

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



_____)
In the Matter of _____)
MSC SOFTWARE CORPORATION, _____)
a corporation. _____)

Docket No. 9299

**COMPLAINT COUNSEL'S RESPONSE TO
RESPONDENT'S MEMORANDUM IN OPPOSITION TO
COMPLAINT COUNSEL'S MOTION TO COMPEL COMPLIANCE WITH
COMPLAINT COUNSEL'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Shorn of its rhetoric, and its attacks on Complaint Counsel, Respondent's Memorandum in opposition to Complaint Counsel's Motion to Compel leaves little in dispute. Respondent has abandoned many of its earlier objections to the Document Request, and has agreed to search for and produce documents responsive to the Document Request despite many of its earlier objections. Nevertheless, our Motion to Compel is not moot, and should be granted. Since Respondent has demonstrated a disturbing habit of renegeing on promises made both to Complaint Counsel and to this court about its intention to cooperate with discovery, a Motion to Compel even as to those aspects of the Document Request that Respondent now agrees to comply with is not moot. As to Respondent's remaining objections to the Document Request, they all fail, and Complaint Counsel's Motion to Compel should be granted. A proposed Order was attached to the Motion to Compel, and is attached again hereto as Exhibit A.

Respondent's Memorandum backs down from most of Respondent's earlier refusals to search for or produce documents, as stated in its written objections to the Document Request, dated December 3, 2001 (hereinafter "Respondent's Objections", attached hereto as Exhibit B).

Respondent no longer states that it will refuse to comply with discovery on the basis of most of its previously-asserted objections, Respondent should be regarded as having abandoned those objections. To the extent not made on December 3, 2000, Respondent has waived any additional objections, since Rule 3.38A requires such objections to be asserted not later than the date set for production of the material, which was December 12, 2001.

Since Complaint Counsel filed its Motion to Compel, Respondent has backed down considerably from Respondent's Objections. Respondent now states that it:

- Does not intend to withhold any documents based on dissatisfaction with Complaint Counsel's compliance with Respondent's discovery (Respondent's Memorandum at 5);
- Will search all its offices worldwide (Respondent's Memorandum at 7);
- Will comply with the Document Request instruction that Respondent either provide duplicate copies of documents found in various files, or produce one copy and identify the files in which identical copies are found (Respondent's Memorandum at 9);
- Will not refuse to produce documents for industries other than automotive and aerospace (Respondent's Memorandum at 10); and
- Agrees to search for responsive documents back to January 1, 1995 (Respondent's Memorandum at 12).

While Complaint Counsel welcome Respondent's abandonment of these objections, Complaint Counsel note that they have delayed Complaint Counsel's discovery, and needlessly troubled this court with motions practice. Moreover, since Respondent has demonstrated to this

court in the context of our deposition dispute that its representations about future compliance with discovery cannot be trusted, Complaint Counsel's Motion to Compel is not mooted as to these withdrawn objections until Respondent actually produces the documents.

Furthermore, Respondent still refuses to comply with the Document Request in the following ways:

- Respondent refuses to commit to a date by which it will complete its response to the Document Request (Respondent's Memorandum at 7, 12).
- Respondent refuses to commit to responding to the Document Request by producing a privilege log, offering only to exchange privilege logs with Complaint Counsel "at an appropriate time" (Respondent's Memorandum at 9).
- Respondent refuses to produce data responsive to the Document Request (Respondent's Memorandum at 10 -11).
- Respondent refuses to commit to searching backup tapes for documents responsive to the Document Request (Respondent's Memorandum at 11).

As explained below, Respondent has failed to justify these remaining objections to the Document Request, or defend its refusal to comply.

Response Date. Respondent refuses to commit to a response date (Respondent's Memorandum at 7, 12), making general burden claims, attempting to excuse its earlier failures to comply with discovery by claiming business exigencies, and making accusations that Complaint Counsel's conduct delayed Respondent's search for responsive documents. Respondent's burden claims and accusations against Complaint Counsel are unsupported by any factual basis, or any affidavit of counsel for Respondent. Accordingly, Respondent has failed to satisfy its burden of

proof in seeking a Rule 3.31(c) limitation on the scope of discovery.

Privilege Log. Respondent has no sustainable basis for conditioning its own production of a privilege log on exchange of privilege logs with Complaint Counsel at some undefined "appropriate" time (Respondent's Memorandum at 9). The Rules of Practice, at 3.31(a), require that, to the greatest extent practicable, discovery should be conducted simultaneously, not sequentially, and the fact that a party is conducting discovery shall not operate to delay any other party's discovery. This is the second instance in which Respondent has flouted Rule 3.31(a), and sought to deprive Complaint Counsel of its right to conduct discovery. (See Second Supplement to Complaint Counsel's Motion to Compel Compliance with Subpoenas Ad Testificandum and Duces Tecum). An order of this court appears necessary to clarify this requirement of Rule 3.31(a) for Respondent.

Data Production. Respondent's refusal to produce responsive data (Respondent's Memorandum at 10 - 11) appears to be based on a misreading of Rule 3.37 and a misunderstanding of how Respondent keeps data in the ordinary course of business. Rule 3.37 provides that "[a] party shall make documents available as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request." The Document Request essentially instructs Respondent how to "organize and label" computerized data maintained in the ordinary course of business, by using particular data queries maintained by Respondent in the ordinary course of business, and as such does not require Respondent to do anything it is not required to do by Rule 3.37. Respondent's objection to producing the data as required by the Document Request therefore is without merit.

As Complaint Counsel have explained to Respondent in numerous conversations, the

Document Request seeks data in the form that was least burdensome to Respondent, based on information provided by Respondent's counsel and information technology personnel during the Part 2 phase of this case. After consultation with Respondent's information technology personnel and Respondent's counsel, Respondent during the Part 2 investigation agreed to produce two data sets of computerized transaction data. Respondent generated each data set from the database Respondent maintains in the ordinary course of business using existing queries whose programs Respondent maintains in the ordinary course of business: the "Data Mart" query and the "All" query.

The Document Request seeks nothing different now. It asks for the same data sets, generated from the database Respondent maintains in the ordinary course of business, using the same two queries, whose programs Respondent maintains in the ordinary course of business. It merely asks that these data sets be updated for the time period covered since the earlier data sets. These updated queries do not require Respondent to write any new programs to capture the required information from the data base.

Recognizing that Respondent had obtained different counsel since the Part 2 investigation, and that Respondent's present Counsel did not appear to be familiar with the Part 2 data production, Complaint Counsel offered on numerous occasions to discuss the data request with Respondent's Counsel, but Respondent's Counsel refused to discuss the request, and did not exhibit any interest in becoming more familiar with the data set, queries, or previous production.

The manner in which the Document Request requires Respondent produce data maintained in the ordinary course of business using queries maintained in the ordinary course of business is not unduly burdensome. Absent any demonstration of burden, Respondent's refusal

to produce data in compliance with the Document Request is without merit.

Backup Tapes. Respondent's refuses to commit to searching backup tapes for documents responsive to the Document Request (Respondent's Memorandum at 11). Since Respondent did not timely object on this ground, any objection that might have been made has been waived. Respondent therefore has no basis for refusing to search and produce responsive documents from backup tapes.

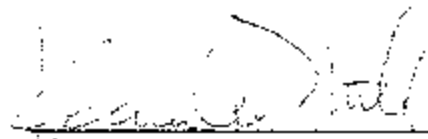
CONCLUSION

Complaint Counsel's Motion to Compel is not moot, and should be granted. Respondent has demonstrated a disturbing habit of failing to comply with required discovery, the Rules of Practice, the Scheduling Order issued by this court, and the Protective Order, and has a history of renegeing on promises made both to Complaint Counsel and to this court about its intention to cooperate with discovery. Given Respondent's demonstrated failures to abide by its promises to comply with discovery, Respondent cannot be counted on to comply with the Document Request, or to do so in a timely manner, absent an order of this court. As to Respondent's remaining objections to the Document Request, they all fail, and Complaint Counsel's Motion to Compel Respondent to Comply with the Document Request should be granted.

For the reasons set forth above and in Complaint Counsel's Motion to Compel, Complaint Counsel request that the Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things be granted.

January 11, 2002

Respectfully Submitted,



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Exhibit A

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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
MSC.SOFTWARE CORPORATION,)	Docket No. 9299
a corporation.)	
)	

**ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO
COMPEL COMPLIANCE WITH COMPLAINT COUNSEL'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

IT IS HEREBY ORDERED that Complaint Counsel's Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things, as modified by Complaint Counsel's letter of December 26, 2001, is GRANTED.

Respondent shall begin compliance with Complaint Counsel's First Request for Production of Documents and Things, as modified by Complaint Counsel's letter of December 26, 2001, immediately, and continue production on a rolling basis.

Respondent shall comply fully with Complaint Counsel's First Request for Production of Documents and Things as modified by Complaint Counsel's letter of December 26, 2001, no later than January 25, 2002.

Furthermore, Respondent shall prioritize its rolling production as follows: Respondent shall: (1) produce responsive documents by December 28, 2001, from MSC files maintained by or for the following individuals: Mr. Beer, Mr. Brown, Mr. Cully, Mr. Curry, Mr. Hart, Mr. Jones, Mr. Louwers, and Mr. Riordan; (2) produce by January 3, 2002, all responsive documents relating to the following customers: Boeing, all NASA centers, Lockheed, GM, Chrysler, and Ford; and (3) produce by January 3, 2002, all MSC board minutes.

Dated: _____

D. Michael Chappell
Administrative Law Judge

Exhibit B

January 1, 1995 as to anything, let alone the blunderbuss demands for the production of documents Complaint Counsel has made. See, e.g., Specification No. 16 (relating to all contracts, sales call reports, correspondence, and invoices, etc. for all sales by MSC for any products). This is particularly true since MSC operates in a *dynamic, high-tech industry* subject to sudden and significant Schumpeterian competition. Given that the FTC Commissioners found sufficient "reason to believe" on October 9, 2001, that MSC's acquisition of UAI in June, 1999, and CSAR in November, 1999, to merit this administrative proceeding, MSC's production obligations should be limited to searching for responsive documents since November 17, 2000 (the date MSC certified its compliance with the FTC's subpoena and CID), absent specific good cause shown for other discovery.

B. Objection to Applying the Geographic Scope of the Search to the World. MSC objects to Complaint Counsel's instruction extending the geographic scope of the search for responsive documents and things to the world. MSC has admitted that the relevant geographic market is the world. However, to the extent that MSC intends to offer documents from foreign offices, MSC will search those offices. There is and there can be no showing of need for discovery from all of MSC's forty-five offices around the world.

C. Objection to Requests for Protected Information. MSC objects to Complaint Counsel's specifications to the extent that they call for the production of documents which are subject to the attorney-client privilege, are protected by attorney work product immunity, or any other evidentiary privilege or immunity.

D. Objection to Burdensomeness. MSC objects to Complaint Counsel's specifications to the extent that they are overly broad; unduly burdensome; unreasonably cumulative

or duplicative; seek information obtainable from some other source that is more convenient, less burdensome, or less expensive; seek information for which the burden and expense of production outweigh the benefit of having the information; and call for the production of documents and things not reasonably calculated to lead to the discovery of admissible evidence. MSC has already produced twenty-two boxes of documents during the course of the FTC's non-public investigation of MSC's 1999 acquisitions of CSAR and UAI. MSC objects to producing further documents in this case before the FTC has complied with its obligation to provide documents as part of its mandatory Initial Disclosures under Commission Rule of Practice 3.31, 16 C.F.R. § 3.31.

E. Objection to Definition of "The Company" and "MSC." MSC objects to Complaint Counsel's definition of "the company" and "MSC" to the extent it attempts to impose upon MSC an obligation to respond to these specifications on behalf of affiliates, joint ventures, directors, officers, employees, consultants, agents and representatives of the foregoing to the extent that MSC does not exercise control over such persons.

F. Objection to Definition of "Nastran." MSC objects to these specifications to the extent that Complaint Counsel's definition of "Nastran" calls upon MSC to produce documents and things unrelated to FEA solvers.

G. Objection to Produce Documents and Things Unrelated to the Aerospace and Automotive Industries and the Service Industries which Support Them. MSC objects to these specifications to the extent that they call upon MSC to produce documents and things unrelated to customers in the aerospace and automotive industries and the service industries which support them.

H. Objection to Imposition of Requirements Beyond Those Contained in the Commission's Rules. MSC objects to these specifications to the extent that they impose obligations

greater than those imposed by the Commission's Rules of Practice.

I. Objection to Complaint Counsel's Instruction No. 5 Regarding Format of Magnetic Media. MSC objects to Complaint Counsel's Instruction No. 5 regarding the formatting of magnetic media to the extent that it imposes obligations upon MSC beyond those required by Commission Rule of Practice 3.37, 16 C.F.R. § 3.37.

J. Objection to Complaint Counsel's Instruction No. 6 Regarding Format of Data Responsive to Specification No. 22. MSC objects to Complaint Counsel's Instruction No. 6 regarding the formatting of data responsive to Specification No. 22 to the extent that it imposes obligations upon MSC beyond those required by Commission Rule of Practice 3.37, 16 C.F.R. § 3.37.

K. Objection to Instructions Nos. 7-10. MSC objects to Complaint Counsel's Instructions Nos. 7 - 10 to the extent that they call upon MSC to produce documents in a manner other than the way in which they were kept in the normal course of business and, therefore, seek to impose obligations upon MSC greater than those imposed by Commission Rule of Practice 3.37, 16 C.F.R. § 3.37.

L. Objection to Instruction No. 12. MSC objects to Complaint Counsel's Instruction No. 12 to the extent that it calls for MSC to produce copies of documents that are identical to those previously produced except for the fact that they are located in different files than those from which they were originally produced. Producing identical copies of previously-produced documents is unreasonably duplicative, cumulative, and burdensome.

M. Objection to Instruction No. 13. MSC objects to Complaint Counsel's Instruction No. 13 to the extent that it requires information to be contained within a privilege log

beyond that which is necessary to establish the grounds for an assertion of privilege or immunity with respect to that document. Specifically, MSC objects to Instruction Nos. 13g, 13h, and to the instruction that MSC identify the employer, firm, and title of each recipient, author, or addressee. MSC further objects to searching the files or logging any privileged documents from the files of outside counsel in this matter. MSC also further objects to logging any documents created after the date on which the FTC issued its Complaint in this matter.

N. MSC Responses Not an Admission of Complaint Counsel's Accuracy. MSC's production of any document or thing in response to these specifications is not an admission of the accuracy or completeness of any of Complaint Counsel's definitions. In addition, MSC's production of any document or thing in response to these specifications is not an admission regarding the admissibility, relevancy, responsiveness, or discoverability of such documents or things.

O. MSC's Agreement to Produce "Non-Privileged" Responsive Documents is an Agreement to Conduct a Reasonable Search. MSC's response to any specification that it intends to produce non-privileged responsive documents means that MSC agrees to conduct a reasonable search of its files for such documents and to produce such documents without waiving any of its general or specific objections or applicable privileges and immunities.

P. Reservation of Right to Further Object. MSC's enumeration of particular objections in response to Complaint Counsel's specifications is not, and should not be construed to be, a waiver of objections not so specified.

Q. Reservation of Right to Supplement. MSC reserves the right to supplement its responses to the specifications pursuant to Commission Rule of Practice 3.31, 16 C.F.R. § 3.31.

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**MSC'S RESPONSES AND OBJECTIONS TO
COMPLAINT COUNSEL'S SPECIFICATIONS**

1. One copy of each organization chart and personnel directory in effect since January 1, 1995, for the company as a whole, and for each of the company's facilities or divisions involved in any activity relating to any relevant product or service.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that such documents and things have not already been produced.

2. Documents sufficient to show all document retention and destruction systems, policies, procedures, capabilities, and personnel of the company:
 - a. the persons responsible for managing such systems, policies, procedures, or capabilities;
 - b. any special policies or procedures put into place by MSC as a result of the Federal Trade Commission's investigation of the company's acquisitions of UAI and CSAR;
 - c. all electronic data and document management information systems of the company;
 - d. all network-accessible documents, information and financial data systems;
 - e. all backup procedures; and
 - f. the process and cost of recovery of backup files including documents sufficient to show:
 - (i) the cost of recovery of backup files generally,
 - (ii) the cost of recovery of backup files containing documents responsive to the Federal Trade Commission's June 28, 2000, Subpoena Duces Tecum to MSC Software, and
 - (iii) the cost of recovery of backup files containing documents responsive to this document request.

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RESPONSE: MSC objects to subpart "f.(iii)" as unduly burdensome because it imposes obligations upon MSC greater than those imposed by the Commission's Rules of Practice to the extent that the specification calls upon MSC to create information regarding "the cost of recovery of backup files containing documents responsive to this document request" which does not exist. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents responsive to this Specification to the extent they have not already been produced.

3. All budget and financial statements, including financial projections, income statements, balance sheets, general ledgers, capital investment plans, operating reports, budget and operating results for individual business groups and product lines, and board or management financial performance summaries, presentations or other management reporting packages, together with all documents relied upon to compile such documents, including documents sufficient to show and all computerized data containing detailed income statement and balance sheet line items; and all documents analyzing, interpreting, or otherwise discussing the information, figures, or trends found or identified in such budget or financial statements.

RESPONSE: MSC objects that the specification is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it calls for the production of documents and things unrelated to FEA solvers. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things pertain to FEA solvers and have not already been produced.

4. All stock analysts' or other investment community analyses, recommendations, or research reports relating to the company, to any relevant product or service, or to computer aided engineering products and services in general, including all Daratech tables, analyses, and research reports.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that have not already been produced.

5. All documents recording or relating to any communications between or among the company and any individual stock analyst or other person engaged [sic] associated with the investment community, including correspondence, press releases, notes, agendas, scripts, transcripts and recordings.

RESPONSE: MSC objects that the specification is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents and things unrelated to any issue in this case. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they pertain to FEA solvers and the specified documents and things relate to other specifications of this document request and to the extent that they have not already been produced.

6. All documents relating to any meeting of or decision making by the board of directors or of any board, executive, or management committee, including:
 - a. all announcements of, agendas for, and minutes of any meeting;
 - b. all memoranda, reports, presentations, or other documents distributed to or presented to such board or committees, including all documents relied upon to prepare the memorandum, report, or presentation; and
 - c. all documents relating to the deliberations and decision making of the board or committee, including notes taken by any persons participating in any such meeting or decision making.

RESPONSE: MSC objects that the specification is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents and things unrelated to any issue in this case. Subject to and without waiving its General

and Specific Objections. MSC will produce non-privileged documents and things responsive to this Specification to the extent that they pertain to FEA solvers and are responsive to other specifications of this document request and have not already been produced.

7. All documents relating to MSC's acquisitions of UAI or CSAR and the post-acquisition integration of UAI or CSAR into MSC, including:
 - a. all pre-acquisition communications between the parties relating to the transaction or its effects, including any plans, proposals, agreements, contracts, executive and employee agreements, distribution agreements, covenants not to compete, licenses, patents, copyrights, trade secrets, and trademarks;
 - b. all documents relating to changes and plans for changes in MSC's, UAI's, or CSAR's operations, structure, policies, pricing, strategies, corporate goals, financing, business, officers, employees, product lines, product features, development, or enhancements, any other area of corporate activity as a result of either acquisition, including whether to honor existing UAI or CSAR contracts;
 - c. all documents relating to former UAI and CSAR customers' continued use of UAI Nastran, CSAR Nastran, Astros, Gensa and to switching to or substitution of other products after the discontinuation of such UAI and CSAR products, including all contracts and pricing documents for such products;
 - d. all documents relating to changes or threatened changes in usage of Nastran for any customer or potential customer or changes in the company's revenue attributable to Nastran following the acquisitions;
 - e. all documents relating to the reasons for each acquisition;
 - f. all board and management committee documents relating to UAI and CSAR or to the proposed acquisitions or their effects, including memoranda, reports, correspondence, minutes, notes, presentations and agendas, as well as all documents used to prepare such memoranda, correspondence, minutes, notes, presentations, and agendas, Excel worksheets, and communications from regional executives or other sales representatives;

- g. all documents relating to any person's valuation of UAI and of CSAR;
- h. all documents relating to all statements or actions by any person in support of, in opposition to, or otherwise expressing opinions about either acquisition or its effects;
- i. all documents relating to MSC's accounting or tax treatment of each acquisition, including any writeoff of goodwill from each acquisition;
- j. all documents relating to any efficiencies, cost savings, economies, synergies, or consumer or other benefits from each acquisition and whether such efficiencies, cost savings, economies, synergies, or other benefits could be achieved without acquiring UAI or CSAR;
- k. documents sufficient to show the name, address, and job responsibilities of all persons employed by or acting as a consultant or agent to either UAI or CSAR at any time since January 1, 1998, and whether MSC hired or retained the person as an employee, consultant, or agent for any period since making each acquisition; all employment or consulting contracts with each such person; and all documents relating to salaries, compensation, bonuses, stock options, or other financial incentives paid or provided to the person by any person; and
- l. all documents relating to each job, program, or project assigned or given by MSC to each former UAI or CSAR employee, consultant, or agent employed or retained by MSC, including documents sufficient to show (i) the contribution and performance of each such person to the job, program, or project, (ii) the goal or objective of the job, program, or project, (iii) the dates the job, program, or project began and concluded, (iv) the personnel requirements for the job, program, or project, (v) the name, address, and job responsibilities of other persons working on job, program, or project, (vi) the job's, program's, or project's budget, including personnel costs, and (vii) the recruiting efforts undertaken to staff the program or project.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

8. All documents relating to the competitive significance, actual or projected financial status or condition, and long term viability of UAI or CSAR prior to their acquisitions by MSC, including UAI's or CSAR's intentions or attempts to sell UAI or CSAR, UAI's or CSAR's plans to exit the market or to cease supplying any relevant product or service, and ability to engage in the continuing sales, licensing, marketing, development, programming, and customer support of any relevant product or service.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

9. All documents relating to any person's plans relating to any relevant product or service or to any product or service compatible with any relevant product or service, including business plans; short term and long range strategic plans and objectives; joint venture, partnering, strategic alliance, and acquisition strategies and plans; budgets, financial statements, and financial projections; personnel recruitment or reassignment plans; plans for new products or product enhancements, features, modules, applications, or services; research or development plans; strategies for product integration; distribution plans and agreements; sales or marketing plans; plans regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, plans and strategies for use of unlimited usage agreements and paid-up licenses; customer support services and customer-funded development plans; analyses of customer satisfaction; and plans for participation in or adoption of the AP209 exchange format standard.

RESPONSE: MSC objects to this specification as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it calls for documents "relating to any person's plans relating to any relevant product or service or to any product or service compatible with any relevant product or service." The use of the term "compatible" extends the specification to include documents regarding competition in areas not relevant to any issue in this case. Subject to and without waiving its General and Specific Objections,

MSC will produce non-privileged documents and things responsive to this Specification to the extent that they pertain to FEA solvers and the specified documents and things have not already been produced.

10. All documents relating in [*sic*] any person's prices, pricing decisions, pricing proposals, licensing fees, or cost of services relating to any relevant product or service generally or with respect to any particular customer or groups of customers, including standard and non-standard price lists, discount schedules and practices, pricing formulae for CMV, GLV, and BLV factors, campus and token pricing systems, pricing commitments, pricing for features, modules, and enhancements, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, cost analyses, supply and demand analyses, analyses regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, pricing negotiations, pricing for unlimited usage contracts, paid-up licence pricing, guidance to marketing or sales personnel regarding prices, presentations to customers relating to prices, pricing for development contracts, on-site and off-site service contracts, price for web sales and licensing, and all documents considered by or emanating from person, committee, or group making a pricing decision, recommendation, or proposal, including pricing packaging group and global pricing package committee.

RESPONSE: MSC objects to this specification as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it calls for documents "relating in [*sic*] any person's prices, pricing decisions, pricing proposals, licensing fees, or cost of services relating to any relevant product or service generally or with respect to any particular customer or groups of customers," to the extent that the request calls for documents unrelated to FEA solvers. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things pertain to FEA solvers and have not already been produced.

11. All documents relating to competition in the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any relevant product or service, including all documents relating to:
 - a. the market share or competitive position of the company or any of its competitors;
 - b. the relative strengths or weaknesses of any person producing or selling any product or service competing with any relevant product or service;
 - c. the relative strengths and weaknesses and differences in capabilities, features, enhancements, and modules between or among any relevant products or services;
 - d. any actual or potential conditions affecting the supply, demand, entry, cost, price, quality, features, enhancements, modules, or applications relating to any relevant product or service;
 - e. efforts to win customers or sales from other companies, or the loss of customers or revenues due to competition or sales by other companies;
 - f. the effects of competition from any supplier of any relevant products or services, including MSC, UAI and CSAR, on sales, pricing, revenues, customers, development, features, enhancements, modules, or applications;
 - g. customers' use of in-house codes, traditional methods of product testing, or prototyping; and
 - h. lock-in effects or switching costs, including the use of unlimited usage agreements and paid-up licenses.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they have not already been produced.

12. All documents relating to switching, including shifts in utilization, between or among any relevant product or service and any other product or service, including the relative ease or difficulty of switching; the estimated, projected or actual costs incurred by users to switch; the time required to switch; the degree of switching possible; the effect on a user's price from switching or shifting utilization or threatening to switch or shift or the availability of the opportunity to switch or shift; the cost of switching attributable to lost productivity while gaining proficiency in the new product or service or from use of a less than optimum product or service; the cost of and time required for training; the cost of and time required for translating or converting existing files, models, routines, commands, DMAP alters, or other legacy materials to the new product or service; the effect of switching on customer or collaborator relationships; the effect of unlimited usage contracts or paid up licenses on switching; the possible loss or cost of complementary software used with the product or service; the use, availability, and the availability and effect of translators and AP209 exchange format standards; and governmental, customer, contractual, or industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

13. All documents relating to actual, attempted, or potential entry into the market for any relevant product or service, including all documents relating to:
 - a. the timeliness, conditions, costs, attractiveness, likelihood, or competitive significance of any such entry;
 - b. the effects of unlimited usage contracts, paid up licenses, or any existing contracts by existing firms upon such entry;
 - c. the requirements for such entry including research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, trademarks, sales and marketing activities, securing a sufficient customer base to achieve minimum viable scale, personnel and staffing, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

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- d. the effects of open or closed software architecture and applications programming interfaces and the availability of translators, AP209 exchange format standards, trademarks, copyrights, patents, or other technology upon such entry;
 - e. the total costs required for such entry, including:
 - (i) the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the licensing or sale of the product or service; and
 - (ii) the methods and amount of time necessary to recover such costs; and the total non-recoverable costs entailed in satisfying the requirements for entry; and
 - f. the minimum viable scale, the minimum and optimum number of products or services, requirements for multi-product, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete successfully in the licensing or sale of such relevant products or services.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

14. All documents relating to the development or acquisition, including licensing, of any features, enhancements, modules, or applications for any Nastran product since January 1, 1995, including any such development or acquisition considered but not undertaken during that period, including:
- a. documents sufficient to show the feature, enhancement, module, or application, the price or charge to the customer for each such feature, enhancement, module, or application, the date each such feature, enhancement, module, or application was added, and the function and benefits of such feature, enhancement, module, or application;
 - b. for all features, enhancements, modules, and applications developed in-house or considered for in-house development, all documents relating to the in-house development, development plans and strategies, time lines for development, budget and projected revenue for the development, personnel requirements, and the identity of customers likely to license the developed product; and any analyses whether to develop in-house or to acquire or license such feature, enhancement, module, or application;
 - c. for all features, enhancements, modules, and applications co-developed with a customer or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer customer's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of other customers likely to license the developed product;
 - d. for all features, enhancements, modules, and applications co-developed with another supplier of FEA software or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer supplier's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of customers likely to license the developed product; and
 - e. for all features, enhancements, modules, and applications acquired, including licensing, by the company or considered for acquisition, all documents relating to the acquisition or licensing of such feature, enhancement, module, or application, the projected revenue for the feature, enhancement, module, and application, the identity of customers likely to license the developed product, and any analyses whether to develop in-house or to acquire or license such feature,

enhancement, module, or application.

RESPONSE: MSC objects that the specification is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it calls for the production of documents and things unrelated to FEA solvers. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things pertain to FEA solvers and have not already been produced.

- 15. All documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any other software products, including any customer's pre- and post-processors or input or output file formats or models, the customer's ability to switch among Nastran products, or the cost, time required, ease, or difficulty of switching from any Nastran product supplied by MSC to any other product.

RESPONSE: MSC objects to this specification because it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "[a]ll documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any other software products." The use of the terms "compatibility" and "interface" extend this specification to cover products other than FEA solvers. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they pertain to FEA solvers and the specified documents and things have not already been produced.

16. All documents relating to the licensing or sale of any relevant product or service to all customers, including customer-funded development, including
- a. all contracts, license agreements, offers, bids, bid solicitations, or proposals for contracts and licensing agreements and all documents interpreting, modifying, or amending such contracts, license agreements, offers, bids, or proposals;
 - b. strategic, sales, and marketing plans for licensing and serving the customer, including sales call reports and sales presentations and pitches;
 - c. price lists, negotiation correspondence, price escalation calculations, documents relied upon to formulate or calculate prices, projections of prices offered by other suppliers of relevant products or services;
 - d. field and headquarters sales and contract files;
 - e. reports of prior or existing usage; and
 - f. invoices for products and services; and record of payment for products or services.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

17. All documents relating to personnel and staffing for the development and technical support of any relevant product and service, including:
- a. all practices, policies, plans, agreements, and proposals relating to hiring and retention of employees, including recruiting efforts, employment incentives and bonuses, wage, salary, bonus, and stock option offers and agreements, incentives and restrictions on employee mobility, covenants not to compete, job advertisements, and the use of recruiting firms;
 - b. all documents relating to the use of off-shore developers and the use of contractors and consultants; and

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- c. all documents relating to the personnel and staffing needs for any general or specific job, program, or project, including customer-funded development projects.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

- 18. All documents relating to any plans of, interest in, or efforts undertaken by the company or any other person for any acquisition, divestiture, joint venture, alliance, or merger of any kind involving the licensing or sale of any relevant product or service, including:
 - a. any acquisition, joint venture, alliance, or merger of any kind with UAI or CSAR by any person;
 - b. the divestiture or sale by MSC of any former UAI or CSAR assets, intellectual property, employees, contracts, customer relations, or UAI's or CSAR's former businesses as going concerns;
 - c. any strategic business relationship between MSC and Dassault Systemes or any Dassault affiliated person or between MSC and IBM or any IBM affiliated person; and
 - d. any acquisition of an interest in MSC by Dassault Systemes or any Dassault affiliated person.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

19. All documents relating to financial or economic methodologies, formulae, or performance models or criteria used by the company or any person for valuing or determining the purchase prices for any actual, attempted, or potential acquisitions, divestitures, joint ventures, alliances, or mergers of any kind involving the licensing or sale of any relevant product or service.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

20. All license agreements for any intellectual property, including patents, copyrights, trademarks, or trade secrets, owned by any person other than the company and included in or furnished with any Nastran product or service, including all documents modifying, amending, or interpreting such agreements, all documents relating to payment of any licensing fees, and all documents relating to the company's plans, actions, or efforts to enforce such agreements against any person.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they have not been previously produced.

21. All documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, or promoting the use of any particular relevant product, including Nastran.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

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22. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Nastran product or service for the period January 1, 1995, to the present, including:
- a. the date of transaction.
 - b. the amount of the transaction.
 - c. the quantity,
 - d. the type and duration of the contract or license.
 - e. a description of each product or service licensed or sold (including product number or code),
 - f. the contract number,
 - g. the location, including physical address and serial number, of the computer where the software is located or service rendered.
 - h. the SIC code, trade or industry category, and business group of the customer, and
 - i. the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that have not already been produced.

23. For each relevant product or service offered for sale or licensing, all selling aids and promotional materials and all manuals, including instructional and installation manuals.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they have not already been produced.

Dated: December 3, 2001



Tefft W. Smith (Bar No. 458441)
Marion O. Skubel (Bar No. 294934)
Michael S. Becker (Bar No. 447432)
Bradford E. Biegon (Bar No. 453766)
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(202) 879-5000 (tel.)
(202) 879-5200 (fax)

Counsel for Respondents,
MSC Software Corporation

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CERTIFICATE OF SERVICE

This is to certify that on December 3, 2001, I caused a copy of the attached Respondent MSC Software Corporation's Responses and Objections to Complaint Counsel's First Request for Production of Documents and Things to be served upon the following persons by hand delivery:

Richard B. Dagen, Esquire
P. Abbott McCartney, Esquire
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

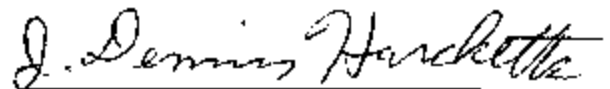

David Shotlander

CERTIFICATE OF SERVICE

This is to certify that on January 11, 2002, I caused a copy of Complaint Counsel's Response to Respondent's Memorandum in Opposition to Complaint Counsel's Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things to be served by hand upon the following persons:

The Honorable D. Michael Chappell
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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J. Dennis Hargetts
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
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