

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)

MSC SOFTWARE CORPORATION,)
A corporation,)

Docket No. 9299

Administrative Judge:
Hon. D. Michael Chappell

**THE BOEING COMPANY'S MOTION FOR *IN CAMERA*
TREATMENT OF CERTAIN BOEING CONFIDENTIAL AND
PROPRIETARY INFORMATION**

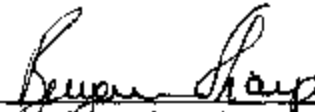
Pursuant to 16 C.F.R. § 3.45(b), third-party The Boeing Company ("Boeing"), by undersigned counsel, respectfully moves for *in camera* treatment of certain confidential and proprietary information identified in the attachments to this motion and produced by Boeing to the parties in the above-captioned matter. The reasons for requesting *in camera* treatment for this material are set forth in the attached memorandum to this motion.

Although not a party to this proceeding, Boeing has produced a significant amount of confidential and proprietary information to counsel for the Respondent, MSC Software Corporation ("MSC") and to the Federal Trade Commission's Complaint Counsel ("Commission") pursuant to subpoenas issued by the parties and under the terms of the protective order entered by the Administrative Law Judge in this case. Boeing has become aware that the parties intend to use some of the confidential information produced by Boeing as exhibits at the hearing in this matter. Accordingly, Boeing respectfully requests *in camera*

treatment for certain confidential and proprietary information contained in these documents,
the disclosure of which would result in a clearly defined, serious injury to Boeing.

A proposed order granting *in camera* treatment for these documents accompanies this
motion.

Respectfully submitted,



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Dated: June 21, 2002

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BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
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MSC SOFTWARE CORPORATION,)	Docket No. 9299
A corporation,)	
)	Administrative Judge:
)	Hon. D. Michael Chappell
)	

**MEMORANDUM IN SUPPORT OF THE BOEING COMPANY'S
MOTION FOR *IN CAMERA* TREATMENT OF CERTAIN BOEING
CONFIDENTIAL AND PROPRIETARY INFORMATION**

Pursuant to 16 C.F.R. § 3.45(b), third-party The Boeing Company ("Boeing") respectfully requests *in camera* treatment for certain confidential and proprietary information identified in the attachments to this memorandum and produced by Boeing to the parties in the above-captioned matter. Disclosure of this information would result in a clearly defined, serious injury to Boeing and would far outweigh the Commission's interests in making available to the public the full record of its adjudicative proceedings and the reasons for its decision, particularly when considering that Boeing is a third party to this proceeding.

Under Commission practice, and in accordance with 16 C.F.R. § 3.45(b), the Commission will only grant *in camera* treatment for relevant information if the party seeking *in camera* treatment makes a clear showing that the "information concerned is sufficiently secret and sufficiently material to [its] business that disclosure would result in serious competitive injury." General Foods Corp., 95 F.T.C. 352, 355 (1980). In determining

whether information is secret and material, the Commission considers: (1) the extent to which the information is known outside of the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Dura Lube Corp., 1999 FTC LEXIS 255, *6-7 (December 23, 1999)(quoting Bristol-Myers Co., 90 F.T.C. 455, 456-457 (1977)).

The documents for which Boeing requests *in camera* treatment are attached to this memorandum at Exhibits 1 through 10. These documents are accompanied by declarations from individuals within Boeing who had responsibility or oversight for the creation or maintenance of these documents. The declarations also describe with specificity the materials for which *in camera* treatment is sought and provide reasons for granting such materials *in camera* status. Although these documents, and the reasons for their *in camera* treatment, are more specifically described in the attached declarations, these documents meet the criteria for *in camera* treatment as set forth in General Foods and Bristol-Myers for the reasons described below.

As a preliminary matter, Boeing reiterates that it is a third party to this proceeding and has cooperated fully in providing documents, both to the Commission and to MSC. The information for which Boeing seeks *in camera* treatment is only a small portion of the

documents provided to both parties and is highly sensitive in nature. The disclosure of this information would severely compromise Boeing's competitive position in the already competitive aerospace industry. Finally, the release by the Commission of Boeing's third party competitive data would have a chilling effect on future participation in these proceedings by third parties.

Moreover, much of the material for which Boeing seeks *in camera* treatment is not widely known outside of the company. Boeing's forecasted software requirements and the terms of its existing agreements with suppliers, including the number of individual licenses acquired, the duration of those licenses, and the locations where software products are used, are all closely held information by Boeing.

This information is also not widely known or distributed within Boeing. Distribution of this sensitive business information is limited to those within the company with a need to know and the Defense Contract Audit Agency, which is bound by both civil and criminal codes to protect this information from disclosure. Much of the material is marked as "Boeing Limited," which is a designation Boeing uses to alert its personnel that the data cannot be shared with others. Proprietary information received from suppliers and potential suppliers likewise is distributed on a need to know basis internally so as to protect that data from improper use by competitors.

In addition, as described in the declarations contained in Exhibits 1 through 10, the information for which Boeing seeks *in camera* treatment is highly valuable, both to Boeing and its competitors. For example, the release of confidential information regarding how

Boeing performed or performs certain sensitive computer analyses would allow Boeing's competitors to improve their own analyses, or enable Boeing's competitors to propose to one of Boeing's customers that their software and process solutions are superior to Boeing's. Boeing is also in direct competition with other aerospace companies to be selected as the next generation provider of certain space and defense related products. Disclosure of Boeing's proprietary and sensitive data related to its strategic planning in this selection process would give Boeing's competitors technical insight into Boeing's testing and analytical methods and would enable Boeing's competitors to improve their methodology or counter Boeing's technical proposals to current and future customers. Because Boeing's competitors are able to maintain confidentiality for similar data, Boeing would be at a distinct disadvantage if only its information was released to the public.

An additional reason for granting Boeing's *in camera* request is that much of Boeing's forecasting requirements and software needs analysis are accomplished only at great expense and effort through extensive interoffice collaboration. In most cases, this collaboration requires the participation of Boeing personnel from various engineering, information technology, and management divisions and this process culminates in long and protracted negotiations with suppliers to meet these requirements. During the negotiation process, Boeing routinely requests that any potential supplier keep these negotiations confidential as well. Because Boeing takes great care to maintain confidentiality for this proprietary data, the likelihood of the information being properly acquired or duplicated by others from publicly available sources is minimal at best.

Aside from the General Foods and Bristol-Myers factors mentioned above, Boeing notes that much of this information is information that is routinely the subject of protective orders in federal and state courts and in Government Accounting Office ("GAO") procurement protests, where the GAO takes great efforts to protect the confidentiality of information in order to enhance the competitive position of government contractors. In addition, the public disclosure of some of these documents could potentially violate the Export Administration Regulations ("EAR") or International Traffic in Arms ("ITAR") regulations if access to these documents were not limited to non-U.S. persons as defined by those regulations. Finally, many of these documents have been retained well beyond Boeing's standard document retention schedule and would have already been destroyed, but for the subpoenas that were issued in this proceeding. Failure to protect the confidentiality of these documents, particularly in this proceeding where Boeing is a third party, would encourage companies to aggressively destroy this information if there is no business or legal requirement to retain the data, thus thwarting the Commission's intended mission to ensure that the nation's markets function competitively.

In summary, as demonstrated above and in the exhibits, Boeing's request for *in camera* treatment complies with the standards set forth in Rule 3.45(b) and with the criteria set forth in General Foods and Bristol-Myers. As a result, Boeing respectfully requests that the Commission accord *in camera* treatment for the documents contained in Exhibits 1 through 10 for a period of time as more specifically identified below:

Exhibit 1 requests *in camera* treatment for documents with Bates stamp numbers TBC 008362, CSA to MSC Transition WBS; TBC 008405, The MSC/Nastran Problem Alternative Solutions (concluded); TBC 008411-16, draft memo regarding Contract NAS8-39400, Change Directive XXX, "Spacelab Structural Math Model Conversion from CSA to MSC NASTRAN"; and TBC008442, Proposal Estimates and Supporting Data Form. These documents contain Boeing schedules, engineering analyses and labor hour estimates. Boeing requests *in camera* treatment for these documents for a period of 5 years. Boeing recognizes that much of its internal cost data is subject to less protection than trade secrets and other forms of confidential information. At the same time, however, Boeing's cost structures do not change significantly over a short period of time, given the nature of its products and its software requirements. Because Boeing's products have estimated useful lives measured in decades rather than years, much of the software needed to develop and maintain these products is developed for long term use. In addition, because training for these software systems is specialized and extensive, Boeing's labor force is not subject to significant turnover, enabling it to keep its costs relatively stable over long periods of time.

Exhibit 2 requests *in camera* treatment for documents with Bates stamp numbers TBC 00257; TBC 013011-19; TBC 000870-99; TBC 000930-49; and TBC 000196-98. These documents contain confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; the cost of re-engineering Boeing software tools and processes; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software; and Boeing's confidential and

proprietary internal recommendations and proposed solutions. Boeing requests *in camera* treatment for these documents indefinitely. In accordance with 16 C.F.R. § 3.45(b)(3), the need for confidentiality for this material is not likely to decrease over time because it gives insight into Boeing's internal methodologies for conducting risk and benefit analyses as well as Boeing's existing software tools and processes. As explained previously, most of Boeing's products have lengthy useful lives. As a result, Boeing's engineering analyses and software requirements do not require frequent updates and revisions.

Exhibit 3 requests *in camera* treatment for documents with Bates stamp numbers TBC 005147; TBC 005149; TBC 005152-54, TBC 005158-62; TBC 005164-5202; TBC 005209-16; TBC 005220-22; and TBC 005231-39. These documents contain sensitive information that exposes confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software; and Boeing's confidential and proprietary internal recommendations and proposed solutions. Boeing requests *in camera* treatment for these documents for a period of 5 years. Much of this data addressed various issues associated with the identification of required engineering functionalities within preferred structural analysis computer codes based on the finite element method. Because some of these documents contain only the views and opinions of select individuals, a lengthier period of time is not necessary.

Exhibit 4 requests *in camera* treatment for documents with Bates stamp numbers TBS SC 009856-010105; TBS SC 010155-61; TBS SC 005925-27; and 34001-HGH-00005-7; 34001-HGH-00050-52; 34001-HGH-00084; 34001-HGH-00096-97; 34001-HGH-00112; 34001-HGH-00157-58; 34001-HGH-00174-75. These documents contain confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; the cost of re-engineering Boeing software tools and processes; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; projected cost savings for re-engineering; and negotiation strategies with software vendors. These documents also reveal sensitive information that exposes Boeing's confidential and proprietary engineering analysis software solutions; Boeing's approach to pricing agreement structures; and negotiation strategies with software vendors. In addition, these documents contain proprietary details of Boeing's software vendor cost structures and negotiation strategies; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software; and Boeing's confidential and proprietary internal recommendations and proposed solutions. Boeing requests *in camera* treatment for these documents for a period of 10 years. In this particular case, the software, process changes and negotiation strategies will be obsolete and of little competitive value after 10 years.

Exhibit 5 requests *in camera* treatment for documents with Bates stamp numbers TBS SC 009596-009684, Rocketdyne Structural Dynamics Manual Vol. 5; TBC 007651-69, FW ITAP ROI Summary Chart; TBC 007671-75, RE: Vol 5 Documentation; TBC 007677-78, RE: P3P4 Modal Test Support; TBC 007680, ITAP; TBC 007681-87, Pre-Test Analysis Process; TBC 007693-94, FW: Purchase Request Justification; TBC 007708-19, FW:

Consultant Agreement Forms; TBC 007728-29, FW:UAI - PO #99250016 Renewal; TBC 007730-32, FW: ITAP; and TBC 007733-34, FW: Service Contract with Dr. Robert Coppolino. These documents contain, among other things, confidential, sensitive, and proprietary information, including a description of the Boeing computer codes used for structural dynamics and associated analyses, as well as confidential and proprietary cost estimates and internal workload estimates for several Rocketdyne Projects and specifications of computer code usage by three Boeing Divisions. This information could aid Boeing's competitors in bidding contracts against Boeing. Also in the documents are materials relating to the Rocketdyne Structural Dynamics Strategic Planning, which would provide competitive advantages to Boeing's competitors because it allows them to adopt or comment on Boeing's confidential, sensitive, and proprietary approaches to Boeing's customers. Boeing requests *in camera* treatment for these documents for a period of 10 years. Because much of this information relates to the NASA Space Launch Initiative, Boeing requests *in camera* status for 10 years, until the final stages of the Space Launch Initiative are complete in 2011.

Exhibit 6 requests *in camera* treatment for documents with Bates stamp numbers TBS SC 006300-13; TBS SC 006314-33; TBS SC 006561-78; TBS SC 006594-6622; TBS SC 006623-28, and TBS SC 006629. These documents reveal, among other things, sensitive information that exposes how Boeing (Hughes Space and Communications at the time) performed certain sensitive computer analysis, including confidential and proprietary summaries and surveys. These documents also contain the confidential negotiations strategy regarding pursuing software upgrades. These documents also contain confidential and proposed workarounds and procedures to perform the analysis work. Boeing requests *in*

camera treatment for these documents for a period of 20 years. This length of time will give Boeing time to evaluate, develop, and implement the software tools contained in the documents and will also allow MSC competitor companies time to develop and implement the software.

Exhibit 7 requests *in camera* treatment for the documents with Bates stamp numbers as identified in Attachment 1 to Exhibit 7. These documents contain sensitive information that exposes confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; the cost of re-engineering Boeing software tools and processes; Boeing's approach to pricing agreement structures and negotiation strategies with software vendors; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software; and Boeing's confidential and proprietary internal recommendations and proposed solutions. Boeing requests indefinite *in camera* protection for these documents. In accordance with 16 C.F.R. § 3.45(b)(3), the need for confidentiality for this material is not likely to decrease over time because it gives insight into Boeing's internal methodologies for conducting risk and benefit analyses as well as Boeing's existing software tools and processes. As explained previously, most of Boeing's products have lengthy useful lives. As a result, Boeing's engineering analyses and software requirements do not require frequent updates and revisions.

Exhibit 8 requests *in camera* treatment for the documents with Bates stamp numbers TBC 004353, Major Application Software Management email; TBC 004355, Major

Application Software Management document; TBC 004357, Software Mixes & Pricing Derivations; TBC 004380, Software Summary email; TBC 004381, Handwritten table; TBC 004382-3, Enterprise Software Management; TBC 004384-6, Selected Non-Standard Software Forecast; TBC 004453, Rasna/Mechanica Strategy; TBC 004455-70 and 004483-98, Corporate Purchase Agreement MDC 4013M Rasna; and TBC 004471-82, Rasna Site License. These documents contain sensitive information regarding how much Boeing pays for various software, the types of licenses it enters into and the expiration dates of various Boeing agreements. Boeing requests *in camera* treatment for these documents indefinitely. Most of these documents contain the proprietary information of third parties. Release of that information could harm those third parties, harm Boeing's relationship with those suppliers, and subject Boeing to legal action brought by those suppliers seeking compensation for harm done to them. Boeing needs to protect these documents from release indefinitely in the absence of a release schedule negotiated with these suppliers.

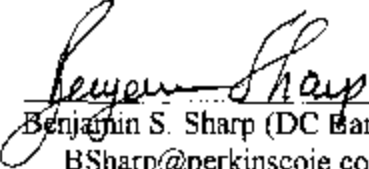
Exhibit 9 requests *in camera* treatment for documents with Bates stamp numbers TBC 008464-5, MSC Transition Budget. These two pages contain Boeing rates and labor estimates. Boeing requests *in camera* treatment for these documents for a period of 5 years. Boeing recognizes that much of its internal cost data is subject to less protection than trade secrets and other forms of confidential information. At the same time, however, Boeing's cost structures do not change significantly over a short period of time, given the nature of its products and its software requirements. Because Boeing's products have estimated useful lives measured in decades rather than years, much of the software needed to develop and maintain these products is developed for long term use. In addition, because training for these

software systems is specialized and extensive, Boeing's labor force is not subject to significant turnover, enabling it to keep its costs relatively stable over long periods of time.

Exhibit 10 requests *in camera* treatment for documents with Bates stamp numbers TBS SC 006851, a hand written note indicating cost by year and number of seats; TBS SC 006852, internal email from Barbara Innes indicating cost by year; TBS SC 006853, MSC License Agreement with cost breakdown; TBS SC 006859–60, internal email from Barbara Innes indicating cost breakdown; TBS SC 006861–62, MSC letter indicating cost breakdown; TBS SC 006863–64, hand written notes indicating cost breakdowns; TBS SC 006865–66, Hughes letter indicating cost breakdown; and TBS SC 006867–68, MSC letter indicating cost breakdown. Cost breakdowns, forecasted requirements, and the terms of existing and proposed agreements are closely held by Boeing and its suppliers as disclosure can damage the competitive positions of both the suppliers in their markets and Boeing in its markets. Boeing requests *in camera* treatment for these documents for a period of 15 years. Boeing's cost structures do not change significantly over a short period of time, given the nature of its products and its software requirements. Because Boeing's products have estimated useful lives measured in decades rather than years, much of the software needed to develop and maintain these products is developed for long term use. In addition, because training for these software systems is specialized and extensive, Boeing's labor force is not subject to significant turnover, enabling it to keep its costs relatively stable over long periods of time.

For the reasons set forth above, Boeing respectfully requests *in camera* treatment for certain confidential and proprietary information contained in the documents accompanying this motion, the disclosure of which would result in a clearly defined, serious injury to Boeing.

Respectfully submitted,


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Attorneys for The Boeing Company

Dated: June 21, 2002

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MSC SOFTWARE CORPORATION,)	Docket No. 9299
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)	Administrative Judge:
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ORDER GRANTING THE BOEING COMPANY'S MOTION FOR *IN CAMERA* TREATMENT OF CERTAIN BOEING CONFIDENTIAL AND PROPRIETARY INFORMATION

For the reasons set forth in The Boeing Company's Motion for *In Camera* Treatment of Certain Boeing Confidential and Proprietary Information, it is hereby:

ORDERED: That the following documents be accorded *in camera* treatment for the reasons and time period specified below:

Documents in Exhibit 1 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBC 008362, CSA to MSC Transition WBS: TBC 008405, The MSC/Nastran Problem Alternative Solutions (concluded); TBC 008411-16, draft memo regarding Contract NAS8-39400, Change Directive XXX, "Spacelab Structural Math Model Conversion from CSA to MSC NASTRAN"; and TBC008442, Proposal Estimates and Supporting Data Form. These documents contain Boeing schedules, engineering analyses and labor hour estimates. *In camera* treatment for these documents is granted for a period of 5 years. Boeing's cost structures do not change significantly over a short period of time, given

the nature of its products and its software requirements. Because Boeing's products have estimated useful lives measured in decades rather than years, much of the software needed to develop and maintain these products is developed for long term use. In addition, because training for these software systems is specialized and extensive, Boeing's labor force is not subject to significant turnover, enabling it to keep its costs relatively stable over long periods of time.

Documents in Exhibit 2 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBC 00257; TBC 013011-19; TBC 000870-99; TBC 000930-49; and TBC 000196-98. These documents contain confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; the cost of re-engineering Boeing software tools and processes; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software; and Boeing's confidential and proprietary internal recommendations and proposed solutions. *In camera* treatment for these documents is granted indefinitely. In accordance with 16 C.F.R. § 3.45(b)(3), the need for confidentiality for this material is not likely to decrease over time because it gives insight into Boeing's internal methodologies for conducting risk and benefit analyses as well as Boeing's existing software tools and processes. Because most of Boeing's products have lengthy useful lives, Boeing's engineering analyses and software requirements do not require frequent updates and revisions.

Documents in Exhibit 3 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBC 005147; TBC 005149; TBC 005152-54; TBC 005158-62; TBC 005164-5202; TBC 005209-16; TBC 005220-22; and TBC 005231-39. These documents contain sensitive information that exposes confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software; and Boeing's confidential and proprietary internal recommendations and proposed solutions. *In camera* treatment for these documents is granted for a period of 5 years. Much of this data addressed various issues associated with the identification of required engineering functionalities within preferred structural analysis computer codes based on the finite element method. Because some of these documents contain only the views and opinions of select individuals, a lengthier period of time is not necessary.

Documents in Exhibit 4 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBS SC 009856-010105; TBS SC 010155-61; TBS SC 005925-27; and 34001-HGH-00005-7; 34001-HGH-00050-52, 34001-HGH-00084; 34001-HGH-00096-97; 34001-HGH-00112; 34001-HGH-00157-58; 34001-HGH-00174-75. These documents contain confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; the cost of re-engineering Boeing software tools and processes; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; projected cost savings for re-engineering; and negotiation strategies with software vendors. These documents also reveal sensitive information that

exposes Boeing's confidential and proprietary engineering analysis software solutions; Boeing's approach to pricing agreement structures; and negotiation strategies with software vendors. In addition, these documents contain proprietary details of Boeing's software vendor cost structures and negotiation strategies; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software; and Boeing's confidential and proprietary internal recommendations and proposed solutions. *In camera* treatment for these documents is granted for a period of 10 years. In this particular case, the software, process changes and negotiation strategies will be obsolete and of little competitive value after 10 years.

Documents in Exhibit 5 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBS SC 009596-009684, Rocketdyne Structural Dynamics Manual Vol. 5, TBC 007651-69, FW ITAP ROI Summary Chart; TBC 007671-75, RE: Vol 5 Documentation; TBC 007677-78, RE: P3P4 Modal Test Support; TBC 007680, ITAP; TBC 007681-87, Pre-Test Analysis Process; TBC 007693-94, FW: Purchase Request Justification; TBC 007708-19, FW: Consultant Agreement Forms; TBC 007728-29, FW:UAI - PO #99250016 Renewal; TBC 007730-32, FW: ITAP; and TBC 007733-34, FW: Service Contract with Dr Robert Coppolino. These documents contain, among other things, confidential, sensitive, and proprietary information, including a description of the Boeing computer codes used for structural dynamics and associated analyses, as well as confidential and proprietary cost estimates and internal workload estimates for several Rocketdyne Projects and specifications of computer code usage by three Boeing Divisions. This information could aid Boeing's competitors in bidding contracts against Boeing. Also in the documents are materials relating to the Rocketdyne Structural Dynamics Strategic Planning,

which would provide competitive advantages to Boeing's competitors because it allows them to adopt or comment on Boeing's confidential, sensitive, and proprietary approaches to Boeing's customers. *In camera* treatment for these documents is granted for a period of 10 years. Because much of this information relates to the NASA Space Launch Initiative, Boeing requests *in camera* status for 10 years, until the final stages of the Space Launch Initiative are complete in 2011.

Documents in Exhibit 6 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBS SC 006300-13; TBS SC 006314-33; TBS SC 006561-78; TBS SC 006594-6622; TBS SC 006623-28; and TBS SC 006629. These documents reveal, among other things, sensitive information that exposes how Boeing (Hughes Space and Communications at the time) performed certain sensitive computer analysis, including confidential and proprietary summaries and surveys. These documents also contain the confidential negotiations strategy regarding pursuing software upgrades. These documents also contain confidential and proposed workarounds and procedures to perform the analysis work. *In camera* treatment for these documents is granted for a period of 20 years. This length of time will give Boeing time to evaluate, develop, and implement the software tools contained in the documents and will also allow MSC competitor companies time to develop and implement the software.

Documents in Exhibit 7 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBC 002023, TBC 007913, TBC 007922, TBC 007926-31, TBC 007933, TBC 007971-72, TBC 008047, TBC 008049-50, TBC 008052-53, TBC 008055, TBC

008058, TBC 008060-61, TBC 008063, TBC 008065, TBC 008067, TBC 008070-72, TBC 008074, TBC 008082-83, TBC 008084-85, TBC 008088-89, TBC 008090-91, TBC 008398-400, TBC 008402, TBC 008405-06, TBC 008431-33, TBC 008438, TBC 008830-31, TBC 008834, TBC 009082, TBC 009087-91, TBC 009093, TBC 009095, TBC 009126-28, TBC 009130, TBC 009135-38, TBC 009142-47, TBC 009160-63, TBC 009165, TBC 009169, TBC 009195-99, TBC 009212-16, TBC 009219, TBC 009221-25, TBC 009227-28, TBC 009230-43, TBC 009246-47, TBC 009250-51, TBC 009253, TBC 009257, TBC 009266-69, TBC 009274-75, TBC 009466, TBC009468, TBC 009470, TBC 009476, TBC 009480-84, TBC 009489-90, TBC 009496-99, TBC 009504-06, TBC 009510-14, TBC 009519-22, TBC 009525-30, TBC 009535-37, TBC 009545-50, TBC 009555-58, TBC 009560-61, TBC 009564-67, TBC 009572-74, TBC 009576-79, TBC 009584-98, TBC 009601, TBC 009605-17, TBC 009620-25, TBC 009627, TBC 009629, TBC 009631-35, TBC 009641-46, TBC 009652, TBC 009656, TBC 009662, TBC 009665, TBC 009667-69, TBC 009691-95, TBC 009720-24, TBC 009739-40, TBC 009743-44, TBC 009767-71, TBC 008096-97, TBC 008099, TBC 008103-12, TBC 008114, TBC 008116, TBC 008118-19, TBC 008121-22, TBC 008124-25, TBC 008127, TBC 008129-31, TBC 008133-37, TBC 008141-44, TBC 008146, TBC 008148, TBC 008152-53, TBC 008155, TBC 008157-60, TBC 008162-64, TBC 008166-67, TBC 008170, TBC 008173-76, TBC 008178-81, TBC 008184-91, TBC 008194-200, TBC 008213-15, TBC 008216-18, TBC 008222-24, TBC 008226-28, TBC 008232-39, TBC 008241-43, TBC 008245-46, TBC 008248-61, TBC 008265-66, TBC 008269, TBC 008272, TBC 008278-84, TBC 008286-87, TBC 008289-90, TBC 008292-95, TBC 008298-302, TBC 008304-06, TBC 008308, TBC 008318, TBC 008321, TBC 008323-

26, TBC 008330, TBC 008332, TBC 008333-35, TBC 008360-61, TBC 008363-67, TBC 008369, TBC 008372-74, TBC 008377-82, TBC 008386-95, TBC 008839-42, TBC 008844-46, TBC 008848, TBC 008852-53, TBC 008862-63, TBC 008865-78, TBC 008880-82, TBC 008498-501, TBC 008426, TBC 008429, TBC 008441, TBC 008447, TBC 008459, and TBC 008461.

These documents contain sensitive information that exposes confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; the cost of re-engineering Boeing software tools and processes, Boeing's approach to pricing agreement structures and negotiation strategies with software vendors; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software, and Boeing's confidential and proprietary internal recommendations and proposed solutions. *In camera* protection for these documents is granted indefinitely. In accordance with 16 C.F.R. § 3.45(b)(3), the need for confidentiality for this material is not likely to decrease over time because it gives insight into Boeing's internal methodologies for conducting risk and benefit analyses as well as Boeing's existing software tools and processes. Because most of Boeing's products have lengthy useful lives, Boeing's engineering analyses and software requirements do not require frequent updates and revisions.

Documents in Exhibit 8 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBC 004353, Major Application Software Management email; TBC 004355, Major Application Software Management document; TBC 004357, Software Mixes & Pricing

Derivations; TBC 004380, Software Summary email; TBC 004381, Handwritten table; TBC 004382-3, Enterprise Software Management; TBC 004384-6, Selected Non-Standard Software Forecast; TBC 004453, Rasna/Mechanica Strategy; TBC 004455-70 and 004483-98, Corporate Purchase Agreement MDC 4013M – Rasna; and TBC 004471-82, Rasna Site License. These documents contain sensitive information regarding how much Boeing pays for various software, the types of licenses it enters into and the expiration dates of various Boeing agreements. *In camera* treatment for these documents is granted indefinitely. Most of these documents contain the proprietary information of third parties. Release of that information could harm those third parties, harm Boeing's relationship with those suppliers, and subject Boeing to legal action brought by those suppliers seeking compensation for harm done to them. Boeing needs to protect these documents from release indefinitely in the absence of a release schedule negotiated with these suppliers.

Documents in Exhibit 9 to Boeing's Motion for *In Camera* Treatment with Bates stamp numbers TBC 008464-5, MSC Transition Budget. These two pages contain Boeing rates and labor estimates. *In camera* treatment for these documents is granted for a period of 5 years. Boeing recognizes that much of its internal cost data is subject to less protection than trade secrets and other forms of confidential information. At the same time, however, Boeing's cost structures do not change significantly over a short period of time, given the nature of its products and its software requirements. Because Boeing's products have estimated useful lives measured in decades rather than years, much of the software needed to develop and maintain these products is developed for long term use. In addition, because training for these software systems is specialized and extensive, Boeing's labor force is not

subject to significant turnover, enabling it to keep its costs relatively stable over long periods of time.

Documents in Exhibit 10 to Boeing's Motion for *In Camera* Treatment for documents with Bates stamp numbers TBS SC 006851, a hand written note indicating cost by year and number of seats; TBS SC 006852, internal email from Barbara Innes indicating cost by year; TBS SC 006853, MSC License Agreement with cost breakdown; TBS SC 006859–60, internal email from Barbara Innes indicating cost breakdown; TBS SC 006861–62, MSC letter indicating cost breakdown; TBS SC 006863–64, hand written notes indicating cost breakdowns; TBS SC 006865–66, Hughes letter indicating cost breakdown; and TBS SC 006867–68, MSC letter indicating cost breakdown. Cost breakdowns, forecasted requirements, and the terms of existing and proposed agreements are closely held by Boeing and its suppliers as disclosure can damage the competitive positions of both the suppliers in their markets and Boeing in its markets. *In camera* treatment for these documents is granted for a period of 15 years. Boeing's cost structures do not change significantly over a short period of time, given the nature of its products and its software requirements. Because Boeing's products have estimated useful lives measured in decades rather than years, much of the software needed to develop and maintain these products is developed for long term use. In addition, because training for these software systems is specialized and extensive, Boeing's labor force is not subject to significant turnover, enabling it to keep its costs relatively stable over long periods of time.

D Michael Chappell
Administrative Law Judge

Dated: June _____, 2002

CERTIFICATE OF SERVICE

This is to certify that on June 21, 2002, I caused copies of: (1) THE BOEING COMPANY'S MOTION FOR *IN CAMERA* TREATMENT OF CERTAIN BOEING CONFIDENTIAL AND PROPRIETARY INFORMATION; (2) MEMORANDUM IN SUPPORT OF THE BOEING COMPANY'S MOTION FOR *IN CAMERA* TREATMENT OF CERTAIN BOEING CONFIDENTIAL AND PROPRIETARY INFORMATION; (3) PROPOSED ORDER; and (4) NOTICE OF APPEARANCE to be served via hand delivery or Federal Express, upon the following:

Hand Delivery

P. Abbott McCartney, Esq.
Peggy D. Bayer, Esq
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580
Fax: (202) 326-3496

Hand Delivery

Karen Mills, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

Hand Delivery

Colin R. Kass, Esq.
Marimichael O. Skubel
Kirkland & Ellis
655 15th Street, N.W.
Washington, DC 20005
Fax: (202) 879-5200

Hand Delivery


Hon. Michael D. Chappell
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

Hand Delivery

Richard B. Dagan, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

Federal Express

John D. Harkrider, Esq.
Axinn, Veltrop & Harkrider, LLP
1370 Avenue of the Americas
New York, NY 10019
Fax: (212) 728-2201


Melissa Ruggirello

1 Benjamin S. Sharp
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Washington, D.C. 20005
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5 Mark W. Reardon (IL State Bar No. 06274437)
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6 Chicago, IL 60606-1596
Telephone: (312) 544-2812
7 Facsimile: (312) 544-2828

8 Attorneys for Third Party
THE BOEING COMPANY
9

10 UNITED STATES OF AMERICA
11 FEDERAL TRADE COMMISSION
12

13 **In the Matter of**
14

15
16 **MSC Software Corporation,**
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18
19 **A corporation**
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Docket No. 9299

Declaration of Thomas F. Allen in Support of
Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information

Administrative Judge:

Hon. D. Michael Chappell

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DECLARATION OF THOMAS F. ALLEN

I, Thomas F. Allen, hereby declare and state:

1. I am a first level manager in the Payload Carriers Program of The Boeing Company ("Boeing"). I make this declaration based on my personal knowledge and review of documents in the case file; if called as a witness, I could and would testify competently to the facts stated herein.

2. I have previously responded to subpoenas issued by the parties in this case. In connection with this lawsuit, documents from Boeing, a third party, have been provided to both the Federal Trade Commission's Complaint Counsel ("Commission") and counsel for Respondent MSC Corporation's outside counsel ("Respondent's counsel") under the terms of the protective order entered in this case by the Administrative Law Judge. The documents submitted were marked in accordance with that Protective Order. I am informed that both parties have listed as potential exhibits to be submitted at trial on this matter list some of these documents, and subsequently those documents would be made part of the public record of these proceedings.


3. I was asked to review certain of these documents, including TBC 008362, CSA to MSC Transition WBS; TBC 008405 The MSC/Nastran Problem Alternative Solutions (concluded); TBC 008411-16 draft memo Subject: Contract NAS8-39400, Change Directive XXX, "Spacelab Structural Math Model Conversion from CSA to MSC NASTRAN"; TBC008442 Proposal Estimates and Supporting Data Form. These documents should have in camera status and be kept confidential because public disclosure will likely result in a clearly defined, serious injury to Boeing.

4. These pages contain Boeing schedules, engineering analyses and labor hour estimates that are treated as confidential business information by both the creators and recipients of the material. The data is treated as confidential business information within Boeing, with distribution limited to those within the company with a need to know and the Defense Contract Audit Agency, which is bound by both civil and criminal codes to protect this information from disclosure.

1 5. Denying *in camera* treatment of this confidential, sensitive, and proprietary
2 labor rate and estimating information would substantially harm Boeing in at least two ways in the
3 competitive aerospace industry. First, contractors such as MSC, would gain valuable competitive
4 insight into Boeing's estimating methods for transitions of software and the labor rates of those
5 who would perform those transitions. In addition it would learn how we determine lead times for
6 effecting software transitions, the steps we take and the order in which we take those steps. With
7 this knowledge, such contractors could, in the future, adjust their bid to cause higher transition
8 costs, in effect assuring themselves of sole source follow-on contracts. For instance, suppose
9 MSC would normally bid a certain software upgrade at \$1,000. If MSC knew that Boeing's
10 estimated cost to transition the software was \$1,500 for that transition, MSC may increase the
11 price of that software in future bids.

12 6. Second, release of such confidential, sensitive, and proprietary estimating
13 information could provide other aerospace companies with competitive insight into Boeing's
14 labor rates and methodologies and the amount of Boeing's labor costs for similar works. Such
15 insight could provide other companies, such as Airbus or Lockheed-Martin, a competitive
16 advantage. For instance, suppose Airbus routinely pays \$150 per hour for certain software
17 engineering labor and discovers that Boeing's labor cost is \$100 for that work. Airbus could use
18 this information to explore ways to reduce its costs for similar work, when it may have thought it
19 was competitive prior to disclosure. In addition, Boeing suffers a competitive disadvantage if
20 Airbus is able to keep such information secret but Boeing must disclose the cost it paid for certain
21 work due to the unsealing of these documents.

22 I declare under penalty of perjury of the laws of the State of Alabama that the
23 foregoing is true and correct and that this declaration is executed this 7th day of June, 2002 at
24 Huntsville, Alabama.

25 
26 Thomas F. Allen

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8 Attorneys for Third Party
THE BOEING COMPANY

10 UNITED STATES OF AMERICA
11 FEDERAL TRADE COMMISSION

13 In the Matter of

16 MSC Software Corporation,

19 A corporation

Docket No. 9299

Declaration of Anita B. Boedeker in Support of
Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information

Administrative Judge:

Hon. D. Michael Chappell

1 **DECLARATION OF ANITA B. BOEDEKER**

2 I, Anita B. Boedeker, hereby declare and state:

3 1. I am a (Procurement Agent) in the (Shared Services Group, Supplier
4 Management and Procurement) for The Boeing Company ("Boeing"). I make this declaration
5 based on my personal knowledge and review of documents in the case file; if called as a witness,
6 I could and would testify competently to the facts stated herein.

7 2. I have previously responded to subpoenas issued by the parties in this case.
8 In connection with this lawsuit, documents from Boeing, a third party, have been provided to both
9 the Federal Trade Commission's Complaint Counsel ("Commission") and counsel for
10 Respondent MSC Corporation's outside counsel ("Respondent's counsel") under the terms of the
11 protective order entered in this case by the Administrative Law Judge. The documents submitted
12 were marked in accordance with that Protective Order. I am informed that both parties have
13 listed as potential exhibits to be submitted at trial on this matter list some of these documents, and
14 subsequently those documents would be made part of the public record of these proceedings.

15 3. I was asked to review certain of these documents, including the documents
16 set forth with bates stamp numbers TBC 00257; TBC 013011 through 013019; TBC 000870
17 through 000899; TBC 000930 through 000949; and TBC 000196 through 000198. These
18 documents should have in camera status and be kept confidential because public disclosure will
19 likely result in a clearly defined, serious injury to Boeing.

20 4. These documents are confidential, sensitive and proprietary because they
21 reveal sensitive information that exposes confidential and proprietary details of Boeing's existing
22 proprietary engineering analysis software and process solutions; the cost of re-engineering Boeing
23 software tools and processes; proposals for increasing Boeing's competitive position by
24 implementing specific strategic and tactical changes; Boeing's confidential and proprietary
25 internal analysis of the risks and benefits of certain software; and Boeing's confidential and
26 proprietary internal recommendations and proposed solutions.

27 5. These confidential, sensitive, and proprietary documents are treated as
28 confidential business information by both the creators and recipients of the material. The data is

1 treated as confidential business information within Boeing, with distribution limited to those
2 within the company with a need to know and the Defense Contract Audit Agency, which is bound
3 by both civil and criminal codes to protect this information from disclosure. In addition, much of
4 the material is marked as "Boeing Limited" a designation employed by Boeing to alert its
5 personnel that the data cannot be shared with others.

6 6. Cost savings and cost breakdowns, pricing agreement structures, forecasted
7 requirements, proposals for increasing Boeing's competitive position, and the terms of existing
8 and proposed agreements are closely held by Boeing and its suppliers as disclosure can damage
9 the competitive positions of both the suppliers in their markets and Boeing in its markets. What
10 terms and how much Boeing pays for various software, the types of licenses, even the expiration
11 dates of some agreements, if disclosed can damage both Boeing and its suppliers in their current
12 and future competitions, both commercial and government. How Boeing licenses certain
13 software, the cost breakdowns, the pricing structures, proposed re-engineering costs and projected
14 savings, the number of sites or individual licenses acquired, the duration of those licenses and
15 products and locations where they are used is all information which Airbus, Lockheed-Martin,
16 Northrop-Grumman could use to Boeing's competitive disadvantage.

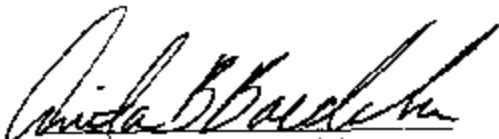
17 7. Denying *in camera* treatment of this confidential, sensitive, and proprietary
18 pricing and negotiations strategy information could substantially harm Boeing in at least two
19 additional ways in the competitive aerospace industry. First, software contractors would gain
20 valuable competitive insight into Boeing's negotiations strategy and the negotiated prices for their
21 contracts. With this knowledge, such contractors could, in the future, adjust their bid to reflect a
22 higher bid than they otherwise would have made. For instance, suppose a software contractor
23 would normally bid a certain software upgrade at \$1,000. If this contractor knew that Boeing was
24 willing to pay \$1,500 for that upgrade, the contractor may increase the price of that upgrade in
25 future bids.

26 8. Second, release of such confidential, sensitive, and proprietary pricing
27 information could provide other aerospace companies with competitive insight into Boeing's
28 negotiations strategy and the amount Boeing is willing to pay for certain items. Such insight

1 could provide other companies, such as Airbus, a competitive advantage. For instance, suppose
2 Airbus routinely pays \$1,500 for a certain software upgrade or capability and discovers that
3 Boeing only pays \$1,000 for that item. Airbus could use this information to force the contractor
4 to offer this upgrade at \$1,000 to Airbus. In addition, Boeing suffers a competitive disadvantage
5 if Airbus is able to keep such information secret but Boeing must disclose the price it paid for
6 certain items due to the release of these documents into the public domain.

7 9. In addition, release of information that exposes confidential and proprietary
8 details of Boeing's existing proprietary engineering analysis software and process solutions could
9 seriously injury Boeing. Competitors could directly apply Boeing's proprietary and confidential
10 knowledge to improve their own abilities, or propose to the customer that their software and
11 process solutions are superior to Boeing's.

12 I declare under penalty of perjury of the laws of the State of Washington that the
13 foregoing is true and correct and that this declaration is executed this 17th day of June, 2002 at
14 Renton, Washington.

15 
16 Anita B. Boedeker

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8 Attorneys for Third Party
THE BOEING COMPANY
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10 UNITED STATES OF AMERICA
11 FEDERAL TRADE COMMISSION
12

13 **In the Matter of**
14

15
16 **MSC Software Corporation,**
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18
19 **A corporation**
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Docket No. 9299

Declaration of Rodney L. Dreisbach in Support
of Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information

Administrative Judge:

Hon. D. Michael Chappell

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DECLARATION OF RODNEY L. DREISBACH

I, Rodney L. Dreisbach, hereby declare and state:

1. I am a Senior Technical Fellow in the Boeing Commercial Airplanes Group of The Boeing Company ("Boeing"). I make this declaration based on my personal knowledge and review of documents in the case file; if called as a witness, I could and would testify competently to the facts stated herein.

2. I have previously responded to subpoenas issued by the parties in this case. In connection with this lawsuit, documents from Boeing, a third party, have been provided to both the Federal Trade Commission's Complaint Counsel ("Commission") and counsel for Respondent MSC Corporation's outside counsel ("Respondent's counsel") under the terms of the protective order entered in this case by the Administrative Law Judge. The documents submitted were marked in accordance with that Protective Order. I am informed that both parties have listed as potential exhibits to be submitted at trial on this matter list some of these documents, and subsequently those documents would be made part of the public record of these proceedings.

3. I was asked to review certain of these documents, including the documents set forth with bates stamp numbers TBC 005147, TBC 005149, TBC 005152 through 005154, TBC 005158 through 005162, TBC 005164 through 005202, TBC 005209 through 005216, TBC 005220 through 005222, TBC 005231, TBC 005235 through 005239. These documents should have in camera status and be kept confidential because public disclosure will likely result in a clearly defined, serious injury to Boeing.

4. These documents are confidential, sensitive and proprietary because they reveal sensitive information that exposes confidential and proprietary details of Boeing's existing proprietary engineering analysis software and process solutions; proposals for increasing Boeing's competitive position by implementing specific strategic and tactical changes; Boeing's confidential and proprietary internal analysis of the risks and benefits of certain software; and Boeing's confidential and proprietary internal recommendations and proposed solutions.

5. These confidential, sensitive, and proprietary documents are treated as confidential business information by both the creators and recipients of the material. The data is

1 treated as confidential business information within Boeing, with distribution limited to those
2 within the company with a need to know and the Defense Contract Audit Agency, which is bound
3 by both civil and criminal codes to protect this information from disclosure. In addition, much of
4 the material is marked as "Boeing Limited" a designation employed by Boeing to alert its
5 personnel that the data cannot be shared with others.

6 6. Cost savings and cost breakdowns, pricing agreement structures, forecasted
7 requirements, proposals for increasing Boeing's competitive position, and the terms of existing
8 and proposed agreements are closely held by Boeing and its suppliers as disclosure can damage
9 the competitive positions of both the suppliers in their markets and Boeing in its markets. What
10 terms and how much Boeing pays for various software, the types of licenses, even the expiration
11 dates of some agreements, if disclosed can damage both Boeing and its suppliers in their current
12 and future competitions, both commercial and government. How Boeing licenses certain
13 software, the cost breakdowns, the pricing structures, proposed re-engineering costs and projected
14 savings, the number of sites or individual licenses acquired, the duration of those licenses and
15 products and locations where they are used is all information which Airbus, Lockheed-Martin,
16 Northrop-Grumman could use to Boeing's competitive disadvantage.

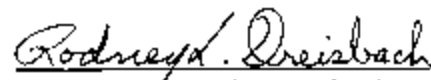
17 7. Denying *in camera* treatment of this confidential, sensitive, and proprietary
18 pricing and negotiations strategy information could substantially harm Boeing in at least two
19 additional ways in the competitive aerospace industry. First, software contractors would gain
20 valuable competitive insight into Boeing's negotiations strategy and the negotiated prices for their
21 contracts. With this knowledge, such contractors could, in the future, adjust their bid to reflect a
22 higher bid than they otherwise would have made. For instance, suppose a software contractor
23 would normally bid a certain software upgrade at \$1,000. If this contractor knew that Boeing was
24 willing to pay \$1,500 for that upgrade, the contractor may increase the price of that upgrade in
25 future bids.

26 8. Second, release of such confidential, sensitive, and proprietary pricing
27 information could provide other aerospace companies with competitive insight into Boeing's
28 negotiations strategy and the amount Boeing is willing to pay for certain items. Such insight

1 could provide other companies, such as Airbus, a competitive advantage. For instance, suppose
2 Airbus routinely pays \$1,500 for a certain software upgrade or capability and discovers that
3 Boeing only pays \$1,000 for that item. Airbus could use this information to force the contractor
4 to offer this upgrade at \$1,000 to Airbus. In addition, Boeing suffers a competitive disadvantage
5 if Airbus is able to keep such information secret but Boeing must disclose the price it paid for
6 certain items due to the release of these documents into the public domain.

7 9. In addition, release of information that exposes confidential and proprietary
8 details of Boeing's existing proprietary engineering analysis software and process solutions could
9 seriously injure Boeing. Competitors could directly apply Boeing's proprietary and confidential
10 knowledge to improve their own abilities, or propose to the customer that their software and
11 process solutions are superior to Boeing's.

12 I declare under penalty of perjury of the laws of the State of Washington that the
13 foregoing is true and correct and that this declaration is executed this 17th day of June, 2002 at
14 Renton, Washington.

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16 Rodney L. Dreisbach
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13 Attorneys for Third Party
14 **THE BOEING COMPANY**

15 UNITED STATES OF AMERICA

16 FEDERAL TRADE COMMISSION

17 **In the Matter of**

18 **MSC Software Corporation,**

19 **A corporation**

Docket No. 9299

Declaration of Donald G. Gants in Support of
Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information

Administrative Judge:

Hon. D. Michael Chappell

1 **DECLARATION OF DONALD G. GANTS**

2 I, Donald G. Gants, hereby declare and state:

3 1. I am a Project Manager for The Boeing Company ("Boeing"). I make this
4 declaration based on my personal knowledge and review of documents in the case file; if called as
5 a witness, I could and would testify competently to the facts stated herein.

6 2. I have previously responded to subpoenas issued by the parties in this case.
7 In connection with this lawsuit, documents from Boeing, a third party, have been provided to both
8 the Federal Trade Commission's Complaint Counsel ("Commission") and counsel for
9 Respondent MSC Corporation's outside counsel ("Respondent's counsel") under the terms of the
10 protective order entered in this case by the Administrative Law Judge. The documents submitted
11 were marked in accordance with that Protective Order. I am informed that both parties have
12 listed as potential exhibits to be submitted at trial on this matter list some of these documents, and
13 subsequently those documents would be made part of the public record of these proceedings.

14 3. I was asked to review certain of these documents, including the documents
15 set forth with bates stamp numbers TBS SC 009856 - 010105; TBS SC 010155 - 010161; TBS
16 SC 005925 - 005927; and 34001-HGH-00005 - 00007; 34001-IIGII-00050 - 00052; 34001-HGH-
17 00084; 34001-HGH-00096 - 00097; 34001-HGH-00112; 34001-IIGII-00157 - 00158; 34001-
18 HGH-00174-000175. These documents should have in camera status and be kept confidential
19 because public disclosure will likely result in a clearly defined, serious injury to Boeing.

20 4. The following specific rationales apply regarding why the documents
21 should remain confidential:

22 a. TBS SC 009856 - 010105; TBS SC 010155 - 010161. These
23 documents are confidential, sensitive and proprietary. They reveal sensitive information that
24 exposes confidential and proprietary details of Boeing's existing proprietary engineering analysis
25 software and process solutions; the cost of re-engineering Boeing software tools and processes;
26 proposals for increasing Boeing's competitive position by implementing specific strategic and
27 tactical changes; projected cost savings for re-engineering; and negotiation strategies with
28 software vendors.

1 b. TBS SC 005925 - 005927. This document reveals sensitive
2 information that exposes Boeing's confidential and proprietary engineering analysis software
3 solutions; Boeing's approach to pricing agreement structures; and negotiation strategies with
4 software vendors.

5 c. 34001-HGH-00005 - 00007; 34001-HGH-00050 - 00052; 34001-
6 HGH-00084; 34001-HGH-00096 - 00097; 34001-HGH-00112; 34001-HGH-00157 - 00158;
7 34001-HGH-00174-000175. These documents reveal sensitive information that exposes
8 confidential and proprietary details of Boeing's software vendor cost structures and negotiation
9 strategies; Boeing's confidential and proprietary internal analysis of the risks and benefits of
10 certain software; and Boeing's confidential and proprietary internal recommendations and
11 proposed solutions.

12 5. These confidential, sensitive, and proprietary documents are treated as
13 confidential business information by both the creators and recipients of the material. The data is
14 treated as confidential business information within Boeing, with distribution limited to those
15 within the company with a need to know and the Defense Contract Audit Agency, which is bound
16 by both civil and criminal codes to protect this information from disclosure.

17 6. Cost savings and cost breakdowns, pricing agreement structures, forecasted
18 requirements, proposals for increasing Boeing's competitive position, and the terms of existing
19 and proposed agreements are closely held by Boeing and its suppliers as disclosure can damage
20 the competitive positions of both the suppliers in their markets and Boeing in its markets. What
21 terms and how much Boeing pays for various software, the types of licenses, even the expiration
22 dates of some agreements, if disclosed can damage both Boeing and its suppliers in their current
23 and future competitions, both commercial and government. How Boeing licenses certain
24 software, the cost breakdowns, the pricing structures, proposed re-engineering costs and projected
25 savings, the number of sites or individual licenses acquired, the duration of those licenses and
26 products and locations where they are used is all information which Airbus, Lockheed-Martin,
27 Northrop-Grumman could use to Boeing's competitive disadvantage.

1 7. The pricing information contained in the above-referenced pages was
2 negotiated by Boeing with its suppliers in a competitive and confidential setting. Boeing treats
3 this pricing information that was competitively negotiated with its suppliers as confidential,
4 sensitive, and proprietary. Boeing keeps this valuable information confidential and does not
5 release it to third parties.


6 8. Denying *in camera* treatment of this confidential, sensitive, and proprietary
7 pricing and negotiations strategy information could substantially harm Boeing in at least two
8 additional ways in the competitive aerospace industry. First, software contractors would gain
9 valuable competitive insight into Boeing's negotiations strategy and the negotiated prices for their
10 contracts. With this knowledge, such contractors could, in the future, adjust their bid to reflect a
11 higher bid than they otherwise would have made. For instance, suppose a software contractor
12 would normally bid a certain software upgrade at \$1,000. If this contractor knew that Boeing was
13 willing to pay \$1,500 for that upgrade, the contractor may increase the price of that upgrade in
14 future bids.

15 9. Second, release of such confidential, sensitive, and proprietary pricing
16 information could provide other aerospace companies with competitive insight into Boeing's
17 negotiations strategy and the amount Boeing is willing to pay for certain items. Such insight
18 could provide other companies, such as Airbus, a competitive advantage. For instance, suppose
19 Airbus routinely pays \$1,500 for a certain software upgrade or capability and discovers that
20 Boeing only pays \$1,000 for that item. Airbus could use this information to force the contractor
21 to offer this upgrade at \$1,000 to Airbus. In addition, Boeing suffers a competitive disadvantage
22 if Airbus is able to keep such information secret but Boeing must disclose the price it paid for
23 certain items due to the release of these documents into the public domain.

24 10. In addition, release of information that exposes confidential and proprietary
25 details of Boeing's existing proprietary engineering analysis software and process solutions could
26 seriously injury Boeing. Competitors could directly apply Boeing's proprietary and confidential
27 knowledge to improve their own abilities, or propose to the customer that their software and
28 process solutions are superior to Boeing's.

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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 7th day of June, 2002 at El Segundo, California.


Donald G. Gants

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8 Attorneys for Third Party
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10 UNITED STATES OF AMERICA
11 FEDERAL TRADE COMMISSION
12

13 **In the Matter of**

14
15
16 **MSC Software Corporation,**
17

18
19 **A corporation**
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Docket No. 9299

Declaration of John Haworth in Support of
Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information

Administrative Judge:

Hon. D. Michael Chappell

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1 analyses. Also included are the assessments of what these proprietary codes can be used for and
2 individuals who can be contacted for assistance in using the codes. Specific proprietary and
3 sensitive details are provided for the Boeing developed codes. This Manual also contains
4 Boeing's proprietary summary and evaluation of commercial codes and how Boeing interfaces
5 these codes together. Release of this confidential and sensitive information could greatly aid our
6 competitors in improving their own codes and processes.

7 b. "FW ITAP ROI Summary Chart," TBC 00765 i - 007669. This
8 document contains confidential and proprietary cost estimates and internal workload estimates for
9 several Rocketdyne Projects and specifications of computer code usage by three Boeing
10 Divisions. This constitutes confidential and sensitive financial information that could aid our
11 competitors in bidding contracts against Boeing. Also in the document is material relating to the
12 Rocketdyne Structural Dynamics Strategic Planning, which would provide competitive
13 advantages to our competitors because it allows them to adopt or comment on our confidential,
14 sensitive, and proprietary approaches to our NASA Customer.

15 c. "RE: Vol 5 Documentation," TBC 007671 - 007675. This
16 document contains confidential, sensitive, and proprietary technical assessments regarding the use
17 of NASTRAN with ITAP, and is included in our Rocketdyne Structural Dynamics Manual
18 Volume 5 (see paragraph 4(a) above). This material would give our competitors technical insight
19 into our confidential, sensitive, and proprietary testing and analytical methods. Our competitors
20 could improve their methodology or counter our technical proposals to our NASA customer.

21 d. "RE: P3P4 Modal Test Support," TBC 007677 - 007678. This
22 document contains confidential and sensitive man-hour estimates for completing specific tasks
23 that could aid our competitors in setting competitive pricing on bids for NASA contracts. It also
24 contains confidential, sensitive, and proprietary information on interactive use of more than one
25 computer code. Again, this provides information on our technical approaches similar to that
26 contained in the Manual (see Paragraph 4(a) above).

27 e. "ITAP," TBC 007680. This document contains confidential,
28 sensitive, and proprietary information about critical steps we take in modal testing. This

1 information could be of great use to our competitors attempting to perform similar tasks, similar
2 to the information contained in the Manual (see Paragraph 4(a) above).

3 f. "Pre-Test Analysis Process," TBC 007681 -- 007687. This
4 document contains the confidential, sensitive, and proprietary step-by-step description of how to
5 perform pre-test evaluations for Modal Testing, which is unique to Rocketdyne. This information
6 could be used by our competitors to improve their methodologies and provide an improved
7 technical product or propose these improvements in a proposal competing with ours.

8 g. "FW: Purchase Request Justification," TBC 007693 -- 007694.
9 This document contains confidential and sensitive information regarding our strategy for hiring a
10 consultant; confidential and sensitive personal information about the consultant; and the
11 confidential, sensitive, and proprietary steps taken to set up our Pre-test Modal Analysis
12 approach. This information is similar to information contained in the document referenced in
13 paragraph 4(f) above.

14 h. "FW: Consultant Agreement Forms," TBC 007708 - 007719. This
15 document contains confidential, sensitive, and proprietary information similar to the documents
16 referenced in paragraphs 4(f) and 4(g) above. This confidential and sensitive document also
17 contains Dr. Coppolino's Social Security number. In addition, the document contains
18 confidential, sensitive, and proprietary financial information about Boeing's proposed
19 compensation for the consultant.

20 i. "FW:UAI - PO #99250016 Renewal," TBC 007728 - 007729. This
21 document contains confidential and sensitive comments about individuals working on specific
22 Boeing programs. Release of this information would allow our competitors to target these
23 individuals for hire.

24 j. "FW: ITAP," TBC 007730 - TBC 007732. This document is a
25 continuation of 4(i) above, and the same objections apply. In addition, the document contains
26 confidential, sensitive, and proprietary information involving the strategic direction of
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1 Rocketdyne Structural Dynamics. Our competitors could use this information to reduce or
2 eliminate any competitive advantage this strategy would produce.

3 k. FW: Service Contract with Dr. Robert Coppolino," TBC 007733 -
4 007734. This document contains a confidential, sensitive, and proprietary summary of our
5 technical approach to Modal Testing and post-test data analysis. Release of this information
6 would reduce our competitive advantage if made a matter of public record and could aid our
7 competitors in improving their own processes.

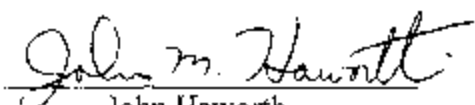
8 5. These highly sensitive and proprietary materials are treated as confidential
9 information within Boeing, with distribution limited to those within the company with a need to
10 know and sometimes to the Defense Contract Audit Agency, which is bound by both civil and
11 criminal codes to protect this information from disclosure.

12 6. In addition to the serious injuries set forth above if this information was
13 released, denying *in camera* treatment of this confidential, sensitive, and proprietary information
14 would substantially harm Boeing in at least two more ways in the competitive aerospace industry.
15 First, the Rocketdyne Propulsion and Power Division of the Boeing Company is engaged in
16 competition with Pratt and Whitney, Aerojet General, and other rocket engine providers in the
17 NASA Space Launch Initiative. One or more of these companies will be selected to build the
18 next generation of reusable launch vehicle rocket engines. Public disclosure of these materials
19 could provide a substantial competitive advantage for these companies in this procurement. The
20 competitive advantage could consist of directly applying Boeing's proprietary and confidential
21 knowledge to improve their own abilities, or proposing to the customer that their approaches,
22 such as the codes they use, are superior to Boeing's. The schedule for flight of the new launch
23 vehicle will occur no earlier than 2011, and may be later.

24 7. Second, Boeing also competes with TRW and Lockheed Martin for
25 directed energy and space power contracts, and those companies would obtain a similar potential
26 competitive advantage if this information were made a matter of public record. TRW and
27 Lockheed Martin, or any other competitor, could use Boeing's proprietary knowledge to improve
28 their own abilities or propose to the customer that their approach is superior to Boeing's.

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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 7th day of June, 2002 at Canoga Park, California.


John Haworth

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10 UNITED STATES OF AMERICA
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13 **In the Matter of**

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16 **MSC Software Corporation,**
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19 **A corporation**
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Docket No. 9299

Declaration of Robert Underwood Johnson, Jr.
in Support of Boeing's Motion for In Camera
Treatment of certain of Boeing's Confidential,
Proprietary Information

Administrative Judge:

Hon. D. Michael Chappell
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1 **DECLARATION OF ROBERT UNDERWOOD JOHNSON, JR.**

2 I, Robert Underwood Johnson, Jr., hereby declare and state:

3 1. I am an Antenna Stress Function Manager for The Boeing Company
4 ("Boeing"). I make this declaration based on my personal knowledge and review of documents in
5 the case file; if called as a witness, I could and would testify competently to the facts stated
6 herein.

7 2. I have previously responded to subpoenas issued by the parties in this case.
8 In connection with this lawsuit, documents from Boeing, a third party, have been provided to both
9 the Federal Trade Commission's Complaint Counsel ("Commission") and counsel for
10 Respondent MSC Corporation's outside counsel ("Respondent's counsel") under the terms of the
11 protective order entered in this case by the Administrative Law Judge. The documents submitted
12 were marked in accordance with that Protective Order. I am informed that both parties have
13 listed as potential exhibits to be submitted at trial on this matter list some of these documents, and
14 subsequently those documents would be made part of the public record of these proceedings.

15 3. I was asked to review certain of these documents, including the documents
16 set forth with bates stamp numbers TBS SC 006300 - 006313; TBS SC 006314 - 006333; TBS
17 SC 006561 - 006578; TBS SC 006594 - 006622; TBS SC 006623 - 006628; and TBS SC 006629.
18 These documents should have in camera status and be kept confidential because public disclosure
19 will likely result in a clearly defined, serious injury to Boeing.

20 4. The following specific rationales apply regarding why the documents
21 should remain confidential:

22 a. TBS SC 006300 - 006313. These documents are confidential,
23 sensitive and proprietary. They reveal sensitive information that exposes how Boeing (Hughes
24 Space and Communications at the time) performed certain sensitive computer analysis, including
25 confidential and proprietary summaries and surveys. These documents also contain the
26 confidential negotiations strategy regarding pursuing software upgrades.

27 b. TBS SC 006314 - 006333. These documents are confidential,
28 sensitive and proprietary. They reveal sensitive information that exposes how Boeing performed

1 certain sensitive computer analysis, including confidential and proprietary summaries and
2 surveys. These documents also contain confidential and proposed workarounds and procedures to
3 perform the analysis work.

4 c. TBS SC 006561 - 006578. These documents are confidential,
5 sensitive and proprietary. They reveal sensitive information that exposes how Parametric
6 Technology Corporation (PTC) was planning to develop the necessary software to meet Boeing's
7 confidential requirements. The documents set forth a roadmap as to when the software would be
8 available for use.

9 d. TBS SC 006594 - 006622. These documents are confidential,
10 sensitive and proprietary. They reveal sensitive information that exposes Boeing's requirements
11 to replace its then-current tool suite with one that PTC is still in the process of developing. These
12 documents contain confidential, sensitive, and proprietary information regarding an integrated,
13 end-to-end system that is responsive and facilitates a collaborative engineering environment.

14 e. TBS SC 006623 - 006628. These documents are confidential,
15 sensitive and proprietary. They contain confidential and proprietary information on the Structural
16 Dynamics roadmap for developing the necessary technology for HSC to perform its analysis
17 work. These documents provide a very detailed listing of the confidential and proprietary
18 requirements and time frame necessary for Boeing to replace its then-current tool suite with one
19 that PTC is still in the process of developing.

20 f. TBS SC 006629. This document is confidential, sensitive and
21 proprietary. It contains confidential and proprietary information on Rasna, the predecessor to
22 Pro-Mechanica's analysis software. This document explains the confidential and proprietary
23 justification for considering this analysis tool as part of the tool suite necessary for Boeing's
24 business.

25 5. These confidential, sensitive, and proprietary documents are treated as
26 confidential business information by both the creators and recipients of the material. The data is
27 treated as confidential business information within Boeing, with distribution limited to those
28 within the company with a need to know and the Defense Contract Audit Agency, which is bound

1 by both civil and criminal codes to protect this information from disclosure. Public release of this
2 confidential, sensitive, and proprietary information may violate Export Compliance Regulations.

3 6. These documents are closely held by Boeing and its suppliers as disclosure
4 can damage the competitive positions of both the suppliers in their markets and Boeing in its
5 markets. Boeing's internal and confidential strategy; proposed workarounds and procedures for
6 performing sensitive computer analysis; and the confidential, sensitive, and proprietary
7 communications between Boeing and PTC is information which Airbus, Lockheed-Martin,
8 Northrop-Grumman could use to Boeing's competitive disadvantage. This information was
9 negotiated by Boeing with PTC in a competitive and confidential setting. Boeing treats this
10 information as confidential, sensitive, and proprietary. Boeing keeps this valuable information
11 confidential and does not release it to third parties.

12 7. Denying *in camera* treatment of this confidential, sensitive, and proprietary
13 information could substantially harm Boeing in at least two additional ways in the competitive
14 aerospace industry. First, software contractors would gain valuable competitive insight into
15 Boeing's strategy and requirements and use this information to their advantage. Second, release
16 of such confidential, sensitive, and proprietary information could provide other aerospace
17 companies with competitive insight into Boeing's strategy and requirements, which would allow
18 these companies to use this information to their competitive advantage.

19 8. In addition, release of information that exposes confidential and proprietary
20 details of how Boeing performed or performs certain sensitive computer analysis could seriously
21 injure Boeing. Competitors could directly apply Boeing's proprietary and confidential knowledge
22 to improve their own abilities, or propose to the customer that their software and process
23 solutions are superior to Boeing's.

24 I declare under penalty of perjury of the laws of the State of California that the
25 foregoing is true and correct and that this declaration is executed this 7th day of June, 2002 at El
26 Segundo, California.

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28 Robert Underwood Johnson, Jr.

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Attorneys for Third Party
THE BOEING COMPANY

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

MSC Software Corporation,

A corporation

Docket No. 9299

Declaration of Donald R. Ladwig in Support of
Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information

Administrative Judge:

Hon. D. Michael Chappell

1 **DECLARATION OF DONALD R. LADWIG**

2 I, Donald R. Ladwig, hereby declare and state:

3 1. I am an Intellectual Property Consultant for the Intellectual Property
4 Business unit of The Boeing Company ("Boeing"). Prior to November 2001 I was an
5 Engineer/Scientist 4 for the Aircraft and Missiles business unit of The Boeing Company
6 ("Boeing"). I make this declaration based on my personal knowledge and review of documents in
7 the case file; if called as a witness, I could and would testify competently to the facts stated
8 herein.

9 2. I have previously responded to subpoenas issued by the parties in this case.
10 In connection with this lawsuit, documents from Boeing, a third party, have been provided to both
11 the Federal Trade Commission's Complaint Counsel ("Commission") and counsel for
12 Respondent MSC Corporation's outside counsel ("Respondent's counsel") under the terms of the
13 protective order entered in this case by the Administrative Law Judge. The documents submitted
14 were marked in accordance with that Protective Order. I am informed that both parties have
15 listed as potential exhibits to be submitted at trial on this matter list some of these documents, and
16 subsequently those documents would be made part of the public record of these proceedings.

17 3. I was asked to review certain of these documents, including the documents
18 set forth with Bates stamp numbers as identified in Attachment 1 to this Declaration. These
19 documents should have in camera status and be kept confidential because public disclosure will
20 likely result in a clearly defined, serious injury to Boeing.

21 4. These documents are confidential, sensitive and proprietary because they
22 reveal sensitive information that exposes confidential and proprietary details of Boeing's existing
23 proprietary engineering analysis software and process solutions; the cost of re-engineering Boeing
24 software tools and processes; Boeing's approach to pricing agreement structures and negotiation
25 strategies with software vendors; proposals for increasing Boeing's competitive position by
26 implementing specific strategic and tactical changes; Boeing's confidential and proprietary
27 internal analysis of the risks and benefits of certain software; and Boeing's confidential and
28 proprietary internal recommendations and proposed solutions.

1 5. These confidential, sensitive, and proprietary documents are treated as
2 confidential business information by both the creators and recipients of the material. The data is
3 treated as confidential business information within Boeing, with distribution limited to those
4 within the company with a need to know and the Defense Contract Audit Agency, which is bound
5 by both civil and criminal codes to protect this information from disclosure.

6 6. Cost savings and cost breakdowns, pricing agreement structures, forecasted
7 requirements, proposals for increasing Boeing's competitive position, and the terms of existing
8 and proposed agreements are closely held by Boeing and its suppliers as disclosure can damage
9 the competitive positions of both the suppliers in their markets and Boeing in its markets. What
10 terms and how much Boeing pays for various software, the types of licenses, even the expiration
11 dates of some agreements, if disclosed can damage both Boeing and its suppliers in their current
12 and future competitions, both commercial and government. How Boeing licenses certain
13 software, the cost breakdowns, the pricing structures, proposed re-engineering costs and projected
14 savings, the number of sites or individual licenses acquired, the duration of those licenses and
15 products and locations where they are used is all information which Airbus, Lockheed-Martin,
16 Northrop-Grumman could use to Boeing's competitive disadvantage.

17 7. The pricing information contained in the above-referenced pages was
18 negotiated by Boeing with its suppliers in a competitive and confidential setting. Boeing treats
19 this pricing information that was competitively negotiated with its suppliers as confidential,
20 sensitive, and proprietary. Boeing keeps this valuable information confidential and does not
21 release it to third parties.

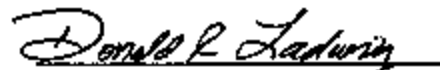
22 8. Denying *in camera* treatment of this confidential, sensitive, and proprietary
23 pricing and negotiations strategy information could substantially harm Boeing in at least two
24 additional ways in the competitive aerospace industry. First, software contractors would gain
25 valuable competitive insight into Boeing's negotiations strategy and the negotiated prices for their
26 contracts. With this knowledge, such contractors could, in the future, adjust their bid to reflect a
27 higher bid than they otherwise would have made. For instance, suppose a software contractor
28 would normally bid a certain software upgrade at \$1,000. If this contractor knew that Boeing was

1 willing to pay \$1,500 for that upgrade, the contractor may increase the price of that upgrade in
2 future bids.

3 9. Second, release of such confidential, sensitive, and proprietary pricing
4 information could provide other aerospace companies with competitive insight into Boeing's
5 negotiations strategy and the amount Boeing is willing to pay for certain items. Such insight
6 could provide other companies, such as Airbus, a competitive advantage. For instance, suppose
7 Airbus routinely pays \$1,500 for a certain software upgrade or capability and discovers that
8 Boeing only pays \$1,000 for that item. Airbus could use this information to force the contractor
9 to offer this upgrade at \$1,000 to Airbus. In addition, Boeing suffers a competitive disadvantage
10 if Airbus is able to keep such information secret but Boeing must disclose the price it paid for
11 certain items due to the release of these documents into the public domain.

12 10. In addition, release of information that exposes confidential and proprietary
13 details of Boeing's existing proprietary engineering analysis software and process solutions could
14 seriously injure Boeing. Competitors could directly apply Boeing's proprietary and confidential
15 knowledge to improve their own abilities, or propose to the customer that their software and
16 process solutions are superior to Boeing's.

17 I declare under penalty of perjury of the laws of the State of Missouri that the
18 foregoing is true and correct and that this declaration is executed this 7th day of June, 2002 at St.
19 Louis, Missouri.

20 
21 Donald R. Ladwig

ATTACHMENT 1

TBC 002023

TBC 007913, TBC 007922, TBC 007926-007931, TBC 007933, TBC 007971-007972,

TBC 008047, TBC 008049-008050, TBC 008052-008053, TBC 008055, TBC 008058, TBC 008060-008061, TBC 008063, TBC 008065, TBC 008067, TBC 008070-008072, TBC 008074, TBC 008082-008083, TBC 008084-008085, TBC 008088 - 008089, TBC 008090-008091, TBC 008398-008400, TBC 008402, TBC 008405-008406, TBC 008431-008433, TBC 008438, TBC 008830-008831, TBC 008834, TBC 009082,

TBC 009087-009091, TBC 009093, TBC 009095, TBC 009126-009128, TBC 009130, TBC 009135-009138, TBC 009142, TBC 009144-009147, TBC 009160-009163, TBC 009165, TBC 009169, TBC 009195-009199, TBC 009212-009216, TBC 009219, TBC 009221-009225, TBC 009227-009228, TBC 009230-009243, TBC 009246 - 009247, TBC 009250-009251, TBC 009253-009257, TBC 009266-009269, TBC 009274-009275, TBC 009466, TBC 009468, TBC 009470 - 009476, TBC 009480-009484, TBC 009489-009490, TBC 009496-009499, TBC 009504-009506, TBC 009510-009514, TBC 009519-009522, TBC 009525 - 009530, TBC 009535 009537, TBC 009545-009550, TBC 009555-009558, TBC 009560 - 009561, TBC 009564-009567, TBC 009572-009574, TBC 009576-009579, TBC 009584-009598, TBC 009601, TBC 009605-009617, TBC 009620 - 009625, TBC 009627, TBC 009629, TBC 009631-009635, TBC 009641-009646, TBC 009652, TBC 009656, TBC 009662, TBC 009665, TBC 009667-009669, TBC 009691 - 009695, TBC 009720 - 009724, TBC 009739 - 009740, TBC 009743 - 009744, TBC 009767 - 009771,

TBC 008096-008097, TBC 008099, TBC 008103-008112, TBC 008114, TBC 008116, TBC 008118-008119, TBC 008121-008122, TBC 008124-008125, TBC 008127, TBC 008129-008131, TBC 008133-008137, TBC 008141-008144, TBC 008146, TBC 008148, TBC 008152-008153, TBC 008155, TBC 008157-008160, TBC 008162-008164, TBC 008166 - 008167, TBC 008170, TBC 008173-008176, TBC 008178-008181, TBC 008184-008191, TBC 008194-008200, TBC 008213-008215, TBC 008216-008218, TBC 008222-008224, TBC 008226-008228, TBC 008232-008239, TBC 008241-008243, TBC 008245-008246, TBC 008248-008261, TBC 008265-008266, TBC 008269, TBC 008272, TBC 008278-008284, TBC 008286-008287, TBC 008289-008290, TBC 008292-008295, TBC 008298-008302, TBC 008304-008306, TBC 008308, TBC 008318, TBC 008321, TBC 008323-008326, TBC 008330, TBC 008332, TBC 008333-008335, TBC 008360-008361, TBC 008363-008367, TBC 008369, TBC 008372-008374, TBC 008377-008382, TBC 008386-008395, TBC 008839-008842, TBC 008844-008846, TBC 008848, TBC 008852-008853, TBC 008862-008863, TBC 008865-008878, TBC 008880-008882, TBC 008498-008501, TBC 008426, TBC 008429, TBC 008441, TBC 008447, TBC 008459, TBC 008461



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15 UNITED STATES OF AMERICA
16 FEDERAL TRADE COMMISSION

17 **In the Matter of**

18 **MSC Software Corporation,**

19 **A corporation**

Docket No. 9299

Declaration of Philip W. Newell in Support of
Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information

Administrative Judge:

Hon. D. Michael Chappell

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DECLARATION OF PHILIP W. NEWELL

I, Philip W. NEWELL, hereby declare and state:

1. I am a Fiscal Analyst in the Information Systems division of The Boeing Company ("Boeing"). I make this declaration based on my personal knowledge and review of documents in the case file; if called as a witness, I could and would testify competently to the facts stated herein.

2. I have previously responded to subpoenas issued by the parties in this case. In connection with this lawsuit, documents from Boeing, a third party, have been provided to both the Federal Trade Commission's Complaint Counsel ("Commission") and counsel for Respondent MSC Corporation's outside counsel ("Respondent's counsel") under the terms of the protective order entered in this case by the Administrative Law Judge. The documents submitted were marked in accordance with that Protective Order. I am informed that both parties have listed certain documents as potential exhibits to be submitted at trial on this matter and subsequently those documents would be made part of the public record of these proceedings.

3. I was asked to review certain of these documents, including TBC 004353 Major Application Software Management email, TBC 004355 Major Application Software Management document, TBC 004357 Software Mixes & Pricing Derivations, TBC 004380 Software Summary email, TBC 004381 Handwritten table, TBC 004382-3 Enterprise Software Management, TBC 004384-6 Selected Non-Standard Software Forecast, TBC 004453 Rasna/Mechanica Strategy, 004455-004470 and 004483-004498 Corporate Purchase Agreement MDC 4013M - Rasna, and TBC 004471-004482 Rasna Site License. These documents should have in camera status and be kept confidential because public disclosure will likely result in a clearly defined, serious injury to Boeing.

4. All of these documents contain both Boeing and other third party proprietary pricing and contract terms that are treated as confidential business information by both the creators and recipients of the material. The data is treated as confidential business information within Boeing, with distribution limited to those within the company with a need to know. Much of the material is marked as "Boeing Limited" a designation employed by Boeing to

1 alert its personnel that the data cannot be shared with others. Proprietary Information received
2 from suppliers and potential suppliers likewise is distributed on a need to know basis internally so
3 as to protect that data from improper use by competitors. Both forecasted requirements and the
4 terms of existing agreements are closely held by Boeing and its suppliers as disclosure can
5 damage the competitive positions of both the suppliers in their markets and Boeing in its markets.
6 What terms and how much Boeing pays for various software, the types of licenses, even the
7 expiration dates of some agreements, if disclosed can damage both Boeing and its suppliers in
8 their current and future competitions, both commercial and government. How Boeing licenses
9 certain software, the number of sites or individual licenses acquired, the duration of those licenses
10 and products and locations where they are used is all information which Airbus, Lockheed-
11 Martin, Northrop-Grumman could use to Boeing's competitive disadvantage.

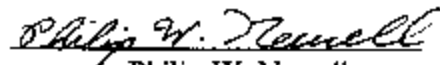
12 5. The pricing information contained in the above-referenced pages was
13 negotiated by Boeing with its suppliers in a competitive and confidential setting. Boeing treats
14 this pricing information that was competitively negotiated with its suppliers as confidential,
15 sensitive, and proprietary. Boeing keeps this valuable information confidential and does not
16 release it to third parties.

17 6. Denying *in camera* treatment of this confidential, sensitive, and proprietary
18 pricing information could substantially harm Boeing in at least two ways in the competitive
19 aerospace industry. First, contractors such as MSC, would gain valuable competitive insight into
20 Boeing's negotiations strategy and the negotiated prices for each line item of the contracts. With
21 this knowledge, such contractors could, in the future, adjust their bid to reflect a higher bid than
22 they otherwise would have made. For instance, suppose MSC would normally bid a certain
23 software upgrade at \$1,000. If MSC knew that Boeing was willing to pay \$1,500 for that part,
24 MSC may increase the price of that part in future bids.

25 7. Second, release of such confidential, sensitive, and proprietary pricing
26 information could provide other aerospace companies with competitive insight into Boeing's
27 negotiations strategy and the amount Boeing is willing to pay for certain items. Such insight
28 could provide other companies, such as Airbus, a competitive advantage. For instance, suppose

1 Airbus routinely pays \$1,500 for a certain software upgrade or capability and discovers that
2 Boeing only pays \$1,000 for that item. Airbus could use this information to force the contractor
3 to offer this item at \$1,000 to Airbus. In addition, Boeing suffers a competitive disadvantage if
4 Airbus is able to keep such information secret but Boeing must disclose the price it paid for
5 certain items due to the unsealing of these documents.

6 I declare under penalty of perjury of the laws of the State of Missouri that the
7 foregoing is true and correct and that this declaration is executed this 7th day of June, 2002 at St.
8 Louis, Missouri.

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11 Philip W. Newell



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Facsimile: (312) 544-2828

Attorneys for Third Party
THE BOEING COMPANY

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

MSC Software Corporation,

A corporation

Docket No. 9299

Declaration of Steve B. Pickard in Support of
Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information


Administrative Judge:

Hon. D. Michael Chappell

1 contracts. For instance, suppose MSC would normally bid a certain software upgrade at \$1,000.
2 If MSC knew that Boeing's estimated cost to transition the software was \$1,500 for that
3 transition, MSC may increase the price of that software in future bids.

4 5. Second, release of such confidential, sensitive, and proprietary pricing
5 information could provide other aerospace companies with competitive insight into Boeing's
6 labor rates and methodologies and the amount of Boeing's labor costs for similar works. Such
7 insight could provide other companies, such as Airbus or Lockheed-Martin, a competitive
8 advantage. For instance, suppose Airbus routinely pays \$150 per hour for certain software
9 engineering labor and discovers that Boeing's labor cost is \$100 for that work. Airbus could use
10 this information to explore ways to reduce its costs for similar work, when it may have thought it
11 was competitive prior to disclosure. In addition, Boeing suffers a competitive disadvantage if
12 Airbus is able to keep such information secret but Boeing must disclose the cost it paid for certain
13 work due to the unsealing of these documents.

14 I declare under penalty of perjury of the laws of the State of Alabama that the
15 foregoing is true and correct and that this declaration is executed this 14th day of June, 2002 at
16 Houston, Texas.

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19 Steven B. Pickard
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AFFIDAVIT

STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, a Notary Public, in and for said County and State, personally appeared Steve B. Pickard, who being by me duly sworn and who acknowledged before me on this day that he has read the foregoing declaration (Docket No. 9299 In The Matter MSC Software Corporation) and states the statements made therein are true and correct to the best of his knowledge.

Given under my hand and seal on this 14th day of June, 2002.

Notary Public

Patti H. Wright

Seal



My commission expires:

8/22/03



AN UNPUBLISHED REVISED EDITION AVAILABLE

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13 Attorneys for Third Party
14 THE BOEING COMPANY

15 UNITED STATES OF AMERICA
16 FEDERAL TRADE COMMISSION

17 **In the Matter of**

18 **MSC Software Corporation,**

19 **A corporation**

Docket No. 9299

Declaration of Edward S. Spiegel in Support of
Boeing's Motion for In Camera Treatment of
certain of Boeing's Confidential, Proprietary
Information

Administrative Judge:

Hon. D. Michael Chappell

1 **DECLARATION OF EDWARD S. SPIEGEL**

2 I, Edward S. Spiegel, hereby declare and state:

3 1. I am a System Design and Analysis Director for The Boeing Company
4 ("Boeing"). I make this declaration based on my personal knowledge and review of documents in
5 the case file; if called as a witness, I could and would testify competently to the facts stated
6 herein.

7 2. I have previously responded to subpoenas issued by the parties in this case.
8 In connection with this lawsuit, documents from Boeing, a third party, have been provided to both
9 the Federal Trade Commission's Complaint Counsel ("Commission") and counsel for
10 Respondent MSC Corporation's outside counsel ("Respondent's counsel") under the terms of the
11 protective order entered in this case by the Administrative Law Judge. The documents submitted
12 were marked in accordance with that Protective Order. I am informed that both parties have
13 listed as potential exhibits to be submitted at trial on this matter list some of these documents, and
14 subsequently those documents would be made part of the public record of these proceedings.

15 3. I was asked to review certain of these documents, including a hand written
16 note indicating cost by year and number of seats, TBS SC 006851; internal email from Barbara
17 Innes indicating cost by year, TBS SC 006852; MSC License Agreement with cost breakdown,
18 TBS SC 006853-006858; internal email from Barbara Innes indicating cost breakdown, TBS SC
19 006859 - 006860; MSC letter indicating cost breakdown, TBS SC 006861 - 006862; hand written
20 notes from myself indicating cost breakdown, TBS SC 006863 - 006864; Hughes letter indicating
21 cost breakdown, TBS SC 006865 - 006866; and MSC letter indicating cost breakdown, TBS SC
22 006867 - 006868. These documents should have in camera status and be kept confidential
23 because public disclosure will likely result in a clearly defined, serious injury to Boeing.

24 4. These confidential, sensitive, and proprietary documents are treated as
25 confidential business information by both the creators and recipients of the material. The data is
26 treated as confidential business information within Boeing, with distribution limited to those
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1 within the company with a need to know and the Defense Contract Audit Agency, which is bound
2 by both civil and criminal codes to protect this information from disclosure.

3 5. Cost breakdowns, forecasted requirements, and the terms of existing and
4 proposed agreements are closely held by Boeing and its suppliers as disclosure can damage the
5 competitive positions of both the suppliers in their markets and Boeing in its markets. What
6 terms and how much Boeing pays for various software, the types of licenses, even the expiration
7 dates of some agreements, if disclosed can damage both Boeing and its suppliers in their current
8 and future competitions, both commercial and government. How Boeing licenses certain
9 software, the cost breakdowns, the number of sites or individual licenses acquired, the duration of
10 those licenses and products and locations where they are used is all information which Airbus,
11 Lockheed-Martin, Northrop-Grumman could use to Boeing's competitive disadvantage.

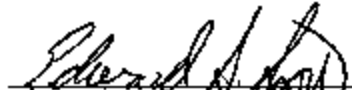
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19 aerospace industry. First, software contractors would gain valuable competitive insight into
20 Boeing's negotiations strategy and the negotiated prices for each line item of the contracts. With
21 this knowledge, such contractors could, in the future, adjust their bid to reflect a higher bid than
22 they otherwise would have made. For instance, suppose a software contractor would normally
23 bid a certain software upgrade at \$1,000. If this contractor knew that Boeing was willing to pay
24 \$1,500 for that upgrade, the contractor may increase the price of that upgrade in future bids.

25 8. Second, release of such confidential, sensitive, and proprietary pricing
26 information could provide other aerospace companies with competitive insight into Boeing's
27 negotiations strategy and the amount Boeing is willing to pay for certain items. Such insight
28 could provide other companies, such as Airbus, a competitive advantage. For instance, suppose

1 Airbus routinely pays \$1,500 for a certain software upgrade or capability and discovers that
2 Boeing only pays \$1,000 for that item. Airbus could use this information to force the contractor
3 to offer this upgrade at \$1,000 to Airbus. In addition, Boeing suffers a competitive disadvantage
4 if Airbus is able to keep such information secret but Boeing must disclose the price it paid for
5 certain items due to the release of these documents into the public domain.

6 I declare under penalty of perjury of the laws of the State of California that the
7 foregoing is true and correct and that this declaration is executed this 7th day of June, 2002 at El
8 Segundo, California.

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11 Edward S. Spiegel

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