

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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

**BATH IRON WORKS UNOPPOSED MOTION TO OBTAIN *IN CAMERA*
TREATMENT OF CERTAIN HIGHLY CONFIDENTIAL INFORMATION**

Pursuant to 16 C.F.R. § 3.45, Bath Iron Works ("BIW"), a third party in this proceeding, respectfully submits the following motion to obtain *in camera* treatment of certain highly confidential information pertaining to costs, contracts, proprietary technology and comparisons of various technologies, designated by Federal Trade Commission ("FTC") staff and attorneys for MSC Software Corporation ("MSC"), to be entered as exhibits in this matter. 1/ As set forth in more detail below, the information at issue relates to BIW's analysis and choice of technologies and the costs associated with those technologies. This information is confidential proprietary data that is not in the public domain and is competitively sensitive in nature. Neither the FTC nor MSC oppose this motion.

1/ See Letter from P. Abbott McCartney, Attorney, Federal Trade Commission to Joseph Krauss, Hogan & Hartson LLP (May 28, 2002) (Attached as Exhibit 2); Letter from Hedy J. Aponte, Senior Legal Assistant, Kirkland & Ellis to Joseph Krauss, Hogan & Hartson L.L.P. (May 28, 2002) (Attached as Exhibit 3)

Public disclosure of third-party BIW's secret and material information would likely result in a clearly defined, serious injury to BIW. Accordingly, BIW respectfully requests that the information specified below be given *in camera* treatment, kept confidential and not placed on the public record for at least the next five years.

I. DOCUMENTS FOR *IN CAMERA* TREATMENT

BIW requests *in camera* treatment for the highly confidential information in the following documents:

- The portions of Bath Iron Works 000001 from the text underneath "3) Description of Service" to the end of the section titled "4) Savings/Justification" These sections describe the testing technology used by BIW and its justification for selecting that technology. Competitively sensitive in its own right, this information could also be used by competitors to generate cost information
- The first, second, third and fifth paragraphs of the letter in Bath Iron Works 000003. These sections contain competitively sensitive cost and discount information for certain testing technology used by BIW as well as a discussion of purchasing plans.
- The first, second and third paragraphs in the email in Bath Iron Works 000004. These sections contain competitively sensitive cost and discount information for certain testing technology used by BIW.
- The portions of Bath Iron Works 000005 from the beginning of the second sentence of the email from M. Dieterle dated January 23, 1998, to the end of the fourth sentence in that email and from the beginning of the second sentence of the email from G. Peck dated January 22, 1998, to the end of the third sentence in that email. These emails contain competitively sensitive information about discounts offered to BIW for certain technologies.

- All of the dollar figures from the Systems Acquisition Request in Bath Iron Works 000006. This document contains competitively sensitive cost information for software licenses purchased by BIW.
- All of the text and numbers below the table headings, including the footnote "assumptions" of the Billing Impact Statement in Bath Iron Works 000007. This document contains competitively sensitive information about maintenance costs, depreciation and training expenses for various hardware and software and includes estimated costs through 2003.
- The portions of Bath Iron Works 000008 from the beginning of section "a" under the header Cost Assumptions to the end of section "d" under the header Cost Assumptions. This document contains the competitively sensitive assumptions used to derive the billing impact statement in Bath Iron Works 000007.
- All of Bath Iron Works 000009-000010. These documents contain competitively sensitive descriptions and costs of various software as well as maintenance and training costs related to software purchased by BIW.
- All of the text in the table titled "Assumptions" in Bath Iron Works 000011. This document details the assumptions BIW uses to generate competitively sensitive cost estimates.
- All of the dollar figures from the Systems Acquisition Request in Bath Iron Works 000012. This document contains competitively sensitive cost information for software purchased by BIW.
- All of the text and numbers below the table headings, including the footnote "Assumptions" of the Billing Impact Statement in Bath Iron Works 000013. This document contains competitively sensitive information about maintenance costs, depreciation and licensing fees for various software.
- The portions of Bath Iron Works 000014 from the beginning of section "a" under the header Cost Assumptions to the end of section "d" under the header Cost Assumptions. This document details the competitively sensitive assumptions used to generate the Billing Impact Statement in Bath Iron Works 000013.

- The portions of Bath Iron Works 000015 from the beginning of line 1 of the table titled "Assumptions" through the end of line 2 of that table. This document contains assumptions used by BIW to generate competitively sensitive cost estimates.
- All of the text in the table in Bath Iron Works 000016. This document is a continuation of Bath Iron Works 000015 and contains assumptions used by BIW to generate competitively sensitive cost estimates.
- All of Bath Iron Works 000017-000018. These documents contain competitively sensitive cost information for various hardware and software purchased by BIW.
- The portions of Bath Iron Works 000019, including the text below the header in the email from C. Logan dated March 6, 1999, and the text below the header in the email from C. Logan dated March 5, 1999. These emails contain a competitively sensitive discussion of technical deficiencies in certain testing technologies reviewed by BIW.
- All of Bath Iron Works 000020. This documents is a continuation of the second email in Bath Iron Works 000019 and contains a competitively sensitive discussion of technical deficiencies in certain testing technologies reviewed by BIW.
- The portions of Bath Iron Works 000021, including the text below the header in the email from J. Geiger dated May 8, 1999, the handwritten notation on that email, and the text below the header in the email from R. Baseler dated April 29, 1999. These emails contain competitively sensitive, internal discussions of whether to purchase various technologies and the costs and discounts associated with those technologies.
- All of Bath Iron Works 000022. This document contains competitively sensitive price quotes, negotiation points and current costs of various products used by BIW.
- All of Bath Iron Works 000023. This document compares two technology options considered by BIW and contains competitively sensitive information gained from BIW's internal testing of these technologies.

- All text above the "Forward Header" in Bath Iron Works 000024. This document discusses the justification for BIW's choice of certain technology and the competitively sensitive results of tests run on those technologies.
- All of Bath Iron Works 000025-000040, which contains a competitively sensitive, detailed analysis of various engineering tools, including a set of tools produced in-house, by BIW's sister company, Electric Boat Corporation. ^{2/}
- Portions of 04017 from the beginning of the first paragraph in the email from mcarpen5@csc.com dated March 17, 2000, to the end of the second paragraph in that email and from the first paragraph in the email from R. Baseler dated March 16, 2000, to the end of the paragraph marked "6" in that email. This email carries over to a second, unnumbered page. These emails contain BIW's competitively sensitive response to questions from the Federal Trade Commission ("FTC") staff concerning BIW's use of various technologies and the possibility of migrating to competing technologies.
- Portions of 04019, including (1) the subject line of the email from mcarpen5@csc.com dated March 23, 2000, (2) the text of that email from the beginning of the second sentence of the first paragraph to the end of the last paragraph in that email, (3) beginning from the subject line of the email from Robert Baseler dated March 23, 2000, at 8:30 am to the end of the first paragraph of that email, (4) the subject line of the email from Robert Baseler dated March 23, 2000, at 8:18 am and (5) from the beginning of the first paragraph of that email to the end of the third paragraph of that email. These emails contain BIW's competitively sensitive response to questions from the FTC staff and discuss the results of testing of various technologies, including a technology developed in-house.

II. BATH IRON WORKS CLEARLY MEETS THE STANDARD FOR *IN CAMERA* TREATMENT FOR THE SPECIFIED INFORMATION

^{2/} Both BIW and Electric Boat Corporation are subsidiaries of General Dynamics Corporation.

“There can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961). As a result, Administrative Law Judges have broad discretion in determining what information should be placed *in camera*. See *In Re General Foods Corp.*, 95 F.T.C. 352 (1980). And, where, as here, a request for *in camera* treatment is made by a company that is not a party to the proceeding, that request should be given “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) (“[P]etitioner’s plea warrants special solicitude coming as it does from a third party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors...”); accord *Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (finding that requests for *in camera* treatment by third parties should be given special solicitude because, as a policy matter, such treatment encourages the third party to cooperate with future adjudicative discovery requests); *In re R.R. Donnelley & Sons Co.*, 1993 FTC Lexis 32 (Feb. 18, 1993) (same).

For information to be afforded *in camera* treatment, a corporation must show that the public disclosure of the information will result in a clearly defined, serious injury to the corporation. *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961). In making this showing, the requesting corporation may rely on the information itself or extrinsic evidence, and it need not specifically demonstrate how a competitor would use the information to undermine the requesting corporation’s competitive position. *E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (1981).

To demonstrate serious injury, the requesting corporation must show that the information at issue is secret and material to its business. *In re General Foods Corp.*, 95 F.T.C. 352 (1980); *In re Bristol-Myers Co.*, 90 F.T.C. 455 (1977).

The following factors should be considered in determining secrecy and materiality:

- 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 by [the business] to guard the secrecy of the information;
- 4) the value of the information to [the business] and to [its] competitors;
- 5) the amount of effort or money expended by [the business] in developing the information;
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

In re Bristol-Myers Co., 90 F.T.C. 455 (1977).

The information at issue for BIW clearly meets these standards.

BIW's analysis of various technologies and the cost to BIW of those technologies are not publicly available, and BIW maintains the confidentiality of such information. The documents provide insight into BIW's costs, negotiating strategy, technology preferences and its use of various technologies, which would be valuable to competitors both to assess BIW's cost structure and to gain insight into the engineering software employed by BIW.

Despite the fact that “there is a presumption that *in camera* treatment will not be provided to information that is three or more years old,” *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (1999) (citing *In re General Foods Corp.*, 95 F.T.C. at 353 (1980); *In re Crown Cork & Seal*, 71 F.T.C. at 1715 (1967)), the FTC has recognized that this presumption is rebuttable and, on numerous occasions, granted *in camera* protection to older documents. See *In re The Coca-Cola Company*, 1990 FTC LEXIS 364 (Oct. 17, 1990) (noting that a three-year standard is sometimes used, but holding that the age of a particular document offers “little guidance” as to whether *in camera* treatment is warranted; instead it is the actual justification for the treatment that matters); *Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (extending protection to information over five years of age); *In re E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981) (protecting 6-year-old information). In this instance, only small a portion of the documents are more than three years old, with the oldest document dating from January of 1998. The results from tests done on various technologies, the initial costs of hardware and software and the descriptions of the kinds of testing software BIW employs, even when more than three years old, still have value. In addition, documents like Bath Iron Works 000007 project costs for long-term contracts that are still on-going. The contents of those documents remain competitively sensitive and should therefore be treated *in camera*.

Bath Iron Work's cost data and its analysis of competing technologies were generated at great expense and could not be easily duplicated by a competitor. Moreover, the general public can have little, if any, legitimate interest in the

information for which BIW requests *in camera* treatment. Even if there was some public interest, it would be heavily outweighed by the serious injury BIW would suffer from disclosure. Further, “public understanding of this proceeding does not depend on access” to these documents. *In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (ordering *in camera* treatment for such documents).

The public disclosure of such sensitive information will result in a clearly defined, serious harm to BIW. With the information contained in these documents, competitors would have insight, otherwise unavailable, into the kinds of testing technology used by BIW, the costs of that technology and BIW’s internal analysis of the efficacy of various testing technologies.

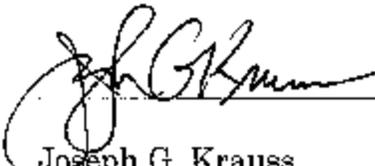
III. CONCLUSION

For the foregoing reasons, BIW respectfully requests that the information in the documents listed in Part I of this motion be given *in camera* treatment, kept confidential, and not placed in the public record of this proceeding for at least the next five years. This information meets the criteria set forth in FTC precedent as qualifying for *in camera* treatment, and therefore should be afforded such protection.

In the event that the Commission intends to disclose *in camera* BIW information, BIW respectfully requests that the Commission notify both Joseph G. Krauss of Hogan & Hartson L.L.P., 555 13th Street, N.W., Washington, D.C. 20004, telephone: 202-637-5832, facsimile: 202-637-5910, and BIW Vice President and General Counsel Ernest J. Babcock, 700 Washington Street, Bath, Maine 04530-2574, phone: 207-442-5841, facsimile: 207-442-5592.

Respectfully submitted,

HOGAN & HARTSON L.L.P.



Joseph G. Krauss
Andrew Graziani

555 13th Street, N.W.
Washington, D.C. 20004
202-637-5832

Attorneys for Bath Iron Works

Dated: June 11, 2002

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2002, I caused an original, one paper copy and a true and accurate electronic copy of the foregoing motion to be filed with the Secretary of the Commission, and that two paper copies were served by hand upon:

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

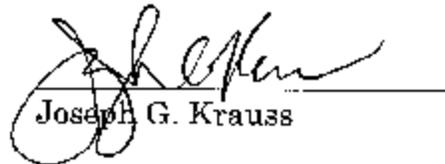
And one paper copy was hand delivered upon:

Patrick J. Roach
Deputy Assistant Director
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

P. Abbott McCartney, Esq.
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

and

Brad Biegon
Kirkland & Ellis
665 Fifteenth Street, N.W.
Washington, D.C. 20005


Joseph G. Krauss

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

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

ORDER

Upon consideration of the Motion of Third Party Bath Iron Works ("BIW") to obtain *in camera* treatment of certain highly confidential information pursuant to 16 C.F.R. § 3.45, and any opposition thereto,

IT IS HERBY ORDERED that BIW's Motion is GRANTED. The information set forth in the following documents (or portions of documents) will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding

- The portions of Bath Iron Works 000001 from the text underneath "3) Description of Service" to the end of the section titled "4) Savings/Justification"
- The first, second, third and fifth paragraphs of the letter in Bath Iron Works 000003.
- The first, second and third paragraphs in the email in Bath Iron Works 000004.

- The portions of Bath Iron Works 000005 from the beginning of the second sentence of the email from M. Dieterle dated January 23, 1998, to the end of the fourth sentence in that email and from the beginning of the second sentence of the email from G. Peck dated January 22, 1998, to the end of the third sentence in that email.
- All of the dollar figures from the Systems Acquisition Request in Bath Iron Works 000006.
- All of the text and numbers below the table headings, including the footnote “assumptions” of the Billing Impact Statement in Bath Iron Works 000007.
- The portions of Bath Iron Works 000008 from the beginning of section “a” under the header Cost Assumptions to the end of section “d” under the header Cost Assumptions.
- All of Bath Iron Works 000009-000010.
- All of the text in the table titled “Assumptions” in Bath Iron Works 000011.
- All of the dollar figures from the Systems Acquisition Request in Bath Iron Works 000012.
- All of the text and numbers below the table headings, including the footnote “Assumptions” of the Billing Impact Statement in Bath Iron Works 000013.
- The portions of Bath Iron Works 000014 from the beginning of section “a” under the header Cost Assumptions to the end of section “d” under the header Cost Assumptions.
- The portions of Bath Iron Works 000015 from the beginning of line 1 of the table titled “Assumptions” through the end of line 2 of that table.
- All of the text in the table in Bath Iron Works 000016.
- All of Bath Iron Works 000017-000018.

- The portions of Bath Iron Works 000019, including the text below the header in the email from C. Logan dated March 6, 1999, and the text below the header in the email from C. Logan dated March 5, 1999.
- All of Bath Iron Works 000020.
- The portions of Bath Iron Works 000021, including the text below the header in the email from J. Geiger dated May 8, 1999, the handwritten notation on that email, and the text below the header in the email from R. Baseler dated April 29, 1999.
- All of Bath Iron Works 000022.
- All of Bath Iron Works 000023.
- All text above the "Forward Header" in Bath Iron Works 000024.
- All of Bath Iron Works 000025-000040.
- Portions of 04017 from the beginning of the first paragraph in the email from mcarpen5@csc.com dated March 17, 2000, to the end of the second paragraph in that email and from the first paragraph in the email from R. Baseler dated March 16, 2000, to the end of the paragraph marked "6" in that email. This email carries over to a second, unnumbered page.
- Portions of 04019, including (1) the subject line of the email from mcarpen5@csc.com dated March 23, 2000, (2) the text of that email from the beginning of the second sentence of the first paragraph to the end of the last paragraph in that email, (3) beginning from the subject line of the email from Robert Baseler dated March 23, 2000, at 8:30 am to the end of the first paragraph of that email, (4) the subject line of the email from Robert Baseler dated March 23, 2000, at 8:18 am and (5) from the beginning of the first paragraph of that email to the end of the third paragraph of that email.

IT IS FURTHERED ORDERED that only the respondent, their counsel, authorized Federal Trade Commission ("FTC") personnel, and court personnel concerned with judicial review may have access to the above-referenced

information, provided that I, the FTC, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

D. Michael Chappell
Administrative Law Judge

Date: _____

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

Declaration of Ernest J. Babcock

I, Ernest J. Babcock, do solemnly and sincerely declare as follows:

1. I am over the age of eighteen and competent to give testimony. The information set forth below is based on my own personal knowledge, information and/or belief.
2. I am Vice President and General Counsel for Bath Iron Works ("BIW").
3. I make this declaration in support of BIW's motion for *in camera* treatment of certain highly confidential BIW documents (or portions thereof) pertaining to BIW's costs, analyses of various technologies and its use of certain engineering software.
4. Portions of Bath Iron Works 000001 describe the testing technology used by BIW and its justification for selecting that technology. Competitively sensitive in its own right, this information could also be used by competitors to generate cost information.

5. Portions of Bath Iron Works 000003 contain competitively sensitive cost and discount information for certain testing technology used by BIW as well as a discussion of purchasing plans.

6. Portions of Bath Iron Works 000004 contain competitively sensitive cost and discount information for certain testing technology used by BIW.

7. Portions of Bath Iron Works 000005 contain competitively sensitive information about discounts offered to BIW for certain technologies.

8. The Systems Acquisition Request in Bath Iron Works 000006 contains competitively sensitive cost information for software licenses purchased by BIW.

9. The Billing Impact Statement in Bath Iron Works 000007 contains competitively sensitive information about maintenance costs, depreciation and training expenses for various hardware and software that include estimates through 2003.

10. Portions of Bath Iron Works 000008 contain the competitively sensitive assumptions used to derive the billing impact statement in Bath Iron Works 000007.

11. Bath Iron Works 000009-000010 contains competitively sensitive descriptions and costs of various software as well as maintenance and training costs related to that software purchased by BIW.

12. Portions of Bath Iron Works 000011 detail the assumptions BIW uses to generate competitively sensitive cost estimates.

13. The Systems Acquisition Request in Bath Iron Works 000012 contains competitively sensitive cost information for software purchased by BIW.

14. The Billing Impact Statement in Bath Iron Works 000013 contains competitively sensitive information about maintenance costs, depreciation and licensing fees for various software.

15. Portions of Bath Iron Works 000014 detail the competitively sensitive assumptions used to generate the Billing Impact Statement in Bath Iron Works 000013.

16. Portions of Bath Iron Works 000015 contain assumptions used by BIW to generate competitively sensitive cost estimates.

17. Bath Iron Works 000016 is a continuation of Bath Iron Works 000015 and contains assumptions used by BIW to generate competitively sensitive cost estimates.

18. Bath Iron Works 000017-000018 contains competitively sensitive costs for various hardware and software purchased by BIW.

19. Portions of Bath Iron Works 000019, which contains a competitively sensitive discussion of technical deficiencies in certain testing technology reviewed by BIW.

20. Bath Iron Works 000020 is a continuation of the second email in Bath Iron Works 000019 and contains a competitively sensitive discussion of technical deficiencies in certain testing technology reviewed by BIW.

21. Portions of Bath Iron Works 000021 contain competitively sensitive, internal discussions of whether to purchase various technologies and the costs and discounts associated with those technologies.

22. Bath Iron Works 000022 contains competitively sensitive price quotes, negotiation points and current costs of various products used by BIW.

23. Bath Iron Works 000023 contains a competitively sensitive comparison of two technology options considered by BIW and contains information gained from internal testing of those technologies.

24. Portions of Bath Iron Works 000024 discuss the justification for BIW's choice of certain technologies and the results of competitively sensitive tests run on those technologies.

25. Bath Iron Works 000025-000040 contains a competitively sensitive, detailed analysis of various engineering tools, including a set of tools developed in-house by BIW's sister company, Electric Boat Corporation 1/.

26. Portions of 04017 contain BIW's competitively sensitive response to questions from the Federal Trade Commission staff concerning

1/ Both BIW and Electric Boat Corporation are subsidiaries of General Dynamics Corporation.

BIW's use of various technologies and the possibility of migrating to competing technologies.

27. Portions of 04019 contain BIW's competitively sensitive response to questions from the Federal Trade Commission staff and discuss the results of BIW's testing of various technologies, including a technology developed in-house by BIW sister company, Electric Boat Corporation.

28. Bath Iron Work's analysis of various technologies and the cost to BIW of those technologies are not publicly available and BIW maintains the confidentiality of that information.

29. The documents discussed above provide insight into BIW's costs, negotiating strategy, technology preferences and use of various technologies. Such information would be valuable to competitors both to assess BIW's cost structure and to gain insight into the engineering software employed by BIW.

30. Bath Iron Work's cost data and its analysis of competing technologies were generated at great expense and could not be easily duplicated by a competitor.

31. With the information contained in these documents, competitors would have insight, otherwise unavailable, into the kinds of testing technology used by BIW, the costs of that technology and BIW's

internal analysis of the efficacy of various testing technologies. As such, the public disclosure of the documents in questions will result in a clearly defined, serious harm to BIW.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 11, 2002

A handwritten signature in black ink, appearing to read "Ernest J. Babcock". The signature is written in a cursive style with a horizontal line underneath it.

Ernest J. Babcock
Vice President and General Counsel
Bath Iron Works, Inc.

EXHIBIT 2



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Anticompetitive Practices Division

P. Abbott McCarliney, Attorney
(202) 326-2695

May 28, 2002

Via Federal Express

Joseph Kraus, Esquire
Hogan & Hartson LLP
555 13th Street, N.W.
Washington, D.C. 20004

Re: MSC Software Corporation
Docket Number: 9299

Dear Mr. Kraus:

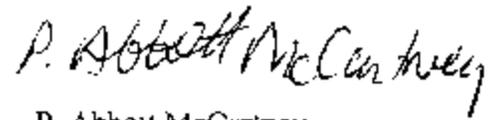
As you know, the Federal Trade Commission issued an administrative complaint against MSC Software Corporation in October 2001. We are contacting you now because you have produced documents to the Federal Trade Commission in connection with this Matter. By this letter we are providing formal notice, pursuant to 16 C.F.R. § 3.45(b), that complaint counsel intend to place the documents referenced on the enclosed list on our exhibit list and intend to offer these documents into evidence in the administrative trial in this Matter, which is scheduled to begin on July 9, 2002. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted.

Under § 4.10(g) of the Commission's Rules of Practice, 16 C.F.R. § 4.10(g), you have "an opportunity to seek an appropriate protective or *in camera* order." Pursuant to the Commission's Rules, the Administrative Law Judge may order that material, whether admitted or rejected as evidence, be placed *in camera* only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment. For the standards applicable to the granting of *in camera* treatment, please see 16 C.F.R. § 3.45(b) as well as the decisions of the Commission in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977); and *General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

Under Administrative Law Judge Chappell's May 3, 2002, Second Revised Scheduling Order, the deadline for *in camera* motions is June 11, 2002. Should you have any questions,

please do not hesitate to contact me at (202) 326-2695.

Sincerely,

A handwritten signature in black ink that reads "P. Abbott McCartney". The signature is written in a cursive style with a large, prominent initial "P".

P. Abbott McCartney
Complaint Counsel

Enclosures

BATH IRONWORKS	
BATES BEGINNING	BATES ENDING
000001	40
04017	
04019	

EXHIBIT 3

KIRKLAND & ELLIS

PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

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

202 879-5000

Facsimile:
202 879-5200To Call Writer Directly:
(202) 879-5000
hedy_aponte@kirkland.com

May 28, 2002

VIA FacsimileJoseph G. Krauss
Hogan & Hartson
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109Re: In the Matter of MSC Software
Docket No. 9299

Dear Mr. Krauss:

This letter is to provide notice that MSC Software intends to introduce into evidence in the above-captioned matter the documents identified on the attached list.

Pursuant to 16 C.F.R. § 3.45(b) you have the right to petition the court to request *in camera* treatment. For your convenience we have attached a copy of 16 C.F.R. § 3.45 which sets forth the standard under which *in camera* treatment will be given.

The deadline for filing a motion for *in camera* treatment is June 11, 2002. If you should have any questions please feel free to call me.

Sincerely,

Hedy J. Aponte
Senior Legal Assistant

Attachments

05/28/02 23:08 FAX

KIRKLAND & ELLIS

0001

ATTACHMENT A

51001-BATH 000023 000040

EXHIBIT 4

**Bath Iron Works / Computer Sciences Corporation
New Services Work Order (NSWO)**

Task ID # / Suffix 98-01-1251 -E

COP

Title of Request: Purchase (1) Nastran Licenses and (5) Patran Licenses from MacNeil Schwindler Corp.

1) Purpose: Initial Review Formal Estimate Work Accomplishment

Date Required: 1/20/98

2) I/T Service: Application Development Desktop & Distributed Telecommunications Other

App'l ID: Other:

A/D Work Type: click here for choices

3) Description of Request:

Redacted

Redacted

5) Authorization:

Initial Review: B/W Group Manager: Click here for choices Baseline Budget Non-Baseline

Formal Estimate: B/W Group Manager: G. Logan CAD Gr 1 *CLW 1-21-98*

Work Accomplishment: B/W Group Manager: Click here for choices

Other Approvals Required for Work Accomplishment:

_____	_____	_____	_____
IT Area Manager	Date	IT Outsourcing Manager	Date
_____	_____	_____	_____
Division Head	Date	Other	Date

6) Attachments:

Refer to B/W Standard Procedure 9-3 for further details.
NSWO.dot

**Bath Iron Works / Computer Sciences Corporation
New Services Work Order (NSWO)**

1 - 2

Cost Benefit Analysis

Specification

Other

7) Budget/Charging for Work Accomplishment:

BIW Charge Number:

3046-0020

CSC NTE Hours/Dollars: _____

full-charge-w/s-d order

8) Requestor:

Fred Randall

4000

Engineering 04

3650

1/13/98

Name

Badge ID

Dept.

Division

Ext.

Submittal Date



THE MACNEAL-SCHWENDLER CORPORATION

EASTERN REGIONAL OFFICE

800 Chelmsford Street • Lowell, Massachusetts 01851-5195

Tel: (508) 453-5310 • FAX: (508) 454-9555

Steve D. Adams
Bath Iron Works Corp.
700 Washington Street
MS2400
Bath, ME 04530

cc:
Fred Randall
Art Dresser
David Darter
* Corey Logan *
Margaret Carpenter
Len Lisewsky

Dear Mr. Adams,

Redacted

If there are any questions that I can answer, if there is anything I can do to help, or if you would like to meet between now and next Friday, January 30th, please do not hesitate to give me a call. I can be reached at 1-800-642-7437, x2214. You may also call Len Lisewsky at x2214.

Redacted

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy Inos'. The signature is written in a cursive style and is followed by a horizontal line.

Guy Inos
Eastern Region Manager
MSC

FYI follow up no. 2

DES

Forward Header

Subject: Nastran
Author: Len Lisewsky <len.lisewsky@nacssch.com> at B1W_SMTPLINK
Date: 01/13/1996 01:26 PM

RE: Our earlier phone conversation

Dave,

Redacted

Your software passwords are currently valid until January 31st per our recent extension. It is important to note that my management will not permit me to extend trial codes beyond that point.

If there is anything that I can do to help between now and the end of January, please give me a call.

Len

SYSTEMS ACQUISITION REQUEST

Redacted

PROJECT TITLE: NASTRAN/PATRAN SOFTWARE LICENSES (REVISION #1)				DATE REC'D:
BIW	TOTAL APPROPRIATION		CURRENT YEAR EXPENDITURE	
	PLAN	THIS REQUEST	PLAN	THIS REQUEST
SYSTEMS EXPENSE	\$0		\$0	1
INVENTORY				
TOTAL	\$0		\$0	
DELT. EXP. REDUCTION		\$0		\$0
DELT. EXPENSE NET	\$0			1
REQUESTING WORKS & DEPT: FRED RANDALL			REQUESTING PHONE: 3630	
GROUP MANAGER'S NAME & GROUP CODE:			GROUP MANAGER'S PHONE:	
DATE ALL RELATED BIW PROJECTS (SCHEDULED):			BIW CHARGE NUMBER: 3046-0020	
			DEPT CONTROL AIR NUMBER: 028	
			APPLICATION CODE (if applicable):	

PROJECT DESCRIPTION, PURPOSE AND JUSTIFICATION:

(This area is redacted in the original document.)

FINAL BIW APPROVALS

AREA MANAGER:	DATE:	FUNCTION HEAD:	DATE:
CAPITAL BUDGET ADMINISTRATION:	DATE:	CHIEF FINANCIAL OFFICER:	DATE:
ENGINEERING MANAGER:	DATE:	CHIEF EXECUTIVE OFFICER:	DATE:

BY SIGNATURE HERE ON, BIW WILL ACCEPT THE OBLIGATIONS FROM CSC FOR THE CAPITAL FACILITIES, TRAVEL FACILITIES, AND RELATED EXPENSES INCLUDING FACILITIES COST OF MONEY ATTRIBUTABLE TO THE "BIW" IN ACCORDANCE WITH THE SERVICE AGREEMENT BETWEEN BIW AND CSC.

CSC AUTHORIZATION

BUDGET		PROJECT LEADER:	DATE:
CAPITAL	\$0	CSC ACCOUNT EXECUTIVE	DATE:
LEASE	0	MANAGER, CSC:	DATE:
REL. EXPENSE	0	MANAGER, FINANCE:	DATE:
TOTAL	\$0	ASST. PRESIDENT:	DATE:

* to be filled in by CSC

Redacted



PROGRAM/TRAN SOFTWARE LICENSES (PERSONS)

Billing Impact Statement

CONTRACT YEAR 1	CONTRACT YEAR 2	CONTRACT YEAR 3	CONTRACT YEAR 4	CONTRACT YEAR 5	CONTRACT YEAR 6	CONTRACT YEAR 7	TOTAL
1978	1979	2000	2001	2002	2003	2004	

Redacted



MASTROVACRAN SOFTWARE LICENSES (VERSION 4.0)

Billing Impact Statement

Redacted



Approved:

Mark O'Connell
BN Account Executive

Redacted

REDACTED

REDACTED

REDACTED

SECRET
NOFORN

Redacted

)

SECRET

SYSTEMS ACQUISITION REQUEST

Redacted

PROJECT TITLE CAE Software Purchase-Phase 2				BAR NO:	
BIW	TOTAL APPROPRIATION		CURRENT YEAR EXPENDITURE		BUDGETED: YES <input type="checkbox"/> NO <input type="checkbox"/>
	PLAN		PLAN		
SYSTEMS EXPENSE	\$0		\$0		
NON SYSTEMS EXPENSE					
TOTAL	\$0		\$0		
SYS. DEV. PRODUCTION					
NON-SYS. PRODUCTION	\$0				
PROJECT MANAGER'S NAME & TITLE Steve Adams			PROJECT DATE 1973		DATE CHANGE REQUEST
GROUP MANAGER'S NAME & TITLE			GROUP MANAGER'S PHONE		DATE GENERAL AUTHORITY
LIST ALL RELATED BIW PROJECTS (BY PROJECT NUMBER)					To Be Determined
					APPLICATION CODE (if applicable)

PROJECT DESCRIPTION, PURPOSE AND JUSTIFICATION:

For the 2nd phase of CAE Software Purchases.

Patrick Baker 10/20/98

FINAL BIW APPROVALS

BY AREA MANAGER:	DATE	<i>[Signature]</i>	DATE	10/20/98
CAPITAL BUDGET ADMINISTRATOR:	DATE	CHIEF FINANCIAL OFFICER	DATE	
CHIEF OPERATING OFFICER:	DATE	CHIEF EXECUTIVE OFFICER	DATE	

BY SIGNING THESE FORMS, YOU WILL ACCEPT THE OBLIGATION IMPOSED UPON YOU FOR THE CAPITAL PROVIDED, LEASE FACILITIES, AND RELATED EXPENSES INCLUDING FACILITIES COST OF MONEY ATTRIBUTABLE TO THIS YEAR IN ACCORDANCE WITH THE SERVICES AGREEMENT BETWEEN BIW AND CSC.

CSC AUTHORIZATION

BUDGET		PROJECT LEADER:		DATE:
CAPITAL	\$0	CSC ACCOUNT EXECUTIVE	DATE:	
LEASE	0	PRINCEP, LDC	DATE:	
REL. EXPENSE	0	MANAGER, FINANCE	DATE:	
TOTAL	\$0	VICE PRESIDENT:	DATE:	

FORM NO. 1001 (REV. 11/87)
To be filled in by CSC

Redacted

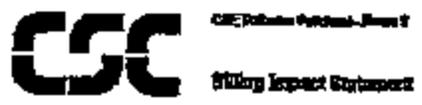


CSC Delivery Purchase - Phase 2

Billing Impact Statement

CONTRACT YEAR 2	CONTRACT YEAR 3	CONTRACT YEAR 4	CONTRACT YEAR 5	CONTRACT YEAR 6	CONTRACT YEAR 7	TOTAL
YES	NO	NO	NO	NO	NO	NO

Redacted



Redacted



Approved:

Eric Lerner
NSA/Chief Executive

Redacted

11/15/2008

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Redacted

2.0000

2.0000

R. D. Davis

REQUIRE APPROVAL

00000000

Author: Cory Logan at BIW_CROP_SYSTEMS
Date: 3/6/99 3:22 PM
Priority: Normal
TO: Scott M Ruff/TMG/CSC at CSC
TO: Dave Smart at BIW_CROPZ
TO: Kevin McDermott at BIW_STEELINK
Subject: Critical Nastran NT issues

COPY 3-1

----- Message Contents -----

Redacted

Thanks.

----- Forward Header -----

Subject: Critical Nastran NT issues
Author: Cory Logan at BIW_CROP_SYSTEMS
Date: 3/5/99 3:18 PM

Redacted

Author: Jeffrey S. Gaiger at BIW_NS_ENG1
Date: 5/8/99 9:26 AM
Priority: Normal
TO: Robert Basaler at BIW_CROF3
TO: Steve D. Adams at BIW_NS_ENG2
Subject: Re: MacNeal-Schwendler Corp (MSC) Consultation

~~SECRET~~
4-1

----- Message Contents -----

Steve, Bob

Redacted

JGG

Reply Separator

Subject: MacNeal-Schwendler Corp (MSC) Consultation
Author: Robert Basaler at BIW_CROF2
Date: 4/29/99 10:03 AM

Redacted

MACROECONOMIC POLICY STATEMENTS
OF THE BOARD OF GOVERNORS

Redacted

COPY

Redacted

Redacted

Forward Header

Subject:
Author: Ahmet Becene at SIW_NS_EHGL
Date: 5/11/98 10:54 AM

This is the latest version of the Patran justification. Please let us know if you need anything else.

Ahmet

Redacted

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Denris Harckelts - MSC Discussions

From: <mcarpen5@csc.com>
To: HQ.DCMAIL2(PMCCARTNEY)
Date: Mar 17, 2000 3:57 PM
Subject: MSC Discussions

Hi Abbott,

Redacted

Thank you!

Margaret

----- Forwarded by Margaret A Carpenter/GIS/CSC on 03/17/2000
03:55 PM -----

From: Robert Baseler/BIW/GDYN@BIW on 03/16/2000 06:32 PM

To: Margaret A Carpenter/GIS/CSC@CSC
cc:
Subject: MSC Discussions

Redacted

Dennis Harckets - MSC Discussions

Redacted

CC: FTC.SERIOUS("Robert_Baseler,BIW@csc.com")

From: <mcarpen5@csc.com>
To: HQ.DCMAIL2(PMCCARTNEY)
Date: Mar 23, 2000 8:32 AM
Subject:

Redacted

Good morning, Abbott,

Please see information from Mr. Baseler below, per your request.

Redacted

Margaret

----- Forwarded by Margaret A Carpenter/GIS/CSC on 03/23/2000
08:31 AM -----

From: Robert Baseler/BIW/GDYN@BIW on 03/23/2000 08:30 AM

To: Margaret A Carpenter/GIS/CSC@CSC
cc:
Subject:

Redacted

I hope this helps.

----- Forwarded by Robert Baseler/BIW/GDYN on 03/23/2000 08:18
AM -----

(Embedded image moved to file:
pic19848.pcx)
file: Fred Randall
pic23956.pcx) (Embedded Image moved to file:
pic05795.pcx)
03/22/2000 03:21:37 PM
(Embedded image moved to file:
pic27246.pcx)

To: Robert Baseler/BIW/GDYN@BIW
cc: Art Dresser/BIW/GDYN@BIW, Erik Hansen/BIW/GDYN@BIW

Subject: Redacted

Dennis Hacketts - Selection of MSC NASTRAN/PATRAN for FEA Analysis

Bob

Redacted

fred

CC: FTC.SERIOUS("Robert_Baseler.BIW@csc.com")