

EXHIBIT H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND 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
STEPHEN CLARKE

VOLUME 2; PAGES 324 - 651

WEDNESDAY, JUNE 9, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-427119)

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10:31:07		10:33:26	
10:31:08		10:33:34	
10:31:09		10:33:36	
10:31:10	4 MR PICKETT: Q It's not based on the	10:33:38	
10:31:12	5 benchmark of some other 50 percent royalty rate, is	10:33:40	
10:31:15	6 it?	10:33:42	
10:31:16	7 MR McDONELL: Vague and ambiguous Asked	10:33:44	
10:31:17	8 and answered	10:33:46	
10:31:19	9 THE WITNESS: No I've never seen a	10:33:47	
10:31:20	10 royalty rate at 50 percent of revenue in any other	10:33:48	
10:31:23	11 case	10:33:50	
10:31:23		10:33:54	
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12:10:23 12:10:26 12:10:30 12:10:32 12:10:38 12:10:39 12:10:40 12:10:42 12:10:44 12:10:48 12:10:50 12:10:52 12:10:53 12:10:55 12:10:56 12:10:59 12:11:00 12:11:01 12:11:03 12:11:05 12:11:08 12:11:09 12:11:12 12:11:13 12:11:17	12:13:01 12:13:12 12:13:14 12:13:15 12:13:20 12:13:42 12:13:46 12:13:48 12:13:49 12:13:51 12:13:52 12:13:56 12 MR PICKETT: Q Is it your opinion that 12:13:57 13 Oracle's agreements with partners and resellers are 12:14:01 14 comparable to a hypothetical license with SAP? 12:14:05 15 MR McDONELL: Vague and ambiguous 12:14:08 16 Incomplete 12:14:12 17 THE WITNESS: I don't think they're 12:14:14 18 identical, but they have -- they have some value in 12:14:18 19 terms of a data point They are a data point that 12:14:25 20 shouldn't be ignored 12:14:31 21 MR PICKETT: Q None of the agreements 12:14:33 22 establish a market royalty rate Correct? 12:14:35 23 MR McDONELL: Vague and ambiguous, overly 12:14:36 24 broad 12:14:38 25 THE WITNESS: I don't think they establish

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12:14:40	1 a market royalty rate for the subject IP and the	12:17:08	
12:14:45	2 use that was made of it in this case.	12:17:13	
12:14:48	3 MR. PICKETT: Q. So what's their	12:17:16	
12:14:48	4 relevance if there's no established market rate?	12:17:22	
12:14:51	5 A. Well, these -- as I say, they're data	12:17:26	
12:14:54	6 points, and they have relevance to the extent that	12:17:31	
12:14:59	7 they form part of the base of the delta. If these	12:17:34	
12:15:04	8 customers -- I beg your pardon. If these companies	12:17:37	
12:15:07	9 are allowed by license with Oracle to provide	12:17:40	
12:15:10	10 support services for modest fees, and presumably	12:17:42	
12:15:17	11 doing everything legally, it would only be the	12:17:45	
12:15:21	12 delta that we referred to at length yesterday that	12:17:51	
12:15:25	13 would be at issue for the license in the	12:17:56	
12:15:28	14 TomorrowNow case.	12:17:58	
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12:15:48		12:18:05	
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12:16:36		12:18:51	
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12:16:40		12:18:57	
12:16:41		12:19:02	
12:16:42		12:19:05	
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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 [] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: June 17th, 2010
Holly Thuman
HOLLY THUMAN, CSR