

EXHIBIT 22

ORACLE USA, INC., ET AL

V.

SAP AG, ET AL

CASE NO. 07-CV-01658

SUPPLEMENTAL EXPERT REPORT OF PAUL K. MEYER

TM FINANCIAL FORENSICS, LLC.

FEBRUARY 23, 2010



PAUL K. MEYER

TEXT REMOVED - NOT RELEVANT TO MOTION

166. First, the timing of the license would be critical to both parties: Oracle had just agreed to pay multiple billions of dollars to acquire PeopleSoft; SAP wanted to take advantage of the fear, uncertainty and doubt of PeopleSoft customers at that time, and knew that it had to strike quickly, which the TomorrowNow acquisition allowed them to do.

167. Second, Oracle would consider and extract a price for the financial impact on Oracle of licensing to a competitor that has abundant resources to directly compete with Oracle in providing a level of PeopleSoft and J.D. Edwards service that has little, to no other, competition.

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252. SAP is Oracle's most significant competitor in enterprise applications and, under the contemplated database license, would be using Oracle's database software to compete for Oracle's application support business at critical junctures in the two companies' histories (at the time of Oracle's acquisition of PeopleSoft and Siebel, and at the time of SAP's acquisition of TomorrowNow and launch of support service for Oracle applications, as is described elsewhere in my report). However, the effects of Defendants' actions on Oracle's PeopleSoft, J.D. Edwards, and Siebel customer bases have already been taken into account in my quantification of the value of use of licenses for those applications. Thus, I have limited SAP's value of use of the copyrighted database materials in suit to the measure of the lost license fees that SAP would have had to pay Oracle had it purchased a license (similar to a separate OLSA) for each relevant customer for which TomorrowNow provided application maintenance services using an Oracle database. For

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purposes of determining SAP's value of use of the copyrighted database materials in suit, I have applied Oracle's pricing for its standard OLSA licensing terms assuming a particular configuration of TomorrowNow hardware. I have not included any fees for options or upgrades that may have been needed by TomorrowNow for each customer in order to emulate its customers' environments. These additional fees could be considerable. For example, some options have additional license fees of 25% - 50% of the enterprise edition license fees. I understand that for an Oracle Standard (Full-Use) license, Oracle would price the database license using its Enterprise Edition, utilizing the count of processors (or cores on each processor, for multi-core processors) on the servers with Oracle database installed or running.⁵²⁶ In pricing this license, I have considered the following specifications:

- Oracle's list price per processor for the basic Enterprise Edition license and support was consistent between 2004 and 2008 at \$40,000/processor for the license and \$8,800/processor per year for support.⁵²⁷ Therefore, I have used \$40,000 per customer per processor as the one-time perpetual license fee and \$8,800 per processor per customer as the support fee per year.

⁵²⁶ Discussion with Richard Allison. Oracle Software Investment Guide, TN-OR 01765697-752, at 709 and 714. For purposes of this analysis, a "processor" refers to either the CPU itself for single-core chips or each core, for multi-core processors.

⁵²⁷ Oracle December 2004 E-Business Global Price List, ORCL00704411-433, at 412; Oracle September 2006 E-Business Global Price List, ORCL00704381-410, at 382; US\$ Pricing Oracle Database filename: ePL071708 JDE Localisable Price lists.xls, ORCL00213686. Oracle's price lists also show options including Enterprise Edition Options such as Real Application Clusters, Partitioning and OLAP. Enterprise Edition Options are priced in addition to the license fees and the listed options range from an additional \$10,000 to \$20,000 per processor per option. See Oracle December 2004 E-Business Global Price List, ORCL00704411-433, at 412.

- TomorrowNow installed and ran Oracle database software on numerous servers that had 2 to 4 processors which were single to quad-core, or effectively 2 to 16 processors per server when considering Oracle's pricing practices, which considers each core for a multi-core processor.⁵²⁸ The server with the majority of TomorrowNow local environments running on Oracle database was purchased in January 2005 and was a 4 processor Unix server with dual-cores, or effectively 8 processors, based upon which Oracle would price a license for 6 processors (Oracle applies a .75 processor factor to Unix processors, so $8 * .75 = 6$ processors priced in the license).⁵²⁹
- Per discussion with Richard Allison, I understand that Oracle would have priced the license based on the largest server configuration. Therefore, I have assumed that Oracle would

⁵²⁸ Defendant TomorrowNow, Inc.'s Eighth Amended And Supplemental Response to Plaintiff Oracle Corporation's First Set of Interrogatories (Set One), December 4, 2009, Interrogatory No. 11 pgs. 42-55. (Identifying TomorrowNow servers with Oracle database-related files). Defendant's First Supplemental Responses And Objections To Plaintiffs' Fifth Set of Interrogatories To Defendant TomorrowNow, inc. and Fourth Set of Interrogatories to Defendants SAP AG and SAP America, Inc., December 4, 2009, pgs. 7-32. (Identifying TomorrowNow servers with Oracle database-related files and confirming that customer local environments accessed Oracle database files). Email from Joshua Fuchs (Jones Day) to Nitin Jindal (Bingham McCutchen), February 19, 2010 identifying the number of processors, number of cores and the date of purchase for each server identified in interrogatories as having an Oracle database installation. *See also*, October 28, 2005 email from George Lester to Jennifer Mrak (SAP), TN-OR01020812-818 at 812 (G. Nelson Exhibit 1831), indicating that, "I have been trying to procure a license for Oracle Standard Edition on two of our internal servers, which each have 4 CPU's."; Email from Alex La Mar (TomorrowNow) to Greg Nelson (TomorrowNow) on March 20, 2006, TN-OR01040829-34 at 829 (G. Nelson Exhibit 1832), indicating "we need to obtain Oracle Standard Edition for a 4 CPU machine running AIX and a 4 CPU machine running Windows."

⁵²⁹Email from Joshua Fuchs (Jones Day) to Nitin Jindal (Bingham McCutchen), February 19, 2010 identifying the number of processors, number of cores and the date of purchase for each server identified in interrogatories as having an Oracle database installation. TomorrowNow PeopleSoft Growth Projections, TN-OR02171843-848, at 844, identifying Quad Processor Unix Database Server as the location for the majority of PeopleSoft environments running on Oracle Database software); Discussion with Richard Allison; Oracle Software Investment Guide, TN-OR 01765697-752, at 709 and 714 (identifying the Unix processor factor as .75).

require SAP to purchase no less than a license that covered each customer accessing Oracle database priced at 6 processors per license. A 6 processor Enterprise Edition Oracle database license would be priced at 6 processors times the license fee of \$40,000 per customer, or \$240,000 per customer, and an annual support fee of \$8,800 times 6 processors, or \$52,800 per year per customer.⁵³⁰

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⁵³⁰ Oracle Software Investment Guide, TN-OR 01765697-752, at 713-714. I am not aware of any technological reason related to Oracle's database or applications to explain why TomorrowNow built environments on servers with different processor configurations.

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