

EXHIBIT E

JOB NO. 94821

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a)	Case No. 07-CV-01658 (MJJ)
Delaware corporation,)	
ORACLE USA, INC., a)	
Colorado corporation, and)	
ORACLE INTERNATIONAL)	
CORPORATION, a California)	
corporation,)	
)	
Plaintiffs,)	
)	
VS.)	
)	
SAP AG, a German)	
corporation, SAP AMERICA,)	
INC., a Delaware)	
corporation, TOMORROWNOW,)	
INC., a Texas corporation,)	
and DOES 1-50, inclusive,)	
)	
Defendants.)	

ORAL AND VIDEOTAPED DEPOSITION OF
TOMORROWNOW BY AND THROUGH MARK KREUTZ
VOLUME 2
OCTOBER 30, 2007

ORAL AND VIDEOTAPED DEPOSITION OF MARK KREUTZ, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above styled and numbered cause on October 30, 2007, from 8:43 a.m. to 3:31 p.m., before RENE WHITE MOAREFI, CSR, CRR, RPR in and for the State of Texas, reported by machine shorthand, at Jones Day, 717 Texas, Suite 3300 Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record herein.

1 acquisition part of the onboarding process for a new
2 customer, JD Edwards customer, can you describe prior to
3 the litigation how TomorrowNow would acquire any
4 software that it would acquire in order to support that
5 JD Edwards customer?

6 A. So the download was one piece, right, and that
7 was -- those were all -- that -- that covers basically
8 the -- the patches and items that they -- that they
9 should be entitled to or licensed to based on the
10 information they gave us. But then -- so we -- we may
11 have had a download for them. And in some instances, we
12 may have received software material directly from the
13 customer.

14 Q. Could you be more specific? What software
15 material would you obtain directly from the customer?

16 A. This would include environments that we were
17 supporting for them.

18 Q. By "environment," what do you mean?

19 A. Basically a -- a copy of an environment that we
20 were supporting for them or maybe a copy of their --
21 their demo environment.

22 Q. So if I understand you, that would be the
23 underlying software release, JD Edwards software
24 release?

25 A. Yes.

1 Q. How would you get that copy of that environment
2 from the customer?

3 A. Either through a -- and I'm just speaking about
4 JD Edwards now. Either through a tape media or possibly
5 a copy of a CD or DVD.

6 Q. Was it TomorrowNow's policy to obtain those
7 client environments to keep in the TomorrowNow domain as
8 part of its support services?

9 A. It's really driven by the support, the contract
10 that's been put together for that customer and their
11 support model preference.

12 Q. As a matter of course in obtaining a new
13 client, TomorrowNow would evaluate whether for that
14 client it would request and obtain copies of the client
15 environment to maintain locally at TomorrowNow?

16 A. The -- repeat that question one more time.

17 Q. Well, in what circumstances would TomorrowNow
18 obtain these client environment copies that you've
19 described?

20 A. It's really -- it's really meant to be, you
21 know, a support model preference. So if a customer
22 should ask or choose to have TomorrowNow -- having it --
23 their environment or an environment of their choosing
24 for support purposes, then they might give us that. For
25 JD Edwards, the -- the -- the preference is to do

1 everything remotely. And there are a lot of reasons for
2 that, good reasons that that's -- that's our preference.

3 So we would actually prefer, you know, not
4 to have a copy of their environment for various reasons
5 and do direct support into their -- into their domain or
6 the environment of their choosing.

7 Q. What are the reasons that you would prefer not
8 to have a copy of their environment locally at
9 TomorrowNow?

10 MR. COWAN: Objection --

11 Q. (BY MR. HOWARD) And, again, we're speaking
12 before the litigation.

13 MR. COWAN: Objection to the extent it
14 calls -- or invades the attorney-client privilege.

15 If you can give reasons -- factual reasons
16 that aren't the subject of advice from counsel, you may
17 do so.

18 THE WITNESS: Okay.

19 Q. (BY MR. HOWARD) I'm just focusing you on the
20 period before the litigation.

21 A. Okay.

22 MR. COWAN: Same objection.

23 Q. (BY MR. HOWARD) Before the litigation, what
24 were the reasons why TomorrowNow preferred not to have a
25 local copy of the client environment?

1 MR. COWAN: Same objection and same
2 instructions.

3 A. The -- the reasons are -- or because, first,
4 the resources it takes to have an -- an environment in
5 TomorrowNow, a copy of that -- the customer's
6 environment. And that means hardware, people to -- to
7 do these activities. But at the same time trying to
8 keep those environments in sync between, you know, the
9 customer and TomorrowNow, very -- very intrusive to our
10 support. And it actually has a customer satisfaction
11 aspect, the customer's not happy about trying to, you
12 know, keep us in sync.

13 So our preference, you know, was really we
14 have direct access into their environment regardless of
15 what changes they've made on their -- their -- their
16 side. That could include, you know, hardware, platform,
17 anything in the underlying architecture of that
18 environment that we don't sync up to as well as, you
19 know, data, you know, their data, their -- possibly
20 their custom changes and things like that. It's just
21 for -- for us, it was just we would prefer dial directly
22 into the customer's environment and do support with you,
23 dynamically troubleshoot with you. We are looking at
24 the same data. It's just -- it's really one of the true
25 value adds for -- for TomorrowNow and what our customers

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<p>1 really liked -- like.</p> <p>2 Q. (BY MR. HOWARD) Any other reasons?</p> <p>3 MR. COWAN: Same objection, same</p> <p>4 instruction.</p> <p>5 A. That's -- that's what I can -- those are</p> <p>6 basically the reasons.</p> <p>7 Q. (BY MR. HOWARD) How many JD Edwards customers</p> <p>8 did TomorrowNow have in March of 2007 before the</p> <p>9 litigation was filed, approximately?</p> <p>10 A. I don't know the number to that. It's over a</p> <p>11 hundred.</p> <p>12 Q. How many of those -- for how many of those</p> <p>13 customers did TomorrowNow have a copy of their client</p> <p>14 environment in the way that you've described would be</p> <p>15 done?</p> <p>16 A. Three.</p> <p>17 Q. And who are those customers?</p> <p>18 A. Praxair, Kountz Wagner, and Bonnie Bell.</p> <p>19 Q. For the balance of the JD Edwards customers</p> <p>20 as that list existed at the time of the litigation, is</p> <p>21 it the case, then, that TomorrowNow downloaded support</p> <p>22 materials for those customers but did not have a copy of</p> <p>23 other source code to support those customers?</p> <p>24 A. Which -- the -- the -- all -- are we talking</p> <p>25 about all JD Edwards customers?</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 Q. With the exception of the three you just gave.</p> <p>2 A. We didn't have downloads for every JD Edwards</p> <p>3 customer.</p> <p>4 Q. Of the -- of the customers that existed at the</p> <p>5 time the litigation was filed, for how many of those</p> <p>6 customers did you have downloads?</p> <p>7 A. I don't -- I don't have a number for you on</p> <p>8 that. I'll -- I would say 80 percent, maybe.</p> <p>9 Q. And for that -- for that 80 percent,</p> <p>10 approximately, of the JD Edwards customers for whom</p> <p>11 TomorrowNow did have downloads and with the exception of</p> <p>12 the three that you gave, did you have any other source</p> <p>13 code that was used to support those customers, Oracle</p> <p>14 source code?</p> <p>15 A. Outside of their download material, their</p> <p>16 support materials? No. Well, let me just -- well, let</p> <p>17 me take a step back here for a second.</p> <p>18 We may have -- in our systems prior to the</p> <p>19 litigation have received from customers source code that</p> <p>20 we had -- you know, had been troubleshooting like I</p> <p>21 said, right? For a customer we may have been</p> <p>22 troubleshooting an issue or working on a tax update --</p> <p>23 tax and regulatory update for that customer. So we</p> <p>24 would have received -- or may have received a -- some</p> <p>25 source code that we didn't have originally.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 THE STATE OF TEXAS)
2 COUNTY OF HARRIS)

3 REPORTER'S CERTIFICATION
4 DEPOSITION OF MARK KREUTZ
5 TAKEN OCTOBER 30, 2007

6 I, RENE WHITE MOAREFI, Certified Shorthand Reporter
7 in and for the State of Texas, hereby certify to the
8 following:

9 That the witness, MARK KREUTZ, was duly sworn by
10 the officer and that the transcript of the oral
11 deposition is a true record of the testimony given by
12 the witness;

13 That the deposition transcript was submitted on
14 _____ to the witness or the attorney for the
15 witness for examination, signature and return to Esquire
16 Deposition Services, by _____;

17 I further certify that I am neither counsel for,
18 related to, nor employed by any of the parties in the
19 action in which this proceeding was taken, and further
20 that I am not financially or otherwise interested in the
21 outcome of the action.

22 Certified to by me this _____ day of
23 _____, 2007. NOV 05 2007

24 *Rene White Moarefi*
25 RENE WHITE MOAREFI, CSR, CRR, RPR
CSR NO. 3070; Expiration Date: 12-31-08
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