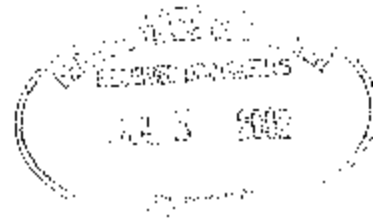


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



\_\_\_\_\_  
IN THE MATTER OF )  
 )  
MSC SOFTWARE CORPORATION, )  
 )  
a corporation )  
 )  
 )  
 )  
\_\_\_\_\_ )

Docket No. 9299

THIRD PARTY LOCKHEED MARTIN CORPORATION'S  
SUPPLEMENTAL MOTION FOR *IN CAMERA* TREATMENT OF  
DESIGNATED HEARING EXHIBITS

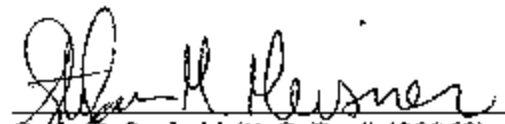
Lockheed Martin Corporation ("Lockheed Martin"), by and through its undersigned counsel, hereby submits this Supplemental Motion For *In Camera* Treatment of Designated Hearing Exhibits. This Motion supplements Third Party Lockheed Martin Corporation's Motion for *In Camera* Treatment of Designated Hearing Exhibits to cover additional documents designated by counsel for MSC Software Corporation as potential hearing exhibits. Lockheed Martin respectfully requests that the Commission enter an Order pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), granting *in camera* treatment for the documents listed in the Appendix to the attached Memorandum and proposed Order. The documents are secret and material to Lockheed Martin's ongoing and future business. Disclosure of these materials would harm Lockheed Martin. In support of this Motion, Lockheed Martin respectfully refers the court to the accompanying Memorandum and Confidential Declaration of FM Bay.

WHEREFORE, third party Lockheed Martin respectfully prays that this Court enter an ORDER granting *in camera* treatment to the documents specified in the attached Memorandum.

Dated: July 3, 2002

Respectfully Submitted,  
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Attorneys for Lockheed Martin Corporation  
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By:



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

**PUBLIC VERSION**

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

**THIRD PARTY LOCKHEED MARTIN CORPORATION'S  
MEMORANDUM IN SUPPORT OF SUPPLEMENTAL MOTION FOR  
IN CAMERA TREATMENT OF DESIGNATED HEARING EXHIBITS**

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, third party Lockheed Martin Corporation ("Lockheed Martin"), by and through its undersigned counsel, hereby submits this Memorandum in Support of its Supplemental Motion for *In Camera* Treatment of Designated Hearing Exhibits and accompanying Confidential Declaration of FM Bay<sup>1</sup> in support thereof.

**I. INTRODUCTION**

On May 28, 2002, Complaint Counsel and counsel for MSC Software Corporation ("MSC") notified Lockheed Martin that they intended to include highly confidential documents produced by Lockheed Martin and deposition testimony of five

<sup>1</sup> The Confidential Declaration of FM Bay is submitted with the Confidential Version of this Memorandum served on the court and parties to this action

current and former Lockheed Martin employees on their respective exhibit lists.<sup>2</sup> Lockheed Martin filed a Motion for *In Camera* Treatment of Designated Hearing Exhibits on June 21, 2002. Subsequent to filing that Motion, Lockheed Martin reviewed the documents designated by MSC and wishes to supplement its motion to include certain highly sensitive documents. Lockheed Martin has diligently marked all of the documents at issue as "Restricted Confidential, Attorneys Eyes Only" pursuant to the terms of the November 21, 2001 Protective Order Covering Discovery Material. As described below, these documents relate to a proposed technology transfer license between Lockheed Martin and [ ], the disclosure of which would be highly damaging to both companies. Lockheed Martin believes that these documents contain information that is secret and material to Lockheed Martin's current and prospective business. Accordingly, Lockheed Martin respectfully submits this Memorandum in Support of its Supplemental Motion for *In Camera* Treatment of Designated Hearing Exhibits.

## II. STANDARD FOR *IN CAMERA* TREATMENT

Materials merit *in camera* treatment when "public disclosure will likely result in a clearly defined, serious injury to the...corporation requesting their *in camera* treatment." 16 C.F.R. § 3.45(b). An applicant faces "serious injury" when the "information in question is secret and material to the applicant's business..." *In the Matter of Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977). In determining whether the

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<sup>2</sup> Both Complaint Counsel and counsel for Respondent, MSC Software Corporation ("MSC"), have previously served subpoenas on Lockheed Martin requesting production of documents and witnesses. In response, Lockheed Martin produced 13 boxes of documents and five current and former Lockheed Martin employees as witnesses.

information is "secret" the Commission considers the following six factors: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors, including the age of the information; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Id.* Lockheed Martin is not required to show how the specific injury would occur; rather it is proper to infer that the disclosure of sensitive information would harm Lockheed Martin's position. *In re E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981).

Third party requests for *in camera* treatment are entitled to "special solicitude." *In re Kaiser Aluminum & Chemical Corp.*, 1984 FTC LEXIS 60 at \*2 (reasoning that "[a]s a policy matter, extensions of...*in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests"). Requests from third parties for *in camera* treatment "should be received as favorably as possible." *In re Kaiser Aluminum & Chemical Corp.*, 1977 FTC LEXIS 1, at \*11-12; *see also In re R. R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32; *In re The Coca-Cola Co.*, 1990 FTC LEXIS 364.

As discussed below, the documents described in this Memorandum meet the above standards and merit *in camera* treatment.

### III. DESIGNATED HEARING EXHIBITS MERIT *IN CAMERA* TREATMENT.

The documents described below, which were designated by MSC as potential hearing exhibits, are attached at Appendix K, which coincides with the Appendices previously submitted with Third Party Lockheed Martin Corporation's Motion for *In Camera* Treatment of Designated Hearing Exhibits.<sup>5</sup>

Documents listed in Appendix K relate to a contemplated technology transfer and licensing agreement between Lockheed Martin and [ ]. See Appendix K. These documents contain competition sensitive and proprietary information of both Lockheed Martin and [ ], the disclosure of which would competitively disadvantage both companies. The documents describe [ ] Lockheed Martin, which constitutes a trade secret of the company. See Bay Decl. ¶ 4. The disclosure of this technical information may also be export controlled. See *id.* ¶ 5.

The documents also contain draft agreements between Lockheed Martin and [

]. Moreover, the documents contain internal impressions of Lockheed Martin personnel on the feasibility of the contemplated agreement, [

]. Lockheed Martin protects the materials that have been shared with [ ] from disclosure outside this limited agreement and enforces the protection of its materials from disclosure outside [ ]. See *id.* ¶¶ 3-4. Lockheed Martin does not disclose the internal impressions of its

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<sup>5</sup> These documents are attached under Appendix J to the Motion and Memorandum submitted to the Administrative Law Judge, but are not served on the parties. See *In re Hoechst Marion Russell, Inc.*, 2000 FTC LEXIS 138, \*9.

personnel outside of the company, and often keeps this information restricted within the company. *See id.* ¶ 3.

#### IV. EXPIRATION DATE

Lockheed Martin requests that all of the documents described above be granted *in camera* treatment indefinitely. The length of *in camera* protection is often increased beyond the standard three-year period where the information in question will remain competitively sensitive. *See, e.g., In re DuPont de Nemours & Co.*, 2000 FTC LEXIS 177 (extending *in camera* protection of cost information that was already over ten years old for an additional ten years); *Kaiser Aluminum*, 1984 FTC LEXIS 60; *DuPont*, 103 F.T.C. at 533; *DuPont*, 97 F.T.C. at 116. The materials listed in the attached Appendix will continue to be of a sensitive nature for some time. They all relate to ongoing and future business practices of Lockheed Martin. Given the technical nature of the documents, as well as the highly confidential nature of the documents, the information contained within the listed documents will remain secret and material to Lockheed Martin's business for the foreseeable future.

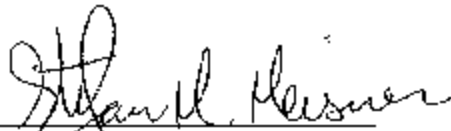
V. CONCLUSION

For the above reasons, Lockheed Martin respectfully requests that this tribunal issue an *in camera* Order for the above designated hearing exhibits.

Dated: July 3, 2002

Respectfully Submitted,  
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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, upon consideration of Third Party Lockheed Martin Corporation's Supplemental Motion For *In Camera* Treatment of Designated Hearing Exhibits and Memorandum and Supplemental Confidential Declaration of FM Bay in support thereof it is hereby ORDERED that said Motion is granted. For the reasons set forth in the Memorandum in Support of Third Party Lockheed Martin Corporation's Supplemental Motion For *In Camera* Treatment of Designated Hearing Exhibits, it is further ORDERED that the documents identified in the attached appendix are afforded indefinite *in camera* treatment.

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

# APPENDIX K

LMC-SUN-01-0001	LMC-SUN-01-0094-95
LMC-SUN-01-0002-11	LMC-SUN-01-0096-98
LMC-SUN-01-0012-19	LMC-SUN-01-0099
LMC-SUN-01-0020-21	LMC-SUN-01-0100-101
LMC-SUN-01-0025-26	LMC-SUN-01-0102
LMC-SUN-01-0027-28	LMC-SUN-01-0103
LMC-SUN-01-0029-30	LMC-SUN-01-0104-105
LMC-SUN-01-0031-36	LMC-SUN-01-0106-0110
LMC-SUN-01-0037-42	LMC-SUN-01-0111-0131
LMC-SUN-01-0044-45	LMC-SUN-01-0132-0134
LMC-SUN-01-0046-48	LMC-SUN-01-0135-0158
LMC-SUN-01-0049-50	LMC-SUN-01-0159-0179
LMC-SUN-01-0051-52	LMC-SUN-01-0180-0185
LMC-SUN-01-0053-57	LMC-SUN-01-0186-0204
LMC-SUN-01-0058	LMC-SUN-01-0205-0215
LMC-SUN-01-0059	LMC-SUN-01-0216-0223
LMC-SUN-01-0060	LMC-SUN-01-0224-0234
LMC-SUN-01-0061-63	LMC-SUN-01-0235-0236
LMC-SUN-01-0064-66	LMC-SUN-01-0237-0275
LMC-SUN-01-0067	LMC-SUN-01-0276
LMC-SUN-01-0068-69	LMC-SUN-01-0277
LMC-SUN-01-0070-76	LMC-SUN-01-0278-0284
LMC-SUN-01-0078-80	LMC-SUN-01-0285
LMC-SUN-01-0081-88	LMC-SUN-01-0286
LMC-SUN-01-0089-92	LMC-SUN-01-0287-0293
LMC-SUN-01-0093	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this 3rd day of July, 2002, I caused an original and one paper copy of a Public version of the foregoing Third Party Lockheed Martin Corporation's Motion for *In Camera* Treatment of Designated Hearing Exhibits, and Memorandum in Support thereof to be filed with the Secretary of the Commission, and that two paper copies of the Confidential version were served by hand upon:

Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
Room 104  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

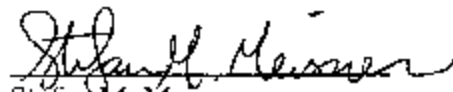
and one paper copy of the Confidential version was served by hand upon:

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