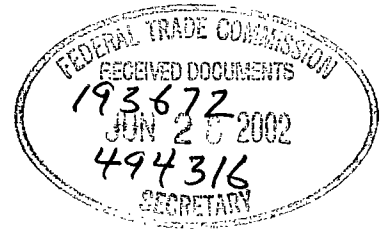


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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



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Docket No. 9299
PUBLIC

**UNITED TECHNOLOGIES CORPORATION'S
MOTION FOR IN CAMERA TREATMENT OF DOCUMENTS**

Third party United Technologies Corporation ("UTC") hereby moves for *in camera* treatment for three documents identified as UTC 1585-1599, UTC 1600-1606, and UTC 1616-1640 in the above-captioned matter. These documents contain information that (1) is confidential and highly sensitive from a business perspective relating to the proprietary technology UTC uses in manufacturing aeroengines, (2) would severely impair UTC's ongoing and future negotiations with other software vendors to the detriment of UTC, or (3) concerns a defense program and UTC believes that this specific information may be covered by 32 CFR § 250: Withholding of Unclassified Technical Data from Public Disclosure and Department of Defense Directive No. 5230.24, and should not be disseminated to the public without the prior permission of the Department of Defense ("DoD").

Counsel for UTC has discussed this motion with Counsel for MSC.Software Corporation ("MSC"), who does not oppose it. Complaint Counsel was provided an

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**UNITED TECHNOLOGIES CORPORATION'S
MOTION FOR *IN CAMERA* TREATMENT OF DOCUMENTS**

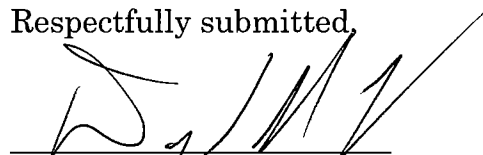
Third party United Technologies Corporation (“UTC”) hereby moves for *in camera* treatment for three documents identified as UTC 1585-1599, UTC 1600-1606, and UTC 1616-1640 in the above-captioned matter. These documents contain information that (1) is confidential and highly sensitive from a business perspective relating to the proprietary technology UTC uses in manufacturing aeroengines, (2) would severely impair UTC’s ongoing and future negotiations with other software vendors to the detriment of UTC, or (3) concerns a defense program and UTC believes that this specific information may be covered by 32 CFR § 250: Withholding of Unclassified Technical Data from Public Disclosure and Department of Defense Directive No. 5230.24, and should not be disseminated to the public without the prior permission of the Department of Defense (“DoD”).

Counsel for UTC has discussed this motion with Counsel for MSC.Software Corporation (“MSC”), who does not oppose it. Complaint Counsel was provided an

advance copy of these motion papers and informed us that the FTC takes no position with respect to the motion.

The facts and authorities in support of this motion are set forth in the supporting memorandum and the accompanying declaration of Raymond B. Wilson.

Respectfully submitted,



Wm. Randolph Smith
David M. Schnorrenberg
Michael G. Van Arsdall
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1001 Pennsylvania Avenue, N.W.
Washington, DC 20007
Telephone: (202) 624-2500
Facsimile: (202) 628-5116

Counsel for United Technologies Corporation

Dated: June 28, 2002

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**MEMORANDUM IN SUPPORT OF
UNITED TECHNOLOGIES CORPORATION'S
MOTION FOR *IN CAMERA* TREATMENT OF DOCUMENTS**

United Technologies Corporation (“UTC”) moves for *in camera* treatment for three documents identified as UTC 1585-1599, UTC 1600-1606, and UTC 1616-1640 in the above-captioned matter. UTC is a third party to these proceedings and has cooperated with both the Federal Trade Commission (“FTC” or “Commission”) and MSC in this matter. UTC has been burdened and has incurred significant expense for more than two years; it searched for and produced documents totaling almost 2,000 pages. Moreover, of the nearly 550 pages of UTC documents identified as potential trial exhibits by Complaint Counsel and Counsel for MSC, UTC has focused narrowly on the information for which it seeks *in camera* treatment. UTC seeks *in camera* treatment only for information that (1) is confidential and highly sensitive from a business perspective relating to the proprietary technology UTC uses in manufacturing aeroengines, (2) would severely impair UTC’s ongoing and future negotiations with other software vendors to the detriment of UTC, or (3)

concerns a defense program and may be covered by 32 CFR § 250: Withholding of Unclassified Technical Data from Public Disclosure and Department of Defense Directive No. 5230.24, which should not be disseminated to the public without the prior permission of the Department of Defense (“DoD”).

This motion has been discussed with Counsel for MSC, who does not oppose *in camera* treatment for the documents discussed in the motion. Complaint Counsel was provided an advance copy of these motion papers and informed us that the FTC takes no position with respect to the motion.

STANDARD FOR *IN CAMERA* TREATMENT

Under Commission Rule 3.45(b), *in camera* protection should be afforded to documents upon a showing that “public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b); *see also In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999) (same). An applicant faces serious injury “when the documents in question are secret and material to the applicant’s business” *In the Matter of Bristol-Meyers*, 90 F.T.C. 455, 456 (1977) (articulating 6-factor test for determining secrecy and materiality). “The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *Hoechst Marion Russell, Inc.*, 2000 F.T.C. LEXIS 138, *6 (2000).

Once it is determined that *in camera* treatment should be accorded, the court must determine the duration for which material will be held *in camera*. *See id.* at *6-7. In making this determination, trade secrets – *i.e.*, secret formulas, processes,

and other secret technical information – are granted a higher degree of protection than ordinary business records. *See id.*

**DOCUMENTS IDENTIFIED AS UTC 1585-1599, UTC 1600-1606, AND
UTC 1616-1640 WARRANT IN CAMERA TREATMENT**

UTC seeks *in camera* treatment for only three documents out of the roughly 550 pages of documents identified by Complaint Counsel and Counsel for MSC as potential trial exhibits. Consistent with the FTC’s standards, UTC has gone to great lengths to narrow the scope of information and the number of specific documents for which it seeks *in camera* protection. *Compare In the Matter of Hoechst Marion Roussel, Inc.*, 2000 F.T.C. LEXIS 157 (noting that the “overwhelming defect with Respondents’ requests for *in camera* treatment is that they seek *in camera* treatment for enormous numbers of documents.”) Moreover, in support of its motion for *in camera* treatment, UTC submits the declaration of Raymond B. Wilson (Attachment A) to explain the factual basis for this request.

A. UTC 1585-1599

The first document for which UTC seeks *in camera* treatment is identified as UTC 1585-1599. This document is an agreement between UTC’s Pratt & Whitney (“P&W”) division and a major airframe manufacturer that is one of P&W’s most important aeroengine customers. Wilson Decl. ¶3. This document contains sensitive information relating to a next generation engine at P&W, specifically the methods used to analyze this engine and the timeframe required to perform certain tasks. Wilson Decl. ¶3. This information is not publicly available, and its

disclosure would give competitors an unfair advantage *vis-à-vis* UTC. Wilson Decl. ¶3. This type of “trade secret” information, which includes “processes, and other secret technical information,” is entitled to a higher degree of protection. *Hoechst Marion Russell, Inc.*, 2000 F.T.C. LEXIS 138, *7.

It is important to note that the manufacture and sale of aeroengines is a highly competitive business, and that UTC spends enormous resources on the design and development of aeroengines. Wilson Decl. ¶6. Thus, it is imperative to P&W's and to UTC's business that its proprietary information and trade secrets in this arena not be made public. Wilson Decl. ¶3.

Notwithstanding the fact that this document dates from July 1999, the methods, procedures, and timeframes identified in this document remain current today. Wilson Decl. ¶3. The continued sensitivity of the information contained in this document is due in part to the fact that the design and manufacture of aeroengines is an extremely complex and lengthy process, employing methods that can remain in place for years. Wilson Decl. ¶3. Due to the longevity of the technical information contained in this document, UTC requests that it continue to receive *in camera* treatment at least until July 2009. Wilson Decl. ¶3; *see also In the Matter of Hoechst Marion Roussel, Inc.*, 2000 F.T.C. LEXIS 157, *6 (noting that “[e]xamples of documents meriting indefinite *in camera* treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged”).

B. UTC 1600-1606

The second document for which UTC seeks *in camera* treatment is identified as UTC 1600-1606. This document summarizes contract negotiations with a software vendor with whom UTC has a continuing business relationship, and with whom UTC is currently in the process of negotiating a new contract. Wilson Decl. ¶4. This document identifies UTC's future software needs (*see e.g.* UTC 1602), and goes into specific details of UTC's negotiating position and strategy for the contract that is currently being negotiated. Wilson Decl. ¶4. Thus, this information implicates future negotiations beyond those currently underway. The information contained in this document is not publicly available, and its disclosure would give the other party to these negotiations an unfair negotiating advantage *vis-à-vis* UTC by disclosing information that would undermine UTC's bargaining position. Wilson Decl. ¶4. This Court has held that "[t]he likely loss of business advantages is a good example of a 'clearly defined, serious injury,'" worthy of *in camera* treatment. *Hoechst Marion Russell, Inc.*, 2000 F.T.C. LEXIS 138, *6. Due to the fact that this document identifies long-term software needs of UTC well beyond 2002, UTC requests that this document maintain *in camera* protection until at least September 2011. Wilson Decl. ¶4.

C. UTC 1616-1640

The third document for which UTC seeks *in camera* treatment is identified as UTC 1616-1640. This document contains information concerning a defense program. This document contains graphs and pictures showing the geometry and

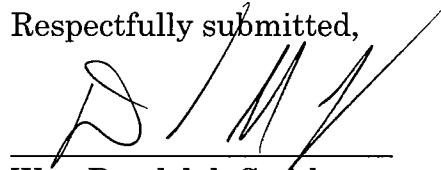
results of studies for the fan blade of a military aircraft. Wilson Decl. ¶5. UTC believes it may be forbidden from disseminating this information to the public without prior permission from the Department of Defense pursuant to 32 CFR § 250: Withholding of Unclassified Technical Data from Public Disclosure, and Department of Defense Directive No. 5230.24. Moreover, the pictures and graphs depicting the geometric analysis of these military programs are immaterial to the issues involved in the present litigation, and thus should not be important in explaining the rationale of a decision in this matter. *See In the Matter of General Foods Corp.*, 95 F.T.C. 352, 1980 FTC LEXIS 99, *10 (explaining that “the importance of the information in explaining the rationale of our decisions,” is the principal countervailing factor in determining whether to disclose information that is likely to cause serious competitive injury).

Further, UTC requests *in camera* treatment of this document until such time as permission is sought by the litigants and granted by the DoD. Generally, indefinite *in camera* treatment is granted only in unusual circumstances where the sensitivity of the information “will not diminish with the passage of time.” *In the Matter of Hoechst Marion Roussel, Inc.*, 2000 F.T.C. LEXIS 157, *6. In this case, the DoD is best positioned to determine when the information contained in this document is no longer sensitive and may be disseminated to the public. Thus, UTC does not believe it is appropriate to specify a time after which *in camera* protection is unnecessary.

CONCLUSION

For the reasons set forth herein, UTC respectfully requests *in camera* treatment for the three documents identified as UTC 1585-1599, UTC 1600-1606, and UTC 1616-1640.

Respectfully submitted,



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Counsel for United Technologies Corporation

Dated: June 28, 2002

CERTIFICATE OF SERVICE

This is to certify that on June 28, 2002, I caused a paper original and one copy as well as an electronic version of the foregoing Public Version of UTC's Motion for *In Camera* Treatment of Documents and memorandum in support thereof to be filed with the Secretary of the Commission and two paper copies to be served by hand delivery, upon:

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

and one paper copy to be served upon the following counsel by hand delivery:

Richard B. Dagan
Assistant Director
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

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

Bradford Biegon
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, DC 20005



Michael G. Van Arsdall

UNITED STATES OF AMERICA
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**ORDER GRANTING UNITED TECHNOLOGIES CORPORATION'S
MOTION FOR *IN CAMERA* TREATMENT OF DOCUMENTS**

Upon consideration of United Technologies Corporation's ("UTC") motion for *in camera* treatment of documents, it is hereby ORDERED that UTC's Motion is GRANTED.

IT IS FURTHER ORDERD, that the document identified as UTC 1585-1599 will receive *in camera* treatment until July 1, 2009, the document identified as UTC 1600-1606 will receive *in camera* treatment until September 1, 2011, and the document identified as UTC 1616-1640 will receive *in camera* treatment until such time as permission is granted by the Department of Defense to release the information contained therein.

D. Michael Chappell
Administrative Law Judge

Dated: June __, 2002

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**DECLARATION OF RAYMOND B. WILSON IN SUPPORT OF
UNITED TECHNOLOGIES CORPORATION'S MOTION
FOR *IN CAMERA* TREATMENT OF DOCUMENTS**

RAYMOND B. WILSON, declares as follows:

1. I am Associate Fellow at Pratt & Whitney ("P&W"), a division of United Technologies Corporation ("UTC").

2. Based on my personal knowledge I submit this declaration in support of United Technologies application for *in camera* treatment of specific documents, which contain proprietary information, information that is competitively sensitive, and information that concerns a defense program. These documents, which are attached as Exhibits 1-3 hereto, are identified as:

- a. UTC 1585-1599 (Ex. 1);
- b. UTC 1600-1606 (Ex. 2); and
- c. UTC 1616-1640 (Ex. 3).

3. *In camera* treatment is imperative. The document identified as UTC 1585-1599 is an agreement between P&W and a major airframe manufacturer that is one of P&W's most important aeroengine customers. This document contains sensitive information relating to a next generation engine at P&W, specifically the methods used to analyze this engine and the timeframe required to perform certain tasks. This information is not publicly available, and its disclosure would give competitors an unfair advantage *vis-à-vis* UTC in that it would reveal the timeframes required by UTC and methods utilized to perform certain tasks associated with analyzing this engine. Notwithstanding the fact that this document dates from July 1999, the methods, procedures, and timeframes identified in this document remain current today. Thus, the information contained therein remains contemporary. Moreover, the design and manufacture of aeroengines is an extremely complex and lengthy process. The methods employed in this process can remain in place for years. It is, therefore, imperative the information in this document continue to receive *in camera* treatment at least until July 2009; this period would be consistent with UTC's internal company policy regarding the requisite confidentiality period for commercially sensitive information in the aeroengine business.

4. The document identified as UTC 1600-1606 summarizes contract negotiations with a software vendor with whom UTC has a continuing business relationship and with whom UTC is currently in the process of negotiating a new contract. The negotiations discussed in this document are ongoing and relate to

UTC's future software needs. This document goes into specific details of UTC's negotiating position and strategy. The information contained in this document is not publicly available, and its disclosure would give the other party to these negotiations, an unfair advantage *vis-à-vis* UTC by disclosing information that would undermine UTC's bargaining position. For example, the document indicates UTC's future needs for certain software. *See, e.g.,* UTC 1602. The vendor is not aware of UTC's future needs and such information would give the vendor an unfair advantage in the current negotiations. Moreover, this document identifies UTC's software needs beyond 2002, which implicates future negotiations with vendor concerning UTC's future business needs. Thus, it is imperative that this document maintains *in camera* protection until at least September 2011, which would be consistent with UTC's internal policy for the time period for maintaining confidential information in the aeroengine development business.

5. The document identified as UTC 1616-1640 contains information, graphs and pictures showing the geometry and results of studies for the fan blade of a military aircraft for the Department of Defense ("DoD"). It is my understanding, based on conversations with responsible persons at UTC, that UTC may be forbidden from disseminating this information to the public without prior permission from the DoD. Moreover, UTC may not be permitted to disclose the information contained in this document at any time, and only the DoD may authorize dissemination. Thus, this document should receive

permanent *in camera* treatment until such time as permission is sought by the litigants and granted by the DoD.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 2002 in Hartford, Connecticut.



Raymond B. Wilson

Exhibit – 1

FILED UNDER SEAL

In the Matter of MSC.Software Corp., Docket No. 9299

Exhibit – 2

FILED UNDER SEAL

In the Matter of MSC.Software Corp., Docket No. 9299

Exhibit – 3

FILED UNDER SEAL

In the Matter of MSC.Software Corp., Docket No. 9299