

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
KEVIN MANDIA

VOLUME 1; PAGES 1 - 290

THURSDAY, MAY 20, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-427382)

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09:12:45

09:14:30 1 Q. How many times?
09:14:33 2 A. I've testified four different times at
09:14:39 3 trial.
09:14:41 4 Q. And can you identify now that you're
09:14:42 5 looking on your CV which of those cases those are?
09:14:50 6 A. In Appendix B, under Criminal Case
09:14:55 7 Experience, I testified twice for United States
09:15:02 8 versus Bret McDanel. I testified on two occasions
09:15:08 9 in United States verse Chad Grant.
09:15:16 10 Q. So two separate cases in which you
09:15:18 11 testified two times each?
09:15:21 12 A. That is correct.
09:15:22 13 Q. Okay. And what was the McDanel case
09:15:24 14 about? What was the nature of your testimony in
09:15:28 15 that case?
09:15:35 16 A. The case was a US 1030 type violation or
09:15:48 17 allegation.
09:15:52 18 Q. Can you, for the court and jury, explain
09:15:55 19 that in lay terms, where they can understand that,
09:15:57 20 please? The court certainly would understand it;
09:16:00 21 the jury may not.
09:16:03 22 A. Sure. I'm trying to remember the exact
09:16:05 23 test I did. But in general, what the case was
09:16:09 24 about is, the allegation was Bret McDanel caused
09:16:15 25 harm to a computer by sending a lot of different

09:12:48 1 A The first time, in regards to the case
09:12:51 2 type?
09:12:53 3 Q Just -- yeah, just give me a little detail
09:12:56 4 about the nature of when you were deposed the first
09:12:59 5 time
09:12:59 6 A I was deposed the first time in
09:13:02 7 approximately I believe the year was 2006 The
09:13:08 8 nature of the case was to determine whether someone
09:13:14 9 had intentionally wiped files or not
09:13:19 10 Q Okay And do you remember where that
09:13:20 11 proceeding was filed?
09:13:23 12 A I believe the proceeding was filed in
09:13:26 13 Dayton, Ohio
09:13:28 14 Q Okay And is that case one of the cases
09:13:30 15 that's listed on your CV?
09:13:33 16 A I believe so
09:13:36 17 Q Okay Can you look and check, please?
09:14:00 18 A In Appendix B, I'm looking at the civil
09:14:04 19 case experience, and the case number identified in
09:14:10 20 the Dayton Power and Light Incorporated verse Peter
09:14:15 21 H Forster, Muhlenkamp and Stephen Koziar That is
09:14:21 22 the case where I was deposed
09:14:24 23 Q Okay Have you ever testified at trial
09:14:28 24 before?
09:14:29 25 A I have

09:16:18 1 emails through a certain type of email server using
09:16:22 2 that server as a remailer. So to the best of my
09:16:26 3 recollection, my involvement with United States
09:16:28 4 verse Bret McDanel was to identify how he
09:16:35 5 interacted with a machine and how he accessed it,
09:16:40 6 looked at the log files to determine did he cause
09:16:42 7 damage or not.
09:16:46 8 Q. Okay. And the other criminal case, what's
09:16:50 9 the last name of the defendant in that case?
09:16:53 10 A. Grant.
09:16:54 11 Q. Grant. And in the Grant case, what was
09:16:56 12 that case about?
09:17:03 13 And let me be more specific. What was the
09:17:05 14 nature of your testimony in that case?
09:17:06 15 A. To the best of my recollection, in United
09:17:09 16 States verse Grant, I testified concerning how he
09:17:13 17 accessed computers from the standpoint of how did
09:17:18 18 he get to the information that he took. So it
09:17:23 19 was -- in loose terms, as we describe it in my
09:17:28 20 field, it was a hacking case.
09:17:31 21 Q. Okay. Would you describe the McDanel case
09:17:35 22 as a hacking case as well?
09:17:39 23 A. Yes, I would.
09:17:48 24 Q. And could the deposition testimony you
09:17:50 25 provided in the Dayton case, could that also be

Page 10		Page 12	
09:17:53	1	described as a hacking case as well?	09:20:33
09:17:55	2	A. It was not.	09:20:42
09:17:57	3	Q. Okay. How would you describe that case,	09:20:45
09:18:02	4	in simple terms, like you've described the McDanel	09:20:47
09:18:07	5	and Grant cases as hacking cases?	09:20:49
09:18:12	6	A. I would describe the Dayton cases, the	09:20:52
09:18:13	7	task was to perform computer forensics. I only	09:20:53
09:18:17	8	recall doing it on one system. It may have been on	09:20:55
09:18:20	9	others. And the purpose was to determine if	09:20:58
09:18:23	10	somebody had intentionally deleted materials or	09:21:00
09:18:25	11	not.	09:21:01
09:18:27	12	So it was more in-depth inspection of a	09:21:05
09:18:31	13	couple of machines.	09:21:07
09:18:32	14	Q. Okay. Other than these five instances of	09:21:10
09:18:37	15	testimony that you've just testified to, have you	09:21:17
09:18:39	16	ever testified in any other proceeding for any	09:21:18
09:18:43	17	other purpose?	09:21:20
09:18:44	18	A. I've testified -- I don't know the	09:21:22
09:18:48	19	technical term, but I was in front of a tribunal in	09:21:23
09:18:54	20	November of last year.	09:21:36
09:18:55	21	Q. For what purpose?	09:21:40
09:18:56	22	A. It was a case being tried at -- in a	09:21:43
09:19:00	23	tribunal form, I believe at the -- it was at the	09:21:45
09:19:04	24	World Bank organization.	09:21:48
09:19:07	25	Q. Okay. And were you an expert in that	09:21:53
Page 11		Page 13	
09:19:10	1	case?	09:21:55
09:19:12	2	A. I believe I was designated as an expert in	09:21:57
09:19:15	3	that case.	09:21:59
09:19:16	4	Q. But what entity?	09:22:03
09:19:17	5	A. I think that I was considered one, but I	09:22:04
09:19:20	6	don't know what entity would have deemed me that	09:22:06
09:19:25	7	expert.	09:22:08
09:19:25	8	Q. What was the nature of your testimony?	09:22:10
09:19:30	9	A. In that case, we reviewed media to	09:22:11
09:19:34	10	determine if documents were spurious or not to the	09:22:13
09:19:39	11	extent we looked at time/date stamps to see if	09:22:15
09:19:43	12	there was time/date stamp manipulation of files.	09:22:17
09:19:47	13	Q. And what type of media did you review?	09:22:20
09:19:50	14	A. In that case, it was floppy disks.	09:22:23
09:19:56	15	Q. And when you say spurious, to see if they	09:22:28
09:19:59	16	were authentic or not?	09:22:35
09:20:05	17	A. That is correct.	09:22:38
09:20:06	18	Q. Is that experience listed on your CV?	09:22:45
09:20:08	19	A. It is.	09:22:47
09:20:09	20	Q. Okay. And can you point me where it is?	09:22:50
09:20:15	21	A. In Appendix B.	09:22:52
09:20:17	22	Q. Okay.	09:22:55
09:20:18	23	A. Under Civil Case Experience, there's the	09:22:57
09:20:23	24	second case listed, says, Libananco Holdings	09:23:00
09:20:27	25	Company, Limited versus Republic of Turkey.	09:23:01

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13:45:25 1 First Addressed in Supplemental Report" is an item
13:45:30 2 called 'Merrill Legal Solutions index of the
13:45:32 3 contents of the CD binders "
13:45:35 4 Do you see that?
13:45:36 5 A Yes, I do
13:45:37 6 Q And you see beside that, in your report,
13:45:39 7 you have a date of production listed as November
13:45:42 8 24, 2009?
13:45:44 9 A Yes I see that
13:45:53 10 Q Were you aware that TomorrowNow offered to
13:45:55 11 make those binders available for inspection very
13:45:58 12 early on in the case?
13:45:59 13 A I am not aware of that
13:46:00 14 Q Were you aware that Oracle's counsel
13:46:02 15 actually inspected some of those binders in
13:46:04 16 November 2008?
13:46:06 17 A As I sit here today, I don't recall being
13:46:08 18 aware of that
13:46:09 19 Q Okay Were you aware that Oracle had
13:46:10 20 additional access through a more thorough
13:46:13 21 inspection on May 28th and 29th of 2009 of those
13:46:18 22 same binders?
13:46:19 23 A As I sit here today, I'm not aware of
13:46:21 24 that
13:46:50 25 Q What did you do to prepare for your

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13:46:52 1 deposition here today?
13:46:55 2 A. One of the things I did is, I spoke with
13:46:58 3 my employees.
13:47:00 4 Q. Okay. And who were they?
13:47:05 5 A. I spoke with -- one of the employees I
13:47:07 6 spoke with was Chris Price.
13:47:09 7 Q. Okay. Who else?
13:47:13 8 A. Ernie Liu.
13:47:17 9 Q. Who else?
13:47:24 10 A. Dave Damato, spelled, last name,
13:47:29 11 D-A-M-A-T-O.
13:47:32 12 Q. Okay. Anyone else?
13:47:39 13 A. Ryan Kazanciyan.
13:47:42 14 Q. You've already spelled his last name. So
13:47:44 15 who else?
13:47:55 16 A. Matt Pepe.
13:47:56 17 Q. How do you spell that?
13:47:58 18 A. Spelled P-E-P-E, first name M-A-T-T.
13:48:05 19 Q. Okay. Anyone else?
13:48:10 20 A. In response to your question, it's -- it's
13:48:15 21 hard to tell -- you said in my preparation for
13:48:18 22 today.
13:48:19 23 Q. Correct.
13:48:19 24 A. So I replace "today" with "deposition,"
13:48:22 25 and it's hard to tell who I met with solely for

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13:48:24 1 deposition, so I'm being overly inclusive in my
13:48:27 2 answer.
13:48:27 3 Q. Fair enough.
13:48:28 4 A. Okay. There are some other folks, if we
13:48:31 5 include an overly inclusive answer.
13:48:33 6 Q. But you feel comfortable that you met
13:48:35 7 with -- and we'll just use first names for ease.
13:48:39 8 Is that fine with you?
13:48:40 9 A. Yes.
13:48:41 10 Q. You feel comfortable that you met with
13:48:43 11 Chris, Ernie, Dave, Ryan, and Matt, for the
13:48:47 12 purposes of preparing for your deposition.
13:48:49 13 Correct?
13:48:49 14 A. That is correct.
13:48:50 15 Q. Okay. And so what are these other
13:48:51 16 extended list of people that you don't know whether
13:48:54 17 it was expressly for the deposition or it could
13:48:56 18 have been for some of the other things you've been
13:48:58 19 doing the past few weeks?
13:49:00 20 A. Right. Mat Oldham, spelled M-A-T, last
13:49:06 21 name O-L-D-H-A-M.
13:49:18 22 Q. Anyone else?
13:49:23 23 A. I've spoken to other Mandiant employees,
13:49:25 24 but I think those would be the ones that I could
13:49:27 25 tie the conversations to in some manner or regard

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13:49:31	1 to depo prep	13:52:11	
13:49:33	2 Q Okay Do each of these individuals have a	13:52:14	
13:49:35	3 particular area of expertise that you rely on,	13:52:17	
13:49:41	4 separate and apart from the others?	13:52:21	
13:49:48	5 MR LEWIS: Objection Vague	13:52:25	
13:49:50	6 MR COWAN: Q Do you understand my	13:52:29	
13:49:51	7 question?	13:52:31	
13:49:52	8 A I think I do Could you --	13:52:38	
13:49:54	9 MR COWAN: Q Yeah I'm asking about	13:52:40	
13:49:57	10 the subject matter knowledge of each of these	13:52:44	
13:49:59	11 individuals	13:52:49	
13:50:00	12 Do you turn to each of these individuals	13:52:52	
13:50:02	13 for different things with respect to the subject	13:52:54	
13:50:05	14 matter with which you consult them, or on which you	13:52:56	
13:50:10	15 consult them?	13:52:59	
13:50:11	16 A I use different Mandiant employees for	13:53:03	
13:50:13	17 different things	13:53:06	
13:50:13	18 Q Okay What do you use Mr Price for?	13:53:07	
13:50:23	19 A Mr Price was the -- my right-hand man,	13:53:14	
13:50:26	20 basically, in this case	13:53:15	
13:50:28	21 Q Okay	13:53:18	
13:50:28	22 A Project manager, and other tasks as	13:53:23	
13:50:32	23 needed	13:53:23	
13:50:33	24 Q What do you use Mr Liu for?	13:53:29	
13:50:40	25 A Mr Liu did some of the tasks that I	13:53:34	
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13:51:04		13:54:01	
13:51:10		13:54:02	
13:51:18		13:54:04	
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13:51:36		13:54:30	
13:51:40		13:54:36	
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13:51:48		13:54:46	
13:51:52		13:54:50	
13:51:55		13:55:02	
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13:52:10		13:55:09	

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14:01:26 1 of the work in regards to running queries against
14:01:29 2 restored databases. And I'm still keeping my
14:01:36 3 answers in general --
14:01:37 4 Q. Yeah, that's all --
14:01:38 5 A. -- without going back to a table of
14:01:40 6 contents or doing anything on a lower level. If we
14:01:43 7 want more detail answers, I'd be happy to go
14:01:45 8 through and provide those.
14:01:46 9 Q. No, I'm just asking, in general, what do
14:01:48 10 you recall the general types of tasks these
14:01:52 11 individuals did. And I understand you to be
14:01:56 12 answering me to the best of your recollection as
14:01:57 13 you sit here today. Right?
14:01:59 14 A. Yes, sir.
14:01:59 15 Q. Okay. Aside from these six individuals
14:02:08 16 that we just talked about at Mandiant, who else
14:02:12 17 worked directly with you in forming -- in doing
14:02:16 18 work that forms the basis for your conclusions and
14:02:18 19 opinions contained in your report?
14:02:20 20 MR. LEWIS: Objection. Compound, and
14:02:22 21 vague.
14:02:23 22 THE WITNESS: Would you mind rephrasing
14:02:24 23 that question, Counselor?
14:02:25 24 MR. COWAN: Q. Yes. Aside from the six
14:02:27 25 individuals that we've just talked about who are

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14:02:29 1 Mandiant employees, who else at Mandiant worked
14:02:33 2 directly with you on any tasks that formed the
14:02:36 3 basis for your conclusions and opinions contained
14:02:39 4 in your report?
14:02:44 5 A. The people that I relied on to assist me
14:02:47 6 in this case, in addition to those six people
14:02:50 7 mentioned already, would include Jon Gross, spelled
14:02:58 8 J-O-N, G-R-O-S-S.
14:03:06 9 Q. Okay. Anyone else?
14:03:21 10 And I'm not talking about secretaries or
14:03:22 11 administrative staff or -- you know, the
14:03:25 12 lower-level technical folks that may have had some
14:03:28 13 secondary support function. I'm talking about
14:03:31 14 people that were involved in doing any review --
14:03:34 15 substantive review and analysis of any materials or
14:03:37 16 assisting you in preparing any portion of your
14:03:39 17 report.
14:03:41 18 A. And I'm doing my best to recall, over the
14:03:43 19 course of 3 years of time, the different people at
14:03:47 20 Mandiant that assisted in some capacity on this
14:03:50 21 case. And I'm speaking in very generalities.
14:03:53 22 Q. Yep.
14:03:54 23 A. And I'm not diving into their entire CV.
14:03:59 24 Another name would be, in some capacity,
14:04:05 25 Bret Padres, B-R-E-T, space, P-A-D R-E-S.

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14:04:21 1 Marshall Heilman To the best of my
14:04:27 2 knowledge, his last named is H-E-I-L-M-A-N There
14:04:32 3 may be two Ls, there may be two Ns
14:04:36 4 Q Okay
14:04:39 5 A Jason Luttgens First name J-A-S-O-N,
14:04:47 6 last name L-U-T-T-G-E-N-S
14:05:00 7 And I believe this is a list that reflects
14:05:04 8 the folks that contributed that I can recall right
14:05:08 9 now
14:05:09 10 Q Okay
14:05:10 11 A There may be more
14:05:12 12 Q What did Mr Gross do relative to the
14:05:16 13 opinions and conclusions contained in your report?
14:05:20 14 A The work that Mr Gross did was --
14:05:24 15 permeates a couple portions of our report
14:05:29 16 Q Which are?
14:05:55 17 A Mr Gross was involved in doing some of
14:05:58 18 the analysis of, as we refer to it, JDE downloads
14:06:05 19 in regards to our Appendix M, as well as in Section
14:06:12 20 2 of our report
14:06:16 21 Mr Gross was also involved in some
14:06:19 22 capacity to HRMS fix analysis, and potentially
14:06:24 23 providing some figures He may not have But I
14:06:27 24 believe he was involved in that regard
14:06:35 25 Q Anything else?

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14:30:48 1 MR. COWAN: Q. My question is, are you
14:30:49 2 going to rely in any way on it in forming any
14:30:53 3 opinions or conclusions for Mr. Gray's report?
14:30:55 4 MR. LEWIS: Same objections.
14:30:57 5 THE WITNESS: Everything on here is
14:30:58 6 nothing more than my interpretations as I read
14:31:01 7 through Gray's report making notes. I'm relying on
14:31:04 8 the contents of Gray's reports, and my opinions on
14:31:09 9 them at that time.
14:31:13 10 MR. COWAN: Q. So is that a no, you're
14:31:14 11 not going to rely on it?
14:31:16 12 MR. LEWIS: Objection. Vague and
14:31:16 13 ambiguous and compound.
14:31:17 14 THE WITNESS: To the extent that I'm
14:31:18 15 relying on them to organize my thoughts for this
14:31:20 16 deposition, that's primarily their use.
14:31:38 17 MR. COWAN: Q. All right. We might come
14:31:40 18 back to that later.
14:31:46 19 My understanding is that you've got a
14:31:48 20 Master of Science in -- forensic science from
14:31:52 21 George Washington University. Is that correct?
14:31:54 22 A. Yes, it is.
14:31:55 23 Q. You also have a Bachelor of Science in
14:31:57 24 computer science from Lafayette College in
14:31:59 25 Louisiana. Correct?

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14:32:00 1 A. It is from Lafayette College,
14:32:04 2 Pennsylvania.
14:32:05 3 Q. Oh, Pennsylvania, I'm sorry.
14:32:09 4 What do you consider your areas --
14:32:11 5 A. I didn't answer that question, sorry.
14:32:13 6 Q. Okay, I just --
14:32:14 7 A. I just was correcting.
14:32:15 8 Q. I'll rephrase it correctly, then.
14:32:17 9 A. Okay.
14:32:17 10 Q. You also have a Bachelor of Science in
14:32:19 11 computer science from Lafayette College in
14:32:21 12 Pennsylvania. Correct?
14:32:23 13 A. Yes, I do. You said Bachelor of Science?
14:32:26 14 Q. I did.
14:32:28 15 A. Yes, I do have a Bachelor of Science in
14:32:30 16 computer science.
14:32:31 17 Q. What do you consider your areas of
14:32:34 18 expertise to be, sir?
14:32:39 19 A. Broadly, my area of expertise are in
14:32:41 20 computer forensics, and responding to computer
14:32:44 21 security breaches is kind of a niche expertise that
14:32:47 22 we've developed over the years.
14:32:51 23 When I say "we," I probably should have
14:32:53 24 said "me," since you asked about me.
14:32:55 25 Q. Yeah, right now all I want to know is

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14:32:57 1 about you.
14:32:57 2 A. Okay.
14:32:58 3 Q. And you responded broadly, your area of
14:33:01 4 expertise is in computer forensics --
14:33:03 5 A. Correct.
14:33:04 6 Q. -- and responding to computer security
14:33:06 7 breaches. Correct?
14:33:07 8 A. That is correct.
14:33:08 9 Q. Do you consider -- do you hold yourself
14:33:10 10 out as an expert in any other area?
14:33:15 11 A. There might be niches under those two
14:33:17 12 categories that may arise that I might hold myself
14:33:22 13 out as an expert to be.
14:33:23 14 Q. What would those niches be?
14:33:27 15 A. Very focused things, such as if somebody
14:33:30 16 asked was I an expert to determine if files had
14:33:32 17 been deleted from a hard drive, yes, I do think I'm
14:33:36 18 an expert in those regards, and I would hold myself
14:33:38 19 out as an expert in those regards.
14:33:41 20 If somebody asks, are you an expert in
14:33:43 21 reviewing log files, for the most part, absolutely,
14:33:47 22 I am an expert in reviewing log files for many
14:33:51 23 different types of applications.
14:33:52 24 If somebody asked can you review a
14:33:54 25 database -- and a lot of these aren't listed -- but

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14:33:57 1 if I was to review a database for tampering, I
14:34:01 2 might, depending on the circumstances, hold myself
14:34:04 3 out as an expert to assist in those regards.
14:34:09 4 Q. Anything else?
14:34:10 5 A. Yes.
14:34:13 6 Q. And you're referring to what right now?
14:34:24 7 A. I'm referring to Appendix -- I guess it's
14:34:27 8 Attachment B, just some of the things that I've
14:34:30 9 been hired on in the past.
14:34:32 10 Q. That's your --
14:34:33 11 A. Where I held myself out to be an expert
14:34:35 12 on, in small categories that I would consider
14:34:39 13 grouped into, for the most part, computer
14:34:43 14 forensics.
14:34:47 15 Q. And it's Attachment B to your report?
14:34:49 16 A. That is correct.
14:34:51 17 Q. All right.
14:34:55 18 A. I would hold myself out as an expert to
14:34:57 19 review a single computer to determine if files were
14:35:01 20 ever printed from it, if a hard drive was wiped, if
14:35:05 21 the computer ever accessed certain websites or
14:35:09 22 email accounts, if there was intentional deletion,
14:35:14 23 and other things such as the review of external
14:35:17 24 media, whether it's been attached or not, whether a
14:35:21 25 system had been compromised or not.

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14:35:25 1 I consider all of these largely grouped
14:35:27 2 under a broader category of computer forensics.
14:35:30 3 Q. Okay. Anything else other than what
14:35:32 4 you've testified to that you consider yourself to
14:35:35 5 be an expert in?
14:35:41 6 A. I think in general, it's computer
14:35:43 7 forensics, and in responding to computers' security
14:35:47 8 breaches.
14:35:49 9 And I think that the term "expert" has a
14:35:52 10 legal connotation to it, so I'm using that term not
14:35:56 11 legally in your question. I'm interpreting it as,
14:36:00 12 I consider myself good at these, and I would hold
14:36:03 13 myself out as being hired at these and being good
14:36:06 14 at them, meaning better than the average layperson.
14:36:09 15 I would add to that, I -- in general,
14:36:12 16 high-technology investigations that involve the
14:36:15 17 review of log files, computer systems, various
14:36:19 18 types of systems, I may hold myself out as an
14:36:23 19 expert as well to investigate different types of
14:36:25 20 high-tech crimes in and above a computer intrusion.
14:36:31 21 Q. Anything else besides what you've already
14:36:33 22 testified to that you consider yourself to be an
14:36:35 23 expert in and that you would hold yourself out to
14:36:37 24 the public as an expert in?
14:36:40 25 A. I think we'll leave it at the generalities

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14:36:43 1 I've expressed already
14:36:44 2 Q Okay You're not a lawyer Right?
14:36:46 3 A I am not a lawyer
14:36:47 4 Q You do not have any specialized legal
14:36:50 5 training in copyright law, do you?
14:36:51 6 A I do not have specialized training in
14:36:54 7 copyright law
14:36:55 8 Q You do not hold yourself out to be a
14:36:57 9 copyright expert, do you?
14:36:59 10 A I do not hold myself out to be a copyright
14:37:01 11 expert
14:37:03 12 Q Before this matter, have you ever
14:37:05 13 undertaken any source code comparison to determine
14:37:08 14 if an alleged copyright violation took place?
14:37:17 15 A Pausing, because I felt like there was two
14:37:20 16 questions there
14:37:22 17 Q Well, it's intended to be combined
14:37:25 18 A Okay
14:37:25 19 Q You've already testified you've done
14:37:27 20 source code comparison
14:37:28 21 A Right
14:37:28 22 Q My question is, have you ever done source
14:37:30 23 code comparison to determine if an alleged
14:37:33 24 copyright violation took place?
14:37:35 25 A Not to the best of my knowledge

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14:37:40 1 Q. Have you ever analyzed source code to
14:37:41 2 determine if it includes protected expression for
14:37:44 3 the purpose of a copyright analysis?
14:37:47 4 A. I have not analyzed source code to
14:37:50 5 determine if it contains protected expression in
14:37:53 6 regards to copyright analysis.
14:37:55 7 Q. Have you ever analyzed source code to
14:37:57 8 determine whether any alleged copied portion of
14:38:01 9 that source code was only de minimus for the
14:38:03 10 purpose of copyright analysis?
14:38:07 11 A. I have not -- you said the word
14:38:10 12 "de minimus" to me. That's another legal term.
14:38:14 13 I have not done what you just asked.
14:38:16 14 Q. Okay. Have you ever performed any
14:38:19 15 analysis to determine if computer source code is a
14:38:21 16 derivative work for the purposes of copyright
14:38:24 17 analysis?
14:38:30 18 A. I have not -- again, I hear the phrase
14:38:33 19 "derivative work," and that's a legal term, and I
14:38:36 20 have an assumption in my report based on derivative
14:38:40 21 works.
14:38:41 22 I think on that one, it -- do you have a
14:38:44 23 definition of "derivative work" that you could
14:38:46 24 provide me?
14:38:47 25 Q. Do you understand what "derivative work"

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14:38:49	1 means in the context of a copyright analysis, sir?	14:41:29
14:38:53	2 A I do not have expert -- I do not know the	14:41:30
14:38:56	3 legal definition of "derivative work" in regards to	14:41:32
14:39:00	4 a copyright infringement case I think I have a	14:41:35
14:39:03	5 layperson understanding of it, but I don't know the	14:41:39
14:39:06	6 legal definition	14:41:41
14:39:13	7 Q Are you familiar with an analysis or test	14:41:44
14:39:16	8 known as the abstract filtration comparison test?	14:41:46
14:39:21	9 A I am not familiar with that test	14:41:48
14:39:26	10 Q To your knowledge, are -- any of the	14:41:51
14:39:27	11 individuals at Mandiant who assisted you in	14:41:52
14:39:32	12 preparation of your report have any expertise in	14:41:54
14:39:40	13 doing the source code comparison to determine if an	14:41:56
14:39:43	14 alleged copyright violation took place?	14:42:01
14:39:45	15 A I am unaware -- first, we weren't tasked	14:42:03
14:39:48	16 to do what you're insinuating here, that we were	14:42:06
14:39:52	17 tasked to do a protected expression analysis in	14:42:08
14:39:55	18 this case We're in fact not tasked at Mandiant to	14:42:11
14:39:59	19 do so	14:42:14
14:39:59	20 But in answer to your question, since we	14:42:31
14:40:01	21 weren't tasked, I'm unaware if any of my employees	14:42:33
14:40:05	22 have done something like this in their past or not	14:42:39
14:40:19	23 Q Are you aware of whether any Mandiant	14:42:47
14:40:21	24 employee has ever analyzed source code to determine	14:42:49
14:40:24	25 if it includes protected expression for the	14:42:50
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14:40:27		14:42:52
14:40:31		14:42:53
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14:40:57		14:43:40
14:40:57		14:43:42
14:40:59		14:43:46
14:41:00		14:43:48
14:41:01		14:43:51
14:41:02		14:43:52
14:41:05		14:43:54
14:41:06		14:43:57
14:41:09		14:43:59
14:41:13		14:44:01
14:41:15		14:44:11
14:41:20		14:44:15
14:41:23		14:44:17

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14:44:19 14:44:25 14:44:31 14:44:35 14:44:38 14:44:40 14:44:48 14:44:49 14:44:52 14:44:55 14:44:58 14:45:02 14:45:04 14:45:07 14:45:09 14:45:16 14:45:29 14:45:31 14:45:34 14:45:43 14:45:46 14:45:49 14:45:53 14:45:54 14:45:57	14:47:01 14:47:05 14:47:07 14:47:10 14:47:14 14:47:16 14:47:18 14:47:20 14:47:22 14:47:25 14:47:26 14:47:28 14:47:29 14:47:31 14:47:31 14:47:33 14:47:36 14:47:38 14:47:40 14:47:42 14:47:47 14:47:49 14:47:51 14:47:54 14:47:56
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14:46:02 14:46:04 14:46:06 14:46:08 14:46:11 14:46:13 14:46:15 14:46:17 14:46:20 14:46:23 14:46:25 14:46:28 14:46:32 14:46:35 14:46:38 14:46:41 14:46:43 14:46:45 14:46:48 14:46:48 14:46:51 14:46:55 14:46:56 14:46:58 14:47:00	14:47:59 1 Q. Okay. You didn't do it personally? 14:48:02 2 A. I did not do it personally. 14:48:14 3 Q. Have you ever designed or developed any 14:48:15 4 enterprise software? 14:48:24 5 A. The question was bifurcated with designed 14:48:27 6 or developed? 14:48:28 7 Q. I'll ask is unbifurcated. 14:48:32 8 A. Thank you. 14:48:32 9 Q. Have you ever designed 14:48:34 10 enterprise software? 14:48:36 11 A. From the standpoint of writing 14:48:38 12 requirements, features, I believe I have, to the 14:48:41 13 standpoint Mandiant's making a product where we 14:48:45 14 described what we're trying to do is automate the 14:48:48 15 things we've been doing for 10, 15 years as 14:48:50 16 consultants into a product, that sort of thing. 14:48:52 17 And it is an enterprise product in regards to it 14:48:55 18 being deployed across hundreds of thousands of 14:48:57 19 machines to be able to give you breadth and scope. 14:49:00 20 I have designed that product to some level of 14:49:05 21 technical detail. 14:49:07 22 Q. What type of product -- what family of 14:49:10 23 enterprise software would that fall into, the 14:49:13 24 product you just described? 14:49:14 25 A. I think it falls --

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14:49:15 1 MR. LEWIS: Objection. Vague. Go ahead.
14:49:17 2 THE WITNESS: I would have to tell you how
14:49:19 3 I define "family."
14:49:20 4 MR. COWAN: Q. Sure.
14:49:21 5 A. I think it's best to state it, it's --
14:49:26 6 Mandiant Intelligent Response, our product, is
14:49:31 7 referred to as enterprise software by us, because
14:49:34 8 it touches all nodes on your enterprise. In that
14:49:39 9 regards, it's enterprise-wide software.
14:49:44 10 Q. And what does the software do?
14:49:48 11 A. It's software to help you collect,
14:49:50 12 analyze, and respond to different types of events
14:49:53 13 where you need to collect electronic evidence,
14:49:56 14 interpret the electronic evidence, and report on
14:49:59 15 that electronic evidence.
14:50:00 16 Q. So it's forensic software, basically?
14:50:03 17 A. Largely to an extent, yes, that's where
14:50:05 18 we're going.
14:50:07 19 Q. Besides that software that you just
14:50:09 20 described that Mandiant is developing, have you
14:50:13 21 ever designed any other enterprise software?
14:50:20 22 A. I have not designed something that I
14:50:23 23 define as enterprise software.
14:50:26 24 Q. And besides the Mandiant product that you
14:50:28 25 just described, have you ever developed any

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14:50:30 1 enterprise software?
14:50:32 2 A. I have not worked as a developer for
14:50:37 3 any -- and as I describe enterprise software in
14:50:40 4 your terms, in regards to this case, it's software
14:50:44 5 that impacts an enterprise-wide of employees.
14:50:48 6 Q. Correct. The kind --
14:50:49 7 A. Yeah.
14:50:49 8 Q. -- of enterprise software that your
14:50:51 9 client, Oracle, sells.
14:50:53 10 A. Right. I have not worked as a developer
14:50:57 11 in regards to developing enterprise application
14:51:00 12 software.
14:51:09 13 Q. Have you ever written COBOL code?
14:51:12 14 A. I have written some COBOL code.
14:51:16 15 Q. For what application?
14:51:19 16 A. I cannot recall the application.
14:51:22 17 Q. How long ago was it it?
14:51:26 18 A. It was in the fall of 1991.
14:51:31 19 Q. Since fall of 1991, can you recall ever
14:51:34 20 writing any COBOL code?
14:51:39 21 A. I do not recall writing any COBOL code
14:51:42 22 since the fall of 1991.
14:51:44 23 Q. Have you ever written any SQR code?
14:51:50 24 A. To the best of my recollection, I have not
14:51:52 25 written any SQR code.

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14:51:56 1 Q. Have you ever written any SQR code?
14:52:00 2 A. To the best of my recollection, I have
14:52:02 3 never written or have not written any SQR code.
14:52:06 4 Q. Have you ever written any Dot C code?
14:52:10 5 A. I have written Dot C code.
14:52:13 6 Q. Which is the C programming language?
14:52:15 7 A. C programming language.
14:52:18 8 Q. In what application?
14:52:22 9 A. My authorship of C programs were primarily
14:52:28 10 for specialized investigations, meaning one-off
14:52:32 11 tools not for applications.
14:52:42 12 Q. How long ago was that?
14:52:54 13 A. I would estimate -- I can only estimate,
14:53:00 14 first off.
14:53:01 15 Q. Please estimate.
14:53:03 16 A. 8 years ago.
14:53:04 17 Q. Okay.
14:53:06 18 A. Was the last time that I recall writing a
14:53:12 19 Dot C program.
14:53:13 20 Q. Okay. Have you ever written any code for
14:53:15 21 the Siebel programs?
14:53:17 22 A. I have not written any code for Siebel.
14:53:30 23 Q. You have never written any PeopleSoft code
14:53:32 24 either, have you?
14:53:34 25 A. I have not written any code for

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14:53:36 1 PeopleSoft
14:53:37 2 Q Have you ever written any code for
14:53:40 3 JD Edwards?
14:53:40 4 A I have not written any code for
14:53:42 5 JD Edwards
14:53:43 6 MR COWAN: Let's take a break
14:53:44 7 THE VIDEO OPERATOR: Going off the record,
14:53:45 8 the time now is 2:53 This also will be the
14:53:49 9 conclusion of Tape 3 of Mandia
15:16:16 10 (Recess from 2:54 p m to 3:18 p m)
15:18:04 11 (Deposition Exhibit 2075 was marked for
15:18:12 12 identification)
15:18:35 13 THE VIDEO OPERATOR: The time now is 3:18
15:18:37 14 We are back on the videotape record This also
15:18:39 15 marks the beginning of Tape 4 Please proceed
15:18:45 16 MR COWAN: Q Mr Mandia, while we were
15:18:46 17 on break, I marked as Exhibit 2075 the notes that
15:18:51 18 you took during the last round of questioning I
15:18:54 19 had
15:18:57 20 Is that what's depicted there by
15:18:58 21 Exhibit 2075?
15:19:01 22 A That is correct
15:19:01 23 Q Okay Thank you
15:19:05 24 Has any other party ever moved to strike
15:19:10 25 or limit your testimony in any case that you're

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15:40:59 1 in my report.
15:41:00 2 Q. Okay. Did you review any software license
15:41:18 3 for any purpose in formulating the opinions and
15:41:20 4 conclusions that are contained in your report?
15:41:25 5 A. I did not. I think when you state
15:41:29 6 license, you mean the actual software license
15:41:31 7 document?
15:41:32 8 Q. Correct.
15:41:32 9 A. Okay. I did not review any specific
15:41:37 10 documents that I would call software license
15:41:40 11 documents.
15:41:45 12 I want to be clear. I did receive
15:41:47 13 information that was called licensing information.
15:41:53 14 Q. Right. But you didn't review, to your
15:41:55 15 knowledge, any of the actual software licenses
15:41:58 16 themselves. Correct?
15:41:59 17 A. It was not part of my task to look at
15:42:01 18 licensing information.
15:42:02 19 Q. Okay.
15:42:15 20 A. I want to clarify that answer. Except
15:42:17 21 for -- I said it kind of generically.
15:42:21 22 It was not my task to look at licenses.
15:42:24 23 However, I did look at what people gave me as
15:42:28 24 license information; in other words, for Merck, OC
15:42:34 25 Technologies, Yazaki, SPX, and a few other, I

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15:42:37 1 believe five total clients, I was provided license
15:42:41 2 informing. I think on the record it read
15:42:44 3 ambiguous. I wanted to clarify.
15:42:46 4 Q. Right. But my question was, you did not
15:42:49 5 review to your knowledge any of the actual software
15:42:51 6 licenses themselves. Correct?
15:42:53 7 A. I did not review the actual software
15:42:55 8 licenses.
15:43:04 9 Q. Did you review any of the actual terms of
15:43:07 10 use language on any Oracle websites for the
15:43:12 11 purposes of formulating any opinions and
15:43:15 12 conclusions that are contained in your report?
15:43:17 13 A. I was asked to make an assumption on terms
15:43:19 14 of use, and I did not personally assess and
15:43:26 15 interpret, from a legal perspective, the terms of
15:43:29 16 use on the Oracle side.
15:43:30 17 Q. Did you actually at any point ever review
15:43:33 18 the actual language of the actual terms of use
15:43:37 19 that's on any of the Oracle websites for the
15:43:40 20 purpose of formulating any opinions or conclusions
15:43:43 21 that are contained in your report?
15:43:47 22 A. Would you repeat that, please?
15:43:51 23 Q. Yeah. Did you actually at any point ever
15:43:52 24 review the actual language of the terms of use that
15:43:58 25 are contained on any of the Oracle websites for the

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15:44:01	1	purposes of formulating any opinions or conclusions	15:46:31
15:44:04	2	that are contained in your report?	15:46:43
15:44:09	3	MR LEWIS: Objection Compound	15:46:56
15:44:20	4	THE WITNESS: I did not review the actual	15:46:59
15:44:23	5	terms of use I made an assumption that I call a	15:47:03
15:44:28	6	"terms of use" assumption in my report and applied	15:47:04
15:44:31	7	that assumption	15:47:04
15:44:32	8	I think the reason I hesitated in	15:47:07
15:44:34	9	answering that question is, I did read it in order	15:47:11
15:44:37	10	to -- I didn't -- I understood my assumption as	15:47:16
15:44:41	11	worded in my record, but I did read them from a	15:47:17
15:44:45	12	layperson's perspective to understand them, to	15:47:19
15:44:47	13	understand that my assumptions seemed reasonable to	15:47:22
15:44:49	14	me	15:47:28
15:44:50	15	MR COWAN: Q You read the assumptions	15:47:29
15:44:51	16	Correct?	15:47:31
15:44:51	17	A I read the assumptions	15:47:33
15:44:53	18	Q But you didn't read the actual terms of	15:47:37
15:44:55	19	use of Oracle's websites Right?	15:47:42
15:44:57	20	A No That's what I was stating, to be	15:47:43
15:45:00	21	clear I did also read the terms of use, in	15:47:44
15:45:04	22	regards to just reading them to understand them	15:47:47
15:45:07	23	Q But you have no conclusions or opinions	15:47:48
15:45:09	24	regarding the applicability of the terms of use of	15:47:51
15:45:14	25	any Oracle website, as far as your conclusions and	15:47:55
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15:45:19			15:48:00
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15:45:35			15:48:20
15:45:36			15:48:21
15:45:38			15:48:22
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15:46:00			15:48:45
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15:46:08			15:48:50
15:46:10			15:48:51
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16:17:02 1 So with that definition, does your
16:17:04 2 objection still stand?
16:17:06 3 MR LEWIS: I think still it's vague
16:17:08 4 It's not clear to what extent participation --
16:17:11 5 you're talking about in front of the computer, or
16:17:14 6 amalgamated information from other sources I'm
16:17:16 7 sorry, Mr Cowan I didn't mean to interrupt you
16:17:20 8 MR COWAN: No problem Fair enough
16:17:22 9 I'll give you that running objection
16:17:24 10 Q But I want you to take my definition: Did
16:17:27 11 you compose by yourself the words that are on the
16:17:29 12 page in your record listed by each definition? So
16:17:32 13 when I say, did you author it, that's what I'm
16:17:34 14 asking Okay?
16:17:35 15 A Okay
16:17:36 16 Q And I'm giving your counsel the running
16:17:37 17 objection on that definition
16:17:38 18 A Okay
16:17:39 19 Q Did you author the definition in paragraph
16:17:42 20 54?
16:17:44 21 A I think that -- here's where it gets
16:17:48 22 complex Almost every one of these definitions
16:17:50 23 were terms we used for years I learned from
16:17:53 24 multiple different people these terms through
16:17:55 25 depositions, conversations with Mandiant employees,

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16:17:58 1 conversations with counsel.
16:17:59 2 So when it comes down to what I put on
16:18:01 3 paper, it's an aggregation of many different things
16:18:04 4 that came from multiple sources.
16:18:08 5 Q. I understand that the basis of your
16:18:09 6 knowledge for providing any input into these
16:18:13 7 definitions occurred over a period of time in this
16:18:15 8 case and your own experience.
16:18:18 9 I'm trying to understand who, whether it's
16:18:21 10 you or others, actually wrote these definitions
16:18:24 11 that are contained in your report. It's that
16:18:27 12 simple.
16:18:28 13 A. Meaning sat down at the computer and typed
16:18:30 14 them in?
16:18:31 15 Q. Well, a little more than the ministerial
16:18:33 16 task. Who used their brain power to come up with
16:18:36 17 the words that are depicted on the page in the
16:18:39 18 order that they appear on this page for purposes of
16:18:41 19 establishing the definition? Okay?
16:18:53 20 And that's my ongoing question to you.
16:18:59 21 A. And which paragraph would you like me to
16:19:00 22 be on?
16:19:01 23 Q. 54. Did you use your brain power to come
16:19:04 24 up with the words that are depicted on the page in
16:19:06 25 the order they appear on this page for the purposes

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16:19:09 1 of establishing this definition by yourself?
16:19:11 2 MR. LEWIS: To be clear, my objection --
16:19:13 3 MR. COWAN: It still stands.
16:19:14 4 MR. LEWIS: Thank you.
16:19:19 5 MR. COWAN: I don't actually agree with
16:19:20 6 it, but it stands.
16:19:21 7 THE WITNESS: 54 is a definition that I
16:19:24 8 wrote in collaboration with other individuals.
16:19:27 9 MR. COWAN: Q. Okay. What about 55?
16:19:37 10 A. 55 is a definition I devised with the
16:19:44 11 collaboration of other individuals, meaning I
16:19:46 12 didn't make it in a vacuum. That I may have typed
16:19:50 13 every word. This might be every exact word I
16:19:52 14 chose, but over the course of a year or more, we
16:19:56 15 all decided cross-use means this.
16:19:59 16 Q. Okay. And when you say we all and other
16:20:01 17 individuals, you're referring to folks at Mandiant,
16:20:04 18 yourself, and Oracle's counsel. Correct?
16:20:06 19 A. That is correct.
16:20:07 20 Q. Okay. What about 56?
16:20:22 21 A. This may be authored by me with knowledge
16:20:26 22 I learned from others, and it may be a definition
16:20:30 23 that I collaborated with somebody else on.
16:20:33 24 Q. Including counsel?
16:20:35 25 A. Including Mandiant employees and counsel.

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16:20:39 1 Q. Okay. And if you will, it'll make it
16:20:42 2 easier, instead of saying somebody else, identify
16:20:44 3 them at least by their employer. Okay?
16:20:47 4 A. Okay.
16:20:48 5 Q. Not by name. You can just say other
16:20:50 6 Mandiant employees and Oracle's counsel, is fine.
16:20:56 7 Paragraph 58?
16:21:07 8 A. I may have authored this by myself with
16:21:11 9 information that I learned while working on this
16:21:14 10 case, and I may have shared this definition with
16:21:19 11 others to get their opinions, and they may or may
16:21:22 12 not have offered changes. But the genesis of this
16:21:26 13 is, as I recollect vaguely, this is something that
16:21:34 14 I typed, that I wrote, and others opined on it or
16:21:39 15 talked about it or discussed it to see if that
16:21:41 16 definition represented their thoughts on it.
16:21:45 17 Q. Okay. And 59?
16:21:53 18 A. I think that contamination I believe is a
16:21:57 19 phrase that Mandiant came up with, but I don't
16:21:59 20 recall. I don't recall the genesis of this one
16:22:04 21 particular definition. It appears to be my words,
16:22:09 22 But I may have collaborated with other Mandiant
16:22:13 23 employees or counsel on this definition.
16:22:15 24 Q. Okay. 60?
16:22:23 25 A. Numerous sources for "data warehouse." I

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16:22:26 1 think there's documents that refer to this as a
16:22:28 2 phrase, Mandiant We had our own definition of
16:22:32 3 "data warehouse " This is a definition that may
16:22:34 4 have been written solely by me, may have been
16:22:37 5 written in collaboration with Mandiant employees,
16:22:43 6 may have been written in collaboration with
16:22:45 7 Mandiant and counsel
16:22:56 8 Continue?
16:22:57 9 Q Well, we're going to go on for 40 more
16:23:00 10 Why don't you just quickly look through
16:23:04 11 the defined term, not the definition, beginning
16:23:10 12 with 61 through 101, and then I just have a couple
16:23:18 13 general questions, and then we'll move on
16:24:22 14 A (Examining document)
16:24:23 15 Q Okay Have you had a chance to look at
16:24:25 16 least at the defined terms, the terms that are in
16:24:28 17 quotes beside each paragraph --
16:24:31 18 A Yes
16:24:31 19 Q -- from 61 to 101?
16:24:34 20 A Yes, I have glanced at the defined terms
16:24:36 21 Q Would it be safe to say at least half or
16:24:39 22 more of these terms were formulated with input from
16:24:42 23 others at Mandiant and counsel rather than you
16:24:45 24 formulating them all by yourself?
16:24:48 25 A I was working the big team I did not

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16:24:51 1 want to come up with a definition in a vacuum and
16:24:54 2 not share that with the team and get a bunch of
16:24:56 3 input on it. We had to all make sure we were
16:24:59 4 speaking the same language.
16:25:00 5 Q. I know, and --
16:25:01 6 A. So I think it's -- obviously, the
16:25:03 7 synthesis of these definitions were a collaboration
16:25:06 8 amongst many different individuals that were
16:25:07 9 working together on reviewing over ten terabytes of
16:25:12 10 data over the course of 3 years.
16:25:15 11 Q. And that would include all the definitions
16:25:17 12 from 48 to 101. Is that right?
16:25:19 13 A. I can't speak in that generality. If you
16:25:21 14 want to go specifically through each one, I will --
16:25:23 15 Q. I want to talk in general terms. Most
16:25:26 16 all. And there may be -- based on going through
16:25:28 17 the first dozen or so with you, it appears that the
16:25:31 18 majority of them were based on collaboration with
16:25:33 19 your own knowledge, others at Mandiant, and
16:25:37 20 counsel. Is that a fair statement?
16:25:39 21 MR. LEWIS: Objection. Vague and
16:25:40 22 ambiguous.
16:25:41 23 THE WITNESS: The collaboration part, it
16:25:43 24 may not be -- that may misstate what happened here,
16:25:47 25 to the extent that a lot of times I anchored the

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17:59:57 1 with him on the phone.
18:00:00 2 Q. Okay.
18:00:12 3 (Deposition Exhibit 2079 was marked for
18:00:14 4 identification.)
18:00:16 5 MR. COWAN: Q. Let me show you what's
18:00:17 6 been marked as Exhibit 2079. And the only portion
18:00:27 7 of this exhibit I'm going to ask you about right
18:00:31 8 now is the second page from the back of the
18:00:39 9 exhibit. And it's the bottom two paragraphs.
18:00:56 10 These are your notes. Correct?
18:00:59 11 A. These are my notes.
18:01:00 12 Q. Okay. And the second -- the
18:01:04 13 second-to-the-last paragraph of Exhibit 2079 on the
18:01:12 14 second-to-the-last page says: I am going to rely
18:01:15 15 on Norm and his expertise with COBOL.
18:01:20 16 Do you see that?
18:01:20 17 A. Yes.
18:01:22 18 Q. And so you considered the information
18:01:26 19 Mr. Ackermann was providing to you as expert
18:01:30 20 opinion?
18:01:32 21 A. I'm relying on him for the facts he gave
18:01:34 22 me about COBOL.
18:01:37 23 Let me ask you, expert is a legal term to
18:01:40 24 me. Is that what you meant in that sentence?
18:01:42 25 Q. I mean, were you considering Mr. -- my

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18:01:48 1 question is, do you consider Mr. Ackermann to be an
18:01:52 2 expert in COBOL?
18:01:54 3 MR. LEWIS: Objection. Vague.
18:01:56 4 THE WITNESS: I --
18:01:57 5 MR. LEWIS: Calls for a legal conclusion.
18:02:01 6 THE WITNESS: I -- yeah, the term "expert"
18:02:04 7 is a legal term.
18:02:06 8 When I spoke to Mr. Ackermann, it was --
18:02:10 9 one reason why I spoke to him was, I was asked to
18:02:13 10 make an assumption about file-based objects being
18:02:17 11 protected expression, and I wanted to know if that
18:02:19 12 was a reasonable assumption. So speaking to
18:02:21 13 Mr. Ackermann, who was a PeopleSoft developer, I
18:02:22 14 asked him some questions about choice and
18:02:26 15 creativity, things of that nature.
18:02:28 16 And there's another paragraph in my report
18:02:30 17 where I clearly cite where I'm trying to understand
18:02:32 18 the choices that the developers make and the
18:02:36 19 creativity applied to the PeopleSoft developers.
18:02:41 20 MR. COWAN: Q. Do you understand the
18:02:41 21 difference between a fact and an opinion?
18:02:46 22 MR. LEWIS: Objection. Calls for legal
18:02:46 23 conclusions.
18:02:50 24 MR. COWAN: Q. I'm asking for your lay
18:02:51 25 definition of it.

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18:02:52 1 A. A fact is something that's -- that is. An
18:02:57 2 opinion is applying -- I got to think about this.
18:03:24 3 It's late in the day. I didn't expect an
18:03:27 4 opinion -- or excuse me, see -- a question like
18:03:30 5 this. I guess an opinion -- I'm not coming up with
18:03:41 6 the right word to describe it right now.
18:03:44 7 Q. Okay. Would you agree with me that an
18:03:46 8 opinion is someone's belief as to what a fact might
18:03:49 9 be?
18:03:51 10 MR. LEWIS: Still in a lay sense?
18:03:52 11 MR. COWAN: Q. And still in a lay sense.
18:03:54 12 A. An opinion -- that sounds reasonable to me
18:03:57 13 to say yes, an opinion is a belief that someone
18:04:01 14 thinks.
18:04:02 15 Q. As opposed to a fact that everyone agrees,
18:04:06 16 for example, that the lights are on in this room.
18:04:09 17 MR. LEWIS: Objection. No foundation.
18:04:11 18 MR. COWAN: Q. That's a fact. Right?
18:04:12 19 A. Yeah. A fact is something that is.
18:04:16 20 Q. And the opinion may be that some people
18:04:20 21 may believe the light is blue colored, some people
18:04:23 22 may believe the light is pink colored. Is that an
18:04:28 23 example of how you would interpret the definition
18:04:30 24 of an opinion?
18:04:31 25 MR. LEWIS: Objection. Vague and

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18:04:32 1 ambiguous
18:04:37 2 THE WITNESS: An opinion is someone's
18:04:38 3 beliefs That seems reasonable as a lay
18:04:40 4 definition
18:04:42 5 MR COWAN: Q So did Mr Ackermann
18:04:43 6 provide you with facts or opinions based on the lay
18:04:46 7 definition we've just discussed?
18:04:52 8 A I'm going -- I'm trying to recall the
18:04:55 9 conversations I had with him But I was primarily
18:04:57 10 talking on a technical level with him from a
18:05:00 11 developer's perspective and asking him about the
18:05:06 12 PeopleSoft product line, about COBOLs, SQRs, and
18:05:10 13 SQCs or file-based objects, and how much creativity
18:05:15 14 he applied when he was creating them and how much
18:05:18 15 choices he made when he was writing them, just so I
18:05:21 16 could better understand SQRs, SQCs, and COBOLs
18:05:26 17 Q And was it your understanding the
18:05:27 18 information Mr Ackermann was providing you were
18:05:29 19 facts In other words, they are what they are?
18:05:31 20 A I think at the time, and as I think about
18:05:35 21 it now, I was just relying on his knowledge of
18:05:37 22 PeopleSoft as a developer in PeopleSoft
18:05:42 23 Q But that didn't answer my question
18:05:43 24 Was the information he was providing you
18:05:45 25 more in the nature of a fact or more in the nature

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18:05:48	1 of the -- an opinion, given the lay definition of	18:08:41
18:05:52	2 those two terms as we've just discussed them?	18:08:45
18:05:54	3 MR. LEWIS: Objection. Argumentative and	18:08:47
18:05:56	4 vague and ambiguous.	18:08:50
18:06:00	5 THE WITNESS: As I recollect the	18:08:56
18:06:01	6 conversation, I feel it was more in the line of, he	18:08:58
18:06:04	7 was just telling me his -- how he develops.	18:09:00
18:06:08	8 MR. COWAN: Q. Are you unable to	18:09:03
18:06:09	9 categorize whether it was a fact or an opinion as	18:09:05
18:06:12	10 to the information he was providing you based on	18:09:08
18:06:14	11 the lay definition of those two terms?	18:09:10
18:06:16	12 A. No. I think he was providing me facts.	18:09:12
18:06:23	13 Q. And one of those facts is at the bottom of	18:09:16
18:06:27	14 the page on the second-to-the-last page of	18:09:19
18:06:29	15 Exhibit 2079, isn't it, where he says, Oracle	18:09:21
18:06:32	16 relies on cut and paste and the ability to copy	18:09:25
18:06:35	17 from one database to another.	18:09:27
18:06:38	18 Do you see that?	18:09:29
18:06:41	19 A. Oracle relies on --	18:09:30
18:06:42	20 MR. LEWIS: I think you misread that,	18:09:32
18:06:44	21 Mr. Cowan. I'm sorry, I misread it, my apologies.	18:09:35
18:06:57	22 MR. COWAN: Q. Do you need me to reread	18:09:37
18:06:59	23 it?	18:09:39
18:07:00	24 A. I see the sentence.	18:09:42
18:07:02	25 Q. Okay. And that's one of the facts that --	18:09:47
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18:07:03		18:09:51
18:07:07		18:09:53
18:07:10		18:10:00
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18:07:16		18:10:07
18:07:18		18:10:11
18:07:21		18:10:13
18:07:26		18:10:16
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18:07:33		18:10:19
18:07:34		18:10:22
18:07:57		18:10:23
18:07:59		18:10:25
18:08:06		18:10:28
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18:08:16		18:10:36
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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 4, 2010
Holly Thuman
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
KEVIN MANDIA

VOLUME 2; PAGES 291 - 570

FRIDAY, MAY 21, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-427384)

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10:48:36	1 deposition of Kevin Mandia The time is 10:48	10:51:50
10:48:44	2 MR COWAN: Q Mr Mandia, if you'll turn	10:51:54
10:48:46	3 to paragraph 4, page 1 of your report, please And	10:51:58
10:48:58	4 we've already talked about that paragraph, but the	10:52:00
10:49:01	5 only one I'm -- the only sentence that I'm -- two	10:52:04
10:49:08	6 sentences that I'm focused on are the last two	10:52:09
10:49:11	7 sentences If you could just read those again,	10:52:11
10:49:17	8 silently	10:52:15
10:49:19	9 A (Examining document) Okay	10:52:19
10:49:51	10 Q Okay And you're making a note there to	10:52:23
10:49:53	11 yourself What did you just note?	10:52:27
10:49:55	12 A I wrote the word "misaligned "	10:52:29
10:49:59	13 Q And why did you write that?	10:52:34
10:50:02	14 A When I think about improper access, one of	10:52:37
10:50:05	15 the things in that sentence, there's a phrase,	10:52:37
10:50:09	16 without regard for customer licenses The	10:52:40
10:50:13	17 "misaligned" refers to our JDE license analysis	10:52:43
10:50:16	18 that Mandiant did	10:52:46
10:50:19	19 Q And what do you mean, that misaligned	10:52:48
10:50:23	20 refers to our JDE license analysis that Mandiant	10:52:51
10:50:26	21 did?	10:52:53
10:50:26	22 A We did a couple of analyses where in one	10:52:54
10:50:30	23 case we took licensing information provided to us	10:52:57
10:50:33	24 from Carlos Barradas for Merck, OC Technologies,	10:52:59
10:50:38	25 Yazaki and two other companies, SPX, I believe, and	10:53:03

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10:50:43	1 one other company, and we look that licensing	10:53:06
10:50:45	2 information for both OneWorld and World, and we	10:53:08
10:50:48	3 looked at the customer-labeled folders to see where	10:53:09
10:50:51	4 the things in the customer-labeled folders aligned	10:53:10
10:50:55	5 with the licensing that we had.	10:53:11
10:50:57	6 So that's how I used the term	10:53:18
10:50:58	7 "misaligned." The customer-labeled folder	10:53:19
10:51:02	8 contained files that weren't aligned with the	10:53:21
10:51:05	9 licensing information we were provided.	10:53:25
10:51:07	10 Q. But they also contained files that were	10:53:28
10:51:09	11 aligned with the licensing information you were	10:53:31
10:51:12	12 provided. Correct?	10:53:34
10:51:12	13 A. They may have. We didn't do that	10:53:36
10:51:14	14 analysis. We looked for and noted in our	10:53:40
10:51:17	15 spreadsheets, actually, both, but I reported on the	10:53:42
10:51:20	16 ones that were misaligned.	10:53:45
10:51:22	17 Q. Did you report on the ones that were	10:53:47
10:51:24	18 properly aligned in your opinion?	10:53:49
10:51:26	19 A. I did not report on the ones that may have	10:53:51
10:51:29	20 been aligned. I reported on what my analysis was.	10:53:53
10:51:34	21 Q. Okay. And the last sentence, you say:	10:53:56
10:51:37	22 TomorrowNow used this tool for data collection	10:53:58
10:51:40	23 without regard for customer credentials or customer	10:54:01
10:51:44	24 licenses.	10:54:06
10:51:45	25 Do you intend that statement to mean that	10:54:08

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11:08:43 1 occurrence, it would use the credentials that are
11:08:45 2 inputted into Titan by the user, and not the
11:08:49 3 default credentials.
11:09:02 4 MR. COWAN: Q. If you'll turn to page 40
11:09:06 5 of your report, please. Paragraph 174, and read
11:09:10 6 that to yourself silently, please.
11:09:13 7 A. (Examining document.) Okay.
11:11:00 8 Q. The second -- the third sentence here
11:11:02 9 says: TomorrowNow programmed Titan to allow
11:11:07 10 automated mass downloading from Oracle without
11:11:10 11 regard to any license restriction a customer may
11:11:14 12 have.
11:11:15 13 Do you see that?
11:11:18 14 A. Yes, I do.
11:11:19 15 Q. And you rely on the testimony of
11:11:21 16 Mr. Ritchie for that?
11:11:23 17 A. That is one of the things I rely on, yes.
11:11:25 18 Q. Okay. What else did you rely on for that
11:11:27 19 statement?
11:11:27 20 A. Well, I think that one of the things
11:11:29 21 Mr. Ritchie clearly stated was that he tested
11:11:31 22 Titan. There is an admission that a million files,
11:11:36 23 at a minimum, were downloaded with Titan deleted.
11:11:39 24 So I think Mr. Ritchie's testimony's
11:11:45 25 strong regard contributes to that sentence.

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14:23:43
14:23:46
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14:24:01
14:24:06

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14:24:09 1 And in that table, I recall the assumption
14:24:14 2 that the automated database -- part of my
14:24:18 3 assumption is that things in Table 36 are protected
14:24:23 4 or covered by the copyrights Oracle asserts in the
14:24:26 5 Fourth Amended Complaint.
14:24:28 6 So from that perspective, that's how I
14:24:31 7 viewed the automated databases. They were in my
14:24:36 8 Table 36 and part of my assumption.
14:24:38 9 MR. COWAN: Q. When you say Table 36,
14:24:40 10 which page are you referring to in your appendix?
14:24:41 11 A. I'm in my report.
14:24:43 12 Q. Okay.
14:24:43 13 A. Page 101.
14:24:58 14 Q. And you say -- you just assumed that the
14:25:04 15 things listed in Table 36 are protected or covered
14:25:08 16 by the copyrights Oracle asserts in the Fourth
14:25:11 17 Amended Complaint. Correct?
14:25:14 18 A. Yes. The -- if you turn to paragraph 45
14:25:18 19 on page 10 -- or I can just explain it to you. My
14:25:23 20 assumption for protected expression covered my
14:25:26 21 materials described in Tables 35 or 36 in Section
14:25:29 22 10. And it's an assumption that I was to
14:25:32 23 provide -- I was provided with that assumption, and
14:25:36 24 that allowed me to, when I saw these things, know
14:25:40 25 that these were the things Oracle was asserting

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14:25:43 1 were covered by the copyright registrations in the
14:25:52 2 Fourth Amended Complaint
14:26:10 3 Q All right Let's go back to Exhibit 2086
14:26:17 4 A Okay
14:26:20 5 Q Other than the assumptions you just
14:26:22 6 described that you made, have you made any attempt
14:26:27 7 at all to determine whether the copyright
14:26:30 8 registrations that are listed on pages 52, 53, 54,
14:26:37 9 55, and 56 of Plaintiffs' Amended -- Fourth Amended
14:26:42 10 Complaint are addressed by the opinions and
14:26:54 11 conclusions in your report?
14:26:56 12 MR LEWIS: Objection Vague
14:26:59 13 THE WITNESS: Could you repeat that
14:26:59 14 question, please?
14:27:01 15 MR COWAN: Q Yeah Did you attempt at
14:27:06 16 any point to review each of the copyright
14:27:11 17 registrations that are listed on pages 52, 53, 54,
14:27:16 18 55, and 56 of Plaintiffs' Fourth Amended Complaint
14:27:20 19 that is Exhibit 2086 to determine whether your
14:27:27 20 opinions and conclusions apply to each one of those
14:27:32 21 copyrights that are listed on those pages?
14:27:34 22 MR LEWIS: Objection Vague and
14:27:35 23 compound
14:27:41 24 THE WITNESS: Yeah, could you restate it,
14:27:42 25 please?

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14:27:44 1 MR. COWAN: Q. Well, let's just start
14:27:45 2 with the first one on page 52 of Exhibit 2086.
14:27:54 3 Did you make any attempt at all to
14:27:56 4 determine whether the copyright registration that's
14:28:08 5 listed there as Shop Floor Control Program was
14:28:14 6 addressed in any way by your report?
14:28:16 7 MR. LEWIS: Objection. Vague.
14:28:25 8 THE WITNESS: When I approached the task
14:28:27 9 of identifying what TomorrowNow possessed, you
14:28:30 10 know, across all the, you know, terabytes of data,
14:28:33 11 dozens and dozens of systems, you had at one point
14:28:37 12 over 90 forensic images, the first task I tried to
14:28:40 13 do -- and I'm telling you this because I think
14:28:41 14 it'll help us get through this faster.
14:28:43 15 MR. COWAN: Q. Okay, good.
14:28:44 16 A. The first thing I did is tried to find the
14:28:47 17 categories that are listed, meaning the information
14:28:49 18 that's listed on Table 35 and 36 of my report. So
14:28:52 19 I was looking for software and support materials
14:28:54 20 that were listed in Table 36, and then different
14:28:59 21 product lines and releases that were in Table 35.
14:29:04 22 So from that perspective, based on my
14:29:06 23 assumption that the things in Table 35 and 36 are
14:29:09 24 covered by the copyrights Oracle asserts in this
14:29:13 25 action, once I got my hands on the data, kind of

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14:29:16 1 funneled it from everything down to things that
14:29:18 2 were inside of those tables
14:29:19 3 So I always did it I think more broadly
14:29:22 4 than line by line, just so you see how I approached
14:29:25 5 the investigation I came very high level and put
14:29:27 6 things into the categories that were my protected
14:29:35 7 expression assumption
14:29:37 8 Q But you didn't make any attempt to analyze
14:29:39 9 whether in fact any of your opinions and
14:29:42 10 conclusions in your report map up to any specific
14:29:47 11 registration that's listed on pages 52 to 56 of
14:29:55 12 Oracle's Fourth Amended Complaint that's attached
14:29:57 13 as Exhibit 2086
14:29:59 14 MR LEWIS: Objection
14:30:00 15 MR COWAN: Q Correct?
14:30:01 16 MR LEWIS: Objection Vague, misstates
14:30:02 17 the testimony, compound
14:30:07 18 THE WITNESS: I viewed my -- there are
14:30:08 19 times where I did, by the way I grabbed the
14:30:11 20 Fourth Amended Complaint and looked at things that
14:30:14 21 I could kind of find here, and I did map it as
14:30:17 22 illustrative examples in my next section, what I
14:30:20 23 called my environments section
14:30:23 24 I'm not sure I'm answering your question,
14:30:26 25 but I approached the problem not -- I didn't start

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14:30:28 1 here and go to TomorrowNow and look for these
14:30:31 2 specific things. I started with Table 35 and Table
14:30:33 3 36, and I looked for those things.
14:31:01 4 MR. COWAN: Q. But as you sit here today,
14:31:03 5 you have no way of knowing whether your opinions
14:31:05 6 and conclusions that are in your report touch on
14:31:09 7 each and every one of the registrations that are
14:31:14 8 identified in pages 52 through 56 of Oracle's
14:31:17 9 Fourth Amended Complaint that is attached as
14:31:20 10 Exhibit 2086. Correct?
14:31:21 11 MR. LEWIS: Objection. Vague, compound,
14:31:24 12 mischaracterizes the testimony.
14:31:26 13 THE WITNESS: Okay. Could you ask that
14:31:27 14 one more time, please, Counsel?
14:31:28 15 MR. COWAN: Q. Sure. And again, I'll
14:31:30 16 stipulate that I'm going to reread the question
14:31:32 17 verbatim, and I'll stipulate that Mr. Lewis's
14:31:37 18 objections that he asserted when the question was
14:31:40 19 stated the first time will stand on the restatement
14:31:42 20 of my question, so you'll just focus on my
14:31:44 21 question.
14:31:45 22 As you sit here today, you have no way of
14:31:47 23 knowing whether your opinions and conclusions that
14:31:49 24 are in your report touch on each and every one of
14:31:53 25 the registrations that are identified in pages 52

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14:31:55 1 through 56 of Oracle's Fourth Amended Complaint
14:31:58 2 that's attached as Exhibit 2086 here to your
14:32:02 3 deposition Correct?
14:32:03 4 MR LEWIS: I maintain my objections
14:32:07 5 THE WITNESS: As I look at this list, I do
14:32:09 6 know that my analysis does touch on many of the
14:32:12 7 things listed here There was over 3,000
14:32:14 8 environments stored at TomorrowNow, there's CD
14:32:16 9 binders with over 14,000 physical disks, there was
14:32:20 10 a lot of information there
14:32:21 11 So my investigation was to put it into the
14:32:25 12 Table 35 and Table 36 categories I didn't make it
14:32:28 13 a primary objective -- I didn't start on this list
14:32:31 14 and go look for these things I applied the
14:32:34 15 assumption of protected expression
14:32:36 16 So as I glance at this, I see PeopleSoft
14:32:40 17 HRMS 7 0 Obviously, 7 5, the PeopleSoft 8, SP1,
14:32:45 18 these are things that I saw numerous copies of
14:32:49 19 them Customer Relationship Management, I saw
14:32:51 20 environments that were CRM environments I saw EPM
14:32:56 21 environments I saw PeopleTools, 7 5, 8 0 I
14:33:01 22 mean, I've seen these things before
14:33:03 23 MR COWAN: Q You've seen things that
14:33:05 24 have these same name Right?
14:33:09 25 A That is correct

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14:33:09 1 Q Because you haven't analyzed the actual
14:33:12 2 contents of what is registered with the US
14:33:16 3 Copyright Office under these registration numbers,
14:33:20 4 have you?
14:33:20 5 MR LEWIS: Objection Vague and
14:33:21 6 ambiguous, and no foundation
14:33:25 7 THE WITNESS: I was given Registered Works
14:33:28 8 as -- asserted by Oracle on I believe 25 different
14:33:32 9 disks, 23 different versions, so I have looked for
14:33:36 10 those --
14:33:37 11 MR COWAN: Q But when you got those
14:33:37 12 Registered Works, you didn't go and make sure that
14:33:40 13 you had a copy of those for each and every one
14:33:42 14 that's listed here on pages 52 through 56 of the
14:33:45 15 plaintiffs' Fourth Amended Complaint, did you?
14:33:49 16 MR LEWIS: Objection Ambiguous, vague
14:34:07 17 THE WITNESS: The -- what I'm glancing at
14:34:09 18 is just my Table 10 on page 17 of my appendices
14:34:13 19 that shows the -- the -- what I call the ISO images
14:34:18 20 that -- or install media that were the Registered
14:34:21 21 Works that we were given that we did code
14:34:27 22 comparisons and things with
14:34:29 23 MR COWAN: Q Perfect So let's take
14:34:30 24 what you just said and let's go back to
14:34:33 25 Exhibit 2086, and I may be able to help you --

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15:43:39 1 to.
15:43:40 2 MR. COWAN: Q. Okay.
15:43:41 3 A. I may miss one thing, but as I sit here
15:43:44 4 today, that's the one thing I know he did.
15:43:46 5 Q. Okay. Did Mr. Altheide have any special
15:43:52 6 expertise with AS/400 hardware or related software?
15:44:00 7 A. Mr. Altheide's background was, he's good
15:44:05 8 at UNIX. So we figured he had the right requisites
15:44:08 9 to understand what Mr. Story would relate to.
15:44:12 10 Q. Does the AS/400 machine operate in a UNIX
15:44:16 11 environment?
15:44:18 12 A. I believe it might. I think it does. But
15:44:23 13 I don't know.
15:44:30 14 Q. And January of 2009, it's stated in
15:44:36 15 paragraph 272 here you indicate that Mandiant and
15:44:39 16 Mr. Story further analyzed a restored version of
15:44:41 17 this same AS/400 machine that they inspected on
15:44:45 18 November 11th, 2008.
15:44:47 19 Do you see that?
15:44:48 20 A. Yes, I do.
15:44:49 21 Q. When you're referring to Mandiant, are you
15:44:51 22 also again referring only to Cory Altheide?
15:44:56 23 A. To the best of my recollection,
15:44:58 24 Mr. Altheide was present with Mr. Story on both
15:45:01 25 occasions.

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15:42:15 1 cumulative update 6 environments
15:42:17 2 Do you see that?
15:42:18 3 A Yes, I do
15:42:20 4 Q And you reference in paragraph 272 that
15:42:28 5 there was an inspection of TomorrowNow's facilities
15:42:34 6 in Bryan, in particular the AS/400 machine on
15:42:42 7 November 11th, 2008
15:42:44 8 Do you see that?
15:42:46 9 A I see in paragraph 272 that Mandiant and
15:42:50 10 an Oracle employee with the knowledge of JD Edwards
15:42:53 11 world software, Greg Story, inspected a machine in
15:42:59 12 Bryan, Texas
15:43:00 13 Q Was that you?
15:43:01 14 A That employee was not me
15:43:03 15 Q Okay Who was it?
15:43:04 16 A That employee was Mr Cory Altheide
15:43:10 17 Q And that's a Mandiant employee?
15:43:14 18 A That is a Mandiant employee
15:43:17 19 Q What other involvement did Mr Altheide
15:43:19 20 have in providing any input into the opinions and
15:43:23 21 conclusions that form the basis of your report?
15:43:26 22 MR LEWIS: Objection No foundation
15:43:31 23 THE WITNESS: To the best of my
15:43:31 24 recollection, one of the things he worked on was
15:43:34 25 this task, and that's all I recall him contributing

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16:17:36 1 A. I just want to make sure I cited every
16:17:39 2 section.
16:17:40 3 Q. I understand. But other than the
16:17:41 4 paragraphs you just cited, you didn't analyze any
16:17:43 5 other Registered Works related to Siebel. Correct?
16:17:46 6 MR. LEWIS: Objection. Vague.
16:17:50 7 THE WITNESS: As I sit here today, I
16:17:51 8 believe those sections comprise a summary of what
16:17:58 9 we did and what we found.
16:18:03 10 MR. COWAN: Q. Okay. Let's go to the
16:18:06 11 beginning here on page 76, where we are, you
16:18:10 12 attempted to find copies of Oracle's database
16:18:13 13 software on TomorrowNow's systems, did you not?
16:18:24 14 A. We attempted to identify what versions of
16:18:28 15 Oracle's database software was at TomorrowNow.
16:18:31 16 Q. Okay. And before this case, had you ever
16:18:35 17 worked in any way with Oracle database software?
16:18:44 18 A. Before this case, I had worked in some
16:18:48 19 regards with Oracle database software.
16:18:51 20 Q. In what regard?
16:18:54 21 A. In responding to computer intrusions or
16:18:57 22 computer security breaches where the breach
16:19:01 23 includes an Oracle database.
16:19:02 24 So in regards to observing things like log
16:19:09 25 files, database query -- doing database queries to

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16:19:13 1 get the DBA table to be able to understand the
16:19:16 2 audit trail, owner's queries, and things of that
16:19:21 3 nature Specifically things like Statspack, it's a
16:19:24 4 version -- it's a package within Oracle databases
16:19:27 5 that tracks owners' queries in regards to physical
16:19:29 6 and logical reads and writes and things of that
16:19:31 7 nature
16:19:32 8 So in general, in responding to computer
16:19:37 9 security breaches, I have investigated breaches of
16:19:39 10 Oracle databases
16:19:40 11 Q Okay And you also got information
16:19:42 12 regarding Oracle database software from an Oracle
16:19:46 13 employee by the name of Russ Kawaguchi Right?
16:19:51 14 A I did speak to Russ Kawaguchi Let me
16:19:55 15 find that to make sure
16:19:56 16 Yes I did speak with Russ Kawaguchi in
16:20:03 17 regards to Oracle database software and Oracle
16:20:07 18 database installations
16:20:08 19 Q Okay On paragraph 2 -- or in paragraph
16:20:11 20 283 on page 76 of your report, why did you focus on
16:20:15 21 the ORADATA directory structure?
16:20:24 22 A Actually, I think we focused on the
16:20:27 23 ORAADMIN directories We could have really picked
16:20:30 24 either one when counting Oracle database
16:20:34 25 installations, but I had a conversation with Russ

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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 [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: June 4, 2010
Holly Thuman
HOLLY THUMAN, CSR