

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of:
MSC.SOFTWARE CORPORATION,
a corporation.

Docket No. 9299



**MSC's RESPONSE TO PARAMETRIC TECHNOLOGY CORPORATION'S
MOTION TO LIMIT OR QUASH SUBPOENA DUCES TECUM**

As this Court is well aware, from day one MSC has taken issue with Complaint Counsel's litigation-rigged "advanced NASTRAN-based solver" market definition. As we have made clear, MSC's believes – and will prove through evidence from its true competitors and customers – that in the real-world market, MSC.Nastran competes with non-Nastran finite element analysis ("FEA") solvers. One of those FEA solvers is Pro/MECHANICA – a product designed and sold by Parametric Technology Corporation ("PTC").

In a brief that might as well have been written by Complaint Counsel, counsel for PTC buys right into the FTC's allegations of a "Nastran-only" market and refuses to produce any documents relating to PTC's own non-Nastran product – despite admitting that its Pro/MECHANICA product is an FEA solver. PTC may not refuse to produce documents necessary for MSC's defense just because its lawyers prefer Complaint Counsel's view of the case.¹ Instead, as this Court has previously stated, PTC may not refuse to search for or produce documents simply

¹ As MSC has previously mentioned, competitors like PTC have an interest in MSC losing this case – as the remedies sought by Complaint Counsel will hobble MSC and provide competitors like PTC with a windfall opportunity to acquire MSC's flagship software code. PTC's general unwillingness to provide discovery to MSC is consistent with its competitive self-interest in the outcome of this dispute.

because it is a third party – PTC must “handle this subpoena in the same way you would handle a request for production if you were a party to a lawsuit.” (2/25/02 Hrg. Tr. at 11, attached as Exhibit B.)

Despite its bluster, PTC fails to inform the Court of MSC’s attempts to work with PTC counsel to address PTC’s alleged burden objections. Moreover, PTC’s representation that it satisfied its meet-and-confer obligations prior to filing this motion is patently false – MSC was not informed in any way of the filing of PTC’s motion until a copy arrived on our fax machine on February 19th.

Consistent with its usual practice and the Court’s prior guidance, MSC continues to try to resolve the issues raised in PTC’s motion without the need for the Court’s involvement. On February 26th, 2002, MSC specifically addressed the inadequacies in PTC’s proposal by letter and set forth the categories of information that MSC would be willing to accept in response to its subpoena. (See 2/26/02 Letter from G. LoCascio to T. Scott, attached as Exhibit A.) Counsel for PTC has never responded to that letter or MSC’s proposal.

BACKGROUND

In order to rebut Complaint Counsel’s market definition, MSC has been required to gather relevant information from the true participants in the FEA solver market. As part of that information-gathering process, on January 25, 2002, MSC exercised its rights under FTC Rule

3.34(b) and served subpoenas *duces tecum* on seven of its industry competitors.² One of these seven subpoenas was served on PTC, which MSC knows to be one of its competitors in the FEA market.³

Along with the subpoena *duces tecum*, MSC included a cover letter expressly stating its willingness to discuss any PTC concerns over the scope of the subpoena and to engage in measures to help PTC meet its discovery deadline. PTC's failure to even attach that cover letter to the subpoena to its Motion (despite having attached the subpoena and selected other correspondence) is telling and shows the lengths to which PTC appears to be willing to go to avoid producing documents. (See 1/25/02 reprint of that Letter from G. LoCascio to R. Harrison & D. Friedman, attached as Exhibit C.)

In response to that letter, on February 7, 2002, MSC and PTC engaged in a less-than-productive discussion of the subpoena. Despite alleging a "service defect" in the subpoena, PTC counsel refused to answer any questions about how it was that the subpoena came into PTC's possession if such a defect truly existed.⁴ Although MSC also repeatedly offered to address PTC's

² PTC's attempt to make it appear that MSC somehow delayed in serving the subpoena is misguided. The "issuance" date on the PTC subpoena reflects the date a blank subpoena form is picked up from the FTC – not the date it is prepared and ready for service by MSC. MSC served the PTC subpoena immediately after finalizing the necessary document schedule for the subpoena. This practice of obtaining blank subpoenas from the FTC ahead of time is not uncommon or improper. See FTC subpoena *duces tecum* to IBM – "issued" by FTC on November 28, 2001 but served by Complaint Counsel on December 27, 2001.

³ Other providers of FEA software also view PTC as a provider of products that compete against MSC.Nastran. Should the Court believe it helpful, MSC can provide evidence *in camera* to that effect that has been provided by other third parties under the Protective Order as Restricted Confidential.

⁴ Indeed, despite having accepted service, PTC continues to raise this point but again avoids addressing the real issue – was the subpoena in fact delivered to PTC? – saying only "the subpoena eventually reached the hands of counsel for PTC".

concerns that the subpoena was overbroad or unduly burdensome on a category-by-category basis during that call, PTC rejected those efforts and simply indicated its overall unwillingness to produce responsive documents to MSC.

Despite the parties initial differences, the parties seemed to make some progress toward the conclusion of the February 7th phone conference. PTC's attorney agreed to discuss the conversation with his client and agreed to obtain an organizational chart of PTC to assist MSC's efforts at narrowing the scope of the search. PTC's attorney also agreed to get back to MSC about these issues by the beginning of the next week. See PTC Br., Ex. A (Feb. 7, 2002 letter from PTC attorney Thane D. Scott, promising that "we will speak again early next week").

Although PTC claims that MSC has been a source of delay, PTC's attorney, by his own admission, did not attempt to follow up with MSC until Thursday, February 14, 2002. (PTC Br. at 5.) Indeed, PTC's attorney *still* has not produced the promised organizational chart in order to assist MSC in evaluating the merits of PTC's proposal to limit the document search to *only four individuals*, as MSC has no way to tell whether these four individuals are a reasonable repository sample of the information sought by the subpoena. Quite simply, MSC cannot agree to exclude all other PTC personnel from the scope of the subpoena without some idea of PTC's corporate structure or what those other people do.

More problematic than its plan to only search four employees' files, PTC proposes to also confine its search for documents to only two categories: (1) documents related to MSC; and (2) documents related to Nastran-based FEA solvers. Such limitations are clearly unacceptable to MSC, as they contradict the very purpose of the subpoena, *i.e.*, to gather information about the broad FEA market in which non-Nastran FEA solvers compete. Indeed, PTC's attempt to so limit the

subpoena while it has full knowledge of MSC's defense (through discussions with counsel and its obvious review of the pleadings to date) confirms its bias towards Complaint Counsel's view of the case and interest in not producing documents.

Although PTC did not provide an organizational chart or any other backup to support its unilateral decision to limit its document search to four employees, MSC took steps to and did respond fully to PTC's proposal. Shortly after receiving the PTC proposal on Friday, February 15th, Gregg LoCascio, the MSC attorney handling this issue, was called out of town to address other matters in this case. However, in order to reassure PTC counsel that its proposal was not being ignored, Mr. LoCascio – on the first business day after receiving PTC's proposal – dictated a letter to PTC counsel. That February 19th letter made perfectly clear that Mr. LoCascio was "out of the office" and that "*we will be providing a response shortly.*" (2/19/02 Letter from G. LoCascio to T. Scott, attached as Exhibit D.)

MSC was unable to provide a substantive response before PTC filed the instant motion because PTC filed its motion *that very same day – without any effort to meet-and-confer or even notify MSC counsel.*

Despite PTC's assertions to the contrary, MSC remains committed to resolving this dispute without the need for judicial intervention. Although PTC's filing of this Motion delayed MSC's response, MSC provided a detailed response to PTC's proposal and the issues in dispute on February 26th, 2002. (See 2/26/02 Letter from G. LoCascio to T. Scott, attached as Exhibit A.) However, as PTC counsel has failed to respond to MSC's letter of February 26th, MSC alternatively sets forth the documents it requires pursuant to the subpoena and asks this Court to enter an order accordingly.

I. PTC MISINTERPRETS THE PLAIN MEANING OF FTC DISCOVERY RULES AND THIS COURT'S SCHEDULING ORDER.

Despite the clear segregation between discovery of parties and discovery of non-parties in both this Court's Scheduling Order and the FTC Rules, PTC apparently believes that the parties' limitations on discovery against one another somehow serve to insulate PTC from having to respond to MSC's subpoena. This argument is without merit and should be rejected.⁵

The FTC rules of discovery make a clear and express distinction between discovery of parties and discovery of non-parties. Rule 3.37(a) provides that "[a]ny party may serve *on another party a request*" for "[p]roduction of documents and things." The rule further provides that "[a] person *not a party* to the action *may be compelled to produce documents and things . . . as provided in § 3.34.*" FTC Rule 3.34, of course, is the rule authorizing *subpoenas duces tecum*. In other words, the FTC rules provide that document discovery of a party is conducted through document "requests" while document discovery of a non-party, such as PTC, is conducted through "subpoenas *duces tecum*." These distinctions are neither novel nor FTC specific – they are commonly understood by litigators right out of law school.

Consistent with FTC rules, the Court's Scheduling Order contains separate provisions for parties to serve document requests of each other and to serve subpoenas *duces tecum* on third parties. *Compare* Add'l Provisions 3 (providing each party with 100 document requests) *and* 6

⁵ Indeed, if PTC's argument was the case, Complaint Counsel – which has served upwards of 90 requests on MSC with subparts – would have only been able to seek less than 10 categories of documents collectively from all of its third party subpoenas. Like MSC, Complaint Counsel has served subpoenas seeking multiple categories of documents without limitation by the party discovery limitation under the Scheduling Order.

(providing for subpoenas *duces tecum* on “non-parties”). In addition to using the term “document request” instead of subpoena *duces tecum*, Additional Provision 3 clearly applies to discovery between parties, as it also governs “interrogatories” and “requests for admission” – both discovery methods that may not be used against non-parties.

In light of the clear language of the FTC rules and this Court’s Scheduling Order (as well as both parties subpoena practice in this case), MSC’s ability to conduct discovery of third parties such as PTC is *completely unaffected* by Additional Provision 3’s party “document request” limitation. Additional Provision 6, which does regulate the use of subpoenas *duces tecum* on “non-parties,” contains no similar limitation. Therefore, PTC’s contention that MSC has “exceeded” the limits of its discovery is misguided and its attempt to have MSC’s subpoena quashed as a result invites error.

II. PTC’S PROPOSAL TO SEARCH ONLY FOUR EMPLOYEES’ FILES FOR ONLY TWO CATEGORIES OF DOCUMENTS – EXCLUDING PTC’S OWN FEA SOLVER – IS UNACCEPTABLY NARROW.

Fundamental due process provides MSC the right to defend itself against Complaint Counsel’s allegations and FTC Rule 3.34(b) provides MSC the specific right to build its defense through the use of third-party discovery. Having been subjected to an enormous amount of what it feels is unjustified discovery by Complaint Counsel, MSC is sensitive to the concerns of third parties and, consequently, has attempted to limit the scope of subpoenas *deuces tecum* whenever necessary so as to provide MSC only with the documents necessary to its defense while avoiding undue burden on third parties such as PTC.

Nevertheless, PTC cannot ignore MSC’s requests, decide for itself what documents are relevant to MSC’s defense, and otherwise refuse to comply with the subpoena. *See In re*

Vitamins Antitrust Litig., 2001 WL 1049433, at *11 (D.D.C. June 20, 2001) (“It is well-established that parties are entitled to discover not only admissible evidence but also information that is ‘reasonably calculated to lead to the discovery of admissible evidence.’”); *United States v. Dentsply Intern., Inc.*, 2000 WL 654286, at *4 (D. Del. May 10, 2000) (“Relevance has been construed liberally under Rule 26(b)(1), to ‘encompass any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case.’”).

As a competitor to MSC and a provider of FEA solver software, PTC is likely to have information relevant to MSC’s defense. Accordingly, MSC is entitled to discovery from PTC and PTC’s narrow proposal to search only four employees’ files for only two categories of documents (and excludes PTC’s own FEA solver) is unacceptable.

PTC’s proposal is fundamentally flawed in that it attempts to limit its search to only two categories of documents: documents related to MSC and documents related to Nastran-based FEA solvers. PTC refuses to produce both information on its own competitive FEA solver (Pro/MECHANICA) and information on the FEA solver market, regardless of whether those products are Nastran-based or not. This information is crucial to MSC’s defense against Complaint Counsel’s allegation that there is a “separate product market for advanced NASTRAN-based solvers.” In fact, PTC’s proposal ignores the fact that PTC’s Pro/MECHANICA product performs finite element analysis and contains an FEA solver – a fact acknowledged by PTC’s own Paul Cimino, who admits in his affidavit attached to PTC’s motion:

One complementary software module group within the Pro/Engineer suite is a product called Pro/Mechanica, which incorporates finite element analysis (“FEA”) solver technology.

Yet, under PTC's proposal, the features and functionality of the Pro/MECHANICA FEA solver would be excluded from its document search and production. Materials sufficient to identify the features and functionalities of PTC's FEA solver should be produced.

Similarly, PTC's proposal ignores MSC's request and need for market and competitive analyses, such as any evaluation by PTC of the market for stand-alone FEA solvers or FEA solvers that are incorporated into CAE software. Likewise, PTC's proposal ignores MSC's request and need for market share and revenue information for PTC products containing FEA solvers. MSC has requested, needs, and is entitled to this information.

Likewise, PTC's proposal appears to ignore UAI and CSAR – the very companies whose acquisitions are the basis of the FTC's suit against MSC. Information regarding UAI and CSAR needs to be produced, including any analyses of their FEA solvers, their corporate viability, market presence or strength, as well as any PTC evaluation of the acquisition of or investment in either UAI or CSAR. PTC's proposal also ignores any communications or analyses relating to MSC's acquisitions of UAI and CSAR – whether to the FTC, to customers, or internally.

In addition, PTC's proposal ignores analyses or discussions relating to customer switching from MSC.Nastran to competitive solvers, including technologies addressing translations or other switching issues.

MSC does not seek overbroad or irrelevant material – each of these categories of documents address key issues in the case. PTC is under subpoena and is obligated to produce these materials.

Finally, MSC cannot agree to limit the search to *only four PTC employees* (chosen unilaterally by PTC counsel) without knowing PTC's organizational structure and what will be

contained in PTC's production. While MSC has indicated its willingness to narrow the personnel that need to be searched, MSC will not negotiate blindly against itself.⁶ Accordingly, MSC cannot agree to exclude all other PTC personnel from the scope of the subpoena without some idea of what those other people do. *See Danis v. USN Comms., Inc.*, 2000 WL 1694325, at * 25 (N.D. Ill. Oct. 20, 2000) (directing that "search [focus] on the places where it is 'most likely that [the] document[s] will be found.'"); *Radetsky v. Binney & Smith, Inc.*, 1989 WL 234026, at * 13 (S.D.N.Y. Dec. 13, 1989) (requiring search for documents "in *all* places where [responsive] information might be found.").

III. MSC HAS ATTEMPTED TO NEGOTIATE THE SCOPE OF THE SUBPOENA DUCES TECUM.

Contrary to PTC's representations, MSC is not and was not "unwilling to narrow the subpoena's scope." From its original subpoena cover letter -- which PTC failed to attach to its motion -- MSC has made its willingness to negotiate and discuss issues with PTC abundantly clear. MSC simply was not able to accept PTC's proposal for the reasons described above and was not able to respond to PTC's proposal because PTC elected not to meet-and-confer or even notify MSC about its motion before it was filed.

In order to advance discovery, MSC is willing to limit the scope of the subpoena to those issues discussed in the preceding section. Since PTC has yet to respond to the proposal by

⁶ PTC's effort to equate their proposal with the negotiations between MSC and ANSYS contradicts the reality of ANSYS' response and draws no support from PTC's citation on that point. (*See* PTC Brief at 5-6.) Unlike PTC's position, ANSYS agreed to produce documents relating to non-Nastran solvers such as its own ANSYS solver. Indeed, when pressed by Your Honor on that point on February 25th, ANSYS counsel confirmed that position. *See* 2/25/02 Hrg. Tr. at 12, attached as Exhibit B ("Judge Chappell: Would you agree that if they do function as solvers that they would be relevant. . . .").

MSC on February 26th, to the extent PTC's efforts to quash or limit this subpoena will be heard by this Court, MSC respectfully asks that the Court order PTC to produce those materials, specifically:

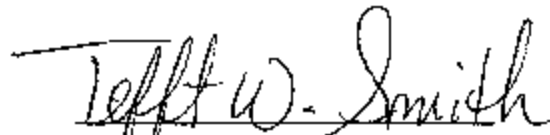
- PTC's organization chart containing personnel responsible for its FEA solver product(s);
- Documents sufficient to identify features and functionalities of PTC's FEA solver Pro/MECHANICA;
- Documents relating to competition between MSC and other providers of FEA solvers or between versions of Nastran and other FEA solver products;
- CAE or FEA market and competitive analyses, including any evaluation by PTC of the market for stand-alone FEA solvers or FEA solvers that are incorporated into CAE software;
- Documents regarding market share and revenue information for PTC products containing FEA solvers;
- Documents regarding UAI and CSAR, including any analyses of their FEA solvers, their corporate viability, market presence or strength, as well as any PTC evaluation of the acquisition of or investment in either UAI or CSAR.
- Documents regarding any communications or analyses relating to MSC's acquisitions of UAI and CSAR – whether to the FTC, to customers, or internally; and
- Documents regarding analyses or discussions relating to customer switching from MSC.Nastran to competitive solvers, including technologies addressing translations or other switching issues.

PTC should produce these documents immediately, otherwise this Court should enter the attached Proposed Order to require PTC to provide those materials.

CONCLUSION

For the foregoing reasons, PTC's Motion to Limit or Quash Subpoena Duces Tecum should be denied, and PTC should be ordered to comply with the subpoena with the modifications detailed in the attached Proposed Order.

Respectfully submitted,



Tefft W. Smith (Bar No. 458441)

Marimichael O. Skubel (Bar No. 294934)

Michael S. Becker (Bar No. 447432)

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Counsel for Respondents

MSC Software Corporation

Dated: March 1, 2002

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

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

[PROPOSED] ORDER

UPON CONSIDERATION of Third-Party Parametric Technology Corporation's Motion to Limit or Quash Subpoena *Duces Tecum*,

IT IS HEREBY ORDERED that PTC's Motion is Denied.

IT IS FURTHER ORDERED that PTC shall produce by _____:

- PTC's organization chart containing personnel responsible for its FEA solver product(s);
- Documents sufficient to identify features and functionalities of PTC's FEA solver Pro/MECHANICA;
- Documents relating to competition between MSC and other providers of FEA solvers or between versions of Nastran and other FEA solver products;
- CAE or FEA market and competitive analyses, including any evaluation by PTC of the market for stand-alone FEA solvers or FEA solvers that are incorporated into CAE software;
- Documents regarding market share and revenue information for PTC products containing FEA solvers;
- Documents regarding UAI and CSAR, including any analyses of their FEA solvers, their corporate viability, market presence or strength, as well as any PTC evaluation of the acquisition of or investment in either UAI or CSAR.
- Documents regarding any communications or analyses relating to MSC's acquisitions of UAI and CSAR -- whether to the FTC, to customers, or internally; and

- Documents regarding analyses or discussions relating to customer switching from MSC.Nastran to competitive solvers, including technologies addressing translations or other switching issues.

Dated: This ___ day of March, 2002

D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that on March 1, 2002, I caused a copy of the attached MSC's Response to Parametric Technology Corporation's Motion to Limit or Quash Subpoenas *Duces Tecum* and [Proposed] Order to be served upon the following persons by hand:

Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Richard B. Dagen, Esquire
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EXHIBIT

A

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February 26, 2002

VIA FACSIMILE

Thane D. Scott, Esq.
Palmer & Dodge
111 Huntington Avenue
Boston, MA 02199-7613

Re: Subpoena to PTC in *FTC v. MSC Software*

Dear Thane:

This letter addresses PTC's proposed subpoena response. As I previously indicated, I was out of the office last week and unable to respond in detail previously.

As an initial matter, despite the representations in PTC's Motion to Limit or Quash the subpoena, MSC has previously offered to meet-and-confer about the scope of the subpoena to PTC and narrow that subpoena in order to limit any burden upon PTC while still providing MSC with the documents it requires.

Indeed, during our telephone discussion on February 7, I repeatedly proposed that we discuss each category called for by the subpoena in an effort to address your concern that the subpoena was overbroad or unduly burdensome. Despite my repeated efforts, you refused to engage in a discussion on those individual topics and instead focused on PTC's overall unwillingness to produce documents in response to the subpoena.

Nevertheless, we concluded that February 7th call as follows – and as your letter of that date concedes – you were to (1) discuss our conversation with PTC and (2) obtain an organizational chart of PTC to assist our efforts at narrowing the scope of the search necessary to respond to the subpoena. To date, PTC has not provided an organizational chart or any other personnel information to MSC to aid in that process. On Thursday February 7th, you also indicated that you would get back to me early in the next week.

The next contact we had was one week later, when you sent me your letter late in the day on February 14th. In that letter, for the first time, PTC raised its creative argument that the parties' limitations on discovery against one another somehow served to insulate PTC from having

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to respond to MSC's subpoena. In that regard, I draw your attention to the fact that the section of the Scheduling Order that PTC relies upon deals with "100 document requests, 50 interrogatories, and 50 requests for admission" – all discovery methods that may only be used by parties against parties to the litigation. Contrast that with other portions of the scheduling order which discuss third-party discovery using the proper term subpoena duces tecum. Had PTC satisfied its meet-and-confer obligations prior to filing its Motion, we could have discussed this issue. Please let me know if PTC will continue to assert this 'objection' to producing documents in response to the subpoena.

As I was out of the office during the week of February 18th, I had a secretary in my office send you a quick letter to that effect on February 19th so that you would not think that MSC was ignoring PTC's proposal. As that letter made clear, MSC was in the process of evaluating PTC's proposal and would provide a response shortly.

Nevertheless – and without any effort at satisfying PTC's meet-and-confer obligations – PTC filed its Motion to Limit or Quash on that same day, February 19th. In an effort to support that motion, PTC misrepresented that MSC was "unwilling to narrow the subpoena's scope." Although PTC's Motion was not due on February 19th, you made no effort to contact me that day to discuss PTC's proposal, the deadlines facing PTC, or your intention of filing that Motion.

In hindsight, PTC's "negotiations" at least appear to MSC to indicate an desire to avoid producing documents in response to the subpoena and frustrate MSC's efforts at obtaining discovery. For example, in our first discussion, you made repeated reference to an alleged "service defect", yet refused to discuss how it was that you and your client came into possession of the subpoena or who accepted service on behalf of PTC. Similarly, PTC's current "discovery limit" argument is neither consistent with the scheduling order nor based upon a logical understanding of discovery practice. MSC will certainly file a response to PTC's motion, and if PTC wishes to continue along this path, the Court will be forced to address PTC's refusal to either discuss the specific requests in the subpoena or meet-and-confer on its motion prior to filing.¹

¹ In that regard, you should be aware that the Court indicated a strong desire for the parties to work through these matters without the need for judicial intervention during yesterday's hearing on Ansys' Motion to Limit or Quash.

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February 26, 2002
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Nevertheless, I want to reaffirm that MSC remains committed to attempting to resolve the issues separating our clients. In the hope that PTC also wishes to work through these issues in a good faith manner, I have addressed PTC's proposal in detail below.

MSC believes PTC's proposal to search the files of Messrs. Underwood, Margaretos, Short and Katsis to be a step in the right direction toward obtaining a satisfactory production of materials while reducing the impact of the subpoena upon PTC. However, without an organizational chart or the benefit of reviewing the documents at issue, we cannot agree to exclude all other PTC personnel from the scope of the subpoena. Similarly, to the extent those four gentlemen were chosen based upon the proposed subject-matter limitation in your letter (which is discussed below), they may not be appropriate on other issues that remain outstanding. In any event, I expect that we could agree that their files be searched and, after a review of the materials provided and a PTC organizational chart, likely agree that any remaining obligations would be narrow if not already satisfied by their materials.

With regard to your proposal that PTC only search for documents that refer to or concern MSC² or NASTRAN-based FEA solvers, MSC cannot agree to such a limitation.

Specifically, and as we have previously discussed, MSC seeks discovery on the FEA solver market (regardless of whether those products are Nastran-based or not) and must obtain that discovery to defend its case. PTC's proposal ignores the fact that PTC's Mechanica product performs finite element analysis and contains an FEA solver – a fact acknowledged by PTC's own Paul Cimino, who in his affidavit attached to the Motion admits:

One complementary software module group within the Pro/Engineer suite is *a product line called Pro/Mechanica, which incorporates finite element analysis ("FEA") solver technology.*

Under PTC's proposal, the features and functionality of PTC's own FEA solver would be excluded from its document search and production. MSC will require that PTC provide materials sufficient to identify the features and functionalities of its FEA solver.

² MSC believes that PTC's proposal that it provide "any documents that refer to or concern MSC" can be further limited to be narrower in scope. Please let me know if PTC would like to discuss further limitations upon that portion of PTC's proposal.

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Thane D. Scott, Esq.
February 26, 2002
Page 4

Similarly, PTC's proposal ignores MSC's request and need for CAE or FEA market and competitive analyses, such as any evaluation by PTC of the market for stand-alone FEA solvers or FEA solvers that are incorporated into CAE software. Likewise, PTC's proposal ignores MSC's request and need for market share and revenue information for PTC products containing FEA solvers. MSC has requested, needs, and is entitled to this information.

Likewise, PTC's proposal ignores UAI and CSAR, the companies whose acquisitions are the basis of the FTC's suit against MSC. If you were including those companies when you referred to MSC in your letter, please let me know. Otherwise, those documents will also need to be produced, including any analyses of their FEA solvers, their corporate viability, market presence or strength, as well as any PTC evaluation of the acquisition of or investment in either UAI or CSAR.

PTC's proposal also ignores any communications or analyses relating to MSC's acquisitions of UAI and CSAR -- whether to the FTC, to customers, or internally.

In addition, PTC's proposal ignores analyses or discussions relating to customer switching from MSC/Nastran to competitive solvers, including technologies addressing translations or other switching issues.

As you know, the categories described above are a significant limitation of the information originally sought by MSC. Please let me know at your earliest convenience whether PTC is willing to provide this information.

Very truly yours,



Gregg F. LoCascio

EXHIBIT

B

In The Matter Of:

MSC.SOFTWARE CORPORATION

Matter No. D09299

PREHEARING CONFERENCE

February 25, 2002

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Original File 20225MSC.ASC, 104 Pages

Min-U-Script® File ID: 2904115368

Word Index included with this Min-U-Script®

(1) the materials which we have already searched and, to
(2) the extent relevant, produced.

(3) They also propose that an e-mail be sent to
(4) all of the company's employees requesting anything
(5) that is responsive to the original subpoena. And
(6) obviously, Your Honor, that would just inundate us
(7) with having to sort through enormous quantities of
(8) duplicative material. We'd have to identify it. We
(9) would have to sort it for responsiveness. We would
(10) have to sort it for confidentiality, sort it for
(11) privilege. And the relevant information that they're
(12) looking for is already in the files of the
(13) higher-level individuals.

(14) This is —

(15) JUDGE CHAPPELL: When you're involved in
(16) litigation and you get a production request, how do you
(17) determine what to produce? Do you assign a paralegal,
(18) an attorney? What do you do in that case?

(19) MR. DONOVAN: I'm sorry. When I receive a
(20) subpoena, Your Honor?

(21) JUDGE CHAPPELL: A production request in a
(22) lawsuit, in litigation, if your company is being sued,
(23) and you get a request to produce?

(24) MR. DONOVAN: I sit down with the relevant
(25) personnel who have responsibility in the area. I talk

P
(1) is: Did your client handle this subpoena the same way
(2) you would handle a request for production if you were
(3) party to a lawsuit?

(4) MR. DONOVAN: Yes, Your Honor. They sat down
(5) with me and all of those senior-level executives and we
(6) determined from their knowledge of the company what
(7) the information would be, and Mr. Secunda then
(8) communicated with the relevant individuals to obtain
(9) the responsive documents.

(10) JUDGE CHAPPELL: Okay.

(11) MR. DONOVAN: In addition to this request for
(12) searching the files of some 31-plus additional people,
(13) Your Honor, MSC has requested that we produce
(14) information relative to competition between ANSYS and
(15) MSC in the FEA solver market.

(16) With respect to the ANSYS family of solvers,
(17) Your Honor, we have in fact sorted that information,
(18) produced that information.

(19) Our objection to that specific request in the
(20) modified MSC demands, Your Honor, is that it extends
(21) beyond solver products and into products which MSC
(22) concedes are merely complementary products.

(23) They do agree that we do not need to produce
(24) documents relating to certain products such as the
(25) CADOE family of products. But they are insisting on

(1) about what documents they generate, I talk about where
(2) they are and who would have them.

(3) JUDGE CHAPPELL: Are you the in-house attorney
(4) for ANSYS?

(5) MR. DONOVAN: No, I'm not, Your Honor.

(6) JUDGE CHAPPELL: Do they have one?

(7) MR. DONOVAN: Yes, Your Honor. It's
(8) Mr. Secunda who I referred to earlier.

(9) We sat down, with Mr. Secunda, we sat down with
(10) the relevant heads of marketing, sales, the CEO, the
(11) head of R&D and determined where in fact the material
(12) would be located.

(13) JUDGE CHAPPELL: And do they have a paralegal
(14) on staff within the company?

(15) MR. DONOVAN: They do not to my knowledge,
(16) Your Honor.

(17) JUDGE CHAPPELL: Then who handles the
(18) documents that would come in in this scenario? Who
(19) would collate it, put everything together, put it in
(20) boxes?

(21) MR. DONOVAN: In this case, Your Honor, they
(22) came to Mr. Secunda. Mr. Secunda then turned them over
(23) to our office for collating, sorting, sorting for
(24) confidentiality, for privilege and similar issues.

P
(1) production of materials such as those relating to
(2) consulting services, the Workbench product and the
(3) DesignSpace product.

(4) JUDGE CHAPPELL: Are they still insisting on
(5) computer-aided design software that functions as FEA
(6) software?

(7) MR. DONOVAN: Yes, Your Honor.

(8) JUDGE CHAPPELL: Go ahead.

(9) MR. DONOVAN: And a portion of that material
(10) would be the ANSYS family of solvers and that material
(11) has been produced.

(12) Our objection is that they go beyond that to
(13) products which in fact do not function as solvers in a
(14) way that is in any way competitive with the NASTRAN
(15) product or with the ANSYS solver product.

(16) JUDGE CHAPPELL: Would you agree that if they
(17) do function as solvers that they would be relevant, if
(18) the software —

(19) MR. DONOVAN: We agree that those products
(20) which are substitutable for the ANSYS solver and the
(21) ANSYS family of solvers and the MSC/NASTRAN solver
(22) relevant.

(23) JUDGE CHAPPELL: So you're disagreeing on which
(24) software is substitutable?

EXHIBIT

C

KIRKLAND & ELLIS

PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-6000

Gregg F. LoCasolo
To Call Writer Directly:
(202) 879-5290

Facsimile:
202 879-5200

January 25, 2002

Parametric Technology Corporation
c/o C. Richard Harrison
President
128 Technology Dr.
Waltham, MA 02453-8905

Parametric Technology Corporation
c/o David R. Friedman
128 Technology Dr.
Waltham, MA 02453-8905

Re: MSC.Software Antitrust Litigation

Gentlemen:

As you may know, MSC.Software is the defendant in a matter brought by the Federal Trade Commission relating to Finite Element Analysis ("FEA") and other CAD/CAE software. Kirkland & Ellis represents MSC.Software in that matter.

As part of its complaint against MSC, the FTC has placed at issue competition in the markets for FEA software and CAD/CAE software containing FEA components. In order to adequately defend against the FTC's allegations, MSC needs to gather information relating to these issues from Parametric Technology Corporation and others in the marketplace. Accordingly, enclosed you will find a subpoena for the production of documents in the FTC v. MSC matter.

Having been subject to significant discovery by the FTC in this matter, and as a third party in other matters, MSC certainly understands and appreciates the effort necessary to respond to this request. As a result, we have tried to limit the scope of the subpoena whenever necessary so as to provide MSC only with the documents necessary to our defense while avoiding undue burden on Parametric Technology Corporation. In that regard, please feel free to call me after receiving the subpoena to discuss any concerns or questions you may have.

Unfortunately, the FTC's case is proceeding on an expedited discovery and trial schedule. As a result, we have provided a return time of two-and-a-half weeks on the subpoena. MSC is more than prepared to help you in every way necessary to meet that deadline -- including by providing legal assistant or temporary attorney help (at MSC's cost) upon your request.

KIRKLAND & ELLIS

January 25, 2002

Page 2

Finally, we wish to make you aware that a protective order has been issued in this case to preserve the confidentiality of certain materials, a copy of which is attached to this letter. In providing documents pursuant to the subpoena, you may designate material as "Confidential" or "Restricted Confidential, Attorney Eyes Only" pursuant to the definitions of those terms in the protective order. By doing so, you will be able to restrict access to your documents so as to avoid any concerns about confidential business materials being available to your competitors, customers, or the public.

Again, I want to emphasize that you should feel free to call me to discuss any questions or concerns.

Very Truly Yours,

Gregg F. LoCascio

EXHIBIT

D

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February 19, 2002

VIA FAX

Thane Scott
Palmer & Dodge LLP
111 Huntington Avenue At Prudential Center
Boston, MA 02199-7613

Dear Thane:

I have received your letter of last week, but have been out of the office. We will be providing a response shortly.

Sincerely,

Gregg LoCasco/Amw
Gregg LoCasco