

# **EXHIBIT I**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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ORACLE CORPORATION, a Delaware  
Corporation; ORACLE, USA, INC.,  
a Colorado Corporation, and  
ORACLE INTERNATIONAL CORPORATION,  
a California Corporation,

Plaintiffs,

Vs.

No. 07-CV-01658-PJH (EDL)

SAP AG, a German Corporation,  
SAP AMERICA, INC., a Delaware  
CORPORATION, TOMORROWNOW, INC.,  
a Texas Corporation, and DOES  
1-50, Inclusive,

Defendants.

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VIDEOTAPED DEPOSITION OF

MICHAEL GARY FUNCK

\_\_\_\_\_  
Tuesday, June 1, 2010

Volume I, Pages 1 - 270

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Reported By: WENDY E. ARLEN, CSR #4355, CRR, RMR  
Job 427105

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10:32  10:33  10:33  10:33  10:33	1 comparisons to determine if an alleged copyright 2 violation had taken place? 3 MS. PERRY: Objection, calls for a legal 4 conclusion, vague and ambiguous, compound question. 10:35 5 THE WITNESS: Yes, I have. 6 Q. MR. LEWIS: Can you tell me what it was? 7 Let's start -- let me withdraw that. 8 How many times? 9 A. That I'm not clear on. I'd have to think 10:35 10 about that a moment. And I think they can be 11 somewhat definitional in the sense I've been involved 12 in trade secret related matters as well and there may 13 be some overlap there. 14 Q. Well, I want to focus -- never mind. I'll 10:35 15 come back to this later when we talk about your 16 experience in litigation. 17 Have you ever offered any expert opinions 18 regarding software licenses? 19 A. I've been involved in cases that involved 10:36 20 software licenses. I'm not sure whether I offered 21 opinions or not. It would depend on the definition 22 of opinion. 23 Q. Would you hold yourself out as an expert in 24 software licenses and their interpretation? 10:36 25 MS. PERRY: Objection, calls for a legal	
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10:33  10:34  10:34  10:34  10:35	1 conclusion, vague and ambiguous. 2 THE WITNESS: Right, as stated, I would say 3 no because that would require a legal background. 4 Q. MR. LEWIS: Do you consider yourself an 10:36 5 expert in terms of use for Web sites? 6 MS. PERRY: Same objections. 7 THE WITNESS: Again, I would say no as it 8 relates to requires a legal background. 9 Q. MR. LEWIS: Do you consider yourself an 10:37 10 expert in any PeopleSoft software? 11 MS. PERRY: Same objection, compound 12 question, too. 13 THE WITNESS: Not to my knowledge. 14 Q. MR. LEWIS: JD Edwards software? 10:37 15 MS. PERRY: Same objections. 16 THE WITNESS: And same answer. No. No, I do 17 not. 18 Q. MR. LEWIS: Seibel? 19 MS. PERRY: Same objections. 10:37 20 THE WITNESS: No, I do not. 21 Q. MR. LEWIS: Oracle? 22 MS. PERRY: Same objections. 23 THE WITNESS: Well, I've used Oracle products 24 off and on. I think in terms of being an expert, I 10:37 25 think there could be specific areas where I might be	

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1 able to offer some, you know, expert testimony.  
2 Q. MR. LEWIS: What do you mean by that? What  
3 areas?  
4 A. Well, Oracle's a big -- it's a big set of  
10:37 5 products. So it, you know, there could be a case  
6 that comes along where the -- and it doesn't mean  
7 necessarily you have to be an expert in the operation  
8 of the, you know, of an Oracle product to offer an  
9 expert opinion on some aspect of, for example, using  
10:38 10 it or that sort of thing. It's a broad question.  
11 Q. Okay. Do you consider yourself an expert on  
12 Enterprise application software in general?  
13 MS. PERRY: Same objections.  
14 THE WITNESS: Right. The difficulty I'm  
10:38 15 having here is that being an expert and offering  
16 expert testimony are two different things.  
17 Q. MR. LEWIS: So you're not able to answer the  
18 question. Is that what you're telling me?  
19 A. I guess I'd like some clarification because  
10:38 20 to me someone could say -- could use the term expert  
21 and it might not be -- it might be just simply that  
22 they think they're very knowledgeable in a particular  
23 area. So I don't know if you're asking that sort of  
24 terminology when you say expert or the kind of thing  
10:39 25 where, you know, that would apply more in terms of

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1 offering expert testimony.  
2 Q. Let me try to be a little more specific.  
3 Have you ever published anything concerning  
4 Enterprise application software?  
10:39 5 A. No, I have not.  
6 Q. Have you ever testified about Enterprise  
7 application software?  
8 A. No, I have not.  
9 Q. Are you an expert in COBOL?  
10:39 10 MS. PERRY: Objection, calls for a legal  
11 conclusion, vague and ambiguous.  
12 THE WITNESS: Can we clarify what -- what  
13 expert means to you in that context?  
14 Q. MR. LEWIS: Is there any sense in which you  
10:39 15 consider yourself an expert in COBOL?  
16 MS. PERRY: Same objections.  
17 THE WITNESS: There may be some sense. In  
18 the sense that I have programmed in COBOL sometime in  
19 the distant past and there may be certain -- certain  
10:40 20 aspects of using COBOL that I could -- that I could  
21 offer an opinion on as an expert. It's a  
22 possibility.  
23 Q. MR. LEWIS: I take it you have some  
24 experience in programming COBOL?  
10:40 25 A. In the distant past, yes.

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1 MS. PERRY: When you get to a good stopping  
2 point, you might want to take a quick break.  
3 MR. LEWIS: We can stop right now. That's  
4 fine.  
10:40 5 VIDEOGRAPHER: Going off the record, the time  
6 now is 10:41. This also is the conclusion of tape  
7 one.  
8 (Deposition recess taken.)  
9 VIDEOGRAPHER: The time now is 11:00 o'clock.  
11:00 10 We're back on the videotape record. This also marks  
11 the beginning of tape two. Please proceed.  
12 Q. MR. LEWIS: Mr. Funck, you understand you're  
13 still under oath?  
14 A. I do, sir.  
11:00 15 Q. As long as we have that understanding  
16 throughout, I'll stop reminding you.  
17 A. All right. Thanks.  
18 Q. Are you an expert in SQR, structured --  
19 excuse me. I'm drawing a blank. SQR.  
11:00 20 MS. PERRY: Objection, calls for legal  
21 conclusion.  
22 THE WITNESS: Something along the lines of  
23 SQR report language?  
24 Q. MR. LEWIS: Yes.  
11:01 25 A. I have no direct experience with SQR, but,

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1 again, as it relates to at some point in the future  
2 of would I be involved in a situation where my  
3 experience as an expert could apply, you know, I  
4 really can't say. So I think the direct answer would  
5 be that I don't have any experience in SQR.  
11:01 6 Q. How about SQC?  
7 MS. PERRY: Same objection.  
8 THE WITNESS: I don't have any experience  
9 with SQC either.  
11:01 10 Q. HTML?  
11 A. I do have some experience with HTML.  
12 MS. PERRY: Same objection.  
13 Q. MR. LEWIS: Do you consider yourself an  
14 expert?  
11:01 15 MS. PERRY: Objection, calls for a legal  
16 conclusion.  
17 THE WITNESS: So this goes back to something  
18 we were talking about before. I think the difficulty  
19 answering are you, you know, are you an expert in a  
11:01 20 certain area, it's been my experience as an ex --  
21 offering expert testimony that there have been  
22 situations where my -- my experience might apply.  
23 And so -- and/or within a sufficient access to  
24 resources and perhaps other people that I can use as  
11:02 25 resources, then I might feel that I've gained

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CERTIFICATE OF REPORTER

I, WENDY E. ARLEN, 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  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

  
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WENDY E. ARLEN CSR, No. 4355