

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ORACLE CORPORATION, a	)	
Delaware corporation,	)	
ORACLE USA, INC., a	)	
Colorado corporation, and	)	
ORACLE INTERNATIONAL	)	
CORPORATION, a California	)	
corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 07-CV-1658 (PJH)
	)	
SAP AG, a German	)	
corporation, SAP AMERICA,	)	
INC., a Delaware	)	
corporation, TOMORROWNOW,	)	
INC., a Texas corporation,	)	
and DOES 1-50, inclusive,	)	
	)	
Defendants.	)	
	)	

VIDEOTAPED DEPOSITION OF  
STEPHEN K. CLARKE

VOLUME 1; PAGES 1 - 323

TUESDAY, JUNE 8, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-427117)

STEPHEN K. CLARKE          June 8, 2010  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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12:08:06	12:11:12
12:08:11	12:11:16
12:08:17	12:11:19
12:08:22	12:11:25
12:08:26	12:11:28
12:08:31	12:11:32
12:08:36	12:11:36
12:08:41	12:11:39
12:08:46	12:11:45     14     MR. PICKETT: Q. In considering what a
12:08:50	12:11:46     15     willing buyer would pay for the license of what was
12:08:55	12:11:52     16     stolen, did you talk with any SAP personnel?
12:08:59	12:11:58     17     A. In terms of the value of use?
12:09:00	12:12:00     18     Q. Yes.
12:09:03	12:12:02     19     A. No.
12:09:07	12:12:02
12:09:11	12:12:03
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12:09:56	12:12:27
12:10:01	12:12:28
12:10:03	12:12:30
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12:10:10	12:12:36
12:10:14	12:12:37
12:10:21	12:12:40
12:10:23	12:12:42
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12:18:30 12:18:30 12:18:32 12:18:35 12:18:37 12:18:44 12:18:49 12:18:52 12:18:56 12:19:05 12:19:10 12:19:15 12:19:16 12:19:18 12:19:20 12:19:22 12:19:25 12:19:29 12:19:34 12:19:36 12:19:40 12:19:42 12:19:45 12:19:48 12:19:49	12:20:47 1 MR. PICKETT: Q. Well, you understand SAP 12:20:48 2 has infringed all kind of intellectual property, 12:20:51 3 don't you? 12:20:52 4 MR. McDONELL: Objection. Same 12:20:53 5 objections. Argumentative. 12:20:55 6 MR. PICKETT: Q. Please answer the 12:20:56 7 question. 12:20:59 8 THE WITNESS: I understand that that is an 12:21:00 9 allegation. I don't have an understanding -- I 12:21:04 10 didn't need an understanding as to whether the 12:21:07 11 allegations will ultimately be found to be proven. 12:21:10 12 MR. PICKETT: Q. Well, don't you 12:21:11 13 understand -- I'm sorry, I didn't mean -- 12:21:13 14 MR. McDONELL: Don't interrupt, please, 12:21:14 15 Counsel. 12:21:15 16 MR. PICKETT: Q. Go ahead. 12:21:17 17 A. Sorry, I've lost my train. Where did I 12:21:33 18 end up? 12:21:34 19 (Record read as follows: 12:21:35 20 Answer: I understand that that is an 12:21:35 21 allegation. I don't have an understanding -- 12:21:35 22 I didn't need an understanding as to whether 12:21:35 23 the allegations will ultimately be found to 12:21:35 24 be proven.) 12:21:35 25 THE WITNESS: Where I was heading next is
Page 123	Page 125
12:19:52 12:19:56 12:19:56 12:19:59 12:20:00 12:20:02 12:20:03 12:20:04 12:20:09 12:20:10 12:20:11 12:20:15 12:20:20 12:20:21 12:20:22 12:20:25 12:20:26 12:20:27 12:20:30 12:20:31 12:20:35 12:20:40 12:20:41 12:20:43 12:20:46	12:21:37 1 that I have made certain assumptions about the 12:21:39 2 liability in the case. And I have done so within 12:21:46 3 the context of certain other expert reports that 12:21:51 4 I've referenced in my report to try to determine 12:22:00 5 what the subject IP is, because, as I understand 12:22:05 6 it, what's at issue here is the value of that use 12:22:10 7 of that subject IP. 12:22:12 8 So without a proper understanding of that, 12:22:16 9 we can't begin to do the next thing. 12:22:19 10 So I didn't blindly assume, which is I 12:22:22 11 think what your question implied, that all of the 12:22:27 12 PeopleSoft, all of the JD Edwards, all of the 12:22:30 13 Siebel software had been, to use your words, stolen 12:22:35 14 by SAP. I -- that's not my area, and I don't think 12:22:40 15 there are any -- there's any acceptance that that 12:22:43 16 is as yet a proven fact. 12:22:47 17 So I've done what I think is the 12:22:49 18 appropriate economic analysis, based upon the 12:22:53 19 subject IP as I've defined it, which I think is the 12:22:57 20 appropriate definition to apply in this case. 12:23:03 21 MR. PICKETT: Q. Tell me -- 12:23:04 22 A. And I understand that Mr. Meyer calculated 12:23:06 23 the value of something else, and no doubt we'll 12:23:11 24 argue about that over the next couple of days and 12:23:13 25 possibly at trial.

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12:23:15	1 Q. Tell me every assumption you made with	12:26:04
12:23:18	2 respect to the liability.	12:26:09
12:23:20	3 MR. McDONELL: Vague and ambiguous, overly	12:26:13
12:23:21	4 broad.	12:26:20
12:23:23	5 THE WITNESS: I assumed that the alleged	12:26:28
12:23:28	6 actions were proven to the extent that they applied	12:26:30
12:23:37	7 to the facts of the case. So not everything that	12:26:38
12:23:41	8 the plaintiffs say in their complaint do I accept	12:26:42
12:23:46	9 to be true. And one of those things, as an	12:26:48
12:23:51	10 example, was that -- Mr. Meyer used this	12:26:51
12:24:00	11 terminology many times -- the entire business model	12:26:57
12:24:03	12 was infringing.	12:26:58
12:24:05	13 I don't think that's true. And there's	12:27:02
12:24:10	14 expert opinion on that that indicates that that's	12:27:04
12:24:16	15 not true.	12:27:05
12:24:18	16 I also think that I did my own analysis of	12:27:07
12:24:21	17 elements of how much of the intellectual property	12:27:10
12:24:27	18 was infringed and for how long, and the manner in	12:27:15
12:24:31	19 which it was used, as I've spent 300 pages here	12:27:21
12:24:35	20 explaining to you.	12:27:29
12:24:38	21 And so I have assumed that there is	12:27:33
12:24:42	22 liability, but I've not assumed that everything you	12:27:38
12:24:46	23 say in the complaint is true.	12:27:48
12:24:51	24 MR. PICKETT: Q. So you've done your own	12:27:49
12:24:54	25 analysis of what SAP infringed and what they did	12:27:52
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12:24:56	1 not infringe?	12:27:56
12:24:58	2 MR. McDONELL: Misstates the testimony,	12:28:00
12:24:59	3 vague and ambiguous.	12:28:01
12:25:01	4 THE WITNESS: No.	12:28:02
12:25:02	5 MR. PICKETT: Q. You did your own	12:28:05
12:25:03	6 analysis of how much IP was infringed and for how	12:28:06
12:25:05	7 long and the manner in which it was used. Yes or	12:28:07
12:25:08	8 no?	12:28:10
12:25:10	9 MR. McDONELL: Vague and ambiguous --	12:28:14
12:25:12	10 THE WITNESS: That's correct.	12:28:17
12:25:13	11 MR. PICKETT: Q. How much -- on your	12:28:20
12:25:15	12 analysis, how much IP was infringed?	12:28:26
12:25:18	13 MR. McDONELL: Misstates the testimony.	12:28:27
12:25:20	14 He has not -- he stated very clearly --	12:28:34
12:25:25	15 MR. PICKETT: No speak being objections.	12:28:38
12:25:29	16 Go ahead.	12:28:39
12:25:29	17 MR. McDONELL: You're trying to mislead	12:28:41
12:25:30	18 the witness.	12:28:42
12:25:31	19 THE WITNESS: I incorporated expert	12:28:45
12:25:32	20 opinion, as I've indicated to you now three or four	12:28:45
12:25:35	21 times, that suggested, indicates, that certain	12:28:46
12:25:43	22 intellectual property owned by Oracle was not used.	12:28:47
12:25:49	23 I have relied upon that opinion to some extent.	12:28:50
12:25:57		12:28:53
12:26:00		12:28:56

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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 17, 2010  
Holly Thuman  
HOLLY THUMAN, CSR

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ORACLE CORPORATION, a	)	
Delaware corporation,	)	
ORACLE USA, INC., a	)	
Colorado corporation, and	)	
ORACLE INTERNATIONAL	)	
CORPORATION, a California	)	
corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 07-CV-1658 (PJH)
	)	
SAP AG, a German	)	
corporation, SAP AMERICA,	)	
INC., a Delaware	)	
corporation, TOMORROWNOW,	)	
INC., a Texas corporation,	)	
and DOES 1-50, inclusive,	)	
	)	
Defendants.	)	
	)	

VIDEOTAPED DEPOSITION OF  
STEPHEN K. CLARKE

VOLUME 3; PAGES 652 - 969

THURSDAY, JUNE 10, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-427123)

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09:41:03 09:41:06 09:41:12 09:41:15 09:41:19 5 MR. PICKETT: Q. As a result of the 09:41:24 6 exclusion analysis, the causation analysis, you 09:41:28 7 ultimately calculated lost profits on my count as 09:41:33 8 179 of the 358 customers at issue. 09:41:36 9 Does that sound about right? 09:41:37 10 A. That sounds about right. 09:41:39 09:41:43 09:41:48 09:41:50 09:41:52 09:41:52 09:41:53 09:41:53 09:41:56 09:41:59 09:42:00 09:42:01 09:42:05 09:42:07 09:42:09	09:43:45 09:43:50 09:43:51 09:43:53 09:43:56 09:43:58 09:44:01 09:44:02 09:44:05 09:44:06 09:44:09 09:44:09 09:44:17 09:44:21 09:44:30 09:44:33 09:44:35 09:44:36 09:44:40 09:44:50 09:44:52 09:44:54 09:44:55 09:44:57 09:45:00



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17:18:52 17:18:55 17:18:55 17:18:58 17:19:00 17:19:01 17:19:04 17:19:07 17:19:10 17:19:15 17:19:18 17:19:19 17:19:19 17:19:29 17:19:37 17:19:42 17:19:42 17:19:44 17:19:45 17:19:50 17:19:54 17:19:56 17:19:58 17:20:03 17:20:11	17:21:19 17:21:20 17:21:20 17:21:24 17:21:30 17:21:33 17:21:37 17:21:41 17:21:43 17:21:46 17:21:50 17:21:53 17:21:56 17:21:58 17:22:01 17:22:02 17:22:03 17:22:05 17:22:06 17:22:11 17:22:13 17:22:14 17:22:16 17:22:18 17:22:20
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17:20:13 17:20:15 17:20:15 17:20:18 17:20:20 17:20:23 17:20:25 17:20:29 17:20:30 17:20:35 17:20:38 17:20:41 17:20:44 17:20:48 17:20:49 17:20:51 17:20:53 17:21:01 17:21:05 17:21:08 17:21:09 17:21:10 17:21:13 17:21:15 17:21:17	17:22:25 17:22:28 17:22:35 17:22:39 17:22:45 17:22:47 17:22:49 17:22:52 17:22:53 17:22:55 17:22:58 17:22:59 17:23:02 17:23:03 17:23:06 17:23:09 17:23:11 17:23:15 17:23:21 17:23:26 17:23:30 17:23:34 22 17:23:37 23 17:23:40 24 17:23:46 25 <p>Q. So I think I heard you say, but let me see if I have it right, that you did not exclude any customer from any of the ten disgorgement exclusion pools on the basis of some evidence that</p>

Page 909		Page 911
17:23:49	1 TomorrowNow played a role in the customer's	17:26:33
17:23:54	2 behavior?	17:26:34
17:23:55	3 MR. McDONELL: Asked and answered, and	17:26:39
17:23:56	4 vague and ambiguous.	17:26:42
17:23:59	5 THE WITNESS: Yeah, I think there are only	17:26:43
17:24:00	6 two customers left in this analysis. It would have	17:26:43
17:24:04	7 to be one of those, wouldn't it?	17:26:45
17:24:05	8 MR. PICKETT: Q. It would, wouldn't it?	17:26:46
17:24:07	9 A. And as I indicated several times already,	17:26:47
17:24:09	10 I don't recall that situation arising.	17:26:48
17:24:13	11 Q. For any of these pools?	17:26:49
17:24:14	12 MR. McDONELL: Asked and answered.	17:26:54
17:24:15	13 THE WITNESS: Well, there are still only	17:26:59
17:24:16	14 two customers, so whatever pools they're in, I	17:27:02
17:24:20	15 don't recall that occurring for those two	17:27:05
17:24:25	16 customers.	17:27:06
17:24:27		17:27:11
17:24:31		17:27:13
17:24:36		17:27:13
17:24:40		17:27:17
17:24:42		17:27:18
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Page 930	Page 932
18:06:39 18:06:40 18:06:43 18:06:46 18:06:50 18:06:53 18:06:58 18:07:01 18:07:01 18:07:04 18:07:04 18:07:05 18:07:06 18:07:08 18:07:11 18:07:12 18:07:13 18:07:15 18:07:17 18:07:19 18:07:20 18:07:23 18:07:27 18:07:31 18:07:34	18:09:04 1 So when you only have data in a model like 18:09:09 2 we have that is in a specific range, it's very 18:09:14 3 dangerous -- in fact, totally inappropriate -- to 18:09:17 4 take information and extrapolate from that limited 18:09:22 5 range of data that you do have and say, well, let's 18:09:26 6 put an intercept here, and the intercept will be 18:09:29 7 where the fixed costs were. 18:09:32 8 And if your data were very close to the Y 18:09:35 9 axis, that might be appropriate. So you -- you can 18:09:38 10 extrapolate a little bit, but you can't extrapolate 18:09:42 11 from 10 billion dollars down to zero. That 18:09:46 12 wouldn't be an appropriate extrapolation. It would 18:09:49 13 be too far. 18:09:52 14 Q. Did -- I'm sorry. 18:09:53 15 A. I was just going to say that the model 18:09:55 16 really only applies over a given range, and you 18:09:59 17 couldn't extrapolate it out to infinite, and you 18:10:02 18 couldn't extrapolate it down to zero. 18:10:05 19 Q. Did you consider that issue in creating 18:10:07 20 your zero intercept regression model? 18:10:10 21 MR. McDONELL: Object to the form of 18:10:10 22 the -- 18:10:11 23 MR. PICKETT: Q. Or using it, I should 18:10:12 24 say? 18:10:13 25 MR. McDONELL: Object to the form.

<p style="text-align: right;">Page 933</p> <p>18:10:13 1 THE WITNESS: Yes. That's why we did 18:10:14 2 that, because there's really no meaning to saying, 18:10:18 3 let's look at Oracle's fixed costs when revenues 18:10:21 4 are zero. 18:10:24 5 Revenues are not zero. The revenues were 18:10:27 6 in the billions of dollars, so it would be 18:10:30 7 inappropriate to extrapolate. 18:10:32 18:10:33 18:10:36 18:10:43 18:10:4 18:10:47 18:10:49 18:10:50 18:10:52 18:10:53 18:10:57 18:10:59 18:11:05 18:11:13 18:11:17 18:11:19 18:11:21 18:11:23</p>	<p style="text-align: right;">Page 935</p> <p>18:12:34 18:12:37 18:12:39 18:12:43 18:12:45 18:12:53 18:12:57 18:13:00 18:13:02 18:13:04 18:13:06 18:13:09 18:13:14 18:13:18 18:13:22 18:13:27 18:13:32 18:13:35 18:13:40 18:13:45 18:13:52 18:13:53 18:13:59 18:14:03 18:14:04</p>
<p style="text-align: right;">Page 934</p> <p>18:11:25 18:11:29 18:11:34 18:11:37 18:11:40 18:11:43 18:11:44 18:11:44 18:11:46 18:11:49 18:11:53 18:11:56 18:12:01 18:12:03 18:12:07 18:12:10 18:12:11 18:12:15 18:12:19 18:12:21 18:12:22 18:12:26 18:12:29 18:12:31 18:12:33</p>	<p style="text-align: right;">Page 936</p> <p>18:14:04 18:14:07 18:14:07 18:14:12 18:14:16 18:14:23 18:14:28 18:14:34 18:14:37 18:14:39 18:14:42 18:14:46 18:14:47 18:14:49 18:14:50 18:14:53 18:14:57 18:15:00 18:15:03 18:15:08 18:15:10 18:15:12 18:15:21 18:15:22 18:15:26</p>

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18:45:11		19:01:49	
18:45:12		19:01:56	
18:45:16		19:01:59	
18:45:17		19:02:00	
18:45:21		19:02:03	
18:45:26		19:02:06	
18:45:34		19:02:10	
18:45:39		19:02:16	
18:45:45		19:02:19	
18:45:47		19:02:20	
18:45:48		19:02:22	
18:46:01		19:02:23	
18:58:50		19:02:27	
18:58:53		19:02:30	
18:59:07		19:02:32	
18:59:08		19:02:50	
18:59:12		19:02:51	

Page 961	Page 963	
19:07:57 19:08:01 19:08:05 19:08:09 19:08:14 19:08:20 19:08:24 19:08:27 19:08:32 19:08:39 19:08:42 19:08:45 19:08:48 19:08:49 19:08:54 19:08:59 19:09:01 19:09:02 19:09:05 19:09:08 19:09:13 19:09:21 19:09:23 19:09:26 19:09:29	19:10:55 19:11:00 19:11:02 19:11:04 19:11:06 19:11:08 19:11:10 19:11:13 19:11:16 19:11:19 19:11:21 19:11:23 19:11:25 19:11:26 19:11:28 19:11:29 19:11:31 19:11:33 19:11:34 19:11:37 19:11:40 19:11:41 19:11:42 19:11:43 19:11:44	
Page 962	Page 964	
19:09:34 19:09:37 19:09:41 19:09:45 19:09:46 19:09:49 19:09:53 19:09:54 19:09:56 19:09:57 19:10:00 19:10:02 19:10:02 19:10:05 19:10:08 19:10:12 19:10:17 19:10:21 19:10:24 19:10:30 19:10:34 19:10:39 19:10:45 19:10:48 19:10:51	19:11:45 19:11:46 19:11:47 19:11:49 19:11:51 19:11:53 19:11:55 19:11:55 19:11:56 19:11:57 19:11:58 19:12:01 19:12:01 19:12:02 19:12:04 19:12:06 19:12:07 19:12:10 19:12:15 19:12:18 19:12:23 19:12:25 19:12:26 19:12:29 19:12:30	17 Q. And if we do your analysis -- I'm sorry, 18 if we look at your Oracle regressions, the Oracle 19 USA regression in particular, I'll use this as an 20 example, you're equating the total costs with the 21 variable costs, are you not? 22 MR. McDONELL: Vague and ambiguous, asked 23 and answered. 24 THE WITNESS: Okay. 25 MR. PICKETT: Q. That's the result of

Page 965		Page 967
19:12:31	1 your regression. Correct?	19:14:52
19:12:32	2 MR. McDONELL: Wait, don't interrupt --	19:14:54
19:12:34	3 THE WITNESS: It's not the result of my	19:14:55
19:12:35	4 regression. What my regression does is, it takes	19:14:56
19:12:40	5 the data for the range that we have it.	19:14:58
19:12:42	6 And you need to understand, fixed costs	19:15:01
19:12:45	7 don't mean they're fixed over every conceivable	19:15:02
19:12:48	8 range of activity. They're fixed over a given	19:15:05
19:12:52	9 range of activity. So if Oracle doubled in size,	19:15:06
19:12:56	10 it wouldn't have the same fixed costs. It would	19:15:09
19:12:58	11 have more buildings all over the world. If it	19:15:12
19:13:01	12 shrunk to 10 percent of its current size, it	19:15:14
19:13:04	13 wouldn't have the same fixed costs. It would	19:15:14
19:13:07	14 divest itself of a bunch of buildings and other	19:15:14
19:13:09	15 fixed costs.	19:15:14
19:13:10	16 So fixed costs only have meaning within a	19:15:14
19:13:13	17 given range of activity. And as soon as you get	19:15:14
19:13:17	18 outside that range of activity, all costs are	19:15:14
19:13:20	19 variable.	19:15:14
19:13:21	20 So to give you an example, General Motors	19:15:14
19:13:27	21 doesn't need to make as many cars. What does it	
19:13:30	22 do? It shuts its factories. It Toyota is a	
19:13:33	23 growing car company and needs to make more cars and	
19:13:36	24 it's at capacity in the factories it's got, it has	
19:13:39	25 to open new factories.	

Page 966		Page 968
19:13:40	1 So the fixed costs are fixed only within a	
19:13:45	2 range. And I have specified the equation that	
19:13:49	3 tells me the slope of the line, and then I have	
19:13:53	4 applied that to quantify the ratio of fixed costs,	
19:13:58	5 and by subtracting that figure for -- I beg your	
19:14:01	6 pardon, variable costs. By subtracting that	
19:14:04	7 variable cost figure from total cost, I get the	
19:14:08	8 fixed cost for that range of activity that's	
19:14:11	9 relevant in this case.	
19:14:17	10 So your constant coming back to this	
19:14:19	11 difference, this completely bogus difference	
19:14:22	12 between the two specifications, is just	
19:14:28	13 demonstrating a lack of understanding. I don't	
19:14:30	14 know who's creating these questions for you, but	
19:14:32	15 they don't know what they're doing.	
19:14:35		
19:14:36		
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19:14:39		
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19:14:41		
19:14:47		
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19:14:51		

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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 21, 2010  
Holly Thuman  
HOLLY THUMAN, CSR



# JONES DAY

1755 EMBARCADERO ROAD • PALO ALTO, CALIFORNIA 94303

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Direct Number: (650) 687-4139  
anphan@jonesday.com

July 19, 2010

## VIA UPS OVERNIGHT

Joseph Vallette  
Merrill Legal Solutions  
135 Main Street, 4<sup>th</sup> Floor  
San Francisco, CA 94105

Re: *Oracle Corporation et al. v. SAP AG et al.*  
U.S. District Court, Northern District of California; Case No. 07-CV-1658

Dear Joe:

Enclosed please find the signature and errata pages to the deposition transcript of Stephen Clarke taken on June 8, June 9, and June 10, 2010.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Anthony Phan  
IP Litigation Project Assistant

Enclosures

cc: Geoff Howard, Esq. (via email and US mail)  
Bree Hann, Esq. (via email and US mail)  
Zachary J. Alinder, Esq. (via email and US mail)  
Jason McDonell, Esq.  
Josh Fuchs, Esq.

SVI-74691v1

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SAN DIEGO • SAN FRANCISCO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

18:32:28 1 a significant part of my analysis of Mr. Meyer's  
18:32:31 2 opinion.

18:32:31 3 MR. PICKETT: Q. But they're not part of  
18:32:33 4 your affirmative case?

18:32:34 5 A. That's correct.

18:32:35 6 MR. McDONELL: I believe we're --

18:32:37 7 MR. PICKETT: Let's take a break.

18:32:39 8 THE VIDEO OPERATOR: Going off the record,  
18:32:40 9 the time is 6:32.

18:32:42 10 (Time noted, 6:32 p.m.)

18:32:52 11 --o0o--

18:32:52 12 I declare under penalty of perjury that  
18:32:52 13 the foregoing is true and correct. Subscribed at

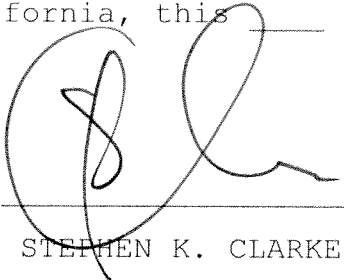
18:32:52 14 \_\_\_\_\_, California, this \_\_\_\_\_ day of

18:32:52 15 \_\_\_\_\_ 2010.

18:32:52 16

18:32:52 17

18:32:52 18

  
\_\_\_\_\_  
STEPHEN K. CLARKE

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19:11:40            1            named when I found that common thread.

19:11:43            2                      MR. McDONELL: We're done, Counsel.

19:11:44            3                      MR. PICKETT: All right. Let's break  
19:11:45            4            then.

19:11:46            5                      THE VIDEO OPERATOR: Very good. Going off  
19:11:47            6            the record, the time now is 7:11. This also marks  
19:11:50            7            the end of Videotape No. 5, Volume 2 of Stephen  
19:11:54            8            Clarke.

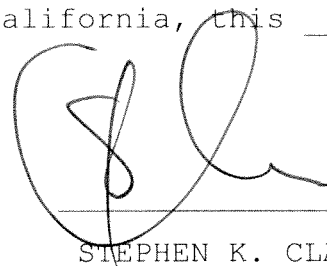
19:11:54            9                      (Time noted, 7:11 p.m.)

19:11:54            10                      --o0o--

19:11:54            11                      I declare under penalty of perjury that  
19:11:54            12            the foregoing is true and correct. Subscribed at

19:11:54            13            \_\_\_\_\_, California, this \_\_\_\_ day of

19:11:54            14            \_\_\_\_\_ 2010.



19:11:54            15

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19:11:54            17

STEPHEN K. CLARKE

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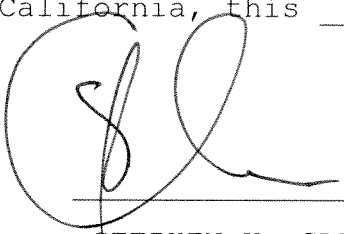
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19:14:52 1 MR. PICKETT: Let's go back on the record.  
19:14:54 2 MR. McDONELL: 30 seconds.  
19:14:55 3 MR. PICKETT: Q. Last question: Would  
19:14:56 4 Oracle's fixed costs change if there were a 2  
19:14:58 5 percent change in the number of support customers?  
19:15:01 6 A. I think that's unlikely.  
19:15:02 7 MR. PICKETT: Thank you. We're done.  
19:15:05 8 THE VIDEO OPERATOR: Very good. Going off  
19:15:06 9 the record, the time now is 7:15. This also will  
19:15:09 10 be the conclusion of Tape 5, Volume 3, in the  
19:15:12 11 deposition of Stephen Clarke.  
19:15:14 12 (Time noted, 7:15 p.m.)  
19:15:14 13 --o0o--  
19:15:14 14 I declare under penalty of perjury that  
19:15:14 15 the foregoing is true and correct. Subscribed at  
19:15:14 16 \_\_\_\_\_, California, this \_\_\_\_ day of  
19:15:14 17 \_\_\_\_\_ 2010.   
19:15:14 18  
19:15:14 19  
19:15:14 20 STEPHEN K. CLARKE  
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Change: Changes are attached

Reason: on 10 pages

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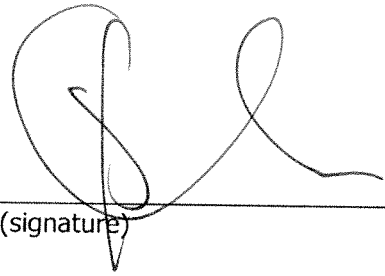
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		Reason: _____

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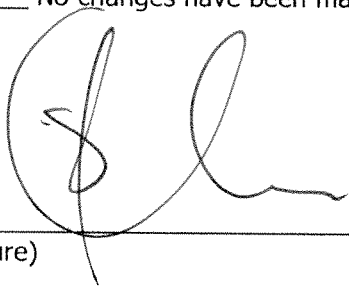
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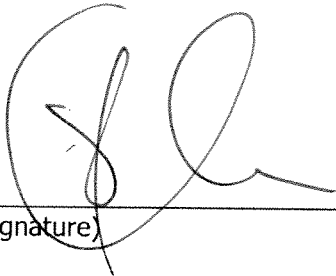
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\_\_\_\_\_  
(signature)

7/8/10  
\_\_\_\_\_  
(date)

# Errata Sheet

Pg/Ln

Correction

23/14 Change from: Delete "OKAY"  
Change to: \_\_\_\_\_

40/18 Change from: stay  
Change to: say

48/2 Change from: you ask  
Change to: you either ask

53/25 Change from: Chemstar  
Change to: Canstar

63/8 Change from: that one. I don't  
Change to: that one so... I don't

63/24 Change from: I  
Change to: I've

68/4 Change from: second most  
Change to: second more, most

73/22 Change from: would have  
Change to: would have, would have

75/1 Change from: What do you  
Change to: When. What do you

88/18 Change from: law on economics  
Change to: law and economics

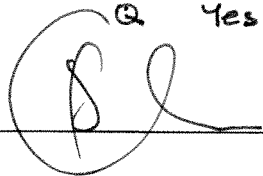
89/16 Change from: lawyers and their  
Change to: lawyers as and their

94/21 Change from: ~~32~~ 3200  
Change to: 2300

94/22 Change from: 284?  
Change to: 284? ~~32~~

Q Yes. It's 3200

Signature: \_\_\_\_\_

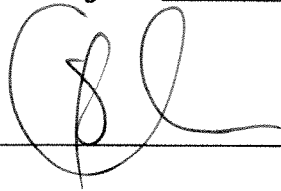


Date: 7/7/10

# Errata Sheet

Pg/Ln	Correction
<u>101/ 4</u>	Change from: <u>cost</u> Change to: <u>course</u>
<u>108/ 4</u>	Change from: <u>the guiding</u> Change to: <u>the leading guiding</u>
<u>108/ 21</u>	Change from: <u>record</u> Change to: <u>report</u>
<u>134/ 5</u>	Change from: <u>A: What do you assume --</u> Change to: <u>Q: What do you assume --</u>
<u>    /    </u>	Change from: <u>deal with that difference, to do</u> Change to: <u>deal with that difference. That to do</u>
<u>167/ 25</u>	Change from: <u>the marketplace</u> <sup>o</sup> <u>You don't</u> Change to: <u>the marketplace,</u> <sup>^</sup> <u>you don't</u>
<u>170/ 14</u>	Change from: <u>collars</u> Change to: <u>colors</u>
<u>177/ 3</u>	Change from: <u>A: At the bottom ---</u> Change to: <u>Q: At the bottom ---</u>
<u>180/ 8</u>	Change from: <u>facts</u> Change to: <u>factors</u>
<u>185/ 2</u>	Change from: <u>possible</u> Change to: <u>upon</u>
<u>198/ 19</u>	Change from: <u>document is -- has</u> Change to: <u>document is -- it has</u>
<u>202/ 17</u>	Change from: <u>world</u> Change to: <u>board</u>
<u>209/ 10</u>	Change from: <u>Agassi</u> Change to: <u>Agass's</u>

Signature: \_\_\_\_\_



Date: 7/7/10

# Errata Sheet

Pg/Ln	Correction
<u>214/18</u>	Change from: <u>a an</u> Change to: <u>as an</u>
<u>268/9</u>	Change from: <u>answered the question. And the reason</u> Change to: <u>answered the question. And <del>that's</del> that's the reason</u>
<u>280/17</u>	Change from: <u>That's what</u> Change to: <u>That's what -- I'm sorry -- that's what</u>
<u>300/6</u>	Change from: <u>he</u> Change to: <u>you</u>
<u>309/1</u>	Change from: <u>So even if it's zero value</u> Change to: <u>So you get a zero value</u>
<u>318/16</u>	Change from: <u>show it to</u> Change to: <u>show it for me, show it to</u>
<u>319/6</u>	Change from: <u>present</u> Change to: <u>presented</u>
<u>332/12</u>	Change from: <u>gap</u> Change to: <u>GAP</u>
<u>339/8</u>	Change from: <u>is that the pile --</u> Change to: <u>is that the pile of exhibits that I - that you gave to me yesterday</u>
<u>339/9</u>	Change from: <u>That is yesterday's exhibits</u> Change to: <u>Yesterday's pile of exhibits, yes.</u>
<u>339/10</u>	Change from: <u>those</u> Change to: <u>that</u>
<u>339/11</u>	Change from: <u>Sure.</u> Change to: <u>Absolutely.</u>
<u>339/12</u>	Change from: <u>Okay.</u> Change to: <u>Okay. I just wanted to be sure.</u>

Signature: 

Date: 7/8/10

# Errata Sheet


Pg/Ln	Correction
<u>341/ 3</u>	Change from: <u>Well, I think</u> Change to: <u>I think</u>
<u>345/ 4</u>	Change from: <u><del>confat</del> control</u> Change to: <u>controlled</u>
<u>349/ 7</u>	Change from: <u>1.8</u> Change to: <u>1.9</u>
<u>360/ 4</u>	Change from: <u>artificial it's</u> Change to: <u>artificial. It's</u>
<u>375/ 23</u>	Change from: <u>remember throughout</u> Change to: <u>remember that throughout</u>
<u>380/ 17</u>	Change from: <u>50 percent royalty right. Right?</u> Change to: <u>50 percent royalty rate. Right?</u>
<u>382/ 25</u>	Change from: <u>wasn't</u> Change to: <u>was</u>
<u>393/ 16</u>	Change from: <u>Volume 1</u> Change to: <u>Volume 2</u>
<u>409/ 16</u>	Change from: <u>they're</u> Change to: <u>their</u>
<u>409/ 18</u>	Change from: <u>things. It's, let's try</u> Change to: <u>things is let's try</u>
<u>429/ 2</u>	Change from: <u>Haltzman</u> Change to: <u>Oltmans</u>
<u>432/ 19</u>	Change from: <u>to an application</u> Change to: <u>to a... an application</u>
<u>440/ 13</u>	Change from: <u>closing</u> Change to: <u>close</u>

Signature: \_\_\_\_\_

Date: 7/2/10

# Errata Sheet

Pg/Ln	Correction
<u>441/20</u>	Change from: <u>stayed</u> Change to: <u>said</u>
<u>447/17</u>	Change from: <u>blank</u> Change to: <u>A: 447 (statement by the witness omitted)</u>
<u>447/18</u>	Change from: <u>I'd like to focus</u> Change to: <u>Q: I'd like to focus.</u>
<u>454/10</u>	Change from: <u>work</u> Change to: <u>Oracle</u>
<u>454/19</u>	Change from: <u>E-Business</u> Change to: <u>E-Base</u>
<u>467/12</u>	Change from: <u>they've</u> Change to: <u>they</u>
<u>469/7</u>	Change from: <u>use it create a database</u> Change to: <u>use it to create is a database.</u>
<u>490/23</u>	Change from: <u>version, it's</u> Change to: <u>version, you can, -- it's</u>
<u>506/6</u>	Change from: <u>beginnings</u> Change to: <u>begins</u>
<u>508/20</u>	Change from: <u>that</u> Change to: <u>it</u>
<u>509/24</u>	Change from: <u>Lacks</u> Change to: <u>lack</u>
<u>513/21</u>	Change from: <u>analysis still people</u> Change to: <u>analysis. Still people</u>
<u>527/19</u>	Change from: <u>market there were</u> Change to: <u>market that were</u>

Signature:  Date: 7/8/10

# Errata Sheet

Pg/Ln

Correction

538/ 33 Change from: find, I'm sure  
Change to: find @ I'm sure that's not true

561/ 6 Change from: complaint  
Change to: client

575/ 20 Change from: loses  
Change to: losses

581/ 25 Change from: customers perceptions  
Change to: their perceptions

605/ 3 Change from: MR MCDONELL: It's based on reading it  
Change to: A: It's based on reading it.

607/ 17 Change from: So you have that, that  
Change to: so you see that

609/ Change from: just based on face value  
Change to: just on face value

608/ 12 Change from: that a general rule  
Change to: that as a general rule

622/ 17 Change from: said, oh, a  
Change to: said our

623/ 22 Change from: will  
Change to: would

628/ 15 Change from: is it often  
Change to: is often

641/ 15 Change from: Counsel, don't interrupt.  
Change to: Counsel, don't interrupt him, counsel please.

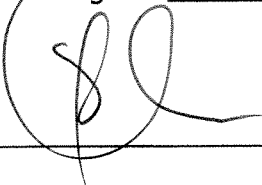
/ Change from: \_\_\_\_\_  
Change to: \_\_\_\_\_

Signature:  Date: 7/8/10



# Errata Sheet

Pg/Ln	Correction
<u>665/15</u>	Change from: <u>explain</u> Change to: <u>explained</u>
<u>669/15</u>	Change from: <u>the</u> Change to: <u>this</u>
<u>683/1</u>	Change from: <u>359</u> Change to: <u>358</u>
<u>683/6</u>	Change from: <u>I may</u> Change to: <u>I misheard... I may</u>
<u>687/5</u>	Change from: <u>Maybe Cedar Crestone</u> Change to: <u>Cedar Crestone</u>
<u>687/12</u>	Change from: <u>So there are -- there's</u> Change to: <u>So there are -- it's</u>
<u>689/14</u>	Change from: <u>There had to be</u> Change to: <u>It had to be</u>
<u>689/15</u>	Change from: <u>Some evidence</u> Change to: <u>Some, some evidence</u>
<u>691/16</u>	Change from: <u>let me show you</u> Change to: <u>let me mark or let me show you</u>
<u>690/7</u>	Change from: <u>valuating</u> Change to: <u>evaluating</u>
<u>716/1</u>	Change from: <u>treat is</u> Change to: <u>treaties</u>
<u>703/3</u>	Change from: <u>world</u> Change to: <u>word</u>
<u>708/12</u>	Change from: <u>MR McDONELL</u> Change to: <u>MR PICKETT</u>

Signature: 

Date: 7/8/10

# Errata Sheet

Pg/Ln

Correction

- 717/25 Change from: how should  
Change to: how long should
- 729/16 Change from: record  
Change to: report
- 734/7/8 Change from: Then I can't read it. MR McDONELL: Then don't...  
Change to: Then I can't read it. MR PICKETT: Then you cannot read it.
- 737/7 Change from: we'll -- we'll reconsider  
Change to: we'll -- we can reconsider
- 754/7 Change from: MR McDONELL  
Change to: A:
- 764/7 Change from: In  
Change to: If
- 767/13 Change from: "Question:  
Change to: Q "Question: (quoted by Mr Pickett)
- 777/22 Change from: Correct  
Change to: I have quoted all of the document. Correct.
- 779/20 Change from: is  
Change to: it
- 782/13 Change from: doesn't  
Change to: didn't
- 785/24 Change from: 2009  
Change to: 2008
- 796/24 Change from: there  
Change to: they're
- 807/13 Change from: some or  
Change to: some or more or


Signature: \_\_\_\_\_

Date: \_\_\_\_\_

7/8/10

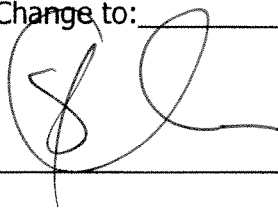
# Errata Sheet

Pg/Ln	Correction
<u>818/ 8</u>	Change from: <u>Some bit parts</u> Change to: <u>Some parts</u>
<u>847/ 19</u>	Change from: <u>3'11</u> Change to: <u>9</u>
<u>877/ 24</u>	Change from: <u>Corrects.</u> Change to: <u>Correct.</u>
<u>895/ 24</u>	Change from: <u>about</u> Change to: <u>at</u>
<u>914/ 9</u>	Change from: <u>true component here</u> Change to: <u>Tomorrow/Now component here</u>
<u>921/ 12</u>	Change from: <u>loss and</u> Change to: <u>Lawson</u>
<u>922/ 13</u>	Change from: <u>variables</u> Change to: <u>variable as</u>
<u>922/ 14</u>	Change from: <u>variables</u> Change to: <u>variable as</u>
<u>922/ 19</u>	Change from: <u>progremion</u> Change to: <u>regressim</u>
<u>932/ 17</u>	Change from: <u>infinite</u> Change to: <u>infinity</u>
<u>939/ 4</u>	Change from: <u>witness</u> Change to: <u>ones</u>
<u>935/ 15</u>	Change from: <u>R-squared had been 50.54</u> Change to: <u>R-squared had been 50, point 54</u>
<u>942/ 18</u>	Change from: <u>It's</u> Change to: <u>Times</u>

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# Errata Sheet

Pg/Ln	Correction
<u>947/24</u>	Change from: <u>running</u> Change to: <u>run</u>
<u>955/13</u>	Change from: <u>A-2</u> Change to: <u>u-2</u>
<u>954/24</u>	Change from: <u>progrerswin</u> Change to: <u>regression</u>
<u>958/11</u>	Change from: <u>stats strick</u> Change to: <u>statistic</u>
<u>965/22</u>	Change from: <u>shuts its factories</u> Change to: <u>shutters factories</u>
<u>961/2</u>	Change from: <u>x</u> <u>misspoke.</u> Change to: <u>y (clarification)</u>
<u>963/20</u>	Change from: <u>she have</u> Change to: <u>They have</u>
<u>965/22</u>	Change from: <u>lk Toyota</u> Change to: <u>lf Toyota</u>
<u>/</u>	Change from: _____ Change to: _____
<u>/</u>	Change from: _____ Change to: _____
<u>/</u>	Change from: _____ Change to: _____
<u>/</u>	Change from: _____ Change to: _____
<u>/</u>	Change from: _____ Change to: _____

Signature:  Date: 7/8/10