

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



IN THE MATTER OF)
)
MSC.SOFTWARE CORPORATION,) Docket No. 9299
)
a corporation.)
_____)

**MSC.SOFTWARE CORPORATION'S UNOPPOSED MOTION TO
AMEND THE REVISED SCHEDULING ORDER**

Despite the parties' best efforts to account for all possible situations that could arise as trial approaches, it has become plainly evident that, as attempts are made to complete trial preparations, some further modifications need to be made to the current Scheduling Order. As explained below, Complaint Counsel has been unable to comply with its obligations under the Order, therefore MSC requests that this Court modify the Order to provide MSC with an extension of time analogous to that which Complaint Counsel has taken to complete its pre-trial service and filing obligations.¹ MSC has conferred with Complaint Counsel, and they do not oppose this Motion.

On June 4, 2002, Complaint Counsel served upon MSC an exhibit list and witness list as required by this Court's Scheduling Order. In doing so, however, Complaint Counsel reserved the right to "supplement this list with additional exhibits." Such a reservation of rights transforms this Court's Scheduling Order deadline into a non-event, a fact which was exemplified on Friday, June

¹ Additionally, as addressed in Complaint Counsel's Motion To Modify Certain Dates In Second Revised Scheduling Order, filed on June 10, 2002, Complaint Counsel was unable to file its pre-trial brief as ordered on June 7, 2002.

9, 2002, when Complaint Counsel did in fact supplement its exhibit list with documents that had long been in its possession and a series of misnumbered exhibits.

Further, on June 9, 2002, Complaint Counsel informed MSC that it would receive Complaint Counsel's "corrected exhibit list on Monday," and that it would "receive a CD containing the documents early next week." See June 7, 2002 letter from P. Bayer to T. Smith & M. Skubel. At no time did Complaint Counsel move this Court for permission to supplement its list or otherwise extend its service deadline, as required by Additional Provision No. 5 of the Revised Scheduling Order, dated March 5, 2002 ("[a]dditional exhibits may be added after the submission of the final lists *only by order of the Administrative Law Judge* upon showing of good cause").

Moreover, the Additional Provisions of the Revised Scheduling Order provide that "Counsel may agree among themselves on the method by which they wish to exchange exhibits with each other." (See 3/5/02 Revised Scheduling Order, Additional Provision No. 13.) At no time did Complaint Counsel confer with MSC to discuss the manner in which exhibits were to be exchanged. To the contrary, Complaint Counsel unilaterally determined to burn images onto CDs. While MSC is not questioning the propriety of an electronic submission of exhibit lists and any attendant documents, it is suggesting that Complaint Counsel's unilateral decision has imposed an additional and unexpected burden upon MSC.

Not having been advised, and therefore, not anticipating the additional steps required to get hard copies of the documents on Complaint Counsel's exhibit list, MSC's ability to review the exhibits for objections, motions *in limine*, motions to strike, and the selection of its own exhibits has been delayed. MSC has had to have the CD images – which have been provided by Complaint

Counsel in piecemeal fashion, and the contents of which are constantly changing (given new exhibit numbers, added to or deleted) – “blown back” to produce hard copies of the exhibits.

As a result of Complaint Counsel’s inability to comply with this Court’s Scheduling Order and its unilateral, self-granted extensions to the service date of its final exhibit list and attendant documents, MSC requests that this Court alter the Revised Scheduling Order to accommodate appropriate extensions for MSC.

Accordingly, the schedule needs to be amended to give MSC until June 18 to submit its exhibit list (with CDs for the documents) and to extend the dates for motions *in limine* and motions to strike which under the current schedule were due after Complaint Counsel’s pretrial brief. To preserve this order Complaint Counsel and MSC propose the following changes: June 17, deadline for motions *in limine* and motions to strike; and June 25, deadline for filing responses to motions *in limine* and motions to strike.

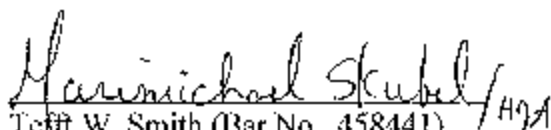
CONCLUSION

After consulting with Complaint Counsel and meeting no opposition, MSC requests that this Court modify the Revised Scheduling Order to reflect the following:

EVENT	DATE
Deadline for filing motions <i>in limine</i> and motions to strike (formerly scheduled for June 11, 2002)	June 17, 2002
Respondent’s Counsel provides to Complaint Counsel its final proposed exhibit list, including copies of all exhibits (except for demonstrative, illustrative or summary exhibits) (formerly scheduled for completion on June 12, 2002)	June 18, 2002
Exchange, and serve courtesy copy on ALJ, objections to final proposed exhibit lists (formerly scheduled for completion on June 20, 2002)	June 24, 2002

Deadline for filing response to motion <i>in limine</i> and motions to strike (formerly scheduled for June 19, 2002)	June 25, 2002
Exchange proposed stipulations of law, facts, and authenticity (formerly scheduled for completion on June 20, 2002)	June 27, 2002
File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties (formerly scheduled for completion on June 25, 2002).	July 1, 2002

Respectfully submitted,


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June 11, 2002

Counsel for Respondents,
MSC Software Corporation

CERTIFICATE OF SERVICE

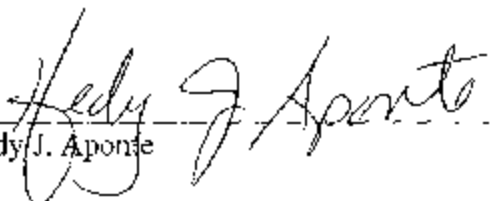
This is to certify that on Tuesday, June 11, 2002, I caused a copy of the attached Unopposed Motion To Amend the Revised Scheduling Order to be sent via facsimile and served via hand-delivery upon the following:

The Honorable D. Michael Chappell
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Counsel for Respondents,
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File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties (formerly scheduled for completion on June 25, 2002).	July 1, 2002
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Dated: _____

D. Michael Chappell
Administrative Law Judge