:36	17:26:53		
17:23:45	17:26:58		
17:23:49	17:27:01		•
17:23:51	17:27:07		
17:23:59	17:27:09		
17:24:01	17:27:12		
17:24:04	17:27:14		
17:24:13	17:27:38		
17:24:20	17:27:40		
Page 610			Page 612
17:24:23	17:27:41		
17:24:27	17:27:41		
17:24:30	17:27:46		
17:24:39	17:27:48		
17:24:41	17:27:50		
17:24:44	17:27:53		
17:24:47	17:28:00		
17:25:09	17:28:02	8	Q. Okay. What that means in simple terms is
17:25:11	17:28:05	9	that under the cost approach, you measure the value
17:25:15	17:28:08	10	of IP by looking at how much it would cost to
17:25:19	17:28:10	11	develop it. Is that a fair statement?
17:25:25	17:28:12	12	A. If we're talking in generalities, that's
17:25:28	17:28:15	13	correct.
17:25:37	17:28:16	14	Q. And I think you've acknowledged that the
17:25:39	17:28:18	15	cost approach has significant limitations. Isn't
17:25:39	17:28:18	16	that right?
17:25:39			
17:25:39	17:28:22 17:28:23	17	MS. HOUSE: Objection. Vague.
17:25:39		18	THE WITNESS: I think what I've said, in
	17:28:26	19	contrast to, say, the income approach, it would
17:25:39	17:28:28	20	have limitations, because because you're working
17:25:39	17:28:32	21	from the cost side; you're not directly measuring
17:25:39	17:28:35	22	the future benefits. And so it has some
17:25:58	17:28:37	23	limitations. But also, it can be something that
17.35.59			
17:25:59 17:26:03	17:28:40 17:28:43	24 25	provides some constructive consideration. MR. McDONELL: Q. Okay. But one of the

71 (Pages 609 to 612)

		Page 613			Page	615
17:28:44	1	limitations of the cost approach is that it doesn't	17:31:03		_	
17:28:46	2	directly consider the future economic benefits of	17:31:03			
17:28:49	3	the assets that are being valued. Isn't that	17:31:03			
17:28:52	4	right?	17:31:03			
17:28:52	5	A. I agree with that.	17:31:03			
17:28:53	6	Q. Okay. So would you agree that, all other	17:31:03			
17:29:08	7	things equal, the cost approach doesn't account for	17:31:03			
17:29:10	8	the risk that the buyer of the asset might not get	17:31:03			
17:29:14	9	any economic value from investing in the costs?	17:31:28			
17:29:19	10	MS. HOUSE: Objection, Vague.	17:31:29			
17:29:21	11	MR. McDONELL: Let me restate that.	17:31:32			
17:29:22	12	Q. Would you agree that the cost approach	17:31:34			
17:29:23	13	doesn't account for the risk that one might not get	17:31:35			
17:29:27	14	any economic benefit from developing the IP?	17:31:38			
17:29:34	15	A. Well, by nature of the cost approach,	17:31:42			
17:29:36	16	because you're focused on the cost side and not the	17:31:44	•		
17:29:40	17	revenue and profit side, that is part of an issue	17:31:47			
17:29:46	18	that confronts the cost approach. It is what it	17:31:49			
17:29:49	19	is.	17:31:51			
17:29:50	20	At the same time, I need to say that	17:31:54			
17:29:51	21	there's in certain circumstances it's	17:31:57			
17:29:55	22	appropriate to use, and it can provide some things	17:31:59			
17:29:58	23	to consider that are very important. And that's	17:32:00			
17:30:01	24	why in this case I have considered it, but it does	17:32:02			
17:30:04	25	have limitations.	17:32:04			
***************************************		Page 614			Page	616
17 20 05			15 20 00		rage	010
17:30:05	1	Q. Okay. Another limitation of the cost	17:32:08			
17:30:06 17:30:10	2	approach is that there's a risk that whatever	17:32:10			
17:30:10	3 4	economic benefit you get turns out to be much less than what you spent to develop the IP. Isn't that	17:32:11			
17:30:12	5	right?	17:32:15 17:32:19			
17:30:15	6	A. And we're talking now just in the corral	17:32:19			
17:30:18	7	of the cost approach, nothing else?	17:32:22			
17:30:21	8	Q. Yes.	17:32:24			
	9	A. If we narrow it down, that's right.	17:32:24			
17:30:22						
17:30:23	10	Because if you just look at the costs and you don't	17:32:29			
17:30:23 17:30:27	10 11	Because if you just look at the costs and you don't consider the projected benefits and look at the	17:32:29 17:32:33			
17:30:23 17:30:27 17:30:29	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37			
17:30:23 17:30:27 17:30:29 17:30:34	10 11	Because if you just look at the costs and you don't consider the projected benefits and look at the	17:32:29 17:32:33 17:32:37 17:32:41			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:35	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43			
17:30:23 17:30:27 17:30:29 17:30:34	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:35 17:30:36 17:30:40	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46 17:32:49			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:35 17:30:36	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46 17:32:49 17:32:51			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:35 17:30:40 17:30:43	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46 17:32:49 17:32:51 17:32:54			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:35 17:30:36 17:30:40 17:30:43 17:30:47	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46 17:32:49 17:32:51 17:32:54 17:32:54			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:35 17:30:36 17:30:40 17:30:43 17:30:47 17:30:50	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46 17:32:51 17:32:51 17:32:54 17:32:57			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:35 17:30:36 17:30:40 17:30:47 17:30:50 17:30:50	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46 17:32:51 17:32:51 17:32:54 17:32:59 17:32:59			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:36 17:30:40 17:30:43 17:30:50 17:30:50	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46 17:32:51 17:32:51 17:32:54 17:32:57			
17:30:23 17:30:27 17:30:29 17:30:34 17:30:36 17:30:40 17:30:43 17:30:50 17:30:50	10 11 12	Because if you just look at the costs and you don't consider the projected benefits and look at the analysis and the revenues and the profits, that can	17:32:29 17:32:33 17:32:37 17:32:41 17:32:43 17:32:46 17:32:51 17:32:54 17:32:57 17:32:59 17:32:59 17:33:02 17:33:04			

72 (Pages 613 to 616)

Page 617			Page 619
17:33:15	17:35:12		
17:33:17	17:35:13		
17:33:18	17:35:15		
17:33:20	17:35:17		
17:33:22	17:35:21		
17:33:24	17:35:28		
17:33:27	17:35:31		
17:33:29	17:35:33		
17:33:30	17:35:35		
17:33:32	17:35:38		
17:33:34	17:35:43		
17:33:36	17:35:45		
17:33:40	17:35:51		
17:33:43	17:35:52		
17:33:46	17:35:54		
17:33:48	17:35:56		
17:33:50	17:35:58		
17:33:52	17:36:01		
17:33:56	17:36:04		
17:33:58	17:36:06		
17:34:01	17:36:09		
17:34:04	17:36:12		
17:34:07	17:36:13		
17:34:09	17:36:16	24	Q. I'm not talking about reconfiguring the
17:34:10	17:36:17	25	marketing program. I think I'm talking about what
			
Page 618			Page 620
17:34:13	17:36:19	1	you just said, that you believe the way the cost
17:34:16	17:36:23	2	approach might have some value is, it basically
17:34:16	17:36:26	3	sets a ceiling on what the licensee would be
17:34:18	17:36:29	4	willing to pay for a license, because if they could
17:34:22	17:36:33	5	independently develop it by investing the cost,
17:34:23	17:36:36	6	they'd more cheaply, they'd go that route. Is
17:34:24	17:36:39		and a more enoughly, and a go man route. to
•	17:36:39	7	that right?
17:34:26	17:36:39	7 8	
			that right?
17:34:26	17:36:40	8	that right? MS. HOUSE: I'm going to object insofar as
17:34:26 17:34:31	17:36:40 17:36:42	8 9	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound.
17:34:26 17:34:31 17:34:34	17:36:40 17:36:42 17:36:44	8 9 10	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with.
17:34:26 17:34:31 17:34:34 17:34:38	17:36:40 17:36:42 17:36:44 17:36:45	8 9 10 11	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the
17:34:26 17:34:31 17:34:34 17:34:38 17:34:40	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46	8 9 10 11 12	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be
17:34:26 17:34:31 17:34:34 17:34:40 17:34:42	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:49	8 9 10 11 12 13	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of
17:34:26 17:34:31 17:34:34 17:34:40 17:34:42 17:34:43	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:49 17:36:53	8 9 10 11 12 13	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the
17:34:26 17:34:31 17:34:38 17:34:40 17:34:42 17:34:43 17:34:46	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:49 17:36:53 17:36:56	8 9 10 11 12 13 14	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the copyrights.
17:34:26 17:34:31 17:34:38 17:34:40 17:34:42 17:34:43 17:34:46 17:34:49	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:49 17:36:53 17:36:56	8 9 10 11 12 13 14 15	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the copyrights. It has some limitations. But the point
17:34:26 17:34:31 17:34:38 17:34:40 17:34:42 17:34:43 17:34:46 17:34:49 17:34:51	17:36:40 17:36:42 17:36:44 17:36:45 17:36:49 17:36:53 17:36:56 17:36:57 17:37:00	8 9 10 11 12 13 14 15 16	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the copyrights. It has some limitations. But the point is, it should be constructive to allow you to
17:34:26 17:34:31 17:34:34 17:34:40 17:34:42 17:34:43 17:34:46 17:34:49 17:34:51	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:53 17:36:56 17:36:57 17:37:00 17:37:04	8 9 10 11 12 13 14 15 16 17	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the copyrights. It has some limitations. But the point is, it should be constructive to allow you to understand, if we're going to offer this solution
17:34:26 17:34:31 17:34:38 17:34:40 17:34:42 17:34:43 17:34:46 17:34:49 17:34:54 17:34:56	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:53 17:36:56 17:36:57 17:37:00 17:37:04 17:37:06	8 9 10 11 12 13 14 15 16 17 18	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the copyrights. It has some limitations. But the point is, it should be constructive to allow you to understand, if we're going to offer this solution and do it independently, here's what it would cost.
17:34:26 17:34:31 17:34:38 17:34:40 17:34:42 17:34:43 17:34:46 17:34:51 17:34:56 17:34:58	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:53 17:36:56 17:36:57 17:37:00 17:37:06 17:37:09	8 9 10 11 12 13 14 15 16 17 18 19 20	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the copyrights. It has some limitations. But the point is, it should be constructive to allow you to understand, if we're going to offer this solution and do it independently, here's what it would cost. But the issue you have to confront, once again, is
17:34:26 17:34:31 17:34:38 17:34:40 17:34:42 17:34:43 17:34:46 17:34:51 17:34:56 17:34:58 17:35:01	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:53 17:36:56 17:36:57 17:37:00 17:37:04 17:37:09 17:37:11	8 9 10 11 12 13 14 15 16 17 18 19 20 21	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the copyrights. It has some limitations. But the point is, it should be constructive to allow you to understand, if we're going to offer this solution and do it independently, here's what it would cost. But the issue you have to confront, once again, is risk. Can you actually, you know, do that and make
17:34:26 17:34:31 17:34:38 17:34:40 17:34:42 17:34:43 17:34:46 17:34:51 17:34:56 17:34:58 17:35:01 17:35:03	17:36:40 17:36:42 17:36:44 17:36:45 17:36:46 17:36:53 17:36:56 17:36:57 17:37:00 17:37:04 17:37:09 17:37:11 17:37:14	8 9 10 11 12 13 14 15 16 17 18 19 20 21	that right? MS. HOUSE: I'm going to object insofar as it misstates his prior testimony and it's compound. You can answer with. THE WITNESS: What I would say is that the cost approach, if done appropriately, can be instructive to understanding the economic value of what you're looking at; in this case, the copyrights. It has some limitations. But the point is, it should be constructive to allow you to understand, if we're going to offer this solution and do it independently, here's what it would cost. But the issue you have to confront, once again, is risk. Can you actually, you know, do that and make

73 (Pages 617 to 620)

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: May 25, 2010

HOLLY THUMAN, CSR

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

PAUL K. MEYER

VOLUME 3; PAGES 648 - 937 FRIDAY, MAY 14, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR (1-427378)

Page 657		Page 659
09:10:58	09:12:58	
09:11:02	09:13:03	•
09:11:05	09:13:07	
09:11:08	09:13:09	
09:11:12	09:13:16	
09:11:13	09:13:19	
09:11:14	09:13:26	
09:11:20	09:13:29	
09:11:21	09:13:32	
09:11:38	09:13:35	
09:11:39	09:13:39	
09:11:39	09:13:45	
09:11:39	09:13:48	
09:11:39	09:13:49	
09:11:39	09:13:51	
09:11:39	09:13:52	
09:11:43	09:13:52	
09:11:43	09:13:53	
09:11:44	09:13:54	
09:11:48	09:13:54	
09:11:49	09:13:54	
09:11:51	09:13:54	
09:11:54	09:14:06	
09:11:55	09:14:12	
09:11:56	09:14:12	
	U 7 : 14 : 14	
Page 658		Page 660
09:11:56	09:14:15	
09:11:57	09:14:17	
09:11:58	09:14:19	
09:11:59	09:14:21	
09:12:00	09:14:23	
09:12:03	09:14:29	
09:12:08	09:14:40 7 MR. M	cDONELL: Q. How have you attempted
09:12:14		your work? How have you attempted to
09:12:14		rden of showing that the alleged
09:12:16		defendants were attributable to the
09:12:17	09:14:51 11 alleged infrin	~
09:12:19		OUSE: Same objections.
09:12:23		TTNESS: From my perspective, I would
09:12:25		eport at paragraphs 436 through 442,
09:12:27	•	o 443. And then I would refer back to
09:12:29	• • •	here I describe in length the
09:12:34		SAP and TomorrowNow, probably going
09:12:37		to paragraphs 44, and basically,
09:12:42		isition of TomorrowNow, the timing of
09:12:44	•	on, paragraph 49, the if you page
09:12:47	09:15:53 21 on through co	onsecutive, 49 through paragraph 53,
09:12:49		, the whole section on SAP's,
	09:16:03 23 TomorrowNo	w's acquisition goals, competition with
09:12:51	ortholio Do Tomolio Mila	on a dequisition godis, compension was
09:12:51 09:12:52		raph 55. Moving through consecutive,

4 (Pages 657 to 660)

		Page 661			Page 66
09:16:14	1	consecutive, all those paragraphs.	09:18:51	1	hundreds of documents in my footnotes that
09:16:16	2	And I would take this probably with all	09:18:54	2	reference this plan of SAP and TomorrowNow and
09:16:17	3	the backup in my work papers and footnotes through	09:18:56	3	working in union, from my perspective, sets up a
09:16:21	4	paragraph 62. This is all information 65, in	09:19:00	4	situation where one cannot undo what's been done.
09:16:27	5	fact, surrounding the plans at SAP and TomorrowNow,	09:19:04	5	Let me finish.
09:16:32	6	up through basically paragraph 65 consecutive, all	09:19:05	6	So once that plan is unveiled, and the
09:16:35	7	those paragraphs where I lay out SAP working with	09:19:07	7	salesforce is initiated, and 4000 customers are
09:16:40	8	TomorrowNow, I would use that, and I put that in	09:19:11	8	joint customers are approached and presented and
09:16:44	9	the report, did that research to set up the fact	09:19:14	9	solicited, you have a situation now where a
09:16:47	10	that the business model of SAP/TomorrowNow was	09:19:17	10	business plan and marketing activities have taken
09:16:50	11	founded upon use of the property in this suit, the	09:19:20	11	place using the property that in this case is not
09:16:53	12	copyrighted property.	09:19:24	12	the property of SAP/TomorrowNow.
09:16:54	13	And then back in my report, on page 267, I	09:19:26	13	That has an impact on all those customers.
09:16:58	14	refer back to Mr. Mandia, in paragraph 436. And	09:19:29	14	And I focused on the 86, and I've made some
09:17:02	15	from my perspective, all those documents, those	09:19:31	15	adjustments and I've looked at timing issues. But
09:17:04	16	business documents, that address the planning and	09:19:35	16	those customers now have all been at some level
09:17:08	17	importance of Safe Passage, set up the situation	09:19:37	17	been impacted, and SAP has benefited from having a
09:17:12	18	where now we can look at SAP's revenues from the 86	09:19:40	18	•
09:17:16	19	customers that have been identified by the	09:19:40	19	program in place that was announced to the world on
09:17:18	20	defendant, and then I can hand off to Mr. Clarke,	09:19:44	20	January 19th, 2005. And one can't go to any level
09:17:24	21	who makes his presentation, and I've now responded	09:19:48		much different than that, because you look at all
09:17:24	22	• ′		21	those customers, and those were joint customers,
09:17:28	23	to that, and I've provided a schedule to you that	09:19:53	22	they had TomorrowNow, they had SAP's other
		sort of details revenues I've identified,	09:19:56	23	products, and that's where we are.
09:17:30	24	Mr. Clarke's adjustments, my response to that. And	09:19:58	24	And I've quantified it, I've made
09:17:33	25	I believe the number is \$288 million.	09:20:00	25	adjustments. I believe I've addressed what I need
		Page 662			Page 66
09:17:35	1	MR. McDONELL: Q. So Mr. Meyer, you	09:20:02	1	to address, and I feel the numbers are
09:17:37	2	referred to your report. And as I understand your	09:20:03	2	appropriates.
09:17:40	3	report, what you referred to there is a lot of the	09:20:04		
09:17:42	4	activities of the defendants that you chronicle in	09:20:06		
09:17:46	5	your report, or the alleged activities.	09:20:12		
09:17:49	6	But that's I have a little different	09:20:14		
09:17:52	7	question.	09:20:16		
09:17:52	8	Have you made an effort in your work to	09:20:22		
09:17:55	9	actually establish the causation between a	09:20:23		
09:18:01	10	particular customer's purchase of something from	09:20:25		
09:18:05	11	SAP, either some software or service, and some	09:20:28		
09:18:10	12	alleged infringement in a way that you can say that	09:20:32		
09:18:14	13	you know that that customer made that purchase from	09:20:35		
09:18:18	14	SAP and, but for the activities of TomorrowNow,	09:20:38		
09:18:20	15	that customer would not have made that purchase?	09:20:42		
09:18:23	16	Have you done that analysis?	09:20:42		
09:18:24	17	MS. HOUSE: Objection. Compound, vague,	09:20:46		
09:18:27	18	assumes a legal test that's not in evidence,	09:20:49		
09:18:30	19	overbroad. And asked and answered.	09:20:49		
09:18:35	20	THE WITNESS: I believe I've answered that	09:20:50		
	21	question. And from my perspective, I have	09:20:53		
09:18:36	22	addressed that exact issue. And the activities as	04.20.50		
09:18:36 09:18:38	22 23	addressed that exact issue. And the activities as	09:20:58		
09:18:36	22 23 24	addressed that exact issue. And the activities as I've testified clearly the last 2 days of TomorrowNow and SAP, and the significant references	09:20:58 09:21:03 09:21:07		

5 (Pages 661 to 664)

Page 673			Page 675
09:29:38	09:32:59		
09:29:40	09:33:03		
09:29:51	09:33:05		
09:29:51	09:33:08		
09:30:13	09:33:10		
09:30:39	09:33:10	_	O Cavildaran tarata lan handa an
09:30:41		6	Q. Could you try to lay hands on
09:30:45	09:33:18	7	Exhibit 2020, please, from earlier sessions? Do
09:30:46	09:34:07	8	you have 2020 before you?
09:30:48	09:34:08	9	A. Yes, I do.
09:30:51	09:34:10	10	Q. You recall you testified about this a
09:30:53	09:34:11	11	little bit on Wednesday, and I have some more
09:30:56	09:34:14	12	detailed questions for you.
	09:34:19	13	First of all, is am I correct that this
09:30:58	09:34:22	14	is a part of your analysis of alleged infringer's
09:31:00	09:34:26	. 15	profits?
09:31:03	09:34:27	16	A. It would be a subsequent analysis I've
09:31:06	09:34:29	17	done since receiving the rebuttal report of
09:31:08	09:34:34	18	Mr. Clarke, and I would say at this point in time,
09:31:11	09:34:37	19	it is my current opinion about infringer's profits,
09:31:13	09:34:44	20	but I do need to caution you that my review of
09:31:15	09:34:50	21	Mr. Clarke is ongoing, and certainly to the extent
09:31:15	09:34:54	22	he is deposed in this matter, I would anticipate
09:31:19	09:35:00	23	understanding further what he says about his
09:31:22	09:35:01	24	report. And it's very voluminous, and I think for
09:31:25	09:35:05	25	the court to know on this record, it's with 300
Page 674	***************************************		Page 676
09:31:32	09:35:08	1	pages single spaced, and there's thousands of
	09:35:06	1	pages single spaced, and mere's mousaids of
09:31:34	09:35:08	2	schedules, and I have not been through all those
09:31:34 09:31:34	1		
	09:35:11	2	schedules, and I have not been through all those
09:31:34	09:35:11 09:35:13	2	schedules, and I have not been through all those working papers. This is my current opinion about
09:31:34 09:31:37	09:35:11 09:35:13 09:35:15	2 3 4	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as
09:31:34 09:31:37 09:31:42	09:35:11 09:35:13 09:35:15 09:35:19	2 3 4 5	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future.
09:31:34 09:31:37 09:31:42 09:31:45	09:35:11 09:35:13 09:35:15 09:35:19 09:35:21	2 3 4 5	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's
09:31:34 09:31:37 09:31:42 09:31:45	09:35:11 09:35:13 09:35:15 09:35:19 09:35:21 09:35:22	2 3 4 5 6 7	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01	09:35:11 09:35:13 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25	2 3 4 5 6 7 8	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct.
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01	09:35:11 09:35:13 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28	2 3 4 5 6 7 8	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right?
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:11	09:35:11 09:35:13 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29	2 3 4 5 6 7 8 9	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details.
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:11 09:32:15	09:35:13 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32	2 3 4 5 6 7 8 9 10	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:04 09:32:11 09:32:15 09:32:16	09:35:13 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35	2 3 4 5 6 7 8 9 10 11	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:04 09:32:11 09:32:16 09:32:18	09:35:11 09:35:13 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35 09:35:35	2 3 4 5 6 7 8 9 10 11 12 13	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right?
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:04 09:32:11 09:32:15 09:32:18 09:32:22	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35 09:35:38 09:35:42	2 3 4 5 6 7 8 9 10 11 12 13	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:04 09:32:11 09:32:15 09:32:18 09:32:22	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:32 09:35:38 09:35:38	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right? A. Yes. This would be the list of 86 customers.
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:04 09:32:11 09:32:15 09:32:16 09:32:18 09:32:22 09:32:26	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:32 09:35:35 09:35:35 09:35:51 09:35:53	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right? A. Yes. This would be the list of 86 customers. Q. And I think in some cases, because there
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:11 09:32:15 09:32:16 09:32:18 09:32:22 09:32:26 09:32:29	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35 09:35:35 09:35:51 09:35:51 09:35:53 09:35:53	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right? A. Yes. This would be the list of 86 customers. Q. And I think in some cases, because there are some companies that may appear twice, like a
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:11 09:32:15 09:32:16 09:32:18 09:32:22 09:32:29 09:32:29 09:32:30	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35 09:35:38 09:35:42 09:35:51 09:35:53 09:35:53 09:35:53	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right? A. Yes. This would be the list of 86 customers. Q. And I think in some cases, because there are some companies that may appear twice, like a Zimmer, Inc., there may be more than 86 line items.
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:11 09:32:15 09:32:16 09:32:18 09:32:22 09:32:29 09:32:26 09:32:29 09:32:30 09:32:30	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35 09:35:38 09:35:42 09:35:51 09:35:51 09:35:53 09:35:53 09:35:53	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right? A. Yes. This would be the list of 86 customers. Q. And I think in some cases, because there are some companies that may appear twice, like a Zimmer, Inc., there may be more than 86 line items. But essentially, what you've tried to do is analyze
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:11 09:32:15 09:32:16 09:32:18 09:32:22 09:32:26 09:32:29 09:32:30 09:32:30 09:32:39	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35 09:35:38 09:35:42 09:35:51 09:35:51 09:35:53 09:35:53 09:35:56 09:36:02 09:36:09	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right? A. Yes. This would be the list of 86 customers. Q. And I think in some cases, because there are some companies that may appear twice, like a Zimmer, Inc., there may be more than 86 line items. But essentially, what you've tried to do is analyze the list of 86 customers. Correct?
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:11 09:32:15 09:32:16 09:32:18 09:32:22 09:32:22 09:32:29 09:32:30 09:32:39 09:32:39 09:32:44	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35 09:35:35 09:35:42 09:35:51 09:35:53 09:35:53 09:35:53 09:36:02 09:36:00 09:36:09 09:36:11	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right? A. Yes. This would be the list of 86 customers. Q. And I think in some cases, because there are some companies that may appear twice, like a Zimmer, Inc., there may be more than 86 line items. But essentially, what you've tried to do is analyze the list of 86 customers. Correct? A. That's right. I would agree, there's some
09:31:34 09:31:42 09:31:45 09:31:58 09:32:01 09:32:11 09:32:15 09:32:16 09:32:18 09:32:22 09:32:26 09:32:29 09:32:30 09:32:30 09:32:39	09:35:11 09:35:15 09:35:19 09:35:21 09:35:22 09:35:25 09:35:28 09:35:29 09:35:32 09:35:35 09:35:38 09:35:42 09:35:51 09:35:51 09:35:53 09:35:53 09:35:56 09:36:02 09:36:09	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	schedules, and I have not been through all those working papers. This is my current opinion about infringer's profits, but it may be updated as events transpire in the future. Q. Okay. So as you sit here today, what's marked as Exhibit 2020 reflects your current analysis of infringer's profits. Is that right? A. That's correct. Q. So I want to walk through it and make sure I understand all the details. First of all, is it I think you already established that the customers listed here are the list of 86. Is that right? A. Yes. This would be the list of 86 customers. Q. And I think in some cases, because there are some companies that may appear twice, like a Zimmer, Inc., there may be more than 86 line items. But essentially, what you've tried to do is analyze the list of 86 customers. Correct?

		Page 677			Page 679
09:36:23	1	column of the schedule, you've listed customers	09:39:14	1	heading "Mr. Clarke Exclusion - Joined SAP Prior to
09:36:29	2	from Abitibi, at the top on page 1, through Zimmer	09:39:18	2	TN; Product Extensions," you've indicated either
09:36:35	3	on page 3. Correct?	09:39:23	3	yes or no. Right?
09:36:40	4	A. You're down to Zimmer, the first break?	09:39:25	4	A. That's correct.
09:36:43	5	Q. Right.	09:39:25	5	Q. And if you indicated yes, that means the
09:36:48	6	A. Okay. You're not going through Vector	09:39:28	6	customer fell into one of those pools. One or both
09:36:51	7	though on page 3. Just down to Zimmer?	09:39:32	7	of those pools.
09:36:54	8	Q. That's correct.	09:39:33	8	A. That's correct.
09:36:56	9	A. Okay. I'm fine.	09:39:34	9	Q. And if you indicated no, that means the
09:36:59	10	Q. Is it correct that that group of customers	09:39:37	10	customer did not fall into either one of those
09:37:00	11	is the group of customers that you're continuing to	09:39:39	11	pools. Correct?
09:37:02	12	include in your measurement of infringer's profits?	09:39:40	12	A. That's correct.
09:37:06	13	A. Based on my prior comments, that's	09:39:49	13	Q. Okay. Could you refer to Footnote 8 to
09:37:07	14	correct. At this point in time.	09:39:52	14	Schedule 2020?
09:37:09	15	Q. Okay. And then the beginning on page	09:39:56	15	A. Yes. Yes.
09:37:11	16	3, under the heading "Adjustment to SAP's	09:40:00	16	Q. And Footnote 8 is a description of that
09:37:16	17	Infringer's Profits," there's a list of customers	09:40:03	17	same column we've just been talking about. Right?
09:37:18	18	from ACH Food to Vector Limited.	09:40:06	18	A. That's correct.
09:37:21	19	Do you see that?	09:40:06	19	Q. Okay. And there you've written that it's
09:37:23	20	A. Yes.	09:40:09	20	a reference to the expert report of Mr, Clarke.
09:37:23	21	Q. And am I correct that that is a list of	09:40:10	21	And then you say, I have accepted Mr. Clarke's
09:37:25	22	customers that you're now excluding entirely from	09:40:15	22	categorization of these customers into these
09:37:23	23	your measurement of alleged infringer's profits?	09:40:19	23	exclusion pools for purposes of preparing this
09:37:38	24	A. That's correct. For the reason detailed	09:40:22		
09:37:38	25	in Footnote 9.	09:40:22	24 25	calculation. Right? A. That's correct.
~~~~~			03.40.23	23	
		Page 678			Page 680
09:37:44	1	Q. Okay. So then going back to the first	09:40:23	1	Q. So you've accepted those pools to the
09:37:46	2	page of Exhibit 2020, let's I know we touched on	09:40:25	2	extent you've used them in this calculation.
09:37:57	3	this briefly Wednesday, so bear with me, because	09:40:28	3	Correct?
09:37:59	4	we're kind of repeating ourselves. But I want to	09:40:28	4	A. With my prior testimony this morning about
09:38:01	5	make sure we have a comprehensive understanding.	09:40:31	5	my analysis, that's correct.
09:38:03	6	So on the third column of Exhibit 2020,	09:40:32	6	Q. And then you go on to say: Nonetheless,
09:38:08	7	the heading is, Mr. Clarke Exclusion - Joined SAP	09:40:35	7	all of these customers took service from
09:38:12	8	Prior to TomorrowNow, and Product Extensions.	09:40:37	8	TomorrowNow, which has impacted their relationship
09:38:15	9	Right?	09:40:40	9	with Oracle.
09:38:16	10	A. That's correct.	09:40:40	10	Do you see that?
09:38:17	11	Q. And what that refers to is two of the	09:40:41	11	A. Yes.
09:38:20	12	pools that Mr. Clarke used in his analysis. Right?	09:40:42	12	Q. And what do you mean by that last
	13	A. He had a series of exclusion pools, and	09:40:43	13	sentence?
09:38:25		I'm looking at his appendices, and there were two	09:40:43	14	A. Well, at this point I've accepted these
09:38:29	14	. I			
	15	where I accept his exclusions under the logic that,	09:40:45	15	categories by Mr. Clarke. I've not gone back into
09:38:29		one, the customers were subject to a product an	09:40:45 09:40:50	15 16	all his detail and to look at all of his bases for
09:38:29 09:38:32	15				- · ·
09:38:29 09:38:32 09:38:40	15 16	one, the customers were subject to a product an	09:40:50	16	all his detail and to look at all of his bases for
09:38:29 09:38:32 09:38:40 09:38:46	15 16 17	one, the customers were subject to a product an existing product extension, and that's his Appendix E-2.6.  And then the grouping, decided to join SAP	09:40:50 09:40:53	16 17	all his detail and to look at all of his bases for categorizing the customers into those two pools.
09:38:29 09:38:32 09:38:40 09:38:46 09:38:50	15 16 17 18	one, the customers were subject to a product an existing product extension, and that's his Appendix E-2.6.	09:40:50 09:40:53 09:40:56	16 17 18	all his detail and to look at all of his bases for categorizing the customers into those two pools.  And so at Mr. Clarke's deposition, if he's asked
09:38:29 09:38:32 09:38:40 09:38:46 09:38:50 09:38:52	15 16 17 18 19	one, the customers were subject to a product an existing product extension, and that's his Appendix E-2.6.  And then the grouping, decided to join SAP	09:40:50 09:40:53 09:40:56 09:41:01	16 17 18 19	all his detail and to look at all of his bases for categorizing the customers into those two pools.  And so at Mr. Clarke's deposition, if he's asked certain questions that further illuminates those
09:38:29 09:38:32 09:38:40 09:38:46 09:38:50 09:38:52	15 16 17 18 19 20	one, the customers were subject to a product an existing product extension, and that's his Appendix E-2.6.  And then the grouping, decided to join SAP prior to joining TomorrowNow, and that's Appendix	09:40:50 09:40:53 09:40:56 09:41:01 09:41:04	16 17 18 19 20	all his detail and to look at all of his bases for categorizing the customers into those two pools.  And so at Mr. Clarke's deposition, if he's asked certain questions that further illuminates those issues or there's other documents, then I would be
09:38:29 09:38:32 09:38:40 09:38:46 09:38:50 09:38:52 09:38:55 09:38:58	15 16 17 18 19 20 21	one, the customers were subject to a product an existing product extension, and that's his Appendix E-2.6.  And then the grouping, decided to join SAP prior to joining TomorrowNow, and that's Appendix E-2.1.	09:40:50 09:40:53 09:40:56 09:41:01 09:41:04 09:41:06	16 17 18 19 20 21	all his detail and to look at all of his bases for categorizing the customers into those two pools.  And so at Mr. Clarke's deposition, if he's asked certain questions that further illuminates those issues or there's other documents, then I would be available to consider that and would want to
09:38:29 09:38:32 09:38:40 09:38:46 09:38:50 09:38:52 09:38:55 09:38:58	15 16 17 18 19 20 21	one, the customers were subject to a product an existing product extension, and that's his Appendix E-2.6.  And then the grouping, decided to join SAP prior to joining TomorrowNow, and that's Appendix E-2.1.  So I took those two groupings from	09:40:50 09:40:53 09:40:56 09:41:01 09:41:04 09:41:06 09:41:09	16 17 18 19 20 21	all his detail and to look at all of his bases for categorizing the customers into those two pools.  And so at Mr. Clarke's deposition, if he's asked certain questions that further illuminates those issues or there's other documents, then I would be available to consider that and would want to consider that.

		Page 681	•		Page 68
09:41:16	1	Q. Okay. So then let's go to the second	09:43:49	1	your measurement of infringer's profits. Is that
09:41:18	2	column on the first page of Exhibit 2020. Are you	09:43:52	2	right?
09:41:21	3	there?	09:43:54	3	A. That's correct.
09:41:23	4	And there you've got a column entitled	09:43:55	4	Q. And is it correct that had you not
09:41:25	5	"Safe Passage Customer." Do you see that?	09:43:57	5	characterized Amgen as a Safe Passage customer, you
09:41:27	6	A. Yes.	09:44:01	6	would have excluded revenue from Amgen from your
09:41:27	7	Q. And am I correct that what you have told	09:44:04	7	calculation of infringer's profits?
09:41:29	8	us is that if you thought the customer was a Safe	09:44:08	8	A. Under my approach, if Amgen was not a Safe
09:41:34	9	Passage customer, you put an X in that column. Is	09:44:12	9	Passage customer, as indicated on SAP's own
09:41:38	10	that right?	09:44:17	10	documents, which are in my work papers here, I
09:41:40	11	A. Well, it's not what I think. If the	09:44:20	11	would have under this approach excluded them from
09:41:42	12	records of SAP reflect that it's a Safe Passage	09:44:22	12	the infringer's profits.
09:41:44	13	customer. I've taken the actual records of SAP,	09:44:24	13	Q. And if there's no X in the column "Safe
09:41:48	. 14	I've traced to those records, and I've now	09:44:27	14	Passage Customer," that means you were unable to
09:41:50	15	summarized those for the court to say, this	09:44:31	15	conclude that they were a Safe Passage customer.
09:41:53	16	customer has been identified as a Safe Passage	09:44:33	. 16	Is that right?
09:41:55	. 17	customer by the records of SAP.	09:44:34	17	A. If there's no X there, then based on the
09:41:57	18	And so I've noted that in that column.	09:44:36	18	record I have, I could not conclude that, and so I
09:42:00	19	Q. And if those records are unreliable, then	09:44:40	19	left that blank, based on SAP's records. I
09:42:03	20	your schedule is unreliable. Correct?	09:44:43	20	couldn't find documentation of that.
09:42:05	21	A. Wait. So you're providing a tautology.	09:44:45	21	
09:42:03	22		09:44:45	21	Q. Okay. Staying with Exhibit 2020, the
		If I'm assuming the schedule is wrong, then my			fourth column, I think you testified, was the SAP
09:42:11	23	summary of the schedule is wrong.	09:44:52	23	revenue start date after the TomorrowNow start
09:42:13	24	Q. Thank you.	09:44:55	24	date. Is that right?
09:42:16	25	So let's take a look at Amgen, for	09:45:02	25	A. Yes. And that comes from my Schedule 42.1
		Page 682	***		Page 68
09:42:20	1	example. Am I correct that well, strike that.	09:45:05	1	from my original report submission and attachments.
09:42:25	2	So what you've done here is essentially an	09:45:09	2	Q. And essentially, what you're doing there
09:42:28	3	and all all and an arrival and a second and a			is, you're identified the date that the customer
		analysis where you've you've said, if a customer	09:45:11	3	, )
09:42:33	4	falls into one of the two pools that Mr. Clarke	09:45:11 09:45:13	3 4	started getting any support for any product from
09:42:33 09:42:37			•		
	4	falls into one of the two pools that Mr. Clarke	09:45:13	4	started getting any support for any product from
09:42:37	<b>4</b> 5	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they	09:45:13 09:45:16	4 5	started getting any support for any product from TomorrowNow. Right? That's one factor you look
09:42:37 09:42:42	4 5 6	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage	09:45:13 09:45:16 09:45:20	4 5 6	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct? A. That's correct.
09:42:37 09:42:42 09:42:44	4 5 6 7	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?	09:45:13 09:45:16 09:45:20 09:45:20	4 5 6 7	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct? A. That's correct. Q. And then you look to see if the same
09:42:37 09:42:42 09:42:44 09:42:48	4 5 6 7 8	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21	4 5 6 7 8	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct. Q. And then you look to see if the same customer is getting any revenue from any source
09:42:37 09:42:42 09:42:44 09:42:48 09:42:51	4 5 6 7 8 9	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing,	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24	4 5 6 7 8 9	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct. Q. And then you look to see if the same customer is getting any revenue from any source— I'm sorry, then you look to see whether the same
09:42:37 09:42:42 09:42:44 09:42:48 09:42:51 09:42:54	4 5 6 7 8 9 10	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30	4 5 6 7 8 9 10	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything
09:42:37 09:42:42 09:42:44 09:42:51 09:42:54 09:42:58 09:43:03	4 5 6 7 8 9 10 11	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35	4 5 6 7 8 9 10 11	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source—I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?
09:42:37 09:42:42 09:42:44 09:42:48 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09	4 5 6 7 8 9 10 11 12	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo,	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24 09:45:28 09:45:35 09:45:35	4 5 6 7 8 9 10 11 12	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source— I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity
09:42:37 09:42:42 09:42:44 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13	4 5 6 7 8 9 10 11 12 13	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of	09:45:13 09:45:16 09:45:20 09:45:21 09:45:21 09:45:24 09:45:30 09:45:35 09:45:37 09:45:39	4 5 6 7 8 9 10 11 12 13	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I
09:42:37 09:42:42 09:42:44 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13 09:43:15	4 5 6 7 8 9 10 11 12 13 14	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.	09:45:13 09:45:16 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:39 09:45:45	4 5 6 7 8 9 10 11 12 13 14 15	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also
09:42:37 09:42:42 09:42:44 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13 09:43:15	4 5 6 7 8 9 10 11 12 13 14	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.  MR. McDONELL: Okay. Move to strike	09:45:13 09:45:16 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:39 09:45:45 09:45:45	4 5 6 7 8 9 10 11 12 13 14 15	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source—I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also pick up that from that date on.
09:42:37 09:42:42 09:42:44 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13 09:43:15 09:43:16 09:43:17	4 5 6 7 8 9 10 11 12 13 14 15 16	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.  MR. McDONELL: Okay. Move to strike everything after the answer "yes" as nonresponsive.	09:45:13 09:45:16 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:39 09:45:45 09:45:48 09:45:51	4 5 6 7 8 9 10 11 12 13 14 15 16	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also pick up that from that date on.  Q. And then you calculate that revenue, and
09:42:37 09:42:42 09:42:48 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13 09:43:15 09:43:16 09:43:17 09:43:21	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.  MR. McDONELL: Okay. Move to strike everything after the answer "yes" as nonresponsive.  Q. All right. So that I understand it, for	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:39 09:45:45 09:45:45 09:45:51 09:45:51	4 5 6 7 8 9 10 11 12 13 14 15 16 17	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also pick up that from that date on.  Q. And then you calculate that revenue, and then in the fifth column of Exhibit 2020, which is
09:42:37 09:42:42 09:42:48 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13 09:43:15 09:43:16 09:43:17 09:43:21 09:43:21	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.  MR. McDONELL: Okay. Move to strike everything after the answer "yes" as nonresponsive.  Q. All right. So that I understand it, for example, with respect to Amgen, you've indicated	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:37 09:45:48 09:45:48 09:45:51 09:45:55 09:46:00	4 5 6 7 8 9 10 11 12 13 14 15 16 17	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source — I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also pick up that from that date on.  Q. And then you calculate that revenue, and then in the fifth column of Exhibit 2020, which is entitled "Mr. Clarke Ongoing Revenue Deduction,"
09:42:37 09:42:42 09:42:48 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13 09:43:15 09:43:16 09:43:17 09:43:21 09:43:23 09:43:23	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.  MR. McDONELL: Okay. Move to strike everything after the answer "yes" as nonresponsive.  Q. All right. So that I understand it, for example, with respect to Amgen, you've indicated yes, that Amgen falls into one of Mr. Clarke's	09:45:13 09:45:16 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:37 09:45:45 09:45:45 09:45:51 09:45:55 09:46:00 09:46:04	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source — I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also pick up that from that date on.  Q. And then you calculate that revenue, and then in the fifth column of Exhibit 2020, which is entitled "Mr. Clarke Ongoing Revenue Deduction," you make an adjustment. Right?
09:42:37 09:42:42 09:42:48 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13 09:43:15 09:43:16 09:43:17 09:43:21 09:43:23 09:43:28 09:43:28	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.  MR. McDONELL: Okay. Move to strike everything after the answer "yes" as nonresponsive.  Q. All right. So that I understand it, for example, with respect to Amgen, you've indicated yes, that Amgen falls into one of Mr. Clarke's exclusion pools. Correct?	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:39 09:45:45 09:45:55 09:45:55 09:45:55 09:46:00 09:46:04	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source—I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also pick up that from that date on.  Q. And then you calculate that revenue, and then in the fifth column of Exhibit 2020, which is entitled "Mr. Clarke Ongoing Revenue Deduction," you make an adjustment. Right?  A. That's correct.
09:42:37 09:42:42 09:42:44 09:42:51 09:42:54 09:42:58 09:42:58 09:43:03 09:43:09 09:43:15 09:43:15 09:43:17 09:43:21 09:43:23 09:43:23 09:43:28 09:43:32	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.  MR. McDONELL: Okay. Move to strike everything after the answer "yes" as nonresponsive.  Q. All right. So that I understand it, for example, with respect to Amgen, you've indicated yes, that Amgen falls into one of Mr. Clarke's exclusion pools. Correct?  A. Yes.	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:39 09:45:45 09:45:45 09:45:51 09:45:55 09:46:04 09:46:06 09:46:06	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source—I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also pick up that from that date on.  Q. And then you calculate that revenue, and then in the fifth column of Exhibit 2020, which is entitled "Mr. Clarke Ongoing Revenue Deduction," you make an adjustment. Right?  A. That's correct.  Q. And the adjustment there is, if you were
09:42:37 09:42:42 09:42:48 09:42:51 09:42:54 09:42:58 09:43:03 09:43:09 09:43:13 09:43:15 09:43:16 09:43:17 09:43:21 09:43:23 09:43:28 09:43:28	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	falls into one of the two pools that Mr. Clarke identified, and you've checked yes, but if they also were identified somewhere as a Safe Passage customer, then you've decided to measure infringer's profits for that customer. Correct?  A. Yes. Under the position that basically the customer has been subjected to the marketing, solicitations, conversations, and promotions of and technology, one, of SAP's promoting Oracle's technology, and so from that perspective, ergo, there's Safe Passage, they stay in the pool of infringer's profits.  MR. McDONELL: Okay. Move to strike everything after the answer "yes" as nonresponsive.  Q. All right. So that I understand it, for example, with respect to Amgen, you've indicated yes, that Amgen falls into one of Mr. Clarke's exclusion pools. Correct?	09:45:13 09:45:16 09:45:20 09:45:20 09:45:21 09:45:24 09:45:28 09:45:30 09:45:35 09:45:37 09:45:39 09:45:45 09:45:55 09:45:55 09:45:55 09:46:00 09:46:04	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	started getting any support for any product from TomorrowNow. Right? That's one factor you look at. Correct?  A. That's correct.  Q. And then you look to see if the same customer is getting any revenue from any source—I'm sorry, then you look to see whether the same customer is paying anything to SAP for anything thereafter. Correct?  A. They would have some commercial activity with SAP, of some license, consulting service. I looked at that, and if they're being paid, I also pick up that from that date on.  Q. And then you calculate that revenue, and then in the fifth column of Exhibit 2020, which is entitled "Mr. Clarke Ongoing Revenue Deduction," you make an adjustment. Right?  A. That's correct.

		Page 685			Page 687
09:46:20	1	Going to 2020, can you please explain what	09:48:48	1	A. That's correct.
09:46:23	2	you've done in the fifth column entitled,	09:48:48	2	Q. And you came up with \$577 million worth of
09:46:24	3	"Mr. Clarke Ongoing Revenue Deduction"?	09:48:55	3	revenue. Is that right?
09:46:27	4	A. Yes. What I've done there, so for the	09:48:57	4	A. That's correct.
09:46:30	5	customers in with the revenue in the fourth	09:48:57	.5	Q. And then just beneath that under the
09:46:35	6	column, I've then gone to the fifth column and	09:48:59	6	adjustment to SAP infringer's profits, this is the
09:46:37	7	said, okay, what is the level of activity that SAP	09:49:02	7	list of all of the customers that you're excluding
09:46:43	8	had commercially with that customer prior to the	09:49:04	8	altogether from the infringer's profits analysis.
09:46:49	9	TomorrowNow relationship?	09:49:06	9	Correct?
09:46:51	10	And under the proposition that the level	09:49:07	10	A. Based on my prior testimony, and where my
09:46:57	11	of business that had been gained prior to	09:49:12	11	analysis stands at this point, that is correct.
09:47:01	12	TomorrowNow's involvement with the customer will	09:49:15	12	Q. And so the total of that revenue that
09:47:05	13	provide an adjustment or a credit for that, saying	09:49:17	13	•
09:47:09	14	that basically the benefits to SAP commence at the			you're excluding appears on page 4 of 4 as \$177 million. Correct?
09:47:14	15	•	09:49:20	14	
09:47:14		time of the TomorrowNow relationship; and	09:49:25	15	A. The total, that's right. It's in that
	16	therefore, the prior revenue, we'll say, is	09:49:29	16	I believe it's the third column.
09:47:22	17	unrelated.	09:49:31	17	Q. And you've made an ongoing revenue
09:47:23	18	And so I take that baseline amount, which	09:49:34	18	deduction calculation related to that group of
09:47:26	19	I have accepted from Mr. Clarke's Appendix N-4, and	09:49:38	19	customers that you have excluded. Is that right?
09:47:29	20	I've identified those amounts, and then I deduct	09:49:40	20	A. Well, I've just summarized the
09:47:33	21	those amounts from the gross revenues identified	09:49:42	21	information. It's more informational because of
09:47:36	22	and come up with an adjusted figure.	09:49:45	22	our prior discussion. I at this point in time,
09:47:38	23	Q. Okay. So this first group of customers on	09:49:48	23	we're not considering those customers below the
09:47:41	24	Exhibit 2020 that goes from Abitibi to Zimmer, each	09:49:51	24	line, but I've provided that information for your
09:47:47	25	one of those customers either has an X in the "Safe	09:49:54	25	use.
		Page 686			Page 688
09:47:50	1	Passage" column or a no in the "Mr. Clarke	09:49:54	1	Q. But it's not really pertinent to your
09:47:55	2	Exclusion" column. Right?	09:49:56	2	calculation, because you've excluded the entire
09:47:58	3	A. In the first batch.	09:49:58	3	77 million. Is that right?
09:47:59	4	O. Yeah,	09:50:00	4	A. At this point in time, that's correct.
09:48:00	5	A. That's correct.	09:50:03	5	Q. Okay. Then let's look at the box on page
09:48:00	6	Q. And as a result, you've decided you were	09:50:06	6	4 of 4 in Exhibit 2020. I want to just make sure
09:48:03	7	going to measure infringer's profits for all of	09:50:00	7	we've got this clear.
09:48:05	8	those customers. Right?	09:50:13	8	So your ultimate calculation of
09:48:06	9	A. I have calculated infringer's profits for	09:50:14	9	infringer's profits is 577 million in SAP revenue,
09:48:08	10	all those customers	09:50:10	10	less a 50 percent profit margin, and resulting in
09:48:09	11	Q. And then you've taken the total gross	09:50:22	11	
09:48:11	12				alleged SAP infringer's profits of 288 million
09:48:11	13	revenues after the TomorrowNow start date for all of those customers. Correct?	09:50:30	12	dollars. Correct?
			09:50:33	13	A. That's correct.
09:48:17	14	A. That's correct.	09:50:37		
09:48:17	15	Q. And then you've made an adjustment for	09:50:41		
09:48:19	16	this ongoing revenue amount. Correct?	09:50:45		
09:48:24	17	A. That's right. Which really is the revenue	09:50:46		
09:48:25	18	that was basically representative of the prior	09:50:48		
09:48:29	19	relationship.	09:50:51		
09:48:30	20	Q. So the totals you then came up with are	09:50:54		
09:48:32	21	reflected on page 3, and the total revenue from	09:50:58		
09:48:35	22	that group of customers was \$722 million. Correct?	09:51:00		
09:48:39	23	A. The total approximately, that's correct.	09:51:02		
09:48:41	24	Q. And then you deducted \$145 million as the	09:51:13		
09:48:45	25	ongoing revenue deduction. Correct?	09:51:13		· ·

Page 797			Page 799
14:01:59	14:04:29		-
14:02:00	14:04:30		
14:02:03	14:04:32		
14:02:06	14:04:37		
14:02:07	14:04:41		
14:02:11	14:04:42		
14:02:15	14:04:45		
14:02:17	14:04:47		
14:02:19	14:04:48		
14:02:22	14:04:51		
14:02:25			
	14:04:54		
14:02:30	14:04:57		
14:02:35	14:05:00		
14:02:41	14:05:01		
14:02:42	14:05:03	15	Q. So in the example that you've cited here
14:02:42	14:05:05	16	at page 167, you're talking about a server with six
14:02:43	14:05:10	17	processors. Is that right?
14:02:45	14:05:12	18	A. Basically, my understanding, it would be a
14:02:51	14:05:15	19	UNIX server and, from my perspective, there's eight
14:02:53	14:05:19	20	processors, but the way the pricing works out for
14:02:57	14:05:22	21	Oracle is that they would price it at effectively
14:03:06	14:05:25	22	six processors. I think there was some issue about
14:03:08	14:05:29	23	load or capacity, so they used a factor of .75.
14:03:11	14:05:33	24	So basically, six effective processors for
14:03:12	14:05:37	25	that server that would then run on top of the
Page 798			Page 800
14:03:14	14:05:39	1	database.
14:03:15	14:05:39	2	Q. Okay. So in this example, I guess, that
14:03:18	14:05:42	3	you're referring to here on 167, you're assuming a
14:03:21	14:05:48	4	server with eight processors. And under Oracle's
14:03:23	14:05:52	5	pricing model, there's a .75 multiplier that
14:03:25	14:05:57	6	converts that into, in effect, six servers that are
14:03:27	14:06:01	7	then charged at 40,000 per server. Right?
14:03:30	14:06:04	8	A. I agree with that.
14:03:35	14:06:05	9	Q. And that's where you get the 240,000
14:03:37	14:06:09	10	license fee?
14:03:39	14:06:10	11	A. Yes, correct.
14:03:42	14:06:12	12	.Q. And there is an annual support fee of
14:03:45	14:06:14	13	\$8,800 for each of those six processors, or \$52,800
14:03:48	14:06:19	14	per customer per year. Correct?
14:03:51	14:06:22	15	A. That's correct.
14:03:56	14:06:22	16	Q. Okay. And again, to the best your
14:03:59	14:06:26	17	knowledge, that was an established pricing model in
14:04:00	14:06:31	18	January of 2005 for that Oracle product?
14:04:05	14:06:31	19	A. Well, my understanding is that
14:04:08	14:06:34	20	Mr. Allison, who was in charge of basically I
14:04:08	14:06:35	21	
14:04:09	14:06:41	22	think he's in global product services but you would basically configure the license for the
14:04:13	14:06:46	23	customer's needs. But the configuration that he
14:04:13	14:06:49	24	provided to me when I talked to him about this
14:04:24	14:06:52	25	-
	17.00:34	45	situation was this would be the configuration from

39 (Pages 797 to 800)

		Page 801			Page 80:
14:06:57	1	his perspective that would be subject to the	14:09:25		
14:07:00	2	license, based on because we're in a unique	14:09:29		
14:07:03	3	situation here, as he sized up how Oracle would do	14:09:31		
14:07:08	4	something that in this license that they don't	14:09:39		
14:07:10	5	do normally, he would configure it this way.	14:09:41		
14:07:14	6	And so he said this is the license	14:09:45		
14:07:15	7	arrangement that he felt would meet the terms of	14:09:53		
14:07:19	8	what TomorrowNow and SAP would need.	14:09:57		
14:07:21			14:09:59		
14:07:24			14:10:03		
14:07:28			14:10:09		
14:07:33			14:10:16		
14:07:34			14:10:21		
14:07:35			14:10:22		
14:07:39			14:10:24		·
14:07:41			14:10:28		
14:07:46			14:10:32		
14:07:48			14:10:34		
14:07:49			14:10:37		
14:07:50			14:10:39		
14:07:53			14:10:45	21	Q. See, that's what I'm trying to get at.
14:07:55		•	14:10:47	22	Is there a license comparable to the one
14:07:56			14:10:50	23	that you're suggesting in this case that actually
14:07:58		<u>.</u> .	14:10:55	24	existed in 2005?
14:08:01		·	14:10:58	25	MS. HOUSE: Objection. Vague.
***************************************		Page 802	**************************************		Page 804
14:08:03		5	14:11:02	1	THE WITNESS: If I understand the
14:08:05			14:11:03	2	question, what I'm pointing to you is that from the
14:08:07			14:11:06	3	Oracle December 2004 E-Business Global Price List,
14:08:12			14:11:09	4	I'm showing you the pricing that's available for
14:08:14			14:11:11	5	the Enterprise Edition license and support per
14:08:18	6	Q. Okay. So staying with January 2005, are	14:11:15	6	processor. And then for support, the 40,000 per
14:08:21	7	you aware of Oracle entering into licenses of the	14:11:19	7	processor, and the \$8,800 per processor. That's
14:08:26	8	Enterprise Edition Oracle database product on some	14:11:22	8	their standard pricing.
14:08:32	9	basis other than the one you've just described?	14:11:23	. 9	But what I don't want to be testifying to
14:08:35	10	You know, the per-processor pricing model.	14:11:25	10	is that — you and I are involved in looking at a
14:08:41	11	A. It's the other way around. What we're	14:11:28	11	license for something that's not within the normal
14:08:43	12	doing here is determining something that's	14:11:30	12	business operations of Oracle; that is, licensing a
14:08:46	13	different than what Oracle would allow customers to	14:11:35	13	database for the purposes that ended up in this
14:08:49	14	do. They have their enterprise license for the	14:11:38	14	issue of the copyrighted property being infringed.
14:08:52	15	database, it's very standard, it has significant	14:11:42	15	And they wouldn't have a license with someone of
14:08:57	16	restrictive terms of use. And what you can do with	14:11:44	16	this nature, but these are the most consistent
14:09:00	17	it, my understanding is, that's not available, in	14:11:47	17	terms we can use to try to figure out how that
14:09:03	18	this situation. This is we are configuring a	14:11:49	18	would have been priced in the situation.
14:09:05	19	license for something that Oracle doesn't normally	14:11:51		·
14:09:07	20	do. That's the exercise we're involved in.	14:11:55		
14:09:11	21	It's not a standard situation, is my	14:11:59		
	22	understanding.	14:12:02		
14:09:13					
14:09:13 14:09:13			14:12:05		
			14:12:05 14:12:08		

40 (Pages 801 to 804)

Page 805		Page 80
14:12:17	14:14:28	
14:12:18	14:14:31	
14:12:19	14:14:34	
14:12:20	14:14:38	
14:12:23	14:14:41	
14:12:28	14:14:45	
14:12:32	14:14:48	
14:12:35	14:14:52	
14:12:36	14:14:52	
14:12:37	14:14:57	
14:12:39	14:14:57	
14:12:42	14:15:01	
14:12:44		•
14:12:47	14:15:05	•
14:12:47	14:15:07	
14:12:49	14:15:14	16 O Olem Ca Ma All'er and a district
14:12:54	14:15:15	Q. Okay. So Mr. Allison gave you the model
14:12:57	14:15:18	that he suggested you use for valuing the database
	14:15:23	18 license in your analysis in this case. Right?
14:13:01	14:15:25	A. That's not correct.
14:13:03 14:13:05	14:15:27	Q. Where did you get it?
	14:15:29	A. What he he didn't give me the model.
14:13:06	14:15:31	He said, from his perspective, the most appropriate
14:13:08	14:15:34	way to price, what I'm setting out to do, is to
14:13:11	14:15:39	rely upon Oracle's December 2004 E-Business Global
14:13:14	14:15:42	25 Price List and take the terms from that, which are
Page 806		Page 80
14:13:17	14:15:46	laid out on page 165 of my report.
14:13:19	14:15:51	<ol> <li>Q. And then did he tell you how to modify</li> </ol>
14:13:21	14:15:54	3 those terms and suggest you apply those modified
14:13:23	14:15:58	4 terms in this case?
14:13:25	14:15:59	5 MS. HOUSE: Assumes facts not in evidence.
14:13:28	14:16:01	6 THE WITNESS: I don't believe that he told
14:13:32	14:16:02	7 me how to modify them. He said, basically, here
14:13:34	14:16:05	8 are the terms, and then we described the we
14:13:36	14:16:09	9 discussed the nature of the database use and then
14:13:39	14:16:12	10 the configuration of the UNIX servers.
14:13:42	14:16:16	And since he was familiar with that and
14:13:44	14:16:18	that's basically his business, I accepted the
14:13:48	14:16:21	structure of that database well, basically the
14:13:51	14:16:26	14 server configuration and how that would intercept
14:13:53	14:16:29	with the pricing of the database.
14:13:55	14:16:30	
14:13:58	14:16:32	
14:14:01	14:16:34	
14:14:03	14:16:37	
14:14:06	14:16:38	
14:14:09	14:16:41	
14:14:12	14:16:47	
14:14:16	14:16:49	
14:14:19	14:16:51	
14:14:26	14:16:53	

41 (Pages 805 to 808)

	_	Page 809		Page	811
14:16:56			14:19:09		
14:16:59			14:19:12		
14:17:02			14:19:16		
14:17:05			14:19:19		
14:17:07			14:19:23		
14:17:09			14:19:26		
14:17:10			14:19:30		
14:17:13			14:19:31		
14:17:17	9	Q. Okay. So that's what I'm trying to	14:19:35		
14:17:19	10	clarify.	14:19:40		
14:17:20	11	It's true, is it not, that there is no	14:19:43		
14:17:22	12	real-world license that you've seen or heard about	14:19:46		
14:17:26	13	for the Enterprise database product that was priced	14:19:49		
14:17:32	14	in the same way that you're pricing your	14:19:51		
14:17:35	15	hypothetical database license in this case?	14:19:53		
14:17:38	16	MS. HOUSE: Objection. Vague, misstates	14:19:54		
14:17:40	17	his testimony.	14:19:56		
14:17:41	18	THE WITNESS: That's not my understanding.	14:19:59		
14:17:42	19	Basically, I understand that the license is set up	14:20:01		
14:17:44	20	so that Oracle can work with its customers under	14:20:03		
14:17:46	21	its license terms, the terms of use, which	14:20:04		
14:17:48	22	obviously would have been breached in this case by	14:20:05		
14:17:51	23	TomorrowNow and SAP.	14:20:07		
14:17:53	24	So they take that structure, and that	14:20:10		
14:17:57	25	structure and this would be not unfamiliar to	14:20:13		
		Page 810		Page	812
14:17:59	1	you they price the database based on the	14:20:15	_	
14:18:03	2	capacity or power of the server. So the more	14:20:19		
14:18:06	3	processors that are being run in the system impacts	14:20:21		
14:18:10	4	the licensing of the database. And that's sort of	14:20:22		
14:18:12	5	that relationship there, and that's what I explored	14:20:24		
14:18:15	6	with Mr. Allison.	14:20:27		
14:18:18			14:20:30		
14:18:19			14:20:34		
14:18:22		, •	14:20:39		
14:18:25			14:20:42		
14:18:27			14:20:46		
14:18:27	12	Q. And would you agree with me that the	14:20:51		
14:18:30	13	Standard database product would be powerful enough	14:20:53		
14:18:34	14	to run TomorrowNow's operations?	14:20:55		
14:18:41	15	MS. HOUSE: Calls for speculation.	14:20:55		
14:18:41	16	THE WITNESS: I cannot address the	14:20:58		
14:18:42	17	particular capacity issues. I have been informed	14:21:01		
14:18:45	18	by Mr. Allison that one would have to price that	14:21:04		
14:18:48	19	under the Enterprise edition license, in these	14:21:05		
14:18:52	20	circumstances.	14:21:10		
14:18:54		4	14:21:14		
14:18:57			14:21:16		
14:18:59			14:21:19		
14:19:03		***************************************	14:21:21		
14:19:05			14:21:23		

42 (Pages 809 to 812)

Page 817	Page 819
14:26:13	14:28:13
14:26:15	14:28:17
14:26:17	14:28:20
14:26:19	14:28:22
14:26:21	14:28:24
14:26:24	14:28:24
14:26:26	·
14:26:27	14:28:33
	14:28:37
14:26:28	14:28:39
14:26:31	14:28:41
14:26:32	14:28:45
14:26:35	14:28:47
14:26:37	14:28:51
14:26:42	14:28:53
14:26:45	14:28:57
14:26:47	14:29:00
14:26:50	14:29:04
14:26:52	14:29:06
14:26:55	14:29:10
14:27:00	14:29:12
14:27:02	14:29:13
14:27:03	14:29:14
14:27:04	14:29:16
. 14:27:07	14:29:18
14:27:12	14:29:19
Page 818	Page 820
14:27:14	14:29:22
14:27:16	14:29:25
14:27:19	14:29:28
14:27:20	14:29:30
14:27:21	14:29:32
14:27:23	14:29:35
14:27:25	14:29:37
14:27:27	14:29:41
14:27:29	14:29:45
14:27:33	14:29:50
14:27:35	14:29:58
14:27:37	14:30:30
14:27:39	14:30:30
14:27:43	14:30:32
14:27:46	14:30:35
14:27:50	
14:27:50	14:30:38
14:27:51	14:31:02
14:27:54	14:31:06
	14:31:12
14:27:59	14:31:16
14:28:01	14:31:19
14:28:02	14:31:24
14:28:03	14:31:31
14:28:06	14:31:32 24 Q. And that's based on the model that
14:28:09	14:31:36 25 Mr. Allison gave to you. Correct?

44 (Pages 817 to 820)

	Page 821			Page	823
14:31:39 1	A. That's not what I've told you. I told you	14:37:02			
14:31:41 2 th	at he provided me the pricing of that database	14:37:04			
	cense, and then I worked through the calculations	14:37:04			
	nd the number of customers, the number of	14:37:08			
	ivironments, and did those calculations back at	14:37:11			
	chedule 44.	14:37:11			
14:31:55	***************************************	14:37:12			
14:31:58	90000000000000000000000000000000000000	14:37:14			
14:32:20	***************************************	14:37:16			
14:32:23		14:37:18			
14:32:28	POCAPOCA	14:37:20			
14:32:29	70000000000000000000000000000000000000	14:37:21			
14:32:32		14:37:21			
14:32:32		14:37:24			
14:32:35	***************************************				
14:32:39	77	14:37:29			
14:32:33	***************************************	14:37:32			
	**************************************	14:37:33			
14:32:45	***************************************	14:37:34			
14:32:47	***************************************	14:37:35			
14:32:51	**************************************	14:37:36			
14:32:53	***	14:37:43			
14:32:58	***	14:37:49			
14:33:01		14:37:51			
14:33:37	200	14:37:52			
14:33:39		14:37:54			
	Page 822			Page	824
14:33:44		14:37:56			
14:34:31	***************************************	14:37:56			
14:34:33	***************************************	14:37:57			
14:34:36		14:37:57			
14:34:41	***************************************	14:37:57			
14:34:46	Average Control of the Control of th	14:37:57	•		
14:34:49	4	14:37:57			
14:34:56		14:37:57			
14:34:57		14:38:16			
14:35:00	,	14:38:18			
14:35:02	***************************************	14:38:21			
14:35:03	Donate	14:38:23			
14:35:17	.	14:38:26			
14:35:17		14:38:32			
14:35:23		14:38:34			
14:35:29		14:38:36			
14:36:18		14:38:39			
14:36:42		14:38:42			
14:36:44	1	14:38:42			
14:36:47		14:38:44			
14:36:49					
14:36:52		14:38:49 14:38:52			
14:36:52					
14:36:59		14:38:55			
14:37:02		14:38:57			
14:37:02	An Low Able with	14:38:59			

45 (Pages 821 to 824)

12 .

1.7

#### 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

6 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.

HOLLY THUMAN, CSR

may 26,2010