

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of
MSC.SOFTWARE CORPORATION,
a corporation.

Docket No. 9299

SCHEDULING ORDER

- December 17, 2001 - Complaint Counsel provides preliminary witness list (not including experts) with description of proposed testimony.
- January 4, 2002 - Respondent's Counsel provides preliminary witness lists (not including experts) with description of proposed testimony.
- January 7, 2002 - Complaint Counsel provides expert witness list.
- January 22, 2002 - Respondent's Counsel provides expert witness list.
- January 31, 2002 - Status conference to report on discovery and other pretrial matters, if requested by the parties.
- February 7, 2002 - Complaint Counsel provides expert witness reports.
- February 14, 2002 - Complaint Counsel provides revised witness lists, including preliminary rebuttal witnesses, with description of proposed testimony.
- March 1, 2002 - Respondent's Counsel provides expert witness reports.
- Respondent's Counsel provides revised witness list, including preliminary sur-rebuttal witnesses, with description of proposed testimony.
- March 8, 2002 - Deadline for issuing document requests, requests for admission, interrogatories and *subpoenas duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.

- March 14, 2002 - Status conference with ALJ to address disputes regarding discovery and expert reports, if requested by counsel.
- March 15, 2002 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports on behalf of Respondent).
- March 29, 2002 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- April 19, 2002 - Deadline for depositions of experts (including rebuttal experts).
- April 22, 2002 - Complaint Counsel files pretrial brief identifying the legal matters, supported by legal authority, and factual matters to be decided by the Administrative Law Judge, supported by documents and deposition citations.
 - Complaint Counsel provides to Respondent's counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, including a list of designated testimony to be presented by deposition, and a brief summary of the testimony of each witness.
- April 23, 2002 - Deadline for filing motions *in limine* and motions to strike.
 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- April 24, 2002 - Status conference to report on discovery and settlement negotiations, if requested by the parties.

- April 29, 2002
- Respondent's Counsel files pretrial brief identifying the legal matters, supported by legal authority, and factual matters to be decided by the Administrative Law Judge, supported by documents and deposition citations.
 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition and copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness. Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, including a list of designated testimony to be presented by deposition, and a brief summary of the testimony of each witness.
- April 31, 2002
- Deadline for filing responses to motions *in limine* and motions to strike.
 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 3, 2002
- Complaint Counsel files reply to Respondent's pretrial brief, supported by documents and deposition citations and identifying any final rebuttal exhibits (together with copies thereof).
- May 6, 2002
- Exchange, and serve courtesy copy on ALJ, objections to final proposed witness lists and exhibits, including objections to the designated testimony to be presented by deposition.
 - Exchange proposed stipulations of law, facts, and authenticity.
- May 13, 2002
- File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- May 16, 2002
- Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. All trial exhibits will be admitted or excluded.

May 21, 2002 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

ADDITIONAL PROVISIONS

1. Pursuant to Rule 3.21(c)(2), extensions or modifications to these deadlines will be made only upon a showing of good cause.

2. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off, that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute.

3. The parties are limited to a total of 100 document requests, 50 interrogatories, and 50 requests for admissions, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Additional discovery will be permitted only for good cause upon application to and approval by the Administrative Law Judge. Responses to document requests, interrogatories, and requests for admission shall be due within 20 days of service. Objections to document requests, interrogatories, and requests for admission shall be due within 10 days of service.

The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition.

4. The revised and final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary or revised preliminary witness lists previously exchanged unless by order of the Administrative Law Judge upon a showing of good cause.

5. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by order of the Administrative Law Judge upon a showing of good cause.

6. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. Counsel scheduling depositions shall immediately notify all other counsel that a deposition has been scheduled.

Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within five business days of receiving the documents.

7. At the time an expert is first listed as a witness by a party, the listing party will provide to the other party:

- (a) materials fully describing or identifying the background and qualifications of the expert, list of all publications, and all prior cases in which the expert has testified or has been deposed; and
- (b) transcripts of such testimony in the possession, custody or control of the listing party or the expert.

At the time an expert report is produced, the listing party will provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case.

Each expert report shall include the subject matter on which the expert is expected to testify and the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds of each opinion.

The listing party need not provide to the other party any written communications exchanged between counsel and expert, including written drafts of expert reports and written drafts of exhibits.

8. Demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) shall be supplied to opposing counsel no later than 24 hours prior to the day that they are to be offered at trial.

9. Service of all papers filed with the Commission shall be made on opposing counsel and two courtesy copies to the Administrative Law Judge by hand or by facsimile by 5:00 p.m. on the designated date. Unless requested, the parties shall not serve courtesy copies on the ALJ of any papers (including discovery requests and responses) that are not required to be filed with the Office of the Secretary.

Deliveries shall be as follows:

For Complaint Counsel: P. Abbott McCartney, Esquire
FEDERAL TRADE COMMISSION
601 Pennsylvania Avenue, N.W.
Room S-3033
Washington, D.C. 20580

For Respondent's Counsel: Marimichael O. Skubel, Esquire
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, D.C. 20005

All deliveries by facsimile shall be followed promptly by delivery of an original by hand or by U.S. mail, first class postage prepaid. It shall be the obligation of the serving party to ensure that service by facsimile has been effected.

10. All pleadings that cite to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

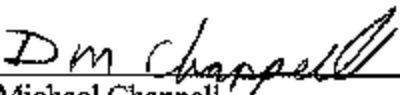
11. The procedure for marking of exhibits referred to in the adjudicative proceeding shall be as follows: both parties shall number their exhibits with a single series of consecutive numbers. Complaint Counsel's exhibits shall bear the designation CX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. (For example, the first exhibit shall be marked CX-1 for Complaint Counsel.) When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive bates number or some other consecutive page number.

All exhibit numbers must be accounted for, even if a particular number is not actually used at trial. If a party selects certain, but not all, documents that it previously designated as deposition exhibits, the party must indicate that certain numbers were not used in the numbering process for designating trial exhibits. For example, if Complaint Counsel decided to not introduce at trial documents previously marked at deposition as exhibits CX-2, CX-4, and CX-6, Complaint Counsel's list of exhibits would begin CX-1, CX-3, and CX-5. This method of numbering exhibits for trial is acceptable, as long as the party also prepares a list of its exhibits indicating that CX-2, CX-4, and CX-6 were never designated as trial exhibits. Using this example, in preparing the set of original exhibits to give to the court reporter, Complaint Counsel must indicate that CX-2, CX-4, and CX-6 were never designated as trial exhibits by inserting in their place a piece of paper or tab indicating the appropriate number.

12. At the final pre-hearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Counsel will also be required to give *the originals* of exhibits to the court reporter, which the court reporter will keep.

13. In addition to providing the original exhibits to the court reporter at the final pre-hearing conference, counsel must bring to the hearing one copy of their exhibits for each of the following: the court reporter, the Administrative Law Judge, the Administrative Law Judge's attorney advisor, and the witness. Counsel will present the copy to each of the above when using it, and then take back the copy when finished. Counsel may agree among themselves on the method by which they wish to exchange exhibits with each other.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: November 13, 2001