

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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

**RESPONDENT MSC.SOFTWARE'S MOTION AND MEMORANDUM
IN SUPPORT OF ITS MOTION FOR THE ISSUANCE OF
SUBPOENAS *DUCES TECUM* AND *AD TESTIFICANDUM* TO THE
DEPARTMENT OF DEFENSE**

The Department of Defense figures prominently in Complaint Counsel's case against MSC. Complaint Counsel's revised witness list includes four witnesses who are expected to testify about practices employed at four separate Department of Defense sites. See Complaint Counsel's Revised Witness List at 25 - 27.

The FTC's technical expert Vipperla Venkayya, Ph.D., recently retired from the Air Force Research Laboratory (AFRL) at Wright Patterson Air Force Base; much of the information in his report is based on his experiences at that location. See Expert Report of Vipperla B. Venkayya, Ph.D. Structural Engineer, April 9, 2002. Interrogatory responses from Complaint Counsel discuss, *inter alia*, the Department of Defense's ability to switch between FEA solvers and its opinions regarding capabilities of FEA solvers. See Complaint Counsel's Second Revised Responses and Objections to Respondent MSC Software Corporation's First Set of Interrogatories, February 28, 2002, at 37 - 40, 55. Dr. Hilke, Complaint Counsel's economic expert, relies on testimony and documents from Department of Defense witnesses to establish his positions on the relevant product market; MSC's pricing both before and after the acquisitions; and whether CSA/Nastran was a viable

substitute to MSC.Nastran. See Supplemental Expert Report of John C. Hilke, Ph.D., Economist, April 9, 2002, at 3, 14, 77.

In order to properly develop a defense, it is essential that MSC be able to obtain documents and deposition testimony from the relevant Department of Defense locations.

MSC Software moves for an Order¹ authorizing the Commission to issue subpoenas *duces tecum* to the following Department of Defense locations: High Performance Computing Modernization Program; Naval Surface Warfare Center, Carderock; Engineering Research Development Center at Vicksburg; and Wright Patterson Air Force Base (collectively, "Department of Defense sites"). The specifications for these requests are attached. In addition, MSC moves for an Order authorizing the Commission to issue subpoenas *ad testificandum* to the following Department of Defense employees: Cray J. Henry; Miles M. Hurwitz; Stanley Willner; and Gordon Everstine.

During its 18 month Part 2 investigation, Complaint Counsel took verbatim statements from three of these Department of Defense employees. See G. Everstine, August 14, 2000; S. Willner, August 14, 2000; and C. Henry, November 21, 2000. While MSC has obtained copies of these verbatim statements, it has not yet had the opportunity to cross examine these witnesses. It has,

¹ As specified in Rule of Practice 3.36, MSC must make a written application in order to subpoena documents in control of a government agency. That application can be granted if:

- (1) the material sought is reasonable in scope;
 - (2) if for purposes of discovery, the material falls within the limits of discovery under § 3.31(b)(1) . . . ; and
 - (3) the information or material sought cannot reasonably be obtained by other means.
- 16 C.F.R. 3.36. MSC's request meets those requirements. In addition, MSC is willing to work with the Department of Defense sites in order to modify the subpoena in any manner necessary to limit their burden while still capturing responsive documents.

however, determined that all four of these witnesses possess relevant information. It is essential that MSC have the opportunity to examine these witnesses during discovery in order to adequately prepare its case for trial. To examine these witnesses on the stand for the first time would be patently unfair and impede MSC's ability to defend itself.

The specifications of the subpoenas *deuces tecum* are narrowly tailored. MSC asks that the Department of Defense search only the sites listed above -- those that MSC reasonably believes contain responsive documentation. Searching for documents at the specified locations is reasonable given the topics Complaint Counsel indicated that their testimony will cover.² In order to competently depose Complaint Counsel's witnesses and develop its own defense, MSC needs to receive and analyze the relevant documents from the specified Department of Defense sites.

MSC's proposal is "reasonably expected to yield information relevant to the allegation of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. 3.31(c)(1). The

²

According to Complaint Counsel, Mr. Henry is expected to testify about: "(a) the operation of the HPCMP; (b) the evaluation, selection, procurement, and use of Nastran by HPCMP, including the Aeronautical System Center at Wright Patterson Air Force Base, and the Engineering Research Development Center at Vicksburg, Mississippi; (c) the history of Nastran pricing and contract negotiations; (d) competition among FEA solvers in the defense industry, including Nastran; (e) MSC's acquisition of UAI and CSAR; and (f) the development of added Nastran features under the Common High Performance Computing Software Support Initiative." Complaint Counsel's Revised Witness list at 25.

Complaint Counsel has stated that Mr. Hurwitz, Mr. Willner and Mr. Everstine are expected to testify about: "(a) the operation of Carderock; (b) the evaluation, selection, procurement, and use of Nastran by Carderock, including for the HPCMP's Engineering Research Development Center at Vicksburg, Mississippi; (c) the history of Nastran pricing and contract negotiations; (d) switching and interchangeability among solvers, including Nastran; (e) principles and methods of engineering and computing; (f) competition among FEA solvers in the defense industry, including Nastran; and (g) MSC's acquisition of UAI and CSAR." *Id.* at 26-27.

subpoenas are directly tied to the issues raised in the complaint filed against MSC. The FTC alleges that MSC's acquisition of CSA and UAI "creat[ed] or enhanc[ed] MSC's ability to raise prices above a competitive level or withhold or delay product development and enhancements, thereby adversely affecting price and product innovation." (Complaint at ¶29.) The discovery MSC seeks is designed to determine the sites' experience using MSC and its competitors. MSC also seeks discovery on the their ability to switch to another FEA solver, which is directly relevant to the allegation that MSC has "attempt[ed] to monopolize the markets for advanced versions of Nastran" (Complaint at ¶40). The documents and testimony requested are designed to obtain needed information regarding the variety of solvers used and considered by the Department of Defense sites, their abilities to switch between solvers, and their reasons for selecting particular solvers.

Although the Department of Defense sites have produced some documents at Complaint Counsel's request, MSC is not aware of the scope of search that took place because no subpoena exists. In order to ensure that the applicable documents have been collected, MSC needs to issue its own subpoenas.

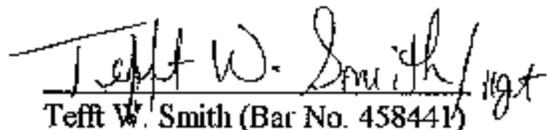
Finally, the Department of Defense sites' files contain an important body of relevant information that no one else possesses. The Centers negotiate their own FEA solver contracts; documents evaluating and deciding which solver to select are only available from each Center. Only employees who are responsible for each site's FEA solver use can testify as to their site's use of FEA solvers, positions while negotiating with MSC, and ability to switch. And, the documents that those employees possess are the only way to establish the veracity of those statements.

MSC cannot obtain this information from any other source. Therefore, it is appropriate that MSC be allowed to obtain its requested discovery from the Department of Defense sites and employees.

CONCLUSION

MSC has made every effort to narrow the scope of the information and testimony it requests from the Department of Defense. Complaint Counsel has made the opinions, choices and positions held by this agency a central issue in this case. It is inherently reasonable for MSC to examine *all* of the relevant documents and speak with potential trial witness as a part of discovery. It is not possible to get this information from other sources. In order to permit MSC to fully defend itself against the FTC's allegations, the Court should grant MSC's motion and authorize the Commission to issue subpoenas *duces tecum* to the Department of Defense sites and subpoenas *ad testificandum* to the specified employees.

Respectfully submitted,



Tefft W. Smith (Bar No. 458441)
Marimichael O. Skubel (Bar No. 294934)
Michael S. Becker (Bar No. 447432)
Bradford E. Biegon (Bar No. 453766)
Larissa Paule-Carros (Bar No. 467907)
KIRKLAND & ELLIS
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5000 (tel.)
(202) 879-5200 (fax)

Counsel for Respondents,
MSC Software Corporation

Dated: April 16, 2002

CERTIFICATE OF SERVICE

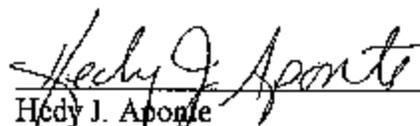
This is to certify that on April 16, 2002, I caused a copy of Respondent MSC Software Corporation's Motion and Memorandum in Support of its Motion for the Issuance of Subpoenas *Duces Tecum* and *Ad Testificandum* to the Department of Defense to be served upon the following persons by hand delivery:

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

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

P. Abbott McCartney, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

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



Hedy J. Aponle
KIRKLAND & ELLIS
655 15th Street, NW
Washington, D.C. 20005
(202) 879-5000 (tel.)
(202) 879-5200 (fax)

In the Matter of MSC Software Corporation, F.T.C. Docket No. 9299
SUBPOENA DUCES TECUM ISSUED ON BEHALF OF
RESPONDENT MSC SOFTWARE CORPORATION

Unless modified by agreement with Respondent MSC Software Corporation (hereinafter "MSC"), each specification of this Subpoena requires a complete search of your "organization" as defined in Paragraph "1" of the Definitions, which appear after the following Specifications.

If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in a way that is consistent with MSC's need for documents and information, you are encouraged to discuss such possible modifications with the MSC attorney identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. Counsel for MSC is prepared immediately to discuss reasonable means of limiting the scope of any required search for responsive documents and any other reasonable modifications of this Subpoena in a desire to minimize the cost, expense, and time required to comply with this Subpoena, including but not limited to agreeing to fact stipulations in the form of sworn declarations.

To facilitate the speed of your response, defendants request that documents be produced as their responsiveness is identified. Defendants are prepared to provide third party temporary lawyers and legal assistants – at MSC's expense – to assist in the search for responsive documents. Defendants will make persons available at any and all document production sites to take receipt of and copy responsive documents, or to arrange for copying.

SPECIFICATIONS

In accord with the Definitions and Instructions, please provide the following:

1. All documents relating to MSC's acquisition of UAI or CSAR, including all documents relating to any communication with the FTC or with anyone regarding the acquisitions or this litigation, and all documents relating to any evaluation, assessment, discussion, or analysis of the impact of the acquisitions or the FTC's action on your organization's acquisition, development, or use of any FEA solver program.
2. All documents relating to any benchmarking study (or other comparative evaluation) prepared by or for your organization that analyzes, compares, recommends, criticizes or characterizes FEA solvers or their costs, including those solvers' features, enhancements, modules, applications, or capabilities; the general or specific uses for such solvers; and the adequacy of each solver's documentation, support, accuracy, or reliability.
3. Documents sufficient to show the required features, functionalities, and capabilities of any finite element analysis software you use.

4. Documents sufficient to show the name, version, number of seats, paid-up copies, or licenses and amount of each type of finite element analysis software you used or had in your possession in 1999 and in 2002.
5. All documents relating to the actual or projected costs, benefits, difficulties or ease of switching some or all usage between any FEA software offered for sale or lease by MSC, UAI, CSAR, Macro Industries ("MI"), and Noran Engineering and any other FEA software program.
6. All documents relating to Schaeffer Automated Simulations, SAS.Nastran or Ansys' AI.Nastran, NE/Nastran, Noran Engineering, MI/Nastran, or Macro Industries.
7. All documents related to any consideration of using, or threatening to use, a finite element analysis software program provider to cause MSC to offer better terms for FEA solvers, to provide additional enhancements, or increase customer support or otherwise offer better terms and conditions.
8. All documents related to any threat made – or proposed to be made – to MSC regarding switching to Ansys, or other FEA software, if MSC did not adjust its service, pricing, or support of MSC.Nastran.
9. All documents relating to any evaluation or assessment of the fairness or benefit to you of any contract for the use of MSC.Nastran offered by MSC Software Corporation.
10. All documents relating to Computerized Structural Analysis and Research, Inc or Universal Analytics, Inc, including documents sufficient to show any problems, errors, malfunctions, or functional limitations of any finite element software you used, leased, or purchased from Universal Analytics, Inc. or Computerized Structural Analysis and Research, Inc.
11. All documents relating to whether your selection or use of any FEA solver influences or is influenced by:
 - a. any supplier's, customer's, project's, or project partner's selection or use of any FEA solver, including all documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, pushing, or promoting the use of any particular FEA solver, including MSC.Nastran;
 - b. your selection or use of any other software program;
 - c. availability of service, support and documentation; or

- d. ability to integrate such FEA solvers into your own internal processes and the ability to work with other solvers or any complimentary products.
12. For each year from January 1, 1995 to present, documents sufficient to show:
- a. the name of each FEA solver used by the organization, including in-house software, to perform finite element analysis;
 - b. the number of users at the organization that use each solver identified in 5(a);
 - c. the number of users that use a pre- and post processor with each solver identified in 5 (a);
 - d. the number of users of each solver identified in 5 (a) that customize that software;
 - e. each type of analysis performed by your organization (including degrees of freedom) with each solver identified in 5 (a), *e.g.*, static linear, dynamic, aeroelasticity, non-linear analysis, etc.
 - f. for each type of analysis identified in 5 (c), the name of other FEA solvers that could be used to perform that analysis.
13. Documents sufficient to show for each FEA solver you have acquired, purchased or used since 1995, which of the following twenty-nine items you use (if any), the purposes for which each such item is used, and the amount each item is used as a percentage of overall use (in terms of annual man-hours and/or existing seats or licenses, or any other measurement):
1. Ability to read Nastran model format input data;
 2. Ability to run large scale structural dynamics analyses of problems involving more than 2 million degrees of freedom;
 3. Ability to generate data for LMS Sysnoise or for Akusmod;
 4. Ability to use or convert data generated by Akusmod models;
 5. Matrix abstraction or matrix manipulation capabilities;
 6. DMAP;
 7. Parallel algorithm/parallel processing capabilities;
 8. Ability to perform aeroelasticity and flight loads analysis;
 9. Ability to perform coupled loads analysis;
 10. Ability to analyze multiple boundary conditions in a single run;
 11. Ability to perform multiple discipline analysis, such as statics, buckling and dynamics, in a single run;
 12. Ability to perform response spectrum analysis;
 13. Ability to perform analysis using the Dynamic Design Analysis

- Method (DDAM);
14. Ability to perform acoustic and other analyses of coupled fluid/structure systems;
 15. Bush elements;
 16. Shear panel element;
 17. Differential stiffness capability;
 18. Ability to use non-structural degrees of freedom (also known as scalar degrees of freedom);
 19. General element matrix input capabilities;
 20. Ability to perform inertial relief analysis;
 21. Ability to spawn another process through calls to another application, equivalent to I-Shell capability;
 22. Pressure stiffness capability for linear dynamics;
 23. Ability to augment modal bases with static vectors (i.e., to add static vectors to Eigenvalue analysis);
 24. Tapered beam element with offsets and warping degrees of freedom;
 25. Batch plotting capabilities;
 26. Automatic singularity processing capabilities;
 27. Ability to handle over 200 design variables in optimization studies;
 28. Ability to generate a Craig-Bampton model; and
 29. Modal cyclic symmetry.

14. Documents sufficient to show the approximate percentage (in terms of annual man-hours and/or existing seats or licenses) of work you perform that is not included within the list of twenty-nine items listed above.

15. Documents sufficient to show the features and functionalities which an FEA solver must possess for you to consider such a solver to be a general purpose solver.

16. Documents sufficient to show the name of any software you use which is complimentary to any FEA solver you use and which would discourage or prevent you from switching to any other FEA solver and the reasons why.

17. All documents relating to each type of FEA solver used by Vipperla B. Venkayya, Ph. D.; the types of analyses performed using each such solver (including the specific program, project, application, or research for which the solver was used); and each instance in which Vipperla B. Venkayya, Ph. D. was involved in the selection or acquisition of (or decision not to select or acquire) any FEA solver while employed at or by the Air Force Research Laboratory.

DEFINITIONS

1. The term "organization" means the following Department of Defense centers or programs: High Performance Computing Modernization Program; Naval Surface Warfare Center,

Carderock; Engineering Research Development Center at Vicksburg; and Wright Patterson Air Force Base.

2. The term "MSC" means MSC Software Inc. or any of its officers, directors, employees, consultants, or agents to the extent such individuals are acting on behalf of MSC Software, Inc.
3. The term "UAI" means Universal Analytics, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing, except to the extent they include MSC Software Corporation.
4. The term "CSAR" means Computerized Structural Analysis and Research Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing, except to the extent they include MSC Software Corporation.
5. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the organization. The term "documents" includes electronic correspondence and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of the organization. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Unless otherwise specified, the term "documents" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans, engineering blueprints, and source code.
6. The term "person" includes the organization and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
7. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
8. The term "documents sufficient to show" means documents that are necessary and sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information, these may be provided in lieu of the underlying documents.
9. The terms "and" and "or" have both conjunctive and disjunctive meanings.
10. The terms "each," "any," and "all" mean "each and every."

11. The term "including" means including but not limited to.
12. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.
13. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
14. The term "in-house software" means software developed primarily by your organization.
15. The term "FEA solver" means all software products offering finite element analysis, **whether offered as a stand alone product or embedded in a Computer Aided Design package ("CAD")**, regardless of platform on which the software operates, and includes all value-added enhancements, features, modules, applications, applications programming interfaces, and programming languages for the software, all products that integrate or combine the FEA software with any other product, and all services relating to maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, training, and hot line and toll-free consultation for FEA products.

INSTRUCTIONS

1. Except for privileged material, the organization shall produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Except for privileged material, the organization shall not mask, cut, expunge, edit or delete any responsive document or portion thereof in any manner.
2. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and information dated, generated, received, or in effect after January 1, 1997.
3. The geographic scope of search is the world.
4. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, the organization must submit legible copies. However, if the coloring of any document communicates substantive information, the organization must submit the original document or a like-colored photocopy. Electronic documents shall be produced, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off organization premises. Electronic mail messages shall also be provided, even if only available on backup or archive tapes or disks. Computer files shall

be printed and produced in hard copy or produced in machine-readable form (provided that counsel for MSC determines prior to submission that it would be in a format that allows them to use the computer files), together with instructions and all other materials necessary to use or interpret the data.

5. Magnetic media shall be submitted in the following forms and formats:
 - a. Magnetic storage media. MSC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). MSC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system MSC will accept data provided on 8mm DAT created using TAR or DD.
 - b. File and record structures.
 - (i) Magnetically-recorded information from centralized non-microcomputer-based systems:
 - (a) File structures. MSC will accept sequential files only. All other file structures must be converted into sequential format.
 - (b) Record structures. MSC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.
 - (ii) Magnetically-recorded information from microcomputers. Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing

documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.

c. Documentation.

- (i) Data must be accompanied by the following information:
 - (a) full path name of the file; and
 - (b) the identity of the media on which on which it resides, e.g. the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.
- (ii) Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media.
- (iii) For all sequential files, the documentation also must include:
 - (a) the number of records contained in the file;
 - (b) the record length and block size ; and
 - (c) the record layout, including the name of each element, the element's size in bytes, and the element's data type.

The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

- d. Shipping. Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**
 - c. Virus Checks: Media will be scanned for computer viruses. Infected media will be returned for replacement.
6. The organization shall mark each submitted page or sheet with its corporate identification, *i.e.*, Department of Defense, and with consecutive document control numbers.
7. For each box containing responsive documents the organization shall:

- a. number each box; and
 - b. mark each box with the name(s) of the person(s) whose files are contained in that box, and the corresponding consecutive document control numbers for each such person's documents.
8. Where identical copies are found in more than one person's files, the organization must produce one copy from each person's files, or otherwise identify the person from whom identical copies of the document are found.
9. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
- a. the reason for withholding it or other information relating to it;
 - b. the author and date of the document;
 - c. each individual to whom the original or a copy of the document was sent;
 - d. each individual who received the original or a copy of the document;
 - e. the date of the document or oral communication;
 - f. the general subject matter of the document;
 - g. the relevant document request the document is responsive to;
 - h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
 - i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer of firm, and denote all attorneys with an asterisk. The description of the subject matter shall include the number of the pages of each document and shall describe the nature of each document in a manner that, without revealing information itself privileged or protected, will enable counsel for MSC to assess the applicability of the privileged or protection claimed. Any part of a document to which you do not claim privilege or work product should be produced in full.

10. If there are no documents responsive to any particular request, the organization shall state so in its answer to the document request.
11. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business, but the organization has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
12. In lieu of original documents, the organization may submit legible copies of documents so long as the organization verifies with the attached form that they fully and accurately represent the originals.
13. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.
14. If your organization has submitted documents to the FTC and MSC has received copies of those documents from the FTC, you need not produce them. Please contact Bradford Biegon at 202-879-5000 to confirm that we have received the documents in question.

VERIFICATION

I personally supervised the preparation and assembly of this response in accordance with the Definitions and Instructions set forth in Subpoena *Duces Tecum* Issued on Behalf of Respondent MSC.Software Corporation in *MSC.Software Corporation*, Docket No. 9299. All copies submitted in lieu of originals are true, correct and complete copies of the original documents. This response is complete and correct to the best of my knowledge and belief.

Signed: _____

Name: _____

Title: _____

Date: _____

Subscribed and sworn to before me this ____ day of

Notary Public

My Commission expires

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

**ORDER GRANTING RESPONDENT MSC.SOFTWARE'S MOTION FOR THE
ISSUANCE OF SUBPOENAS *DUCES TECUM* AND *AD TESTIFICANDUM* TO THE
DEPARTMENT OF DEFENSE**

On April 16, 2002, pursuant to Commission Rule 3.36, Respondent MSC.Software filed a motion for an order authorizing the issuance of subpoenas *deuces tecum* and *ad testificandum* to the Department of Defense. Respondent's motion is GRANTED.

Pursuant to Rule 3.34, in the event that the Department of Defense seeks to limit or quash the subpoena, the Department of Defense shall have ten days after service of the subpoena to do so.

Respondent shall serve a copy of this order on the Department of Defense at the time it serves the subpoena.

ORDERED:

D. Michael Chappell

DATE: April __, 2002