Oracle Corporation et al v. SAP AG et al
Doc. 860 Att. 10

EXHIBIT J

Dockets.Justia.com

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

NORM ACKERMANN

FRIDAY, DECEMBER 4, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-424593)

INDEX

INDEX OF EXAMINATIONS

EXAMINATION BY:	PAGE
MR. COWAN	5
MR. POLITO	40
MR. COWAN	53

--o0o--

Deposition of NORM ACKERMANN, taken by the Defendants, at JONES DAY, 555 California Street, 26th Floor, San Francisco, California 94104, commencing at 2:43 p.m., on FRIDAY, DECEMBER 4, 2009, before me, HOLLY THUMAN, CSR, RMR, CRR.

--o0o--

APPEARANCES

FOR THE PLAINTIFFS:
BINGHAM MCCUTCHEN
Three Embarcadero Center
San Francisco, California 94111
By: JOHN POLITO, Attorney at Law

FOR THE DEFENDANTS:
JONES DAY
717 Texas, Suite 3300
Houston, Texas 77002-2712
By: SCOTT W. COWAN, Attorney at Law

JONES DAY
555 California Street, 26th Floor
San Francisco, California 94104
By: ILHAM HOSSEINI, Attorney at Law

ALSO PRESENT: TED HOPPE, Videographer.

SAN FRANCISCO, CALIFORNIA; FRIDAY, DECEMBER 4, 2009

2:43 p.m.

--o0o--

PROCEEDINGS

THE VIDEO OPERATOR: Here begins Volume 1, Videotape No. 1 in the deposition of Norm Ackermann in the matter of Oracle versus SAP AG in the United States District Court, Northern District of California, Oakland Division.

Today's date is December 4th, 2009; the time on the video monitor, 2:43.

The video operator today is Ted Hoppe of Merrill Legal Solutions, San Francisco California. This videotaped deposition is taking place at the law offices of Jones Day, 555 California Street, in San Francisco.

Counsel, could you please voice identify yourselves and state whom you represent.

MR. COWAN: Scott Cowan, with Jones Day, for Defendants. And with me is Ilham Hosseini, also of Jones Day, the San Francisco office.

MR. POLITO: John Polito for Oracle.

THE VIDEO OPERATOR: The court reporter today is Holly Thuman of Merrill Legal Solutions.

Holly, could you please swear the witness in.

--o0o--

NORM ACKERMANN,

called as a witness, who, having been first duly sworn, was examined and testified as follows:

---oOo---

EXAMINATION BY MR. COWAN

MR. COWAN: Q. Good afternoon, Mr. Ackermann. How are you?

A. Fine. How are you?

Q. Fine. Can you state your full name for the record, please?

A. My full name is Norman Paul Ackermann.

Q. And what is your title?

A. Senior Programmer.

Q. For what company?

A. For Oracle Corporation.

Q. How long have you had that title?

A. I really couldn't tell you for sure. Probably 5 years or so.

Q. How long -- you came up through the PeopleSoft organization?

A. That's correct.

Q. When did you join PeopleSoft?

Page 6

14:44:52 A. In December of 1995.
14:44:56 Q. And what did you do before then?
14:44:58 A. I worked for Canadian Airlines in British Columbia as a programmer there.
14:45:02 Q. Did you work with Ms. Fowler when she was at Canadian Airlines as well?
14:45:06 A. I did.
14:45:07 Q. How long have you and Ms. Fowler worked together?
14:45:08 A. Since, give or take, September of 1985.
14:45:12 Q. Have you had your deposition taken before?
14:45:23 A. No.
14:45:25 Q. There's a couple rules of the road that you need to understand.
14:45:27 The most important one, this afternoon, is that you and I can't talk at the same time. Okay?
14:45:29 A. Fair enough.
14:45:30 Q. It makes it easy on -- easier on the court reporter, and certainly makes for a cleaner video record as well. Okay?
14:45:33 A. Sounds good to me.
14:45:35 Q. I will talk clearly, slowly, and plainly, and ask that you do so as well.
14:45:37 I also ask that if you do not understand my question, that you ask me to rephrase it. Okay?
14:45:40
14:45:43
14:45:45
14:45:46
14:45:49
14:45:52
14:45:57

Page 7

14:46:03 A. Fair enough.
14:46:06 Q. And like I said, I think we can get through this possibly without taking a break. If we can get through it in the next hour, we will do so if at all possible. Okay?
14:46:10 A. Sounds perfect.
14:46:13 Q. But if you need a break or anyone in the room needs a break, please let me know.
14:46:14 The -- I'm going to ask you whether you have communicated with a number of people or people within a number of companies. And when I use the word "communication," I'm referring to it in its broadest sense, which would include email communication, telephone communication, face-to-face communication, any form of exchange of information at all. Okay?
14:46:19 A. Okay.
14:46:21 Q. Have you ever had any communication with a person known as Francoise Tourniaire?
14:46:26 A. Not that I'm aware of.
14:46:31 Q. Okay. The company that individual is from is FT Works. Have you ever heard of that company?
14:46:35 A. No, I don't believe so.
14:46:39 Q. Okay. Then I assume it's safe to assume you've never had any communication with anyone at that company that you're aware of?
14:46:43
14:46:45
14:46:49
14:46:53
14:46:54
14:46:55
14:46:59
14:47:04
14:47:05
14:47:07
14:47:14
14:47:14
14:47:16

Page 8

14:47:20 A. Not that I'm aware of.
14:47:21 Q. Okay. Have you ever spoken to a gentleman known as Douglas Gary Lichtman?
14:47:23 A. I believe so, yes.
14:47:27 Q. Okay. When?
14:47:28 A. I couldn't tell you the exact date, but it was -- there was a phone call with Mr. Lichtman.
14:47:32 Q. Okay. Just one?
14:47:34 A. Yes.
14:47:38 Q. How long did it last?
14:47:41 A. I have no idea.
14:47:42 Q. Was it this year?
14:47:48 A. Yes, it was this year.
14:47:50 Q. Okay. Did you have any other communication with Mr. Lichtman besides the one phone call that you believe occurred this year?
14:47:51 A. No, I don't believe so.
14:47:52 Q. Okay. Have you ever had any communication with anyone -- with a gentleman by the name of Daniel Levy, or Levy?
14:47:57 A. Not that I'm aware of.
14:48:00 Q. He is with a company known as Advanced Analytical Consulting Group.
14:48:02 Have you ever had any communication that you're aware of with anyone at Advanced Analytical Consulting Group?
14:48:03
14:48:06
14:48:09
14:48:14
14:48:20
14:48:22
14:48:26

Page 9

14:48:28 A. Again, not that I'm aware of.
14:48:31 Q. Have you ever had any communication with a gentleman by the name of Paul C. Pinto?
14:48:34 A. Not that I'm aware of.
14:48:35 Q. Have you ever had any communication with anyone at an entity known as Sylvan VI, or Sylvan VI, Incorporated?
14:48:41 A. No, not that I'm aware of.
14:48:43 Q. Have you ever had any communication with Kevin Mandia?
14:48:44 A. Yes.
14:48:49 Q. Have you ever had any communication with any other person at Kevin Mandia's company known as Mandiant?
14:48:51 A. Yes.
14:48:53 Q. Who?
14:48:55 A. Unfortunately, I'm very bad with names, and the only name that I can remember is a Pepe. But I don't remember any of the other names at the meeting.
14:48:57 Q. What about a guy by the name of Chris Price? Does that ring a bell?
14:48:59 A. It rings a bell, but I couldn't guarantee
14:49:00
14:49:04
14:49:05
14:49:06
14:49:11
14:49:14
14:49:22
14:49:25
14:49:25
14:49:27
14:49:29

Page 42

becomes that all of them would be the same.
MR. COWAN: Objection. Nonresponsive.
MR. POLITO: Q. With respect to adding fields to a database, would you think it likely that two developers independently adding fields to a database, to existing tables in a database, would create the same field names?
MR. COWAN: Objection. Form, and leading.
THE WITNESS: It would be unlikely, yes.
MR. POLITO: Q. Same question for adding tables to a database. Let me restate that.
Do you think it would be likely that two developers adding a table to a database as part of a PeopleSoft fix would add tables with the same name?
MR. COWAN: Objection. Form, and leading.
THE WITNESS: It would be very unlikely.
MR. POLITO: Q. And as you make multiple types of choices, say a variable name and a field or a field and a table, would it again become even less likely to have multiple choices be the same choices?
MR. COWAN: Objection. Form and leading.
THE WITNESS: That's correct.
MR. POLITO: Q. You referenced if-then-else versus some other programming structures.

Page 43

Were you talking about even though two programmers might implement the same functionality, those two programmers might implement it differently?
MR. COWAN: Objection. Form, and leading.
THE WITNESS: That's correct.
MR. POLITO: Q. Specifically with respect to PeopleSoft tax and regulatory updates, is it your opinion that two individuals implementing a PeopleSoft fix might implement that fix in different ways?
MR. COWAN: Objection. Form, and leading.
THE WITNESS: It is very likely.
MR. POLITO: Q. More specifically, do you think it is unlikely that two individuals who develop the same fix independently would come to the same solution?
MR. COWAN: Objection. Form, and leading.
THE WITNESS: The end result may be the same, but internally the method of getting there would most likely be different.
MR. POLITO: Q. Internally, was that a reference to how the code looks?
MR. COWAN: Objection. Form, and leading.
THE WITNESS: That's correct.

Page 44

MR. POLITO: Q. Do developers have leeway in the choice of use of brackets, white space, and comments in their code in the PeopleSoft environment?
A. Yes.
Q. How many tax and regulatory updates have you worked on as a PeopleSoft or Oracle employee?
A. Give or take, between 75 and a hundred.
Q. Would you say that you were quite familiar with the ways in which PeopleSoft fixes have been created over the years for Payroll North America?
MR. COWAN: Objection. Form, and leading.
THE WITNESS: Yes, I would.
MR. POLITO: Q. You made a reference in a response to one of Mr. Cowan's questions about error messages. Do you recall that?
A. I do.
Q. Is it the case that the text in an error message is chosen freely by a developer?
MR. COWAN: Objection. Form, and leading.
THE WITNESS: Yes, it is.
MR. POLITO: Q. Do you think it would be unlikely if two developers independently created the same error message when separately implementing the same fix?

Page 45

MR. COWAN: Objection. Form, and leading.
THE WITNESS: It would be unlikely.
MR. POLITO: Q. Let me remind you not to talk at the same time.
A. Sorry.
MR. COWAN: You need to give me a little -- a little crack there.
THE WITNESS: Okay.
MR. POLITO: Q. Do you remember in response to one of Mr. Cowan's questions that you referenced something you called headend programs?
A. Yes.
Q. What is a headend program?
A. Within COBOL, there -- a single functional program can consist of a headend program, which is the program that's actually called at the very start. And that program will subsequently call multiple subprograms, each of which can do a specific function, whether it's earnings retrieval, balance retrievals, a calculation. But the headend program is the one program that starts off the whole process.
Q. In your mind, is there a hierarchy of importance of the different COBOL programs in Payroll North America?

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 stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript [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 December 9, 2009.

HOLLY THUMAN, CSR No. 6834