UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

MSC'S RESPONSE TO ANSYS's MOTION FOR AN EXTENSION OF TIME TO EITHER RESPOND OR MOVE TO QUASH SUBPOENA DUCES TECUM

ANSYS is one of MSC's fiercest competitors in the FEA solver market. It has refused to produce relevant documents or to comply with the subpoena served upon it. Instead, ANSYS has filed a Motion for an extension of time in which to respond to, or to move to quash, the subpoena. Because this Motion does no more than impair MSC's ability to obtain needed discovery in this case, it should be denied.

MSC's due process rights are being severely compromised by the expedited and limited pre-trial preparation period permitted under the current Scheduling Order. As it now stands, Complaint Counsel, which had the benefit of almost two years of compulsory process, has an incredible advantage over MSC. Indeed, until recently, MSC was not even permitted to know the nature of the information provided by the third-parties that cooperated with Complaint Counsel during the investigation. Recognizing that MSC is in "catch-up" mode, ANSYS filed this Motion, which takes advantage of the Scheduling Order's inherent bias by limiting MSC's ability to obtain, analyze, and make use of highly relevant documents that will demonstrate ANSYS's competitive significance and put the lie to Complaint Counsel's theories.[1] Indeed, ANSYS's own motion

[1] ANSYS's refusal to cooperate with MSC in producing relevant documents should not be surprising. As both the Federal Trade Commission and the United States Department of Justice have

recognizes, and is premised on the fact, that the current litigation time-line fails to permit adequate time for discovery.

Be that as it may, unless and until this Tribunal alters the Scheduling Order, MSC will continue to do its best to prepare its defense in the time allotted. MSC cannot afford to, and this Tribunal should not, brook any unwarranted delays, such as that sought by ANSYS. *See* 16 C.F.R. § 3.1.

The documents sought by MSC are highly relevant and are necessary for MSC to prepare its defense. MSC's own documents recognize that ANSYS is "enemy No. 1," and much of MSC's strategic efforts – from its pricing to its product development efforts – are designed to "thwart ANSYS." The FTC has also recognized the relevance of ANSYS to these proceedings by placing on its Preliminary Witness List ANSYS's Vice President of Marketing, Michael J. Wheeler.

Despite the clear relevance of ANSYS to these proceedings, the FTC has failed to conduct any formal discovery from ANSYS.[2] The only reason for this glaring omission is that Complaint Counsel recognizes that ANSYS is likely to have exculpatory evidence. One of the few

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said, including in briefs submitted to the Supreme Court, "competitors have a substantial incentive to challenge acquisitions that will make their rivals more efficient, make their industry more competitive, and reduce the prices they can charge their customers." Brief for the United States and the FTC as Amici Curiae Supporting Petitions at 10, *Cargill, Inc. v. Montfort of Colo., Inc.*, 479 U.S. 104 (1986). As a competitor in the market, ANSYS has a vested interest in seeing MSC lose. Not only will any relief that injures MSC competitively benefit ANSYS, but ANSYS also likely believes that it would be a potential beneficiary of any divestiture or licensing order in the unlikely event that Complaint Counsel prevails. Thus, ANSYS has every incentive to prevent MSC from obtaining the evidence – such as the "*Power of Choice*" Presentation cited below – that attests to MSC's view of the competitive marketplace.

[2] We understand that ANSYS (or its counsel) have been actively working with the FTC. Although Mr. Thomas Donovan, counsel for ANSYS, has been unwilling to expressly confirm or deny the extent of his or ANSYS's conversations with the FTC, he has admitted that there has been at least one discussion involving him or his client and the FTC.

documents prepared by ANSYS, of which MSC happened to obtain a copy in the ordinary course of business, demonstrates that:

- It is a "Myth" that MSC is the "leader in the Aerospace Industry," since the "reality" is that "ANSYS is used at all the leading Aerospace companies, [including] Lockheed Martin, Raytheon, Boeing, Gruman ..." (ellipse in original).

- It is a "Myth" that MSC is the "leader in the Automotive industry," since the "reality" is that "ANSYS is used at major Automotive companies, [including] FORD, GM, Vickers ..." (ellipse in original).

- It is a "Myth" that "NASTRAN is the only code for government contract work," since the reality is that "ANSYS is used at government sites, [including] NASA, NRC, NIST, DOT, Army, NAVFAC...," and that "ANSYS is the only CAE GSA Contractor." (ellipse in original).

- It is a "Myth" that "NASTRAN is the only CAE product with broad capabilities" and that it is the "best performing analysis code for large models..., dynamics, superelements, [or] aeroelasticity." The "reality" is that "ANSYS offers a "single product" that crosses "all disciplines" and satisfies "all simulation needs."

See ANSYS Presentation: *"The Power of Choice"* (Exhibit A). Indeed, according to ANSYS, it offers the "fastest solvers in the industry." *Id.* As a result, the "Market Realities" are that ANSYS's customer base is twice the size of MSC's, its sales are "growing at a rate of 20-30%" compared to "flat" sales of MSC.NASTRAN, and "ANSYS is the Price/Performance leader compared to MSC/NASTRAN." *Id.*

Complaint Counsel's failure to obtain such exculpatory evidence – evidence that is fundamentally inconsistent with Complaint Counsel's market definition and theory of the case – has placed a significant burden on MSC and has prejudiced MSC in preparation of its case.

To address Complaint Counsel's selective, and perhaps self-serving, use of compulsory process during the investigation stage, MSC served a subpoena on ANSYS shortly after the entry of the Scheduling Order. Subsequent discussions with ANSYS have only revealed its natural hostilities

toward MSC as a competitor and have confirmed that ANSYS would benefit competitively if Complaint Counsel wins this case. Since MSC served the subpoena on ANSYS – and even prior to service – MSC has attempted to negotiate the appropriate scope of ANSYS's document search and production. As detailed below, these negotiations have proven virtually futile, and ANSYS has refused to produce documents that MSC believes are necessary to the presentation of its defense. ANSYS has even refused to produce a complete organizational chart to facilitate discussions about the appropriate scope of the search.

In fact, on a number of critical issues, MSC and ANSYS are at a fundamental impasse. These issues include whether documents relating to ANSYS's approach to the FEA solver market constitutes information that is "relevant" or "reasonably calculated to lead to the discovery of admissible evidence." 16 C.F.R. § 3.31(c)(1). Until all basic issues of this type are resolved, third-party discovery from ANSYS is likely to remain at a virtual stand-still. It simply makes no sense to extend ANSYS's time to file its objections to the subpoena (in the form of a motion to quash, as required by Commission rules) to the end of January. Such a delay is not only unnecessary, but will severely prejudice MSC.

To help mitigate this prejudice, MSC proposes that the Tribunal deny ANSYS's Motion for Extension of Time, and order ANSYS to either respond to, or move to quash, the subpoena by January 14, 2002. MSC will respond to any such motion by January 21, 2002. MSC further requests that the Tribunal resolve any such motion at a hearing on January 23, 2002, or as soon as possible thereafter. In addition, MSC believes that this Tribunal should order ANSYS to

produce – as a starting point – those documents ANSYS previously offered to produce in its December 27, 2001 letter as part of its efforts to obtain a stipulated extension.[3]

I. BACKGROUND

MSC has been in contact with counsel for ANSYS since shortly after ANSYS's announcement that they had entered into a strategic relationship with Schaeffer Automated Simulation, LLC ("SAS") to develop and market a Nastran-based FEA solver to complement its existing product offerings. During those discussions, counsel for MSC explained, among other things, that it would be necessary to obtain discovery of ANSYS, since MSC viewed ANSYS as one of its strongest competitors.

On December 18, 2001, MSC served by fax and by mail a subpoena *duces tecum* on ANSYS. (*See* Exhibit B). The subpoena served on ANSYS closely tracks the subpoena issued by the FTC to MSC, although it has been modified to reduce the burden on ANSYS and more specifically target relevant information.[4] Shortly thereafter, counsel for ANSYS called and requested an extension of time to January 31, 2002 (which would have been almost a month-and-a-half after service of the subpoena). Counsel for MSC explained that, while it was willing to discuss a shorter

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[3] ANSYS's Motion did not disclose the fact that there had been a meet and confer (and correspondence) relating to the issue of an extension of time. These negotiations are described in more detail below, and are, for the most part, memorialized in ANSYS's December 27, 2001 proposal and MSC's counter-proposal, which identifies the problems with the extensive qualifying language in ANSYS's proposal. Because MSC continues to believe that the minor modifications that it proposed in it counter-offer are perfectly reasonable, the Tribunal should further order ANSYS to produce the additional documents called for by that counter-proposal by January 31, 2002.

[4] In addition, MSC has made clear in the subpoena and in all subsequent conversations and correspondence that it is willing to work with ANSYS to identify appropriate modifications or implement appropriate procedures to minimize the burden on ANSYS consistent with MSC's need to obtain relevant documents.

extension, an extension to January 31st would only be acceptable if ANSYS committed to producing substantial relevant documents on a rolling basis while conducting negotiations as to the full scope of the subpoena in the interim. MSC's counsel explained that, absent such a commitment from ANSYS, MSC might be forced to wait until January 31st only to find out that ANSYS is unwilling to produce any of the documents that MSC is keenly interested in.

On December 27, 2001, after a telephonic meet and confer, ANSYS's counsel wrote a letter to MSC's counsel requesting additional time to respond the subpoena. In exchange for such an agreement, ANSYS proposed to produce a *limited* set of documents. That proposal, however, was filled with qualifying language that severely limited the scope of the production, gave virtually unfettered discretion to ANSYS to determine which documents to produce, and made it difficult to determine exactly what commitments ANSYS was actually making.[5] *See* December 27, 2001 Letter from T. Donovan to T. Smith (Exhibit C). In the spirit of cooperation, and because of the recognition that an agreement would be necessary to avoid undue delay, MSC's counsel proposed a few minor modifications to ANSYS's proposal. *See* December 27, 2001 Letter from C. Kass to T. Donovan (Exhibit D). Rather than engage in a dialogue, ANSYS chose to file this Motion, stating that "the verbiage-gap is wider than we can bridge in the time available to do so." *See* December 28, 2001 Letter from T. Donovan to C. Kass (Exhibit E).

By filing this Motion, ANSYS has effectively granted itself a unilateral extension of time without committing to produce anything. The time to respond to the subpoena – January 4,

[5] For example, ANSYS limited a number of requests to "readily identifiable and readily available" documents without explaining what those terms meant. ANSYS also limited its agreement to produce to documents that were filed in specific way (such as under a file folder expressly named "MSC"), rather than produce all relevant documents on the topic. ANSYS also failed to commit to produce e-mails or other electronic evidence.

2002 – has already passed, yet ANSYS has not filed a motion to quash. Even if the Tribunal denies ANSYS's motion, the time needed to prepare, respond, and resolve any motion to quash effectively means that MSC will see no documents, and the scope of the subpoena will not be resolved, until mid-to-late January at the earliest. ANSYS has not even committed to producing those documents identified in its December 27th proposal, let alone in MSC's counter-proposal.

Because of the prejudice caused by ANSYS's Motion, MSC immediately called ANSYS's counsel to initiate discussions on the scope of the subpoena and/or ANSYS's search for documents. An extensive telephonic meet and confer was held on January 3, 2002. No agreement to modify the subpoena resulted. In fact, the meet and confer only revealed ANSYS's unwillingness to engage in the type of search called for by the subpoena and necessary for MSC's defense of this case. For example, MSC asked for documents discussing competition in the FEA solver market and ANSYS's approach to that market. ANSYS has refused. ANSYS also refused to discuss ways of limiting the search to specific ANSYS employees in an effort minimize burden.[6]

It is now clear that counsel for MSC and ANSYS are at loggerheads on a number of critical issues. Such issues concern primarily relevance and the adequacy of the Protective Order, as ANSYS has not been willing to discuss the question of its burden in detail until these issues are resolved.

And until these issues are resolved, valuable preparation time will continue to needlessly slip away. ANSYS's failure to commit to produce responsive documents means that

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[6] Although it is apparent that ANSYS may be willing to search up to five people for documents that discuss MSC, UAI, CSA, and SAS, they have not committed to doing so until there is a resolution on the scope of the subpoena. ANSYS has also refused to permit counsel for MSC to view its organizational chart (below these five people).

ANSYS does not need the month of January to collect, review, and produce responsive documents. All it needs to do is prepare a motion to quash to support its objections to the subpoena. There is no reason why this Tribunal should give ANSYS the entire month of January to do that.

II. ARGUMENT

A. ANSYS's Own Motion For Extension of Time Demonstrates the Inherent Unfairness Associated With the Scheduling Order.

Complaint Counsel has had almost two years to investigate and prepare its case against MSC. During this period, Complaint Counsel has been empowered with the benefits of compulsory process. This has given Complaint Counsel an unfair advantage, and has created an uneven playing field. MSC has had no such ability to obtain third-party discovery. And Complaint Counsel's unwillingness to identify the issues raised by these third-parties (until long after the Complaint issued) has impaired MSC's ability throughout the investigation to marshal the evidence in its own files that will rebut Complaint Counsel's specious allegations.

Complaint Counsel's disproportionate advantage is heightened by the apparent rush to judgment contemplated by the current Scheduling Order. *Fitzgerald v. Penthouse Intern., Ltd.*, 776 F.2d 1236, 1238 n.3 (4th Cir. 1985) ("our system of justice" requires that "the district court ... avoid creating an appearance of unfairness through an unnecessary rush to judgment."); *Local 174, Intern. Union, United Auto., Aerospace & Agr. Implement Workers of Am., v. N.L.R.B.*, 645 F.2d 1151, 1153 (D.C. Cir. 1981) (noting that a "rush to judgment ... diminishes respect for the Board" and can be "at odds with traditions of due process and orderly administrative procedure").

It is well established that Constitutional Due Process requires that parties must be given adequate opportunity to prepare a defense prior to imposing an adverse judgment. *Cf.*

Chambers v. Mississippi, 410 U.S. 284 (1973) (due process right to introduce certain evidence). Even apart from due process, the Congress, the courts, and the FTC have clearly recognized that parties must be afforded an adequate opportunity to obtain, analyze, and present relevant evidence. *Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir. 1995) (The Federal Rules of Civil Procedure creates a "'broad right of discovery'" because "'wide access to relevant facts serves the integrity and fairness of the judicial process by promoting the search for the truth.'") (citation omitted). As the Ninth Circuit explained,

> "We start with the premise that pre-trial discovery is ordinarily 'accorded a broad and liberal treatment.' If no claim of privilege applies, a non-party can be compelled to produce evidence regarding any matter 'relevant to the subject matter involved in the pending action' or 'reasonably calculated to lead to the discovery of admissible evidence.' This broad right of discovery is based on the general principle that litigants have a right to 'every man's evidence,' and that wide access to relevant facts serves the integrity and fairness of the judicial process by promoting the search for the truth."

Shoen v. Shoen, 5 F.3d 1289, 1292 (9th Cir. 1993) (citations omitted). Significantly, the Commission has ruled that, because "[t]he scope and limits of discovery under the FTC's Rules of Adjudicatory Procedure essentially mirror the Federal Rules of Civil Procedure," "case law interpreting similar language of the Federal Rules should be considered persuasive authority." *In re Schering-Plough Cor.*, 2001 WL 1328628 (F.T.C. Oct. 23, 2001)

Here, the Scheduling Order barely gives MSC four months to conduct discovery. In a case of this magnitude, involving a market this complex, and where the FTC has threatened to break-up MSC into multiple parts, such an expedited discovery period is both unwarranted and prejudicial. *See United States v. Microsoft Corp.*, 253 F.3d 34. 101 (D.C. Cir.) (reversing District Court's remedy for failing to hold adequate remedy hearing, and noting that a "full exploration of the facts is usually necessary in order [to] properly draw (an antitrust) decree") (citation omitted).

The prejudice associated with so short a discovery period for so complex a case is being exacerbated by Complaint Counsel's conduct. For example, Complaint Counsel has failed to provide the fruits of its third-party discovery in a timely manner, and has served wholly-inadequate responses to MSC's interrogatories. Not only has such conduct prevented MSC from understanding the charges made against it, but Complaint Counsel has insisted on taking further discovery of MSC and has been virtually unyielding in its demands on MSC. While all this discovery could have been propounded on MSC during the investigation stage, Complaint Counsel chose to wait until after the Complaint issued, thus compounding the prejudice associated with the expedited discovery schedule.

In addition to Complaint Counsel's conduct, the holidays have greatly interfered with MSC's ability to obtain discovery and prepare its case. Not only is MSC inconvenienced, but third-parties, such as ANSYS, have used the holidays as an excuse to avoid producing documents. As ANSYS's motion makes clear, the deadlines (which are a direct result of this Tribunal's Scheduling Order) are unreasonable "in light of the combination of the intervening holidays and ANSYS's year-end activities." (ANSYS Mot. at 4.) Indeed, ANSYS even submitted a declaration testifying to the unreasonableness of the period allotted for resolving discovery disputes and producing relevant documents.

Despite the holidays and the substantial year-end activities (which applies equally to MSC as it does to ANSYS), the current Scheduling Order simply does make allowances for unwarranted delays. If ANSYS were permitted to delay responding to the subpoena, MSC's ability to analyze these documents, take relevant depositions, and otherwise obtain additional discovery would be severely compromised. Only by denying ANSYS's Motion for Extension of Time will the prejudice to MSC resulting from this Tribunal's expedited discovery schedule be lessened.

B. **An Extension to January 31, 2002 Is Unwarranted Given ANSYS's Declared Refusal to Comply with the Subpoena.**

Under Commission rules, a motion to extend the time to respond to, or to move to quash, a subpoena should only be granted if there is good cause. *See* 16 C.F.R. § 3.1 ("In the conduct of [adjudicative proceedings,] the Administrative Law Judge ... shall make every effort ... to avoid delay."). In light of ANSYS's express refusal to comply with the subpoena, there is no just reason for giving ANSYS until the end of the month to file its objections in the form of a motion to quash.

Indeed, ANSYS's stated reason for requesting an extension until January 31st is disingenuous. ANSYS claims that an extension is necessary because the subpoena "would require consideration" of both "which ... files need to be searched for [ANSYS's] 440 employees," and "whether [to] search [its] ... 11 subsidiaries operating in 21 locations." (ANSYS Mot. at 3.) But ANSYS has already stated that, with limited exceptions, it does not intend to search beyond the top five people at ANSYS's headquarters, and has refused to discuss which additional employees may have responsive information. It is also clear that ANSYS has no intention of producing most of the documents expressly called for by the subpoena. In fact, MSC believes that ANSYS has already decided not to search ***any*** of its 11 subsidiaries, 20 of its 21 locations, or approximately 435 of its 440 employees, unless so ordered by this Tribunal. Rather, ANSYS apparently is seeking to rely primarily on confidentiality and relevance objections for as long as this Tribunal will permit ANSYS to get away with it.

But under the Commission's rules, ANSYS can only refuse to comply with the subpoena by filing a motion to quash, a motion which should not take all of January to prepare.

III. CONCLUSION

Because the time pressures associated with the current Scheduling Order are so great, and because ANSYS has failed to support its request for an extension of time with an adequate justification, ANSYS's motion should be denied.

As the time for responding to the subpoena has already passed, this Tribunal should: (1) Order ANSYS to respond to the subpoena or move to quash it by January 14, 2002; (2) Order MSC to respond to any such motion by January 21, 2002; (3) Set a hearing for January 23, 2002 to

resolve any outstanding issues concerning this subpoena; and (4) Order ANSYS to produce on a rolling basis, but no later than January 31, 2002, all documents identified in ANSYS's letter dated December 27, 2001 (*see* Exhibit C), or better yet, MSC's letter dated December 27, 2001 (*see* Exhibit D).

Dated: January 7, 2002

Tefft W. Smith (Bar No. 458441)
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Counsel for Respondents,
MSC.Software Corporation

CERTIFICATE OF SERVICE

This is to certify that on Monday, January 7, 2002, I caused a copy of the attached MSC's Response To ANSYS's Motion For An Extension Of Time To Either Respond Or Move To Quash Subpoena *Duces Tecum* to be sent electronically without exhibits, via facsimile and served by hand-delivery with exhibits upon the following persons:

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

Richard B. Dagen, Esquire
Karen A. Mills, Esquire
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

This is to certify that on Monday, January 7, 2002, I also caused a copy of the attached MSC's Response To ANSYS's Motion For An Extension Of Time To Either Respond Or Move To Quash Subpoena *Duces Tecum* to be sent via facsimile and served by U.S. mail upon the following person:

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Counsel for Respondents,
MSC.Software Corporation

ANSYS

"The Power of Choice"

"The Power of Choice!"

ANSYS

Market Situation

- Global competition is a reality for manufacturing companies
  - Time to market
  - Reducing costs
  - Liability and warranty
  - Managing change
- New ways of doing things

"The Power of Choice!"

ANSYS

Market Requirements

- Ability to solve larger problems
- Reduce solution costs
- Broader industry adoption

"The Power of Choice!"

ANSYS

Adapting to a Complex Market

Companies must evaluate:

- **Engineering processes**
- **Technologies**
- **Technology partners**

"The Power of Choice!"

ANSYS

Processes

Evaluating processes (PQ 250 phase II):

"Ten Best Practices for Product Development" according to Motorola, Inc.

–Total Cycle-Time Reduction
–New Product Development Process
–New Products Driver
–Engineering Metrics
–Robust Design and Training
-Engineering Tools
–Electronic Networks and Interfaces
–Empowerment and Customer Visits
–Research Labs and Technology Sharing
–Reuse and Career Recognition

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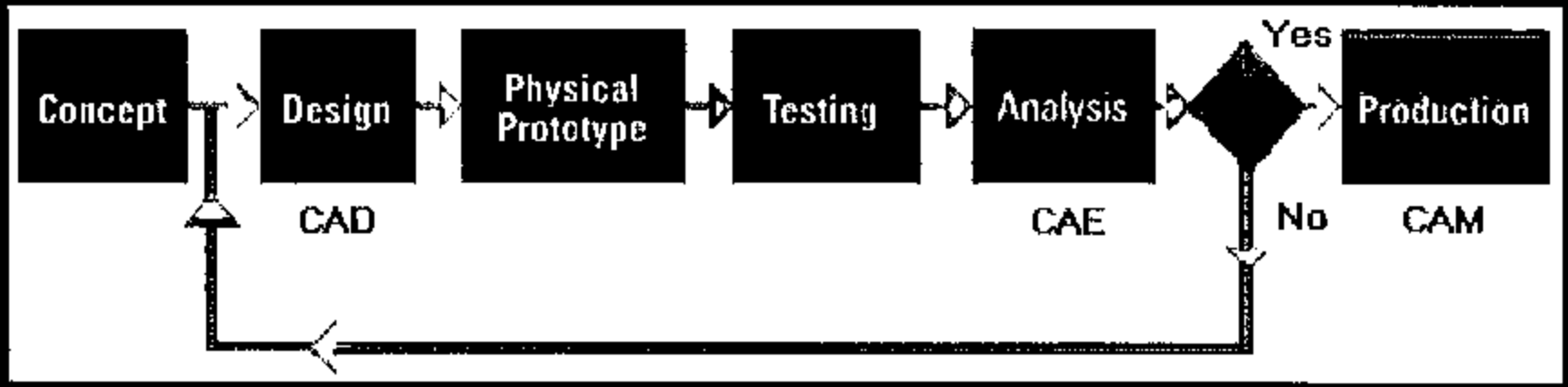
ANSYS

Traditional Design Process



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ANSYS

Traditional Design Process

Traditional approach

- All phases acting as distinct, autonomous entities
- Functional organizational structures

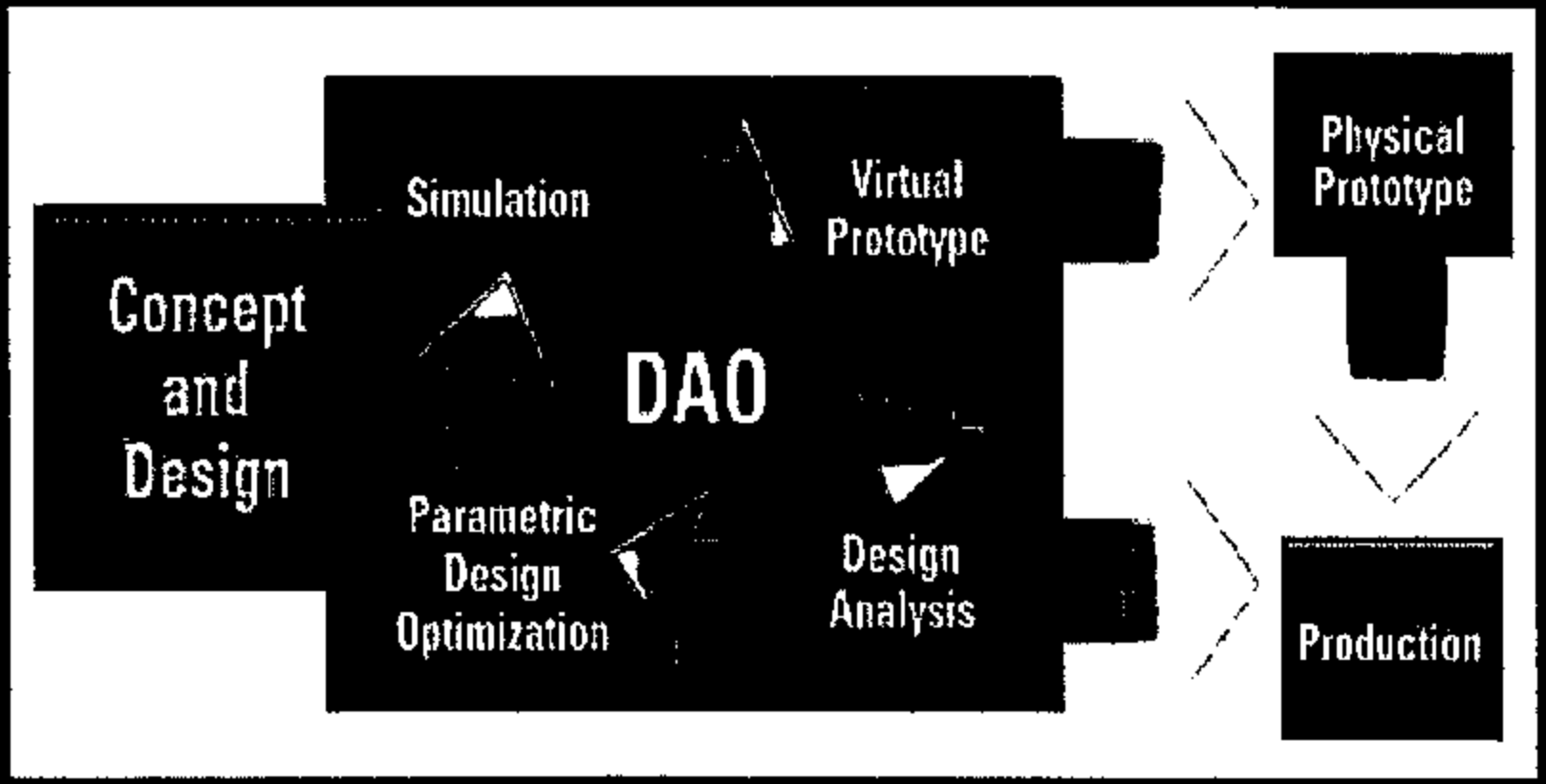
Disadvantages

- Long design cycle
- Unrealized cost / material savings
- Increased time to market

"The Power of Choice!"

ANSYS

Process-Centric Engineering



Design, Analysis, Optimization

"The Power of Choice!"

ANSYS

Process-Centric Engineering

- **Process-Centric approach accelerates time to market**
- **Easier-to-use software creates broader user base**
- **Integration of CAD and analysis improves design effectiveness**
- **Virtual prototyping reduces engineering costs**

"The Power of Choice!"

ANSYS

Technology

- Evaluating Technologies (CAE tools)
  - Improve speed in performing tasks
    - Integrated pre-/post-processor with solvers
    - Ability to work with other engineering tools such as CAD and PDM
    - Wide range of integrated solvers to handle company-wide needs (now and in the future)
    - Data compatibility across company-wide computer systems

"The Power of Choice!"

ANSYS

Technology Partners

- **Evaluating technology partners**
  - **Knowledge and experience**
  - **Industry leading technology**
  - **Customer base**
  - **Customer support**

"The Power of Choice!"

ANSYS

ANSYS, Inc. Overview

- **The Company:**
  - **Founded in 1970**
  - **John Swanson, Founder and Chief Technologist**
  - **Public company: IPO in June 1996**
  - **220 employees**
  - **Technology innovator**
  - **ISO 9001 certification**

"The Power of Choice!"

ANSYS

ANSYS Principles

"as a company... and a product"

- **Open for business**
- **Fanatical commitment to quality**
- **Technological excellence**
- **Speed of execution**
- **Intuitive and productive solutions**
- **Power of choice**

"The Power of Choice!"

ANSYS

Companies Who Choose ANSYS:

Solve the full range of analysis problems - they don't hit a brick wall

Count on unsurpassed quality from an analysis vendor that develops products under ISO 9001

Have the flexibility of choice - their CAD system(s), their hardware platform(s), their operating system(s)

"The Power of Choice!"

ANSYS

Companies Who Choose ANSYS:

- **Depend on ANSYS, Inc's significant investment in R&D to keep them current.**
- **Know that there is an ongoing commitment from ANSYS to support industry standards.**
- **Integrate analysis solutions into enterprise-wide engineering systems to leverage existing investments**

"The Power of Choice!"

ANSYS

ANSYS Support Distributors

ANSYS Support Distributors (ASD):

- Exclusive regional distribution and support
- 35 independent distributors worldwide
- 68 offices in 27 countries
- Engineering consulting firms
- 95% of technical personnel with engineering degrees (75% with advanced degrees)
- Offer complimentary products and services

"The Power of Choice!"

ANSYS

ANSYS Products

- **Products:**
  - **Product line offers a broad width of CAE tools**
    - **New to experienced users**
    - **Design engineering tools to high-end coupled field multiphysic analyses**
    - **PCs to supercomputers**
    - **Full data compatibility**

"The Power of Choice!"

ANSYS

Breadth of Capabilities

Structural . . . . . .

Thermal . . . . . .

Acoustics . . . . . .

Piezoelectric . . . . .

Vibration . . . . . .

Electromagnetic . . .

CFD . . . . . .

MULTI-PHYSICS

"The Power of Choice!"

ANSYS

ANSYS Services

Services:

- **Local administrative, sales, technical support, and consulting services through ASD's**
- **Technical Enhancements and Customer Support (TECS) includes software updates, corrective and adaptive maintenance, and ongoing customer support**

"The Power of Choice!"

ANSYS

Myth vs. Reality

"The Power of Choice!"

ANSYS

Myth vs. Reality: MSC

MSC Market Perceptions:

- **Perceived leader in Aerospace industry**
- **Perceived leader in Automotive industry**
- **NASTRAN is the only code for government contract work**
- **Image of cutting edge company and products**
- **The Biggest is the Best**
- **Premium Price for premier product**

"The Power of Choice!"

ANSYS

Myth vs. Reality: ANSYS

- ANSYS Market Realities:
  - ANSYS is used at all the leading Aerospace companies:Lockheed Martin, Raytheon, Boeing, Gruman...
  - ANSYS is used at major Automotive companies: FORD, GM, Vickers....
  - ANSYS is used at government sites: NASA, NRC, NIST, DOT, Army, Navy, NAVFAC...
  - ANSYS is the only CAE GSA Contractor

"The Power of Choice!"

ANSYS

Myth vs. Reality: ANSYS

ANSYS Market Reality:

- **ANSYS customer base of 4,000+ companies is larger than MSC's 2,000+ companies**
- **ANSYS sales of $65M in 1995 equals MSC/NASTRAN sales**
- **ANSYS sales are growing at a rate of 20-30% whereas MSC/NASTRAN sales have been flat**
- **ANSYS is the Price/Performance leader as compared to MSC/NASTRAN**

"The Power of Choice!"

ANSYS

Myth vs. Reality: MSC

- **MSC Product Perceptions:**
  - **NASTRAN is the only CAE product with Broad Capabilities and Support in all FEA Technologies**
  - **Best performing analysis code for large models**
  - **Best analysis code for dynamics, superelements, aeroelasticity.**
  - **Perception as CAE Industry Experts - Strong Support**

"The Power of Choice!"

ANSYS

Myth vs. Reality: MSC

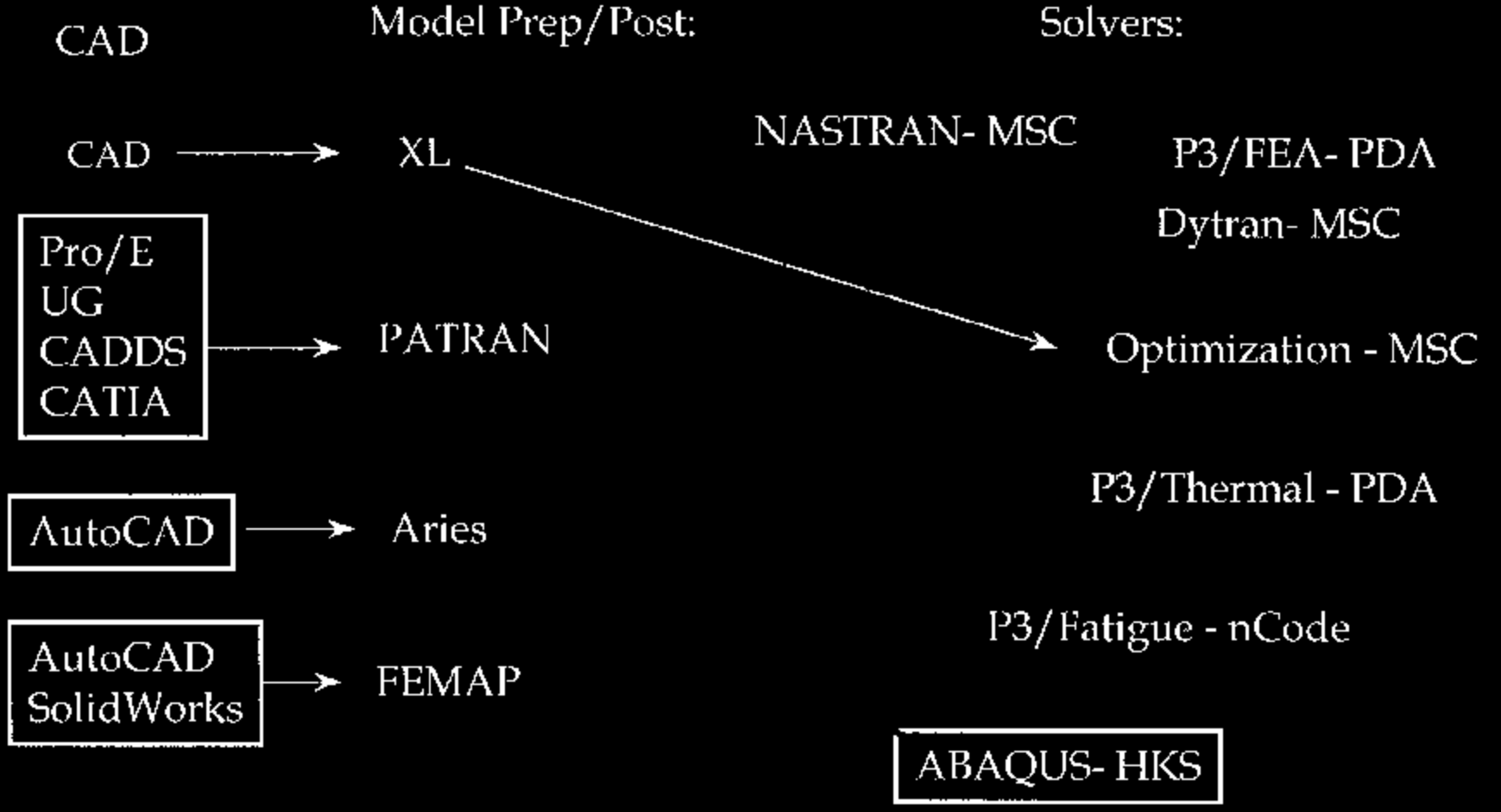
MSC Product Realities:

- **Full functionality requires more than one product (MSC/NASTRAN solver, MSC/PATRAN prep/post, MSC/DYTRAN, etc.)**
- **Products not integrated - convoluted product strategy**
- **High Cost of Ownership**
  - **High purchase (lease/usage) price**
  - **Maintenance costs for each product**
    - **Loading software and updates, obtaining system IDs, entering authorization codes, troubleshooting**
  - **Separate technical support centers for each product**
  - **Technical training for each product**

"The Power of Choice!"

ANSYS

MSC Product Map



"The Power of Choice!"

ANSYS

Myth vs. Reality: ANSYS

- **ANSYS Product Reality:**
  - **One single graphical user interface (GUI) across all disciplines: Structural, Thermal, Electromagnetics, CFD**
  - **One database structure from low-end to high end platforms/operating systems (PCs to SuperComputers)**
  - **Enterprise-wide Simulation: Entry Level to Advanced User**
  - **Coupled multiphysics capabilities provide a more accurate solution**

"The Power of Choice!"

ANSYS

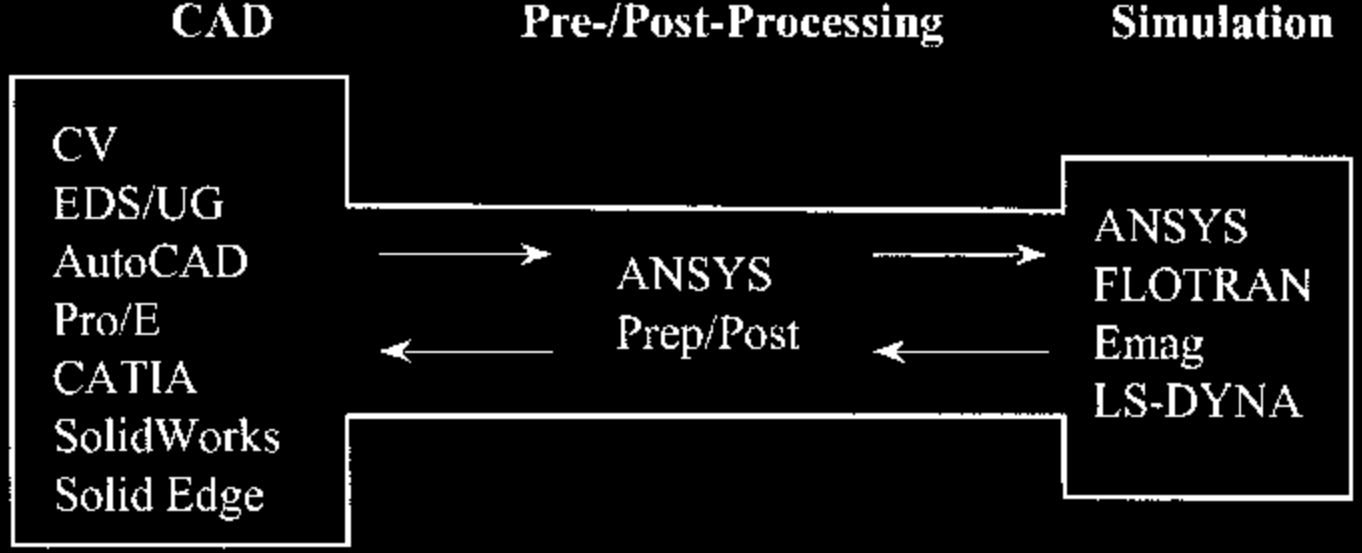
Myth vs. Reality: ANSYS

- ANSYS Product Reality:
  - One product for all simulation needs: Pre, Post and Solvers
  - Integrated Bi-directional Design Optimization Technology
  - Price/Performance Leader
  - Industry leading support from ASDs and ANSYS

"The Power of Choice!"

ANSYS

ANSYS Product Map

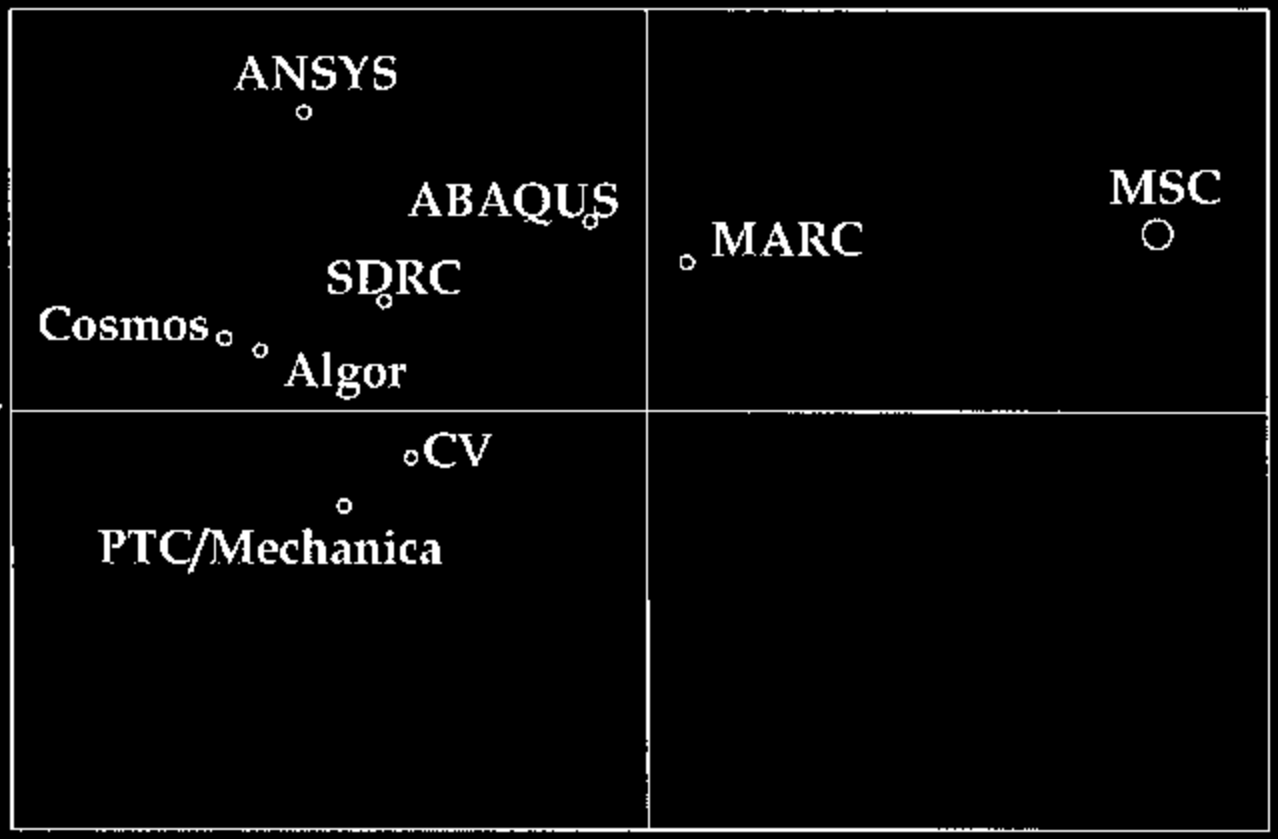


Consistent ANSYS Database & Interface for Window 95, Windows NT, Unix Workstation and Supercomputers

"The Power of Choice!"

ANSYS

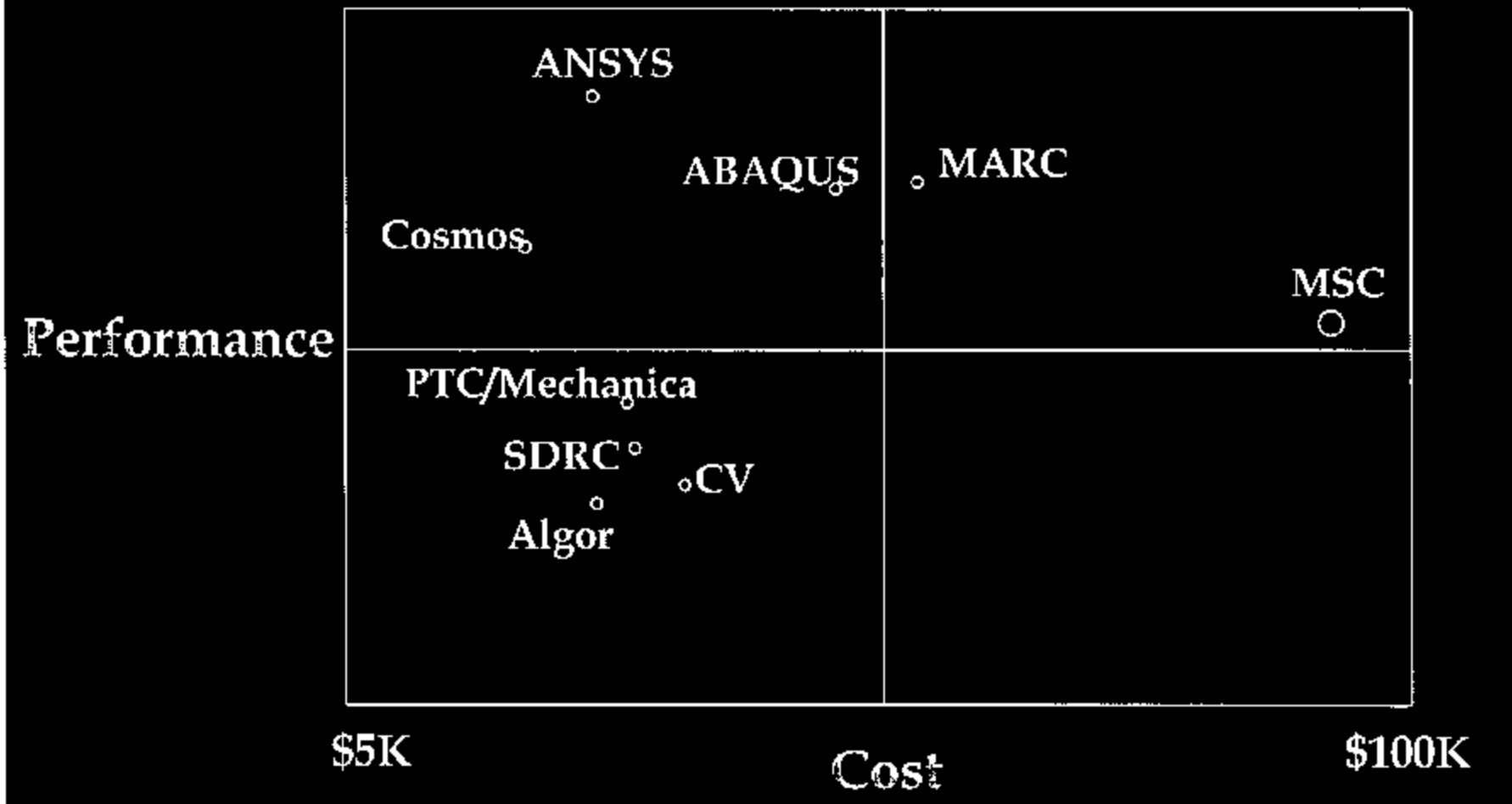
CAE Price/Functionality



"The Power of Choice!"

ANSYS

CAE Price/Performance



"The Power of Choice!"

ANSYS

"Where the rubber meets the Road!"

"The Power of Choice!"

ANSYS

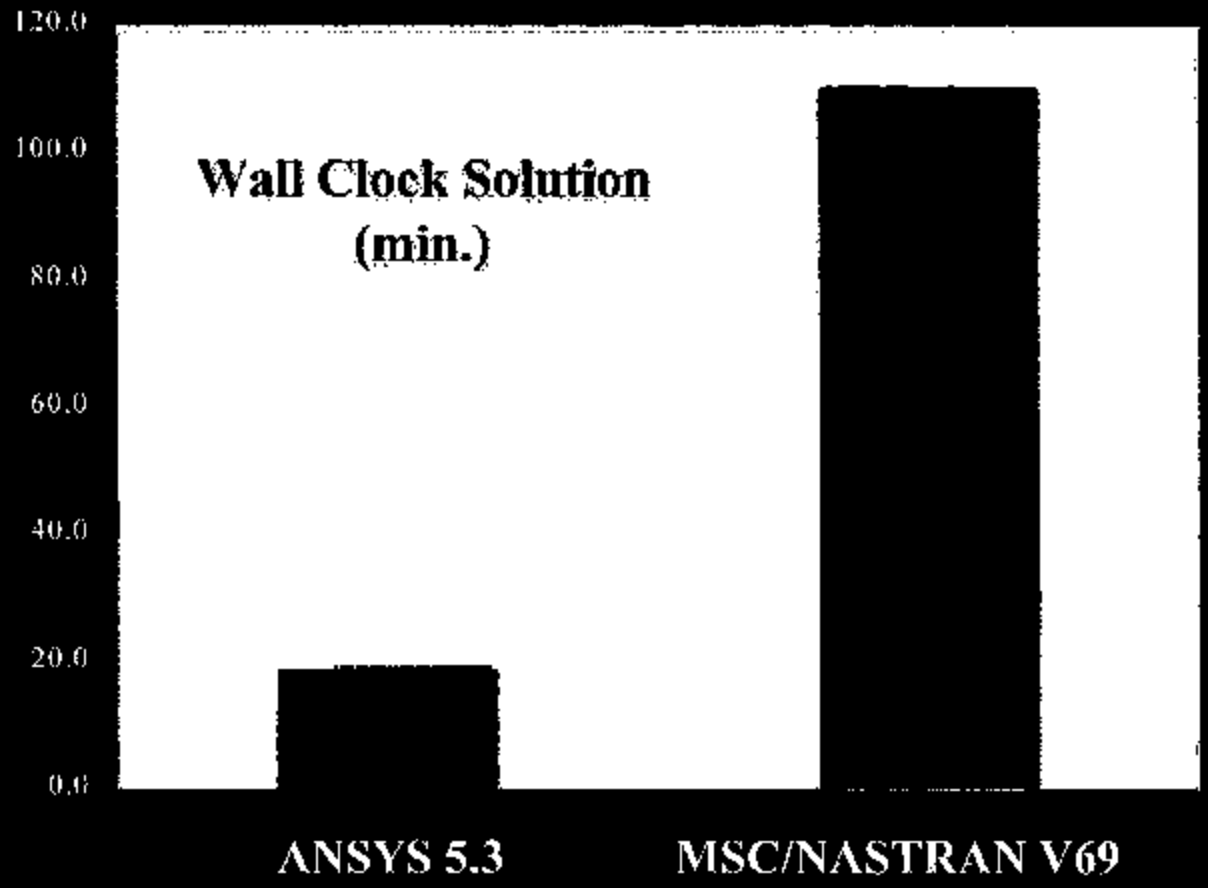
Pump Yoke Model

- Customer Model
  - Geometry created in Pro/ENGINEER
  - Meshed with Pro/MESH
  - 10-node tet elements
  - 301K DOF
- Linear static analysis
  - ANSYS PowerSolver
  - MSC/NASTRAN FIST

"The Power of Choice!"

ANSYS

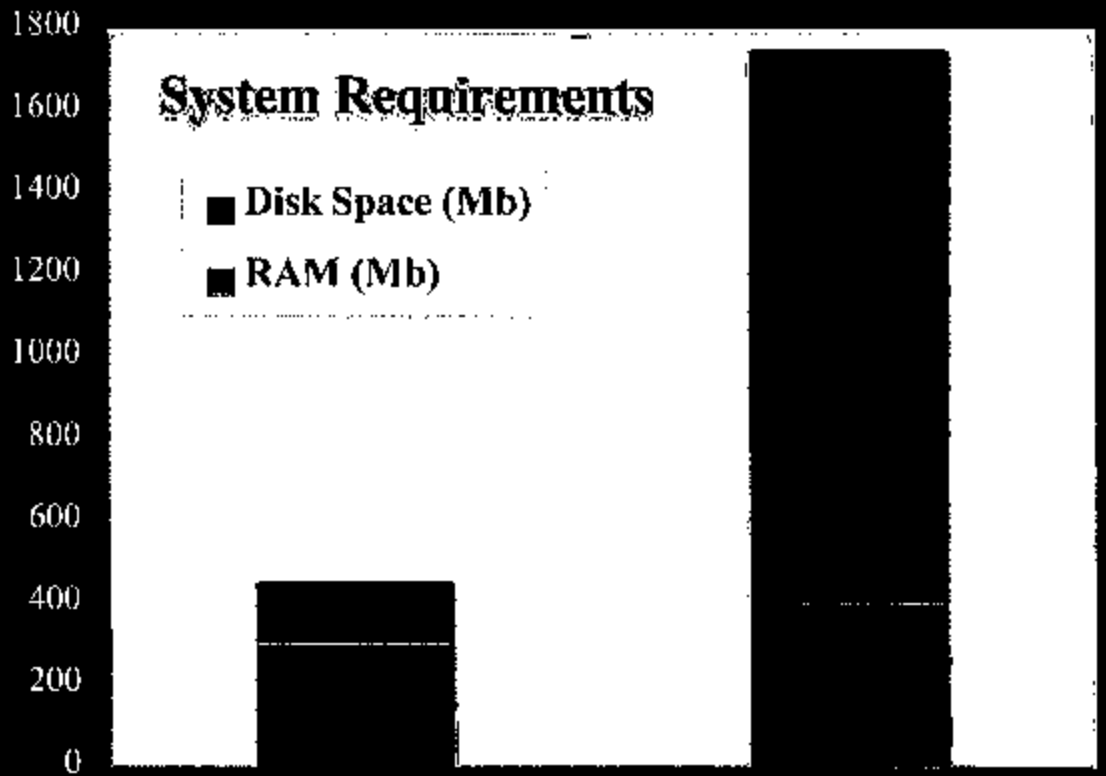
Pump Yoke Model



"The Power of Choice!"

ANSYS

Pump Yoke Model

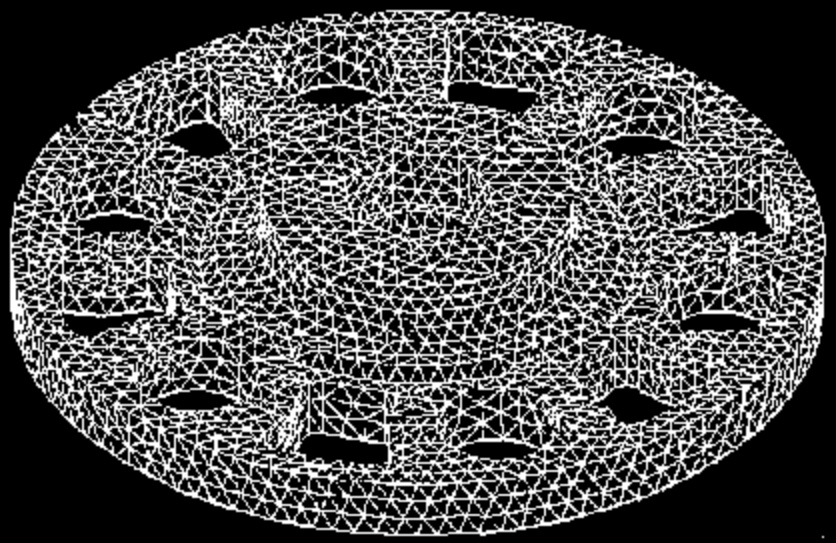


"The Power of Choice!"

ANSYS

Carrier Model (-05)

- **Linear static analysis**
  - **ANSYS PowerSolver**
  - **MSC/NASTRAN FIST**

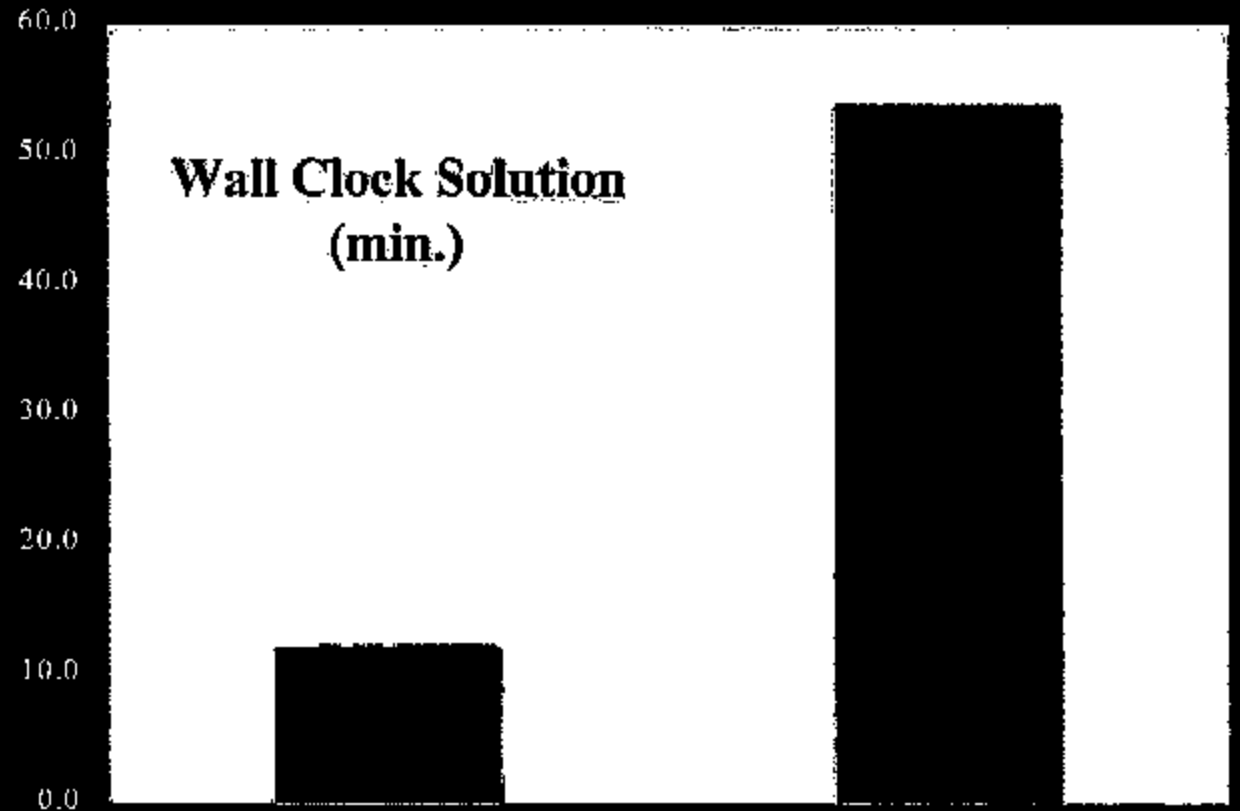


10-node tet elements
225K DOF

"The Power of Choice!"

ANSYS

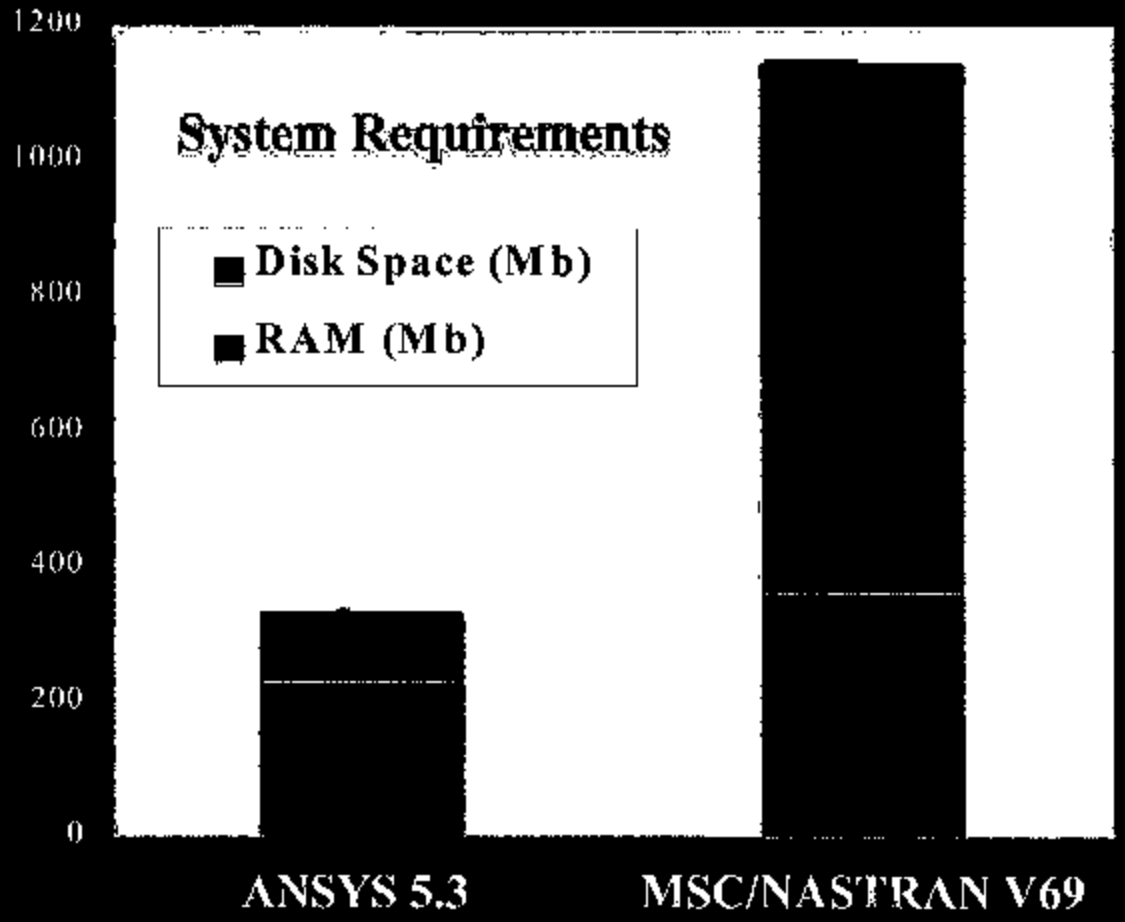
Carrier Model (-05)



"The Power of Choice!"

ANSYS

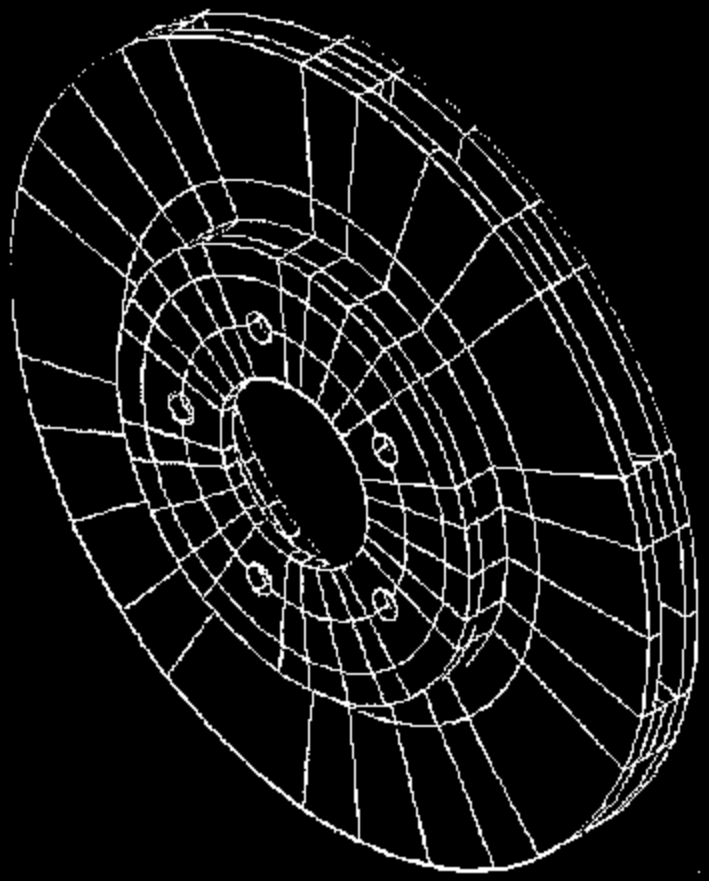
Carrier Model (-05)



"The Power of Choice!"

ANSYS

Disk Brake Rotor Model



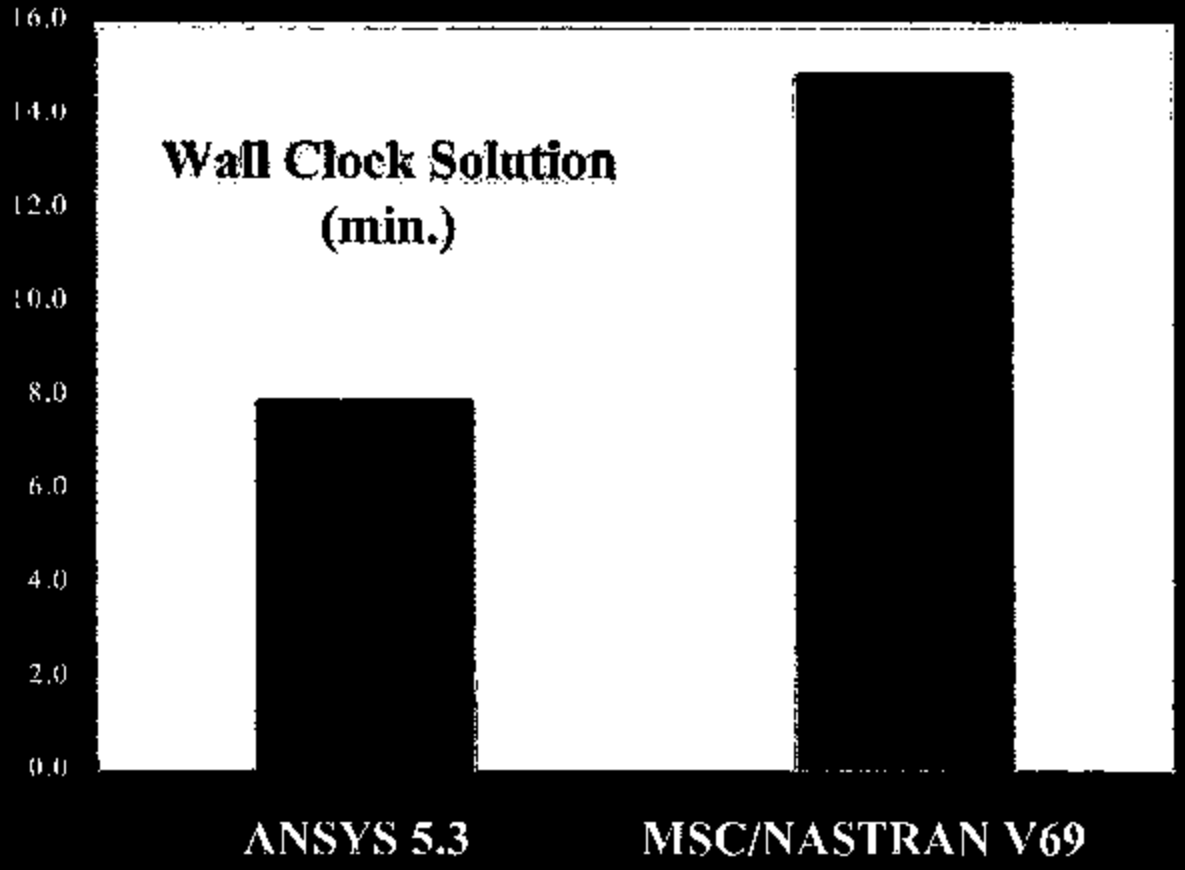
8-node brick elements
73,575 DOF

"The Power of Choice!"

ANSYS

Disk Brake Rotor Model

Iterative Solvers - Linear Static

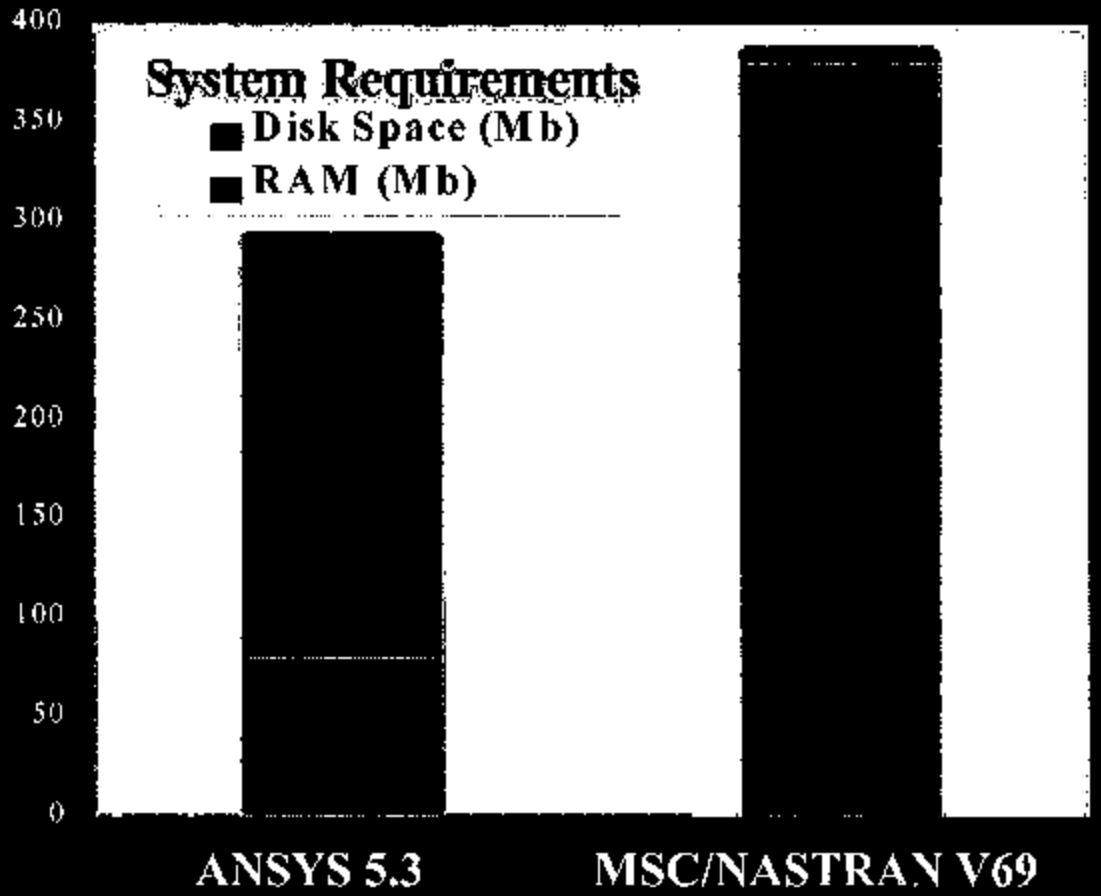


"The Power of Choice!"

ANSYS

Disk Brake Rotor Model

Iterative Solvers - Linear Static

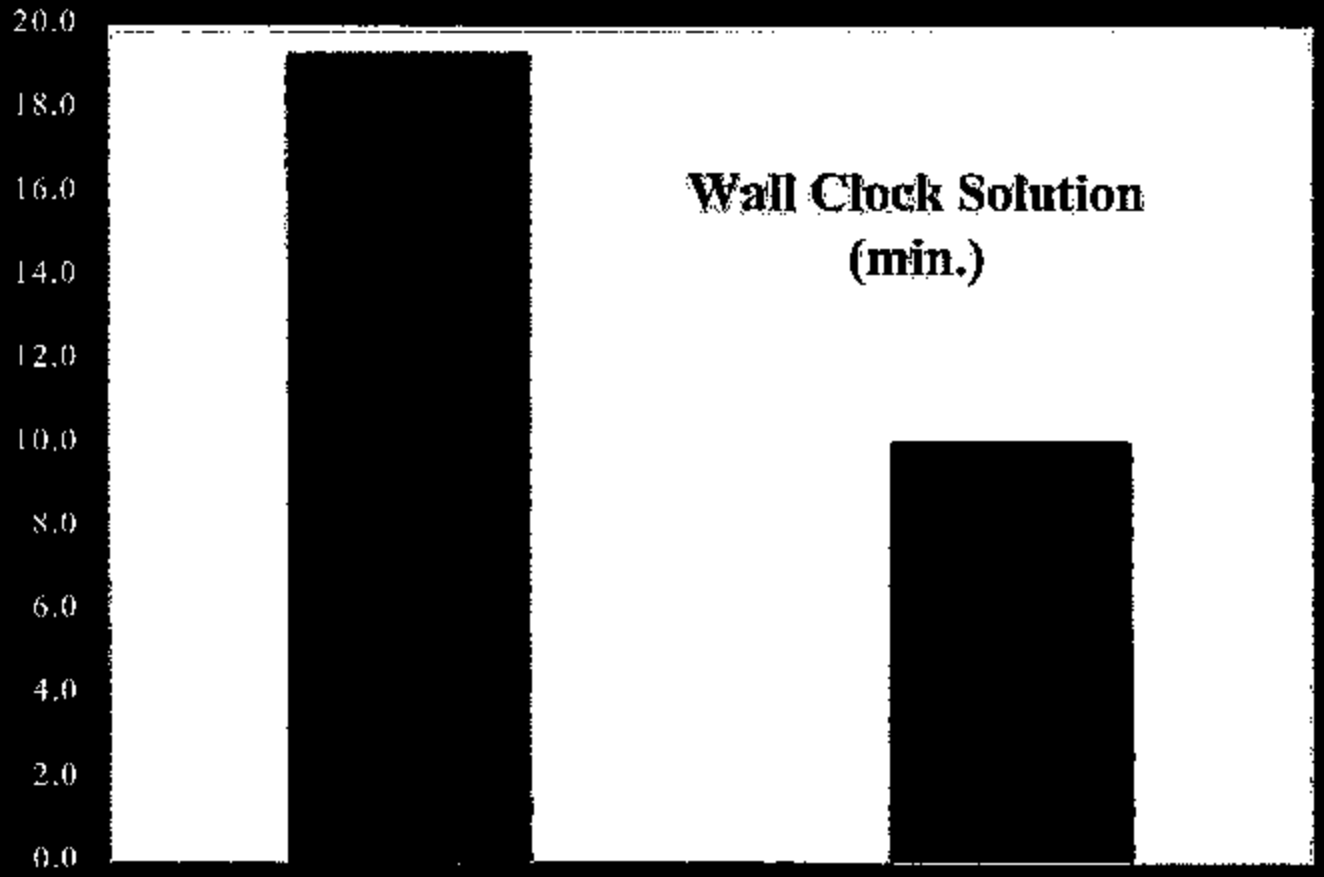


"The Power of Choice!"

ANSYS

Disk Brake Rotor Model

Sparse Solvers - Linear Static

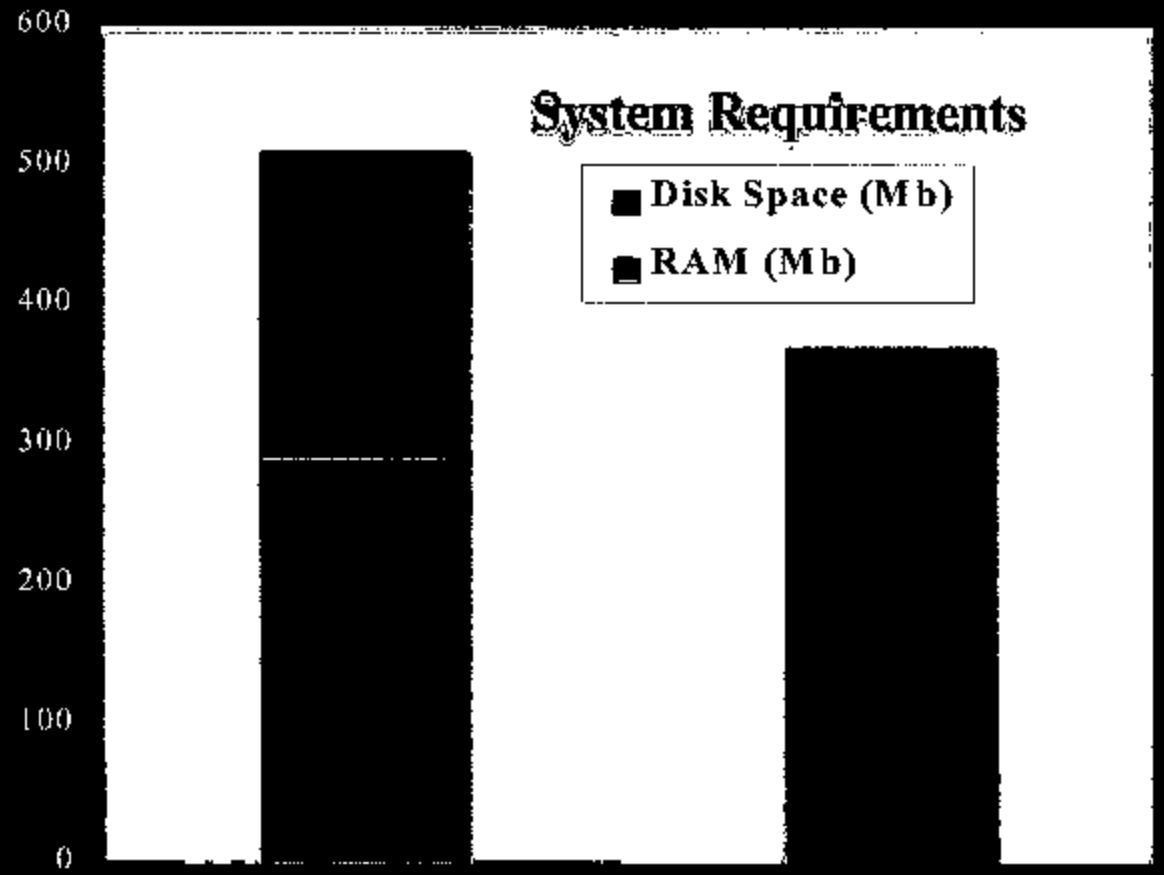


"The Power of Choice!"

ANSYS

Disk Brake Rotor Model

Sparse Solvers - Linear Static

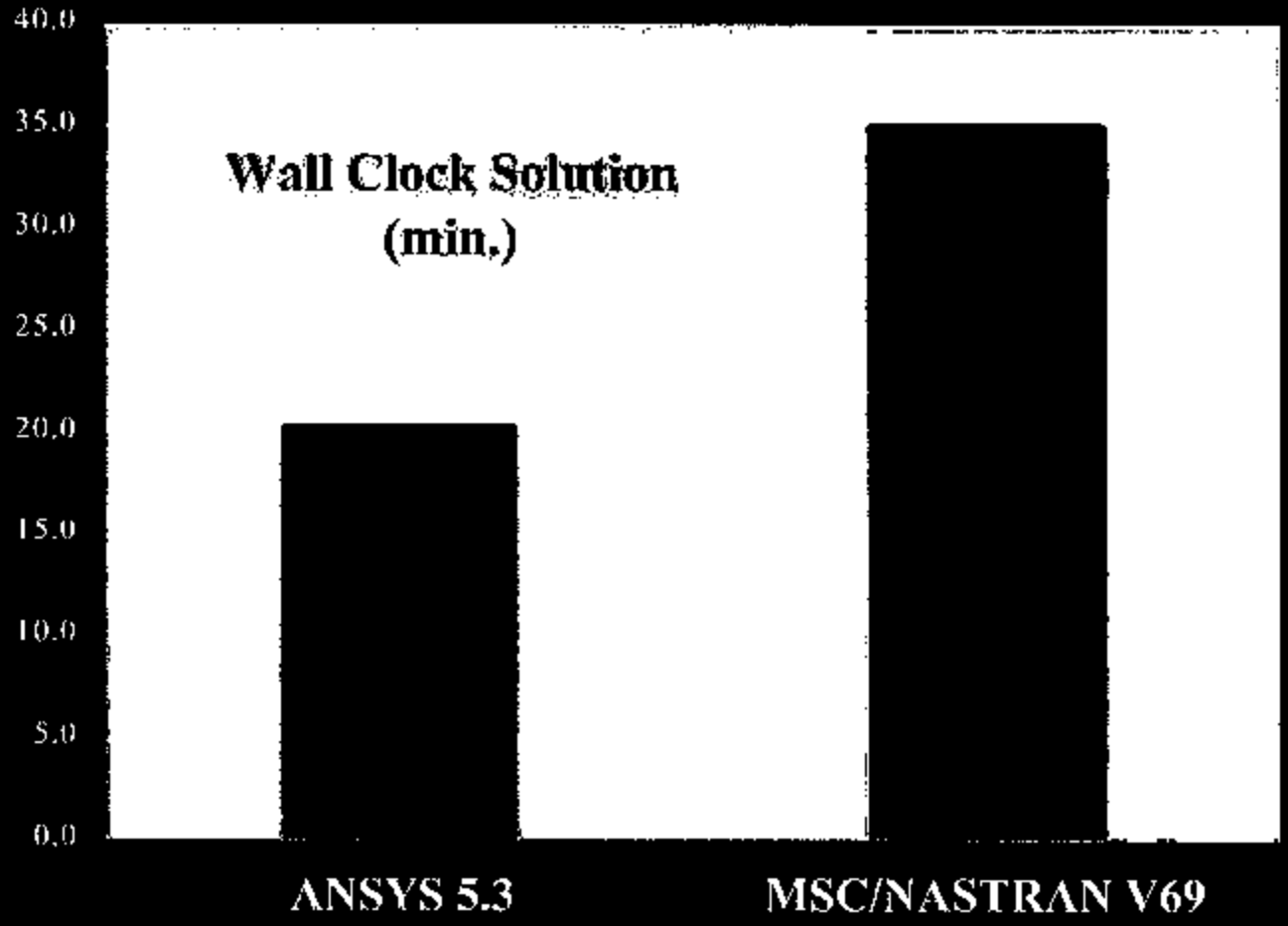


"The Power of Choice!"

ANSYS

Disk Brake Rotor Model

Block Lanczos Modal Solvers

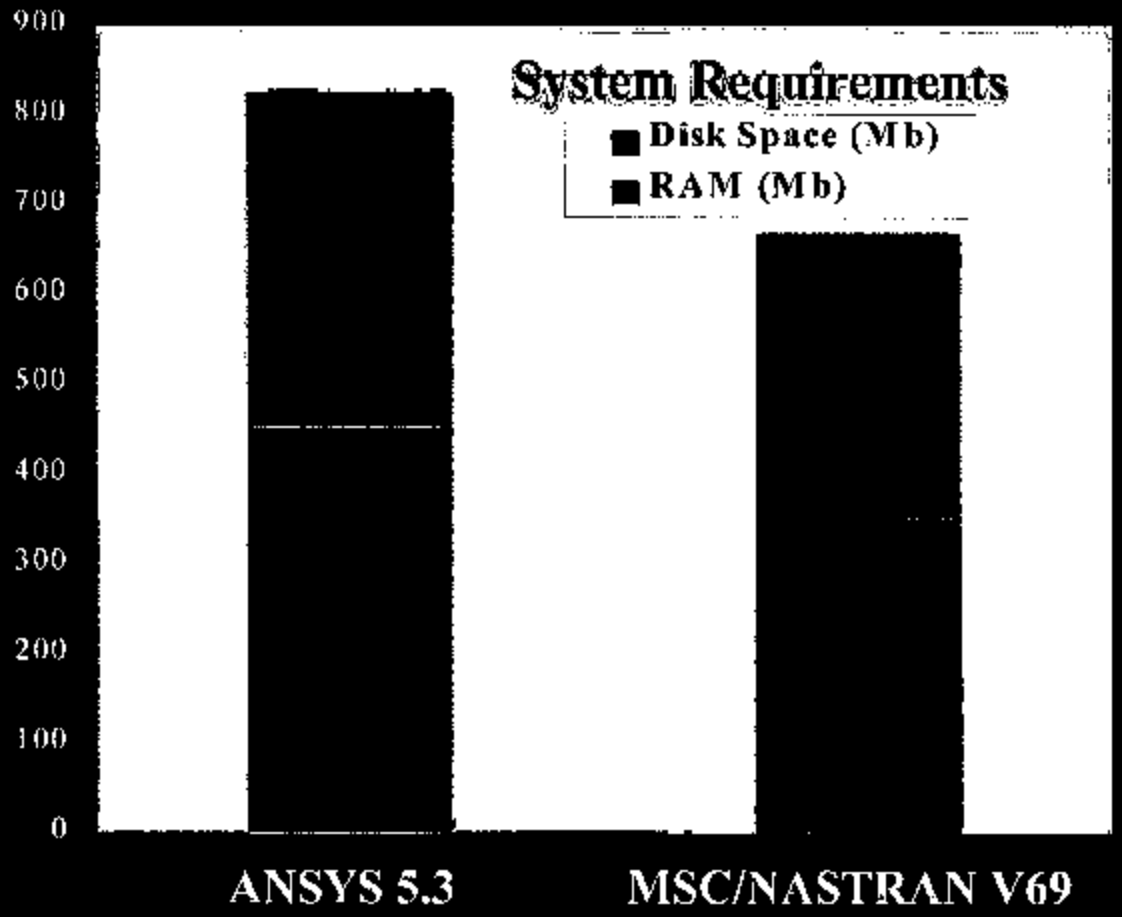


"The Power of Choice!"

ANSYS

Disk Brake Rotor Model

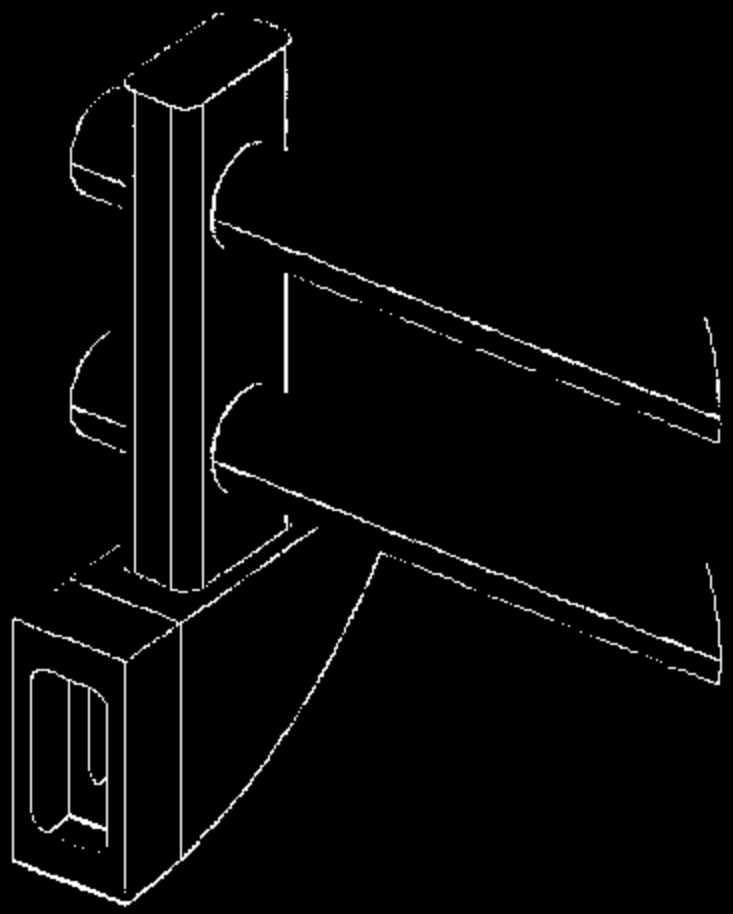
Block Lanczos Modal Solvers



"The Power of Choice!"

ANSYS

Torpedo Tube & Tank Model



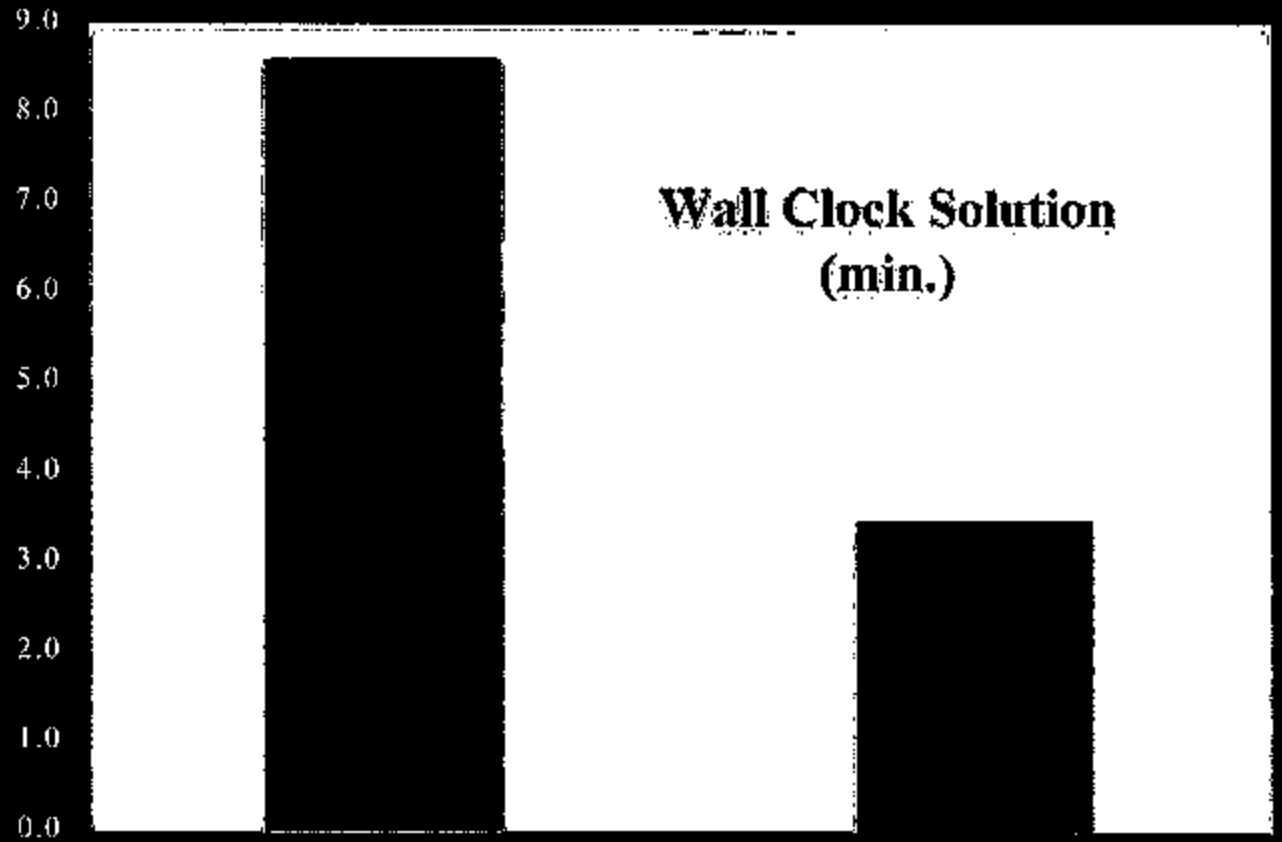
Shell elements
(quad dominant & tri)
71,472 DOF

"The Power of Choice!"

ANSYS

Torpedo Tube & Tank Model

Sparse Solvers - Linear Static

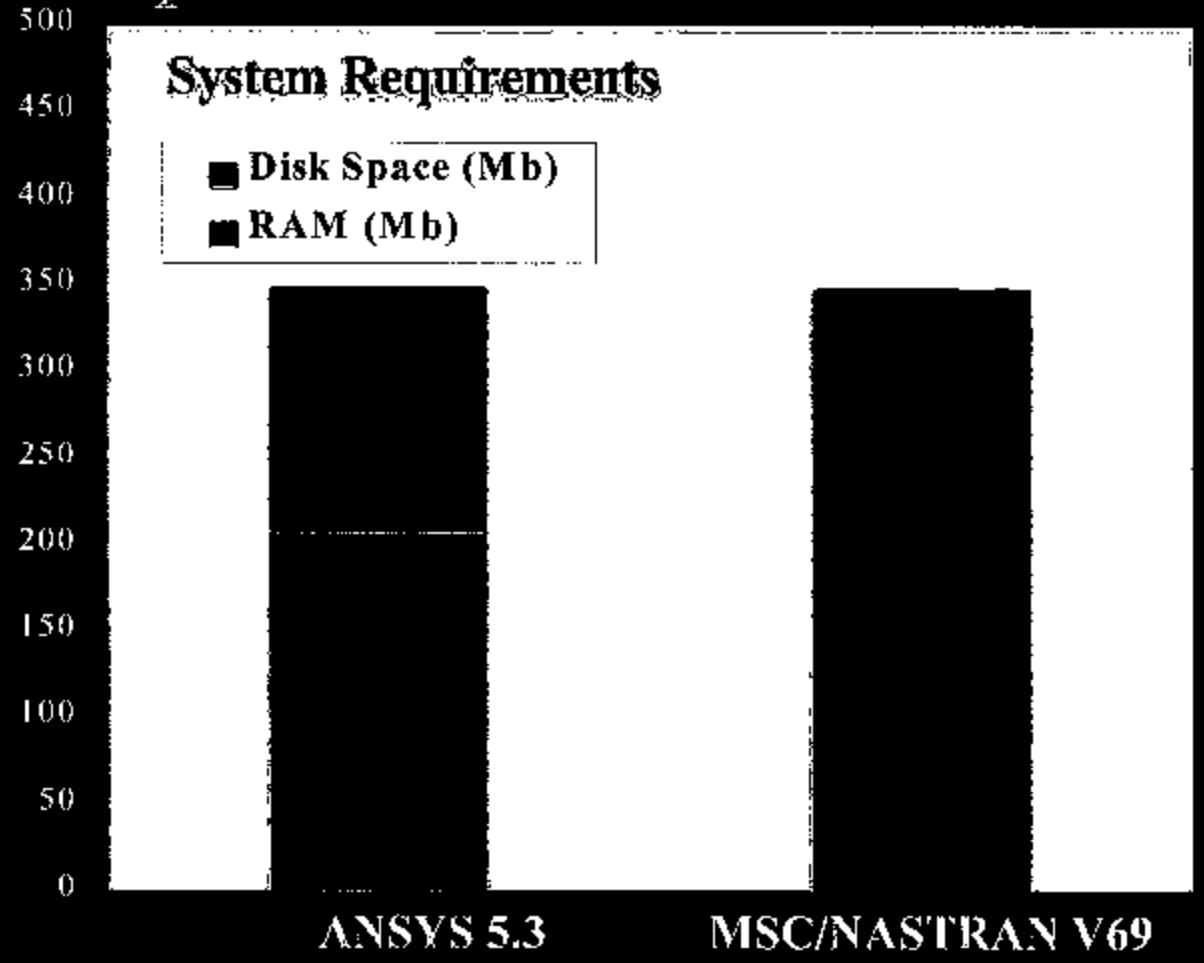


"The Power of Choice!"

ANSYS

Torpedo Tube & Tank Model

Sparse Solvers - Linear Static

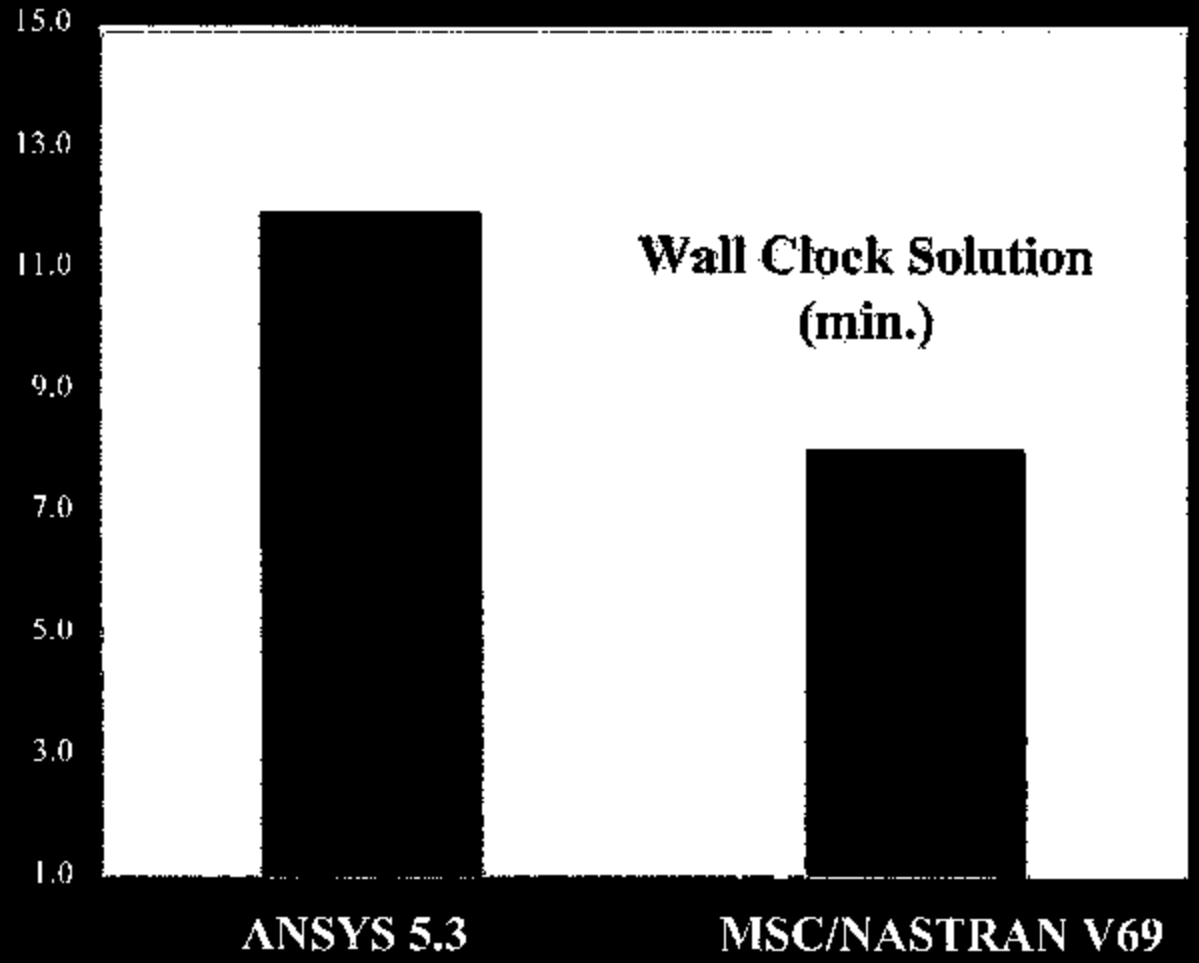


"The Power of Choice!"

ANSYS

Torpedo Tube & Tank Model

Block Lanczos Modal Solvers

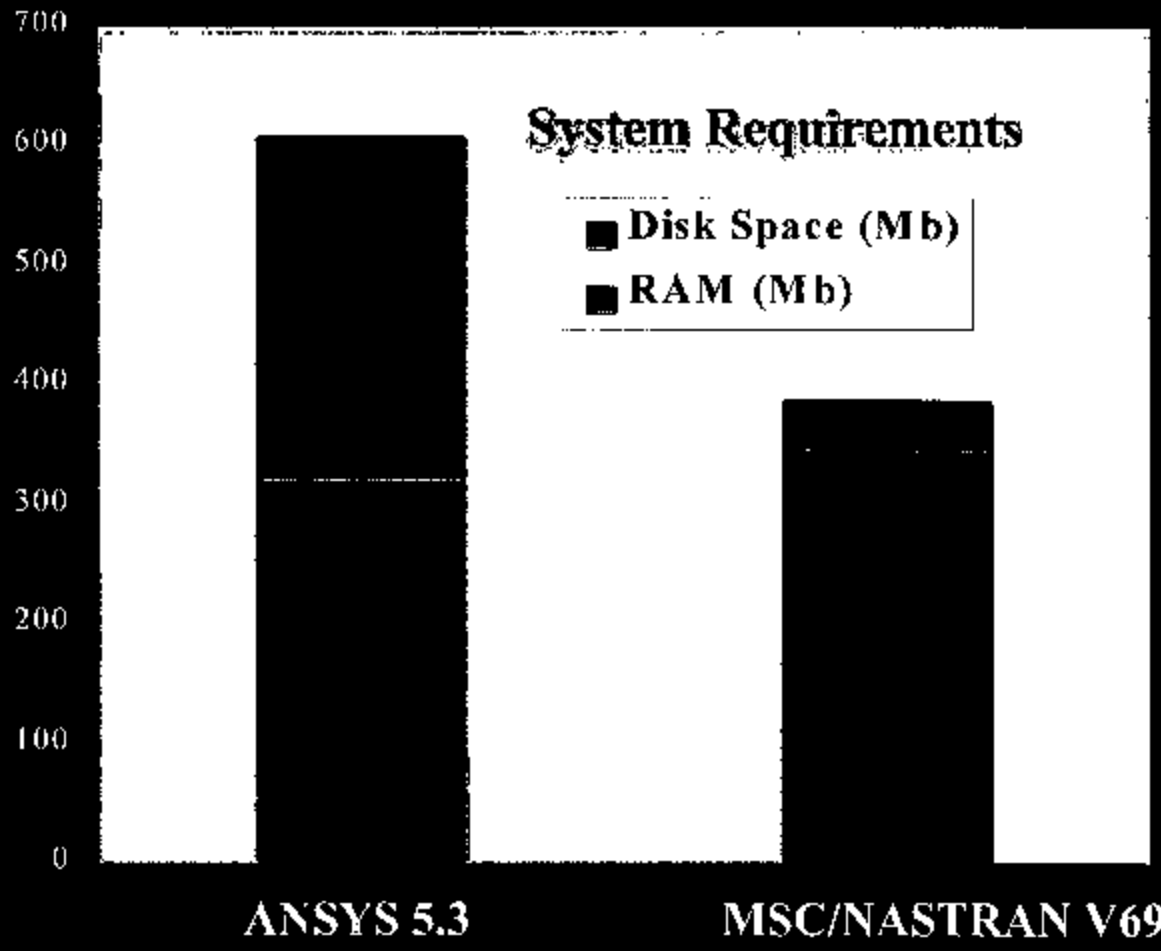


"The Power of Choice!"

ANSYS

Torpedo Tube & Tank Model

Block Lanczos Modal Solvers



"The Power of Choice!"

ANSYS

ANSYS Advantages

- Fastest solvers in the industry
- Most intuitive, easy-to-use pre & post processor in the industry
- Comprehensive Design Optimization capability (size, shape and topological)
- Complete bi-directional integration with the leading CAD companies
- The most reliable code (Validated by ISO 9001 Certification)
- Local support from ASDs (analysis experts and industry consultants)

"The Power of Choice!"

ANSYS

ANSYS vs. MSC Cost Analysis

Functionality	ANSYS	MSC
CAD Interfaces		7,500
Pre&Post Processing		35,000
Linear Static		
Non-Linear		30,000
CFD		NA
Thermal		
Dynamics		
Coupled		NA
Acoustics		
Size Optimization		
Shape Optimization		NA
Topological Optimization		NA
Fatigue		20,000
Electromagnetics		
Network Version		
Total Paid-Up	$ 42,000	$ 92,500

* Pricing based upon typical workstation configuration.

"The Power of Choice!"

ANSYS

ANSYS Strategy

- One Place for all your CAE Needs
- Strong customer driven technology
- Fit into *your* environment: *your* CAD systems, *your* hardware, solve *your* problems.
- Unequaled product support through ASDs
- Flexible open design analysis
- Develop quality products: ISO 9001 certification

"The Power of Choice!"

ANSYS

The NEXT STEP!!!!!

"The Power of Choice!"

ANSYS

The ANSYS Challenge

Develop a Quickstart program:

- Measure design process effectiveness versus industry averages using PQ Assesment
- Identify a project or product for proof of performance
- We'll Provide Professional Consultation
- We'll Provide Competitive Cost Analysis
- Identify the metrics for success
- Attend our customized training class
- Evaluate ANSYS for 60 - 90 days

Take a test drive and put ANSYS to the test!

"The Power of Choice!"

ANSYS

SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

ANSYS, Inc.
c/o David S. Scounda
South Pointe
275 Technology Drive
Canonburg, PA 15317

ANSYS, Inc.
c/o CT Corporation System
1515 Market Street
Suite 1210
Philadelphia, PA 19102

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

Kirkland & Ellis
655 15th Street, NW
Washington, DC 20005
(or at a place to be agreed upon)

4. MATERIAL WILL BE PRODUCED TO

Marimichael O. Skubel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

January 4, 2002 at 12:00 p.m.

6. SUBJECT OF PROCEEDING

In the matter of MSC. Software Corporation, Docket No.9299

7. MATERIAL TO BE PRODUCED

See attached Specifications, Definitions and Instructions

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Marimichael O. Skubel
Kirkland & Ellis
655 15th Street, NW
Washington, DC 20005
(202) 879-5034
Counsel for MSC.Software Corp.

DATE ISSUED

DEC 13 2001

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ *in person.*

○ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

.....

.....

.....

.....

on the person named herein on:

.....
(Month, day, and year)

.....
(Name of person making service)

.....
(Official title)

CERTIFICATE OF SERVICE

This is to certify that on December 18, 2001, I caused a copy of the attached Subpoena Duces Tecum Issued on Behalf of *MSC.Software Corporation* to be sent via registered mail, upon the following persons for service:

ANSYS, Inc.
c/o David S. Secunda
South Pointe
275 Technology Drive
Canonburg, PA 15317

ANSYS, Inc.
c/o CT Corporation System
1515 Market Street
Suite 1210
Philadelphia, PA 19102

This is to further certify that on December 18, 2001, I caused a copy of the attached Subpoena Duces Tecum Issued on Behalf of *MSC.Software Corporation* to be served by hand delivery, upon the following person:

P. Abbott McCartney
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Suite 3033
Washington, DC 20580

Marimichael O. Skubel
Kirkland & Ellis
655 15th Street, N.W.
Washington, DC 20005
Phone: (202) 879-5034
Facsimile: (202) 879-5200

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 company" 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 but under ANSYS's control – 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 under ANSYS's control.

SPECIFICATIONS

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

1. One copy of each organization chart and personnel directory in effect since January 1, 1997, for the company as a whole, and for each of the company's facilities or divisions involved in any activity relating to any Relevant Product or Service.

2. Documents sufficient to identify, for each year, all personnel responsible for, or involved in, (1) the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any Relevant Product or Service; or (2) financial reporting, accounting, analysis for the company.

3. All documents relating to MSC.

4. All documents relating to CSAR.

5. All documents relating to UAI.

6. All documents relating to SAS, Harry G. Schaeffer, Richard H. McNeal, or Michael J. Krauski.

7. All documents relating to Nastran-based FEA solvers.

8. All documents relating to any communications with any third-party concerning MSC's acquisitions of CSAR and UAI or the FTC's investigation or litigation concerning MSC's acquisitions of CSAR and UAI.

9. All documents relating to any communications with the Federal Trade Commission concerning any Relevant Product or Service, MSC's acquisitions of CSAR and UAI, or any actual or potential customer of any Relevant Product or Service.

10. All documents relating to any plan, decision, or effort by ANSYS to offer or develop a Nastran-based FEA Solver.

11. For the company as a whole and for each business unit, product line, and product, one copy of each quarterly or annual budget financial statement, income statement, balance sheet, operating reports, capital investment plans, financial plan or forecast, sales plan or forecast, revenue plan or forecast.

12. All stock analysts' or other investment community analyses, recommendations, or research reports relating to the company, to any Relevant Product or Service, or to computer aided engineering products and services in general.

13. All documents relating to any communications concerning any Relevant Product or Service between or among the company and Daratech or any individual stock analyst or other person engaged in, or associated with, the investment community, including correspondence, press releases, notes, agendas, scripts, transcripts and recordings.

14. All documents relating to any meeting of or decision making by the board of directors or of any board, executive, or management committee concerning any Relevant Product or Service, including:

    a. all announcements of, agendas for, and minutes of any meeting;

    b. all memoranda, reports, presentations, or other documents distributed to or presented to such board or committees, including all documents relied upon to prepare the memorandum, report, or presentation; and

    c. all documents relating to the deliberations and decision making of the board or committee, including notes taken by any persons participating in any such meeting or decision making.

15. All annual or multi-year business or strategic plans prepared by or for an Officer or Director of ANSYS for purposes of analyzing competition for any Relevant Product or Service.

16. All documents relating to (i) plans or activities by any company other than ANSYS to develop, market, or sell any Relevant Product or Service, or (ii) ANSYS's interpretation, analysis, response, reaction, or plans to coordinate, join, or investigate such company's activities or plans.

17. All documents relating to prices of any Relevant Product or Service, excluding actual invoices and signed contracts, but including (i) documents referring to negotiations or bidding for any Relevant Product or Service, (ii) summaries or reports of pricing by ANSYS or any other provider of any Relevant Product or Service; and (iii) documents discussing future pricing plans or projections or historical pricing; and (iv) methodologies, formulae, practices, or policies for determining actual or offered prices.

18. All documents relating to competition in the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any Relevant Product or Service, including all documents relating to:

    a. the market share or competitive position of the company or any of its competitors;

    b. the relative strengths or weaknesses of any person producing or selling any product or service competing with any Relevant Product or Service;

    c. the relative strengths and weaknesses and differences in capabilities, features, enhancements, and modules between or among any Relevant Product or Service;

    d. any actual or potential conditions affecting the supply, demand, entry, cost, price, quality, features, enhancements, modules, or applications relating to any Relevant Product or Service;

    e. efforts to win customers or sales from other companies, or the loss of customers or revenues due to competition or sales by other companies;

    f. the effects of competition from any supplier of any Relevant Product or Service, including MSC, UAI and CSAR, on sales, pricing, revenues, customers, development, features, enhancements, modules, or applications;

    g. customers' use of in-house codes, traditional methods of product testing, or prototyping; and

    h. the use of unlimited usage agreements and paid-up licenses.

19. All documents relating to switching, including shifts in utilization, between or among any Relevant Product or Service and any other product or service, including the relative ease or difficulty of switching; the estimated, projected or actual costs incurred by users to switch; the time required to switch; the degree of switching possible; the effect on a user's price from switching or shifting utilization or threatening to switch or shift or the availability of the opportunity to switch or shift; the cost of switching attributable to lost productivity while gaining proficiency in the new product or service or from use of a less than optimum product or service; the cost of and time required for training; the cost of and time required for translating or converting existing files, models, routines, commands, DMAP alters, or other legacy materials to the new product or service; the effect of switching on customer or collaborator relationships; the effect of unlimited usage contracts or paid up licenses on switching; the possible loss or cost of complementary software used with the product or service; the use, availability, and the availability and effect of translators and AP209 exchange format standards; and governmental, customer, contractual, or industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.

20. All documents relating to actual, attempted, or potential entry into the market for any Relevant Product or Service, including the actual or expected cost likelihood, form and timing of such entry.

21. All documents relating to the design, development, marketing, sale or announcement of any MSC.Nastran product for Windows, and all documents relating to any response, plans, change in strategy or conduct by ANSYS as a result of MSC's offering of an MSC.Nastran for Windows product.

22. Documents sufficient to show, for each year, the number of people involved in (i) technical support, and (ii) research and development; and all documents relating to the need or desire to hire, or the difficulties or issues associated with hiring, additional personnel to assist in research and development activities or technical support.

23. All documents relating to financial or economic methodologies, formulae, or performance models or criteria used by the company or any person for valuing or determining the purchase prices for any actual, attempted, or potential acquisitions, divestitures, joint ventures, alliances, or mergers of any kind involving the licensing or sale of any Relevant Product or Service.

24. All documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, or promoting the use of any particular Relevant Product or Service.

25. Documents sufficient to identify or describe, for each year, the customers who purchased any Relevant Product or Service from ANSYS, the products such customers purchased, the

amount of such purchases, and the projects for which such products or services were used.

26. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Relevant Product or Service for the period January 1, 1997, to the present, including:

    a. the date of transaction,

    b. the amount of the transaction,

    c. the quantity,

    d. the type and duration of the contract or license,

    e. a description of each product or service licensed or sold (including product number or code),

    f. the contract number,

    g. the location, including physical address and serial number, of the computer where the software is located or service rendered,

    h. the SIC code, trade or industry category, and business group of the customer, and

    i. the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.

27. For each Relevant Product or Service offered for sale or licensing, all selling aids and promotional materials and all manuals, including instructional and installation manuals.

28. Documents sufficient to describe each Relevant Product or Service offered by ANSYS, including the functionality of each such product or service and the types of projects for which each such product or service is suitable.

29. Documents sufficient to show or describe the following:

    a. all document retention and destruction systems, policies, procedures, and practices of the company (including all documents sufficient to identify each instance where the company's document retention policy has not been followed);

    b. the persons responsible for managing such systems, policies, procedures, or capabilities;

c. all electronic data and document management information systems of the company;

d. all network-accessible documents, information and financial data systems;

e. all backup procedures; and

f. the process and cost of recovery of backup files, including documents sufficient to show:

(i) the cost of recovery of backup files generally; and

(ii) the cost of recovery of backup files containing documents responsive to this document Subpoena.

DEFINITIONS

1. The term "the company" or "ANSYS" means ANSYS, Incorporated, its domestic and foreign parents, predecessors, successors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.

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.

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.

5. The term "SAS" means Shaeffer Automated Simulation, LLC, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing.

6. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. 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 company. 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.

7. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

8. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.

9. 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 desired as a basis for providing the requested information, MSC is prepared to discuss the form and content of such summaries, compilations, lists, or synopses in order to minimize burden.

10. The terms "and" and "or" have both conjunctive and disjunctive meanings.

11. The terms "each," "any," and "all" mean "each and every."

12. The term "including" means including but not limited to.

13. 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.

14. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.

15. The term "agreement" or "contract" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

16. 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.

17. The term "Relevant Product or Service" as used herein means any software product that contains FEA software (either as a stand-alone product or embedded as part of a broader software product) and any services provided in connection with or relating to FEA software,

including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation. The term "Relevant Product or Service" also includes all computer aided design (CAD) software that functions as a FEA software.

18. The term "Nastran" means all software products, regardless of platform on which the software operates, based in whole or in part on the Nastran code or Nastran kernel developed originally either by the National Aeronautical and Space Administration ("NASA") or by any person acting pursuant to a development contract with NASA, and includes any program released into the public domain by NASA or the University of Georgia; all value-added enhancements, features, modules, applications, applications programming interfaces, programming languages, and Direct Matrix Abstraction Programming ("DMAP") for any Nastran product; all products that integrate or combine Nastran with any other product; and all services relating to Nastran, including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation for Nastran products. The term also includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, Working Model, Elfini, GPS, Cosmos, or any other solver licensed or sold by MSC.

19. The term "FEA software" means all software products offering finite element analysis, including Nastran, 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 1-800 consultation for FEA products. The term "FEA software" includes, but is not limited to, software that has embedded FEA solver functionality, or any computer aided design (CAD) software that competes with can be perform functions similar to an FEA solver.

20. The term "minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the relevant product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

21. The term "non-recoverable costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

INSTRUCTIONS

1. Except for privileged material, the company 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 company 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 company must submit legible copies. However, if the coloring of any document communicates substantive information, the company 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 company 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 determine 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. counsel for 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). Counsel for 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, counsel for 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. Counsel for MSC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. Counsel for 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.**

e. Virus Checks: Media will be scanned for computer viruses. Infected media will be returned for replacement.

6. As to Specification No. 26, submit all computer data in machine readable form in Excel (.xls) 2000 or prior version, or Lotus-compatible (.wk1) format, or in ASCII delimited, comma separated or fixed length field format, with field names as the first record.

7. The company shall mark each submitted page or sheet with its corporate identification, *i.e.*, ANSYS, and with consecutive document control numbers.

8. Responsive documents from each person's files shall be produced together in file folders that segregate the person's files. Documents responsive to Specification No. 16 shall be produced in file folders segregated by customer and in chronological order within each customer file.

9. For each box containing responsive documents the company 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.

10. Where identical copies are found in more than one person's files, the company must produce one copy from each person's files, or otherwise identify the person from whom identical copies of the document are found.

11. If it is claimed that any document, or portion thereof, responsive to any request or Specification 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 or Specification 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.

12. If there are no documents responsive to any particular request or Specification, the company shall state so in its answer to the document request or Specification.

13. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business, but the company 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.

14. In lieu of original documents, the company may submit legible copies of documents so long as the company verifies with the attached form that they fully and accurately represent the originals.

15. To furnish a complete response, the person supervising compliance with this Subpoena must submit a signed and notarized copy of the attached verification form along with the responsive materials.

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

Kirkpatrick & Lockhart LLP

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December 27, 2001

Thomas A. Donovan
412.355.8466
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tdonovan@kl.com

VIA FACSIMILE

Tefft W. Smith, Esquire
Kirkland & Ellis
655 Fifteenth Street, N.W., Suite 1200
Washington, DC 20005

Re: ANSYS, Inc.

Dear Mr. Smith:

In our telephone conversation on the afternoon of December 26, 2001, I proposed that the deadline for ANSYS, Inc. ("ANSYS") to file a motion to quash the subpoena dated December 18, 2001 which you served on behalf of MSC.Software Corporation ("MSC") (the "Subpoena") and ANSYS' response date under the Subpoena both be postponed until January 31, 2002. You indicated that you could agree to such extensions depending upon what ANSYS expects to produce in a rolling production.

ANSYS would expect to produce in a rolling production prior to January 31, 2002 non-privileged documents among the following types of materials:

1. Any files in the executive offices at ANSYS' headquarters which are filed under the names of MSC, CSAR or UAI;

2. A corporate organization chart for ANSYS;

3. Documents relating to the relationship with Schaeffer Automated Simulation, LLC, announced in ANSYS' November 27, 2001 press release;

4. Readily available and readily identifiable documents, if any, located in the executive offices within ANSYS' headquarters in which Nastran-based FEA solvers are the primary subject of discussion;

5. Any readily available and readily identifiable documents concerning MSC's acquisitions of CSAR or UAI which are contemporaneous with those acquisitions;

6. Non-privileged documents, if any, responsive to paragraphs 9 and 10 of the Subpoena; and

7. Readily available and readily identifiable documents in ANSYS' headquarter offices relating to any efforts by ANSYS to persuade customers to switch from Nastran-based solvers to the ANSYS Solver products.

Circumstances at this time do not permit us to estimate when any of the foregoing materials would be available. However, further discussions with my client, as well as discussions with counsel for MSC, can be expected to identify additional materials that can be produced on a rolling basis.

Please let me know at your earliest convenience whether you are prepared to stipulate to an extension of the two deadlines to January 31, 2002 so that we will know how to proceed with respect to the filing of an appropriate motion on December 28, 2001.

Very truly yours,

Thomas A. Donovan

TAD/drt

KIRKLAND & ELLIS
PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

655 Fifteenth Street, N.W.
Washington, D.C. 20005-5793

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To Call Writer Directly:
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(202) 879-5000

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December 27, 2001

VIA FACSIMILE

Thomas A. Donovan, Esq.
Kirkpatrick & Lockhart, LLP
535 Smithfield Street
Pittsburgh, PA 15222-2312

Re: *In the matter of MSC.Software Corporation*, Docket No. 9299 (F.T.C.)

Dear Tom:

I write in response to the proposal you sent today concerning ANSYS' response to MSC's subpoena. We cannot agree to your proposal as written. However, as we indicated, we are not trying to be unreasonable, and we remain eager to work with you to minimize the burden on ANSYS consistent with our need to defend MSC in this case. Thus, if ANSYS agrees to the modifications to your proposal that are outlined below, MSC will agree to extend the time for ANSYS to move to quash or otherwise respond to the subpoena until January 31, 2002.

Such an agreement would be made with the understanding that counsel for MSC and ANSYS would continue to negotiate the final scope of the subpoena in good faith between now and January 31, 2002. Such an agreement would also be without prejudice to MSC's right to enforce the subpoena as written or to oppose any motion to quash filed by ANSYS.

In order for such an agreement to be acceptable to MSC, ANSYS would need to agree to the following minor modifications to your proposal:

1. You proposed that ANSYS would produce "[a]ny files in the executive offices at ANSYS' headquarters which are filed under the names of MSC, CSAR, or UAI." This is too narrow, as it would exclude many highly relevant documents. At a minimum, we expect ANSYS to produce all documents located in the executive offices of ANSYS' headquarters that relate to MSC, CSAR, UAI, or Schaeffer Automated Simulation, LLC ("SAS"). Such production should include all e-mails and other electronic data that relate to MSC, CSAR, UAI, or SAS.

2. You proposed that ANSYS would produce "[a] corporate organization chart for ANSYS." Without waiving the right to seek any additional documents, we have no modification to this proposal at this time.

3. You proposed that ANSYS would produce "[d]ocuments relating to the relationship with Schaeffer Automated Simulation, LLC, announced in ANSYS' November 27, 2001 press release." Without waiving the right to seek any additional documents, we have no modification to this proposal at this time.

4. You proposed that ANSYS would produce "[r]eadily available and readily identifiable documents, if any, located in the executive offices within ANSYS' headquarters in which Nastran-based FEA solvers are the primary subject of discussion." The use of the qualifiers "readily available," "readily identifiable," and "primary" are vague and ambiguous and do not permit a full understanding of the types of documents that ANSYS is agreeing to produce. Before we can agree to this proposal, you will need to clarify how you meant these qualifiers to limit the scope of ANSYS' search or production.

5. You proposed that ANSYS would produce "[a]ny readily available and readily identifiable documents concerning MSC's acquisitions of CSAR or UAI which are contemporaneous with those acquisitions." Without waiving the right to seek any additional documents, we would be willing to agree to this proposal subject to clarification of, and agreement on, the terms "readily available" and "readily identifiable."

6. You proposed that ANSYS would produce "[n]on-privileged documents, if any, responsive to paragraphs 9 and 10 of the Subpoena." Without waiving the right to seek any additional documents, we would be willing to agree to this proposal so long as any privileged documents (responsive to this or any other request) withheld from production are reported on a privilege log.

7. You proposed that ANSYS would produce "[r]eadily available and readily identifiable documents in ANSYS' headquarter offices relating to any efforts by ANSYS to persuade customers to switch from Nastran-based solvers to the ANSYS Solver products." Without waiving the right to seek any additional documents, we

would be willing to agree to this proposal subject to clarification of, and agreement on, the terms "readily available" and "readily identifiable."

If you agree to these modifications, we would expect, as you indicated during our conversation on December 26, 2001, that responsive documents will be produced on a rolling basis with production of all such documents completed by January 31, 2002. Also, we request that ANSYS produce all other documents responsive to the subpoena, as written, to the extent that such documents are identified during the search for any of the documents identified above. We believe that this will reduce ANSYS' burden of having to re-search any files after the final scope of the subpoena is fully negotiated.

Please let me know as soon as possible if these modifications are acceptable.

Sincerely,

Colin R. Kass

Kirkpatrick & Lockhart LLP

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December 28, 2001

Thomas A. Donovan
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tdonovan@kl.com

Colin R. Kass, Esquire
Kirkland & Ellis
655 Fifteenth Street, N.W. Suite 1200
Washington, DC 20005

RE: In Re MSC.Software Corporation

Dear Mr. Kass:

Thank you for your letter dated December 27, 2001. While we do not seem to be too far apart on substance, the verbiage-gap is wider than we can bridge in the time available to do so. Accordingly, we will proceed to file ANSYS' motion for an extension without representing that it has your consent.

I suggest that we sit down face-to-face as soon as possible to discuss the substance of your subpoena. Please let us know when you and your colleagues would be available to meet in Pittsburgh. Consideration should be given to whether having in attendance at the meeting business people intimately familiar with the facts of the marketplace would not hasten our arrival at a definition of responsive materials which would meet your realistic needs without imposing undue burdens on ANSYS.

Sincerely,

Thomas A. Donovan

TAD/drt

PI-790812 v1 0218480-0001

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

PROPOSED ORDER

UPON CONSIDERATION of Third-Party ANSYS, Inc.'s Motion to Extend Time to Respond and/or Move to Limit or Quash Subpoena *Duces Tecum* served by MSC.Software Corporation,

IT IS HEREBY ORDERED that such Motion is DENIED;

IT IS FURTHER ORDERED that Third-Party ANSYS, Inc. ("ANSYS) shall respond to the subpoena served upon it by Respondent MSC.Software Corporation ("MSC") or shall move to quash such subpoena by January 14, 2002;

IT IS FURTHER ORDERED that MSC shall respond to any such motion to quash filed by ANSYS by January 21, 2002;

IT IS FURTHER ORDERED that any motion to quash filed by ANSYS shall be heard on January 23, 2002; and

IT IS FURTHER ORDERED that ANSYS shall produce on a rolling basis, but no later January 31, 2002, all documents responsive to the specifications set forth in either ANSYS's letter dated December 27, 2001 or MSC's letter dated December 27, 2001, which are attached as Exhibits

C and D to MSC's Response to ANSYS's Motion For an Extension of Time to Either Respond or Move to Quash Subpoena *Duces Tecum*.

Dated: This ___ day of January, 2002

D. Michael Chappell
Administrative Law Judge