

EXHIBIT 2

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.
_____ /

VIDEOTAPED DEPOSITION OF
PAUL PINTO

Wednesday, May 19, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Reported By: WENDY E. ARLEN, CSR #4355, CRR, RMR
Job 427372

TEXT REMOVED - NOT RELEVANT TO MOTION

6 Q. How in the year 2000 did you come to start
7 using this process?

8 A. That's when I joined NIIT, which again is a
9 CMM Level 5 company. So all processes are
12:45 10 documented.

11 Q. Okay. And you -- and that process is
12 documented at NIIT?

13 A. A variant of this process is documented.

14 Q. Why did you use a variant of it here in this
12:45 15 report?

16 A. Because this is specifically written for this
17 context.

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22 Q. You see under Roman vi it says ten-step
23 analysis, et cetera?

24 A. Yes, I do.

12:47 25 Q. And then A, Step One, B, Step Two, et cetera?

1 A. Yes.

2 Q. All the way to J, Step Ten. Those are the
3 ten steps that you employed, right, in your function
4 point analysis?

12:47 5 A. Those are the ten steps I employed in this
6 analysis.

7 Q. Are you aware of whether those ten steps in
8 that order have been approved by any standard setting
9 group such as the International Software Benchmarking
10 Standards Group?

11 A. But, Mr. Butler -- --

12 Q. Yeah.

13 A. -- these ten steps were specifically written
14 and tailored for this case.

12:48 15 Q. So the answer is no.

16 A. No, that's not the answer.

17 Q. Let me ask my question again because I'm
18 entitled to an answer to my question not the question
19 you want to answer.

12:48 20 A. Understood.

21 Q. Okay. This -- you see here ten steps you
22 have page i, Roman i in front of you.

23 A. I do.

24 Q. And there's ten steps going all the way from
12:48 25 Step One to Step Ten.

1 A. I see that.

2 Q. Okay. Have those ten steps in that order as
3 you have them on that paper -- page I see you looking
4 at right in front of you, page i of your report, have
12:48 5 those ten steps been approved by any standard setting
6 group such as the International Software Benchmarking
7 Standards Group?

8 MS. HOUSE: And I'm going to object to the
9 word approved as vague.

12:48 10 THE WITNESS: Yeah, I can't say as to whether
11 they've -- they've been approved --

12 Q. MR. BUTLER: Okay.

13 A. -- by those organizations.

14 Q. Okay. Are you -- thank you. Are you aware
12:49 15 of any IFPUG publication that uses this ten-step
16 process?

17 MS. HOUSE: Asked and answered.

18 THE WITNESS: I am not aware.

19 Q. MR. BUTLER: Has this ten-step process listed
12:49 20 here been peer reviewed, as far as you know?

21 A. Yes, it has been peer reviewed.

22 Q. Okay. And you believe it would be
23 publishable in a peer reviewed professional journal?

24 A. Yes, I do.

12:49 25 Q. Have you seen it published in such a journal?

1 A. I have not.

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13 Q. MR. BUTLER: You hold yourself out as having
14 some sort of function point expertise?

14:29 15 A. I hold myself out as being an expert in the
16 field of commercial product development and as such
17 have applied a number of estimating techniques.

18 Q. Okay. But you don't specifically hold
19 yourself out as a function point expert?

14:29 20 A. I didn't --

21 MS. HOUSE: Objection, overbroad, misstates
22 his testimony.

23 THE WITNESS: I do not hold myself out as a
24 function point specialist.

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13 Q. MR. BUTLER: Mr. Pinto, I'm handing you what
14 has been marked as Exhibit 2060.

16:36 15 A. Yes.

16 Q. And it's a document entitled COCOMO II Model
17 Definition Manual.

18 A. I see that.

19 Q. Right. Sorry. I was looking at the wrong
16:37 20 page here. Have you seen this manual before today?

21 A. I have.

22 Q. When was that?

23 A. Numerous times.

24 Q. Okay. In the course of preparing your
16:37 25 report, did you see this report -- or this document?

1 A. I've seen this document for many years prior
2 to that.

3 Q. Oh, you have.

4 A. And in the course of preparing my report.

16:37 5 Q. Okay. If you turn to page 1 of that
6 document.

7 A. Yes.

8 Q. You see Eq. 1 and Eq. 2 there?

9 A. I do.

16:37 10 Q. Those are the equations I showed you earlier
11 today.

12 A. I see that.

13 Q. Do you recognize those?

14 A. I recognize those as being from this manual.
16:37 15 I also recognize them as -- as being the equations
16 contained in my COCOMO spreadsheet.

17 Q. Okay. And if you turn to page something
18 which I'll get to in a second -- well, bear with me
19 one second, Mr. Pinto. There we go. Okay. If you
16:38 20 turn now, please, to page 41 there is equation 14
21 that we referred to earlier. Do you recognize that
22 as being the equation we looked at before?

23 A. I do see that there.

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Page	Line	Change:	Reason:
<u>263</u>	<u>21</u>	<u>"SO" TO "A"</u>	<u>CORRECTION</u>
<u>285</u>	<u>1</u>	<u>"IF COULD" TO "IF I COULD"</u>	<u>CORRECTION</u>
<u>295</u>	<u>15</u>	<u>"IT NOT" TO "IT IS NOT"</u>	<u>CORRECTION</u>
<u>316</u>	<u>17</u>	<u>"CM LEVEL" TO "CMD LEVEL"</u>	<u>CORRECTION</u>
<u>319</u>	<u>18</u>	<u>"143" TO "144"</u>	<u>CORRECTION</u>
<u>325</u>	<u>13</u>	<u>"CHANGES" TO "RATES"</u>	<u>CORRECTION</u>
<u>330</u>	<u>21</u>	<u>OMIT "IS"</u>	<u>CORRECTION</u>

ACB Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.


 (signature)

6/23/10
 (date)

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 use and that I am not related to any of the parties thereto.



DATED: May 25, 2010

Wendy E Arlen

WENDY E. ARLEN CSR, No. 4355