

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



\_\_\_\_\_) )  
In the Matter of ) )  
 ) )  
MSC.SFTWARE CORPORATION, ) Docket No. 9299  
a corporation. ) )  
\_\_\_\_\_)

**SECOND REVISED SCHEDULING ORDER**

At the status conference on April 25, 2002, the parties raised requests for revisions to the current scheduling order. The parties were urged to file a joint motion by April 26, 2002, and required, to the extent that they could not agree to the revisions each side sought, to file separate motions to revise the scheduling order by April 26, 2002, and any oppositions thereto by April 30, 2002. On April 26, 2002, Respondent MSC.Software ("MSC") filed a motion seeking modifications to the current scheduling order. Also on April 26, 2002, Complaint Counsel filed an opposition to Respondent's motion. On April 30, 2002, MSC filed a reply in support of its motion.

On May 1, 2002, Complaint Counsel filed a response to MSC's motion for a second amended scheduling order. Complaint Counsel was required to file any response to MSC's motion by April 30, 2002. This opposition, which was filed on May 1, 2002, is untimely and will not be considered. Also on May 1, 2002, MSC filed a request for leave to file a supplemental memorandum in support of its motion to amend the scheduling order. This request is denied and the supplement will not be considered.

In consideration of the April 26, 2002 pleadings of Complaint Counsel and of MSC and the April 30, 2002 reply of MSC, the Revised Scheduling Order, previously entered on March 5, 2002, is hereby revised to establish the following deadlines.

The "Additional Provisions" from the November 13, 2001 Scheduling Order remain in place. The parties may take the depositions of third parties listed on the opposing parties' final witness list beyond the close of discovery deadline only upon a showing of good cause.

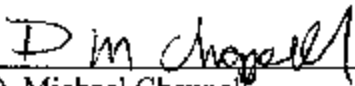
- April 30, 2002 - Respondent's Counsel provides supplemental revised witness list, if necessary, including preliminary sur-rebuttal witnesses, with description of proposed testimony.

- May 6, 2002 - Respondent's Counsel provides supplemental expert witness reports, if necessary.
- May 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.
- May 20, 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).
- May 28, 2002 - Parties that intend to offer into evidence at the hearing confidential materials of an opposing party or non-party must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- May 28, 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.
- June 4, 2002 - 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.
- June 5, 2002 - Status conference to report on discovery and settlement negotiations, if requested by the parties.
- June 7, 2002 - Deadline for depositions of experts (including rebuttal experts).
- June 10, 2002 - Complaint Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- June 11, 2002 - Deadline for filing motions *in limine* and motions to strike.

- June 11, 2002 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- June 12, 2002 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition and counter designations to Complaint Counsel's designations, 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 and counter designations to be presented by deposition, and a brief summary of the testimony of each witness.
- June 17, 2002 - Respondent's Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- June 17, 2002 - Complaint Counsel provides to Respondent's counsel and serves courtesy copies on ALJ its counter designations to be presented by deposition.
- June 19, 2002 - Deadline for filing responses to motions *in limine* and motions to strike.
- June 19, 2002 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- June 20, 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.
- June 20, 2002 - Exchange proposed stipulations of law, facts, and authenticity.
- June 24, 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).
- June 25, 2002 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.

- July 2, 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. Trial exhibits will be admitted or excluded to the extent practicable.
- July 9, 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.

ORDERED:

  
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D. Michael Chappell  
Administrative Law Judge

Date: May 3, 2002