

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



\_\_\_\_\_  
In the Matter of )  
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 )  
MSC.SOFTWARE CORPORATION, )  
a corporation. )  
\_\_\_\_\_ )

Docket No. 9299

**COMPLAINT COUNSEL'S RESPONSE TO RESPONDENT  
MSC.SOFTWARE CORPORATION'S MOTION TO QUASH  
SUBPOENAS AD TESTIFICANDUM, AND  
COMPLAINT COUNSEL'S MOTION TO COMPEL COMPLIANCE WITH  
SUBPOENAS AD TESTIFICANDUM AND DUCES TECUM**

Complaint Counsel hereby respond to Respondent's Motion to Quash Subpoenas Ad Testificandum, and pursuant to Rule 3.38 of the Commission's Rules of Practice, 16 C.F.R. § 3.38, Complaint Counsel now Move to Compel Compliance with Subpoenas Ad Testificandum and Duces Tecum outstanding to Messrs. Thomas C. Curry, George N. Riordan, Robert E. Louwers, Thomas Cully, Bruce Hart, Edward Jones, Todd L. Brown, and David Beer. Complaint Counsel is entitled to obtain discovery from these persons pursuant to Rule 3.31(c)(1) because all of these persons may be reasonably expected to have information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Respondent in this matter. Mr. Riordan was a former Chairman of the Board of Directors of Respondent, and continues to be a member of the Board of Directors of Respondent. Mr. Curry was a former Chief Executive Officer of Respondent. All of the other subpoenaed persons were account managers or supervisors of account managers, and have been involved in sales of the relevant products at issue in this case.

Respondent has moved to quash the Subpoenas Ad Testificandum claiming that notice was inadequate, and that “this relief is necessary to protect MSC from the ‘annoyance, . . . oppression [and] undue burden or expense’ that MSC would endure to comply with the subpoenas, Rule 3.31(d),” but Respondent has failed to document its claim. Respondent’s Motion to Quash therefore should be DENIED. In order to move discovery forward in this matter, Complaint Counsel move that the subpoenaed persons be ordered to comply both with the Subpoenas Ad Testificandum that Respondent has moved to quash, and with outstanding Subpoenas Duces Tecum that the subpoenaed persons and Respondent have failed to comply with by their specified response dates. Complaint Counsel certifies pursuant to Rule 3.22(f) that it has met and conferred with counsel for these persons in an attempt to resolve these issues, but has reached impasse on the return date for subpoenas duces tecum, in that counsel for these persons has refused to specify when production will be made (Certification attached as Exhibit A). Although an agreement has been reached for January dates for deposition of these persons, Complaint Counsel seeks issuance of an order to compel appearance of these persons because experience has demonstrated that these persons have tended to back away from agreements about their availability to appear. A proposed Order DENYING Respondent’s Motion to Quash is attached as Exhibit B. A proposed Order GRANTING Complaint Counsel’s Motion to Compel Compliance with Subpoenas Ad Testificandum and Duces Tecum is attached as Exhibit C.

#### **STATEMENT OF FACTS**

Complaint Counsel seeks to proceed expeditiously with discovery pursuant to the Scheduling Order issued in this case. Complaint Counsel served subpoenas ad testificandum and duces tecum on November 26, 2001, requiring the appearance of the above named persons on

dates ranging from December 5 through December 18, 2001, and submission of responsive documents by them on dates ranging from December 3 through December 10, 2001. Complaint Counsel delivered courtesy copies of the subpoenas to MSC counsel that same day (Exhibit D). After initially saying MSC would not accept service for or provide representation to and Respondent's Counsel would not represent Mr. Curry, Riordan or Jones, Respondent's Counsel on November 29, 2001 confirmed that MSC would accept service and Respondent's Counsel would provide representation to all of these subpoenaed persons.

Respondent notified Complaint Counsel that it objected to appearance of the subpoenaed persons in December, citing business and personal conflicts, and suggested instead that these persons could appear in January, 2002. Although Complaint Counsel offered to conduct December depositions on different December dates than those specified in the subpoenas if it would be more convenient for the witnesses, and at locations convenient for the subpoenaed persons, and although for a time Respondent represented that some of the subpoenaed persons could be made available in December, 2001, as of December 5, 2001, Respondent took the position that none of the subpoenaed persons would appear in December 2001, and moved to quash all of the Subpoenas Ad Testificandum.

Subpoenas duces tecum issued to Messrs. Curry, Riordan, Louwers, Cully, Hart, Jones, Brown, and Beer on November 26, 2001 called for production of responsive documents in their personal custody or control on dates ranging from December 3, 2001 to December 10, 2001. Respondent sought and Complaint Counsel granted modifications of subpoenas duces tecum to Mr. Curry and Mr. Riordan to December 10, 2001. Respondent sought no extensions on behalf of the other witnesses, and while some documents have been produced for Mr. Curry, no

documents have been produced for any of these other persons, and the return dates for all have passed. Despite repeated requests by Complaint Counsel, Respondent has been unwilling to state when responsive documents would be produced, or to certify that no further responsive documents exist.

### ARGUMENT

Respondent failed to satisfy orally or in its written Motion to Quash its burden of showing that its objection to the December deposition dates was justified. Of the MSC sales people, Respondent says only that they have sales quotas to make during the month of December, and holiday plans. Respondent has refused to supply either to Complaint Counsel or to this Court any support for these claims, or for the claim that the burden on these persons and Respondent outweighs any benefit to be gained by Complaint Counsel and this Court from expeditious discovery. Of the former MSC employees Curry and Jones and Board Member Riordan, MSC claims only that they have holiday plans and obligations to their new employers, but again, Respondent has supplied no factual support to Complaint Counsel or to this Court with its motion of these claims. Rule 3.34 requires that Motions to Quash set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits or other supporting documentation. Respondent has submitted no supporting affidavits or other supporting documentation for its factual claims.

Legally, too, Respondent has failed to meet its burden to support the Motion to Quash the subpoenas ad testificandum. Respondent alleges that notice to the subpoenaed persons was inadequate, and that the burden of complying with the subpoenas ad testificandum outweighs the benefit to be gained therefrom. Respondent's arguments should be rejected on both accounts.

Respondent alleges that Complaint Counsel failed to provide Respondent with adequate notice of the subject matter to be covered in the depositions, or adequate advance notice of deposition dates. Respondent fails to cite to any portion of or interpretation of the Rules of Practice that support its claim. Rule 3.33 provides that “[a]ny party may take a deposition of a named person . . .” by “serv[ing] upon each party to the proceeding reasonable notice in writing of the time and place at which it will be taken, and the name and address of each person or persons to be examined.” The Rules of Practice do not require, as Respondent suggests, “substantive identification of the topics to be covered at the deposition.” As to advance notice of service, the Rules require only “adequate notice.” Particularly given the ambitious discovery schedule contemplated by the Scheduling Order in this matter, one week’s notice of deposition dates is adequate. Respondent cites no authority to the contrary, and no basis for the claim that one week is insufficient notice under the Rules. Furthermore, where Complaint Counsel offered flexibility to conduct depositions on different December dates than those originally specified in the subpoenas ad testificandum, Respondent hardly can be permitted to claim notice was limited to a week or was insufficient. For example, with respect to Mr. Riordan, the subpoena ad testificandum issued to him on November 26, 2001, originally called for his appearance on December 6, 2001, so he and Respondent had 9 business days’ notice. After Respondent claimed he was not available on that date, but would be available on either December 27 or 28, Complaint Counsel agreed to conduct the deposition on either of those two dates, giving him 21 business days’ notice. Respondent later claimed it was inconvenient for Mr. Riordan to appear on these just-offered dates because he had made travel plans with his family, but this example belies Respondent’s lack of support for the claim that recipients of subpoenas ad testificandum

received inadequate notice of appearance dates.

The Rules do not contemplate delay of discovery simply for the convenience of parties or witnesses. Rule 3.31(d), which Respondent invokes, provides that an Administrative Law Judge may deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense. Since Respondent has failed to demonstrate how December 2001 depositions would have risen to the level of annoyance, embarrassment, oppression, or undue burden or expense, Respondent's Motion to Quash Subpoenas Duces Tecum should be denied.

Rule 3.31(d) also empowers Administrative Law Judges to make any order which justice requires "to prevent undue delay in the proceeding." Discovery in this matter will not be able to proceed as contemplated by this Court's Scheduling Order if Respondent can simply make unsupported claims that personal and business commitments of persons precludes their or Respondent's compliance with discovery.

Immediately upon Respondent's representation that subpoenaed persons were not available in December 2001 but would be available in January 2002, Complaint Counsel asked Respondent both for factual support for those claims, and for January dates on which they could and would appear. Respondent never provided the factual support for its claims, and it was only with great difficulty, and after several dates were first offered to Complaint Counsel and then withdrawn, that agreement on January appearance dates was reached on the eve of the last business day before Complaint Counsel's Complaint Counsel's Response to Respondent's Motion to Quash.

In order to assure the appearance of these persons as agreed between Complaint Counsel

and Respondent, Complaint Counsel now move to compel appearances of these persons to give testimony at the times and places agreed to by Respondent on their behalf, pursuant to the attached proposed Order (Exhibit C).

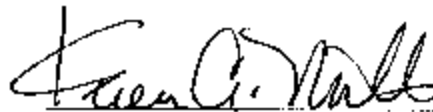
At the same time, Complaint Counsel also move to compel response to the subpoenas duces tecum to these persons by December 22, 2001 pursuant to the attached proposed order (Exhibit C). The subpoena return dates ranging from December 3, 2001, to December 10, 2001, all have passed. In order that discovery can proceed, Complaint Counsel move to compel these persons to produce the documents responsive to the subpoenas duces tecum, or a certification that no responsive documents exist, by December 21, 2001, pursuant to the attached proposed order (Exhibit C).

The subpoenaed persons' non-compliance with the Subpoenas Duces Tecum, and Respondent's refusal to commit to compliance dates, and Respondent's refusal to permit these persons to respond to the Subpoenas Ad Testificandum in December 2001 effectively has cost Complaint Counsel one month of discovery and jeopardizes Complaint Counsel's ability to meet subsequent deadlines. Respondent misrepresents Complaint Counsel's concern in this regard: Complaint Counsel expressed concern to Respondent not only about how Respondent's delay of discovery might compromise Complaint Counsel's ability to generate a preliminary witness list by December 17, 2001, but also about how the delay might compromise Complaint Counsel's: (1) ability to do additional discovery; (2) ability to determine the need for and select expert witnesses by January 7, 2002; (3) provide expert witness reports by February 7, 2002; and (4) provide a revised witness list, including preliminary sur-rebuttal witnesses, by March 1, 2002. This Court's Scheduling Order leaves little room for slippage of discovery.

**CONCLUSION**

Because the subpoenas ad testificandum provided sufficient notice to the recipients pursuant to the Rules of Practice, and because Respondent has failed to satisfy its burden of demonstrating that the Subpocnas Ad Testificandum impose a burden greater than the benefit to be gained from them, Complaint Counsel requests that Respondent's Motion to Quash the Subpoenas Ad Testificandum be DENIED. In addition, in order to move discovery forward consistent with the Scheduling Order, Complaint Counsel request that Complaint Counsel's Motion to Compel Compliance with Subpoenas Ad Testificandum and Duces Tecum be GRANTED.

Respectfully Submitted,



\_\_\_\_\_  
P. Abbott McCartney  
Peggy D. Bayer  
Kent E. Cox  
Karen A. Mills  
Patrick J. Roach  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



**EXHIBIT A**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

<p style="text-align:center"><b>IN THE MATTER OF</b></p> <p><b>MSC.SOFTWARE CORPORATION,</b></p> <p style="text-align:center">a corporation.</p>	)	
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	)	Docket No. 9299
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**Statement of Karen A. Mills Pursuant to 16 C.F.R. § 3.22(f)**

Pursuant to 16 C.F.R. § 3.22(f), Karen A. Mills states as follows:

1. I am an attorney for the Federal Trade Commission. I serve as Complaint Counsel In the Matter of MSC Software Corporation, Docket No. 9299. I submit this declaration to represent that Complaint Counsel has conferred with Counsel for Respondent Marimichael O. Skubel and Larissa Paule-Carres many times, in a good faith effort to resolve by agreement the issues raised in Complaint Counsel's Motion to Compel Compliance with Subpoenas Ad Testificandum and Duces Tecum to Messers. Thomas C. Curry, George N. Riordan, Robert E. Louwers, Thomas Cully, Bruce Hart, Edward Jones, Todd L. Brown, and David Beer.
2. On November 26, 2001, the Secretary of the Federal Trade Commission issued Subpoenas Duces Tecum and Ad Testificandum at Complaint Counsel's Request to Messers. Thomas C. Curry, George N. Riordan, Robert E. Louwers, Thomas Cully, Bruce Hart, Edward Jones, Todd L. Brown, and David Beer.
3. Courtesy Copies of the Subpoenas were served on Counsel for Respondent Marimichael O. Skubel.
4. Complaint Counsel offered to consider revising the subpoena appearance dates and places for the convenience of all of the witnesses to dates in December other than those specified in the subpoenas ad testificandum, but Respondent refused to consider alternative December dates.
5. On November 29, 2001 Complaint Counsel and Respondent reached an impasse regarding the scheduling of the depositions of MSC sales people (Louwers, Cully, Hart, Brown and Beer). Respondent took the position that no MSC sales people could be made available during December claiming that the fourth quarter was important to the company's results, and they could not take time out to be deposed from working on sales, but offered no support for these claims. Although Complaint Counsel offered to conduct depositions where the proposed deponents are located, offering to save the proposed

deponents travel time, Respondent offered no flexibility, and continued to insist that no sales people could be made available for deposition at any time or place during December 2001.

6. Complaint Counsel reached an impasse on the scheduling of depositions for Messrs. Riordan, Curry and Jones on December 4, 2001. Complaint Counsel was unaware that Respondent planned to take the position that Messrs. Riordan, Curry, or Jones also would not be made available for deposition in December, and planned to move to quash subpoenas ad testificandum to Messrs. Riordan, Curry, or Jones, until 5:45 p.m. on December 4, 2001, when Karen Mills, representing Complaint Counsel telephoned Counsel for Respondent Larissa Paule-Carres to confirm whether Mr. Curry would be appearing as required by the subpoena on Wednesday December 5, 2001. Until this telephone call, Respondent's Counsel had told Complaint Counsel in telephone conversations on November 29, 2001, and December 3, 2001, that Respondent's Counsel would try to find available dates in December for Mr. Curry's and Mr. Jones' depositions, and that Mr. Riordan was available on December 27 and 28, 2001. Respondent's Counsel backed away from that position on the evening of December 5, 2001, now claiming that it was convenient for none of these witnesses to appear, and that it was not convenient for Mr. Riordan to appear on the previously given dates due to the holidays and family plans, even if Complaint Counsel were willing to conduct the deposition in Los Angeles for his convenience.
7. Complaint Counsel requested that Respondent supply January appearance dates, in the event that the depositions would take place in January 2002 either because Your Honor would grant Respondent's Motion to Quash the Subpoenas, or because a mere ruling on the Motion to Quash might delay the taking of these depositions until January. Despite Complaint Counsel's repeated attempts to secure commitments regarding January appearance dates, Respondent declined to provide specific dates until Respondent filed its Motion to Quash the subpoenas ad testificandum on December 5, 2001, when Respondent supplied dates or ranges of January dates when these persons would be available for deposition (see attached Exhibit E).
8. On December 6, 2001, Complaint Counsel notified Respondent which of the proffered January 2002 dates it would choose to depose each person, should these persons not be required to appear in December 2001. In several instances, to accommodate the convenience of witnesses, Complaint Counsel agreed to conduct the depositions where the witnesses are located. Respondent then repeatedly backed away from various dates and places for depositions, as witnesses schedules and preferences changed, and Complaint Counsel fears this may happen again. It was with great difficulty that Complaint Counsel secured from Respondent in the evening of December 13, 2001, commitments that the following people would appear at the following places for depositions on the following dates:

Mr. Beer	January 3 (possibly carrying over to January 4)	FTC Southwest Regional Office 1999 Bryan Street Dallas, TX
Mr. Curry	January 8	601 Pennsylvania Ave., N.W. Washington, DC
Mr. Brown	January 9	601 Pennsylvania
Mr. Louwers	January 10	601 Pennsylvania
Mr. Riordan	January 14	601 Pennsylvania
Mr. Hart	January 15	601 Pennsylvania
Mr. Jones	January 16	FTC Northwest Regional Office 915 Second Avenue Seattle, WA
Mr. Cully	January 22	601 Pennsylvania

9. Complaint Counsel and Respondent have reached an impasse regarding compliance with the subpoenas duces tecum because Respondent has not filed motions to quash the subpoenas, and the subpoenaed persons have declined to comply with the subpoenas by the response dates, all of which now have passed. Complaint Counsel has not been able to secure from Respondent any commitment when the subpoenaed persons will comply with the subpoenas and produce responsive documents. Respondent on December 14, 2001, orally told Complaint Counsel that a small quantity of documents submitted on behalf of Mr. Curry constituted the entirety of his responsive documents, and that other subpoenaed persons had no responsive documents, but Respondent has refused to certify this in writing, despite Complaint Counsel's repeated requests.

  
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Karen A. Mills

**EXHIBIT B**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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IN THE MATTER OF	)	
	)	
MSC.SOFTWARE CORPORATION,	)	Docket No. 9299
	)	
a corporation.	)	
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**ORDER DENYING RESPONDENT'S MOTION TO QUASH  
SUBPOENAS AD TESTIFICANDUM**

IT IS HEREBY ORDERED that Respondent's Motion to Quash Subpoenas Ad Testificandum and Duces Tecum issued to Messrs. Thomas C. Curry, George N. Riordan, Robert E. Louwers, Thomas Cully, Bruce Hart, Edward Jones, Todd L. Brown, and David Beer is DENIED.

Dated: \_\_\_\_\_, 2002

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

**EXHIBIT C**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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IN THE MATTER OF  
MSC.SOFTWARE CORPORATION,  
\_\_\_\_\_  
a corporation.  
\_\_\_\_\_

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) Docket No. 9299  
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**ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO COMPEL  
COMPLIANCE WITH SUBPOENAS AD TESTIFICANDUM AND DUCES TECUM**

IT IS HEREBY ORDERED that Complaint Counsel's Motion to Compel Compliance with Subpoenas Ad Testificandum and Duces Tecum issued to Messrs. Thomas C. Curry, George N. Riordan, Robert E. Louwers, Thomas Cully, Bruce Hart, Edward Jones, Todd L. Brown, and David Beer is GRANTED.

Messrs. Thomas C. Curry, George N. Riordan, Robert E. Louwers, Thomas Cully, Bruce Hart, Edward Jones, Todd L. Brown, and David Beer shall comply with the Subpoenas Duces Tecum by December 21, 2001.

Messrs. Thomas C. Curry, George N. Riordan, Robert E. Louwers, Thomas Cully, Bruce Hart, Edward Jones, Todd L. Brown, and David Beer shall comply with the Subpoenas Ad Testificandum according to the following schedule, agreed to by Respondent on their behalf:

Mr. Beer	January 3 (possibly carrying over to January 4)	FTC Southwest Regional Office 1999 Bryan Street Dallas, TX
Mr. Curry	January 8	601 Pennsylvania Ave., N.W. Washington, DC
Mr. Brown	January 9	601 Pennsylvania
Mr. Louwers	January 10	601 Pennsylvania
Mr. Riordan	January 14	601 Pennsylvania



Mr. Hart      January 15

601 Pennsylvania

Mr. Jones     January 16

FTC Northwest  
Regional Office  
915 Second Avenue  
Seattle, WA

Mr. Cully     January 22

601 Pennsylvania

Dated: \_\_\_\_\_, 2002

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D. Michael Chappell  
Administrative Law Judge

**EXHIBIT D**



# SUBPOENA DUCES TECUM

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

1. TO

Thomas C. Curry  
LMS International  
Suite 102  
15061 Springdale Street  
Huntington Beach, California 92649

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

Federal Trade Commission  
Suite 3027  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Karen A. Mills, Complaint Counsel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

December 3, 2001, at 5:00 p.m.

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See attached definitions, instructions and specifications.

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell  
  
Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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

### 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

**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)

**SUBPOENA DUCES TECUM ISSUED TO  
THOMAS C. CURRY  
ON BEHALF OF COMPLAINT COUNSEL IN  
MSC.SOFTWARE CORPORATION,  
FTC Docket No. 9299**

Unless modified by agreement with Complaint Counsel of the Federal Trade Commission, each specification of this Request requires a complete search of documents in your possession, custody, or control, except documents in your possession, custody, or control solely because of your employment with LMS International. If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in any way that is consistent with Complaint Counsel's need for documents and information, you are encouraged to discuss such questions and possible modifications with Complaint Counsel identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. All modifications to this Subpoena must be agreed to in writing.

**DEFINITIONS**

- A. The term "MSC" means MSC.SOFTWARE Corporation, 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 MSC.
- B. 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. 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 UAI.
- C. 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. 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 CSAR.
- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody or control. 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 your possession, custody or control. 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 and engineering blueprints.

- E. The term "person" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
- G. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- H. The terms "each," "any," and "all" mean "each and every."
- I. The term "including" means including but not limited to.
- J. 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.
- K. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- L. 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.
- M. 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 includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, and Working Model.

- N. 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.

### INSTRUCTIONS

1. Except for privileged material, 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, do 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, 1995.
3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, you may submit legible copies. However, if the coloring of any document communicates substantive information, you 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 your 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 Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
4. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC 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). The FTC 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 the FTC 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. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC 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 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.
5. Mark each submitted page or sheet with your name and with consecutive document control numbers.
  6. Responsive documents shall be produced together in file folders as they are kept in the usual course of business.
  7. For each box containing responsive documents you shall number each box; and mark each box with your name.
  8. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
    - a. the reason for withholding it or other information relating to it;

- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer, 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 Complaint Counsel 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.

- 14. If there are no documents responsive to any particular request, you shall state so in your response to the Subpoena.
- 15. If documents responsive to a particular specification no longer exist, but you have 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.
- 16. In lieu of original documents, you may submit legible copies of documents so long as you verify with the attached form that they fully and accurately represent the originals.
- 17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

## SPECIFICATIONS

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

1. All documents relating to MSC, UAI, or CSAR, including MSC's acquisition of UAI or CSAR.
2. All documents relating to the licensing or sale of any FEA software, including any documents relating to competition between any FEA software and any other product, software, or process.
3. All documents relating to any agreement, contract, or understanding between you and MSC, including any employment or other compensation agreement or covenant not to compete.

**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 to Thomas C. Curry on Behalf of Complaint Counsel in *MSC Software Corporation*, in 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

**CERTIFICATE OF SERVICE**

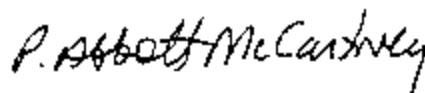
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Thomas C. Curry  
LMS International  
Suite 102  
15061 Springdale Street  
Huntington Beach, California 92649

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for *MSC Software Corporation*



---

P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA DUCES TECUM

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

1. TO

George N. Riordan  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

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

Federal Trade Commission  
Suite 3027  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Karen A. Mills, Complaint Counsel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

December 3, 2001, at 5:00 p.m.

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See attached definitions, instructions and specifications.

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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

### 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

### 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)

**SUBPOENA *DUCES TECUM* ISSUED TO  
GEORGE N. RIORDAN  
ON BEHALF OF COMPLAINT COUNSEL IN  
*MSC.SOFTWARE CORPORATION,*  
FTC Docket No. 9299**

Unless modified by agreement with Complaint Counsel of the Federal Trade Commission, each specification of this Request requires a complete search of documents in your possession, custody, or control, except documents in the possession, custody, or control of MSC.Software Corporation that MSC will search in response to Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC.Software Corporation. If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in any way that is consistent with Complaint Counsel's need for documents and information, you are encouraged to discuss such questions and possible modifications with Complaint Counsel identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. All modifications to this Subpoena must be agreed to in writing.

**DEFINITIONS**

- A. The term "MSC" means MSC.SOFTWARE Corporation, 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 MSC.
- B. 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. 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 UAI.
- C. 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. 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 CSAR.
- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody or control. 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 your possession, custody or control. 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 and engineering blueprints.

- E. The term "person" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
- G. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- H. The terms "each," "any," and "all" mean "each and every."
- I. The term "including" means including but not limited to.
- J. 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.
- K. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- L. 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.
- M. 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 includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, and Working Model.

- N. 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.

### INSTRUCTIONS

1. Except for privileged material, 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, do 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, 1995.
3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, you may submit legible copies. However, if the coloring of any document communicates substantive information, you 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 your 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 Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
4. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC 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). The FTC 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 the FTC 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. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC 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.
5. Mark each submitted page or sheet with your name and with consecutive document control numbers.
  6. Responsive documents shall be produced together in file folders as they are kept in the usual course of business.
  7. For each box containing responsive documents you shall number each box; and mark each box with your name.
  8. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
    - a. the reason for withholding it or other information relating to it;

- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer, 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 Complaint Counsel 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.

- 14. If there are no documents responsive to any particular request, you shall state so in your response to the Subpoena.
- 15. If documents responsive to a particular specification no longer exist, but you have 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.
- 16. In lieu of original documents, you may submit legible copies of documents so long as you verify with the attached form that they fully and accurately represent the originals.
- 17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

## **SPECIFICATIONS**

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

1. All documents relating to MSC, UAI, or CSAR, including MSC's acquisition of UAI or CSAR.
2. All documents relating to the licensing or sale of any FEA software, including any documents relating to competition between any FEA software and any other product, software, or process.

**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 to George N. Riordan on Behalf of Complaint Counsel in *MSC Software Corporation*, in 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

**CERTIFICATE OF SERVICE**

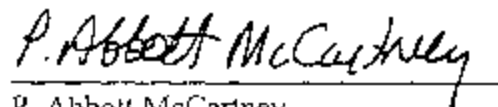
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

George N. Riordan  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496





# SUBPOENA DUCES TECUM

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

1. TO

David Beer  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

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

Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Karen A. Mills, Complaint Counsel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

December 6, 2001, at 5:00 p.m.

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See attached definitions, instructions and specifications.

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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

### 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

**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)

**SUBPOENA DUCES TECUM ISSUED TO  
DAVID BEER  
ON BEHALF OF COMPLAINT COUNSEL IN  
MSC.SOFTWARE CORPORATION,  
FTC Docket No. 9299**

Unless modified by agreement with Complaint Counsel of the Federal Trade Commission, each specification of this Request requires a complete search of documents in your possession, custody, or control, except documents in the possession, custody, or control of MSC Software Corporation that MSC will search in response to Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC Software Corporation. If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in any way that is consistent with Complaint Counsel's need for documents and information, you are encouraged to discuss such questions and possible modifications with Complaint Counsel identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. All modifications to this Subpoena must be agreed to in writing.

**DEFINITIONS**

- A. The term "MSC" means MSC SOFTWARE Corporation, 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 MSC.
- B. 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. 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 UAI.
- C. 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. 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 CSAR.
- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody or control. 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 your possession, custody or control. 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 and engineering blueprints.

- E. The term "person" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
- G. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- H. The terms "each," "any," and "all" mean "each and every."
- I. The term "including" means including but not limited to.
- J. 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.
- K. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- L. 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.
- M. 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 includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, and Working Model.

- N. 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.

### INSTRUCTIONS

1. Except for privileged material, 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, do 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, 1995.
3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, you may submit legible copies. However, if the coloring of any document communicates substantive information, you 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 your 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 Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
4. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC 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). The FTC 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 the FTC 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. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC 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.
5. Mark each submitted page or sheet with your name and with consecutive document control numbers.
  6. Responsive documents shall be produced together in file folders as they are kept in the usual course of business.
  7. For each box containing responsive documents you shall number each box; and mark each box with your name.
  8. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
    - a. the reason for withholding it or other information relating to it;

- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer, 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 Complaint Counsel 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.

- 14. If there are no documents responsive to any particular request, you shall state so in your response to the Subpoena.
- 15. If documents responsive to a particular specification no longer exist, but you have 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.
- 16. In lieu of original documents, you may submit legible copies of documents so long as you verify with the attached form that they fully and accurately represent the originals.
- 17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.



## SPECIFICATIONS

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

1. All documents relating to MSC, UAI, or CSAR, including MSC's acquisition of UAI or CSAR.
2. All documents relating to the licensing or sale of any FEA software, including any documents relating to competition between any FEA software and any other product, software, or process.

**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 to David Beer on Behalf of Complaint Counsel in *MSC Software Corporation*, in 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

CERTIFICATE OF SERVICE

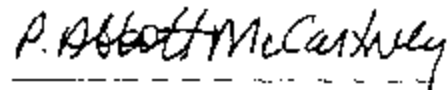
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

David Beer  
MSC.Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KJRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC.Software Corporation



-----  
P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA DUCES TECUM

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

1. TO

Robert E. Louwers  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

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

Federal Trade Commission  
601 Pennsylvania Avenue, NW  
Suite 3027  
Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Karen A. Mills, Complaint Counsel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

December 6, 2001, at 5:00 p.m.

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See attached definitions, instructions and specifications.

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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 respondents 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

**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)

.....  
(Office title)

**SUBPOENA *DUCES TECUM* ISSUED TO  
ROBERT E. LOUWERS  
ON BEHALF OF COMPLAINT COUNSEL IN  
*MSC.SOFTWARE CORPORATION,*  
FTC Docket No. 9299**

Unless modified by agreement with Complaint Counsel of the Federal Trade Commission, each specification of this Request requires a complete search of documents in your possession, custody, or control, except documents in the possession, custody, or control of MSC.Software Corporation that MSC will search in response to Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC.Software Corporation. If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in any way that is consistent with Complaint Counsel's need for documents and information, you are encouraged to discuss such questions and possible modifications with Complaint Counsel identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. All modifications to this Subpoena must be agreed to in writing.

**DEFINITIONS**

- A. The term "MSC" means MSC.SOFTWARE Corporation, 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 MSC.
- B. 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. 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 UAI.
- C. 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. 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 CSAR.
- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody or control. 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 your possession, custody or control. 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 and engineering blueprints.

- E. The term "person" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
- G. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- H. The terms "each," "any," and "all" mean "each and every."
- I. The term "including" means including but not limited to.
- J. 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.
- K. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- L. 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.
- M. 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 includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, and Working Model.

- N. 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.

### INSTRUCTIONS

1. Except for privileged material, 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, do 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, 1995.
3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, you may submit legible copies. However, if the coloring of any document communicates substantive information, you 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 your 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 Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
4. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC 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). The FTC 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 the FTC 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. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC 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 (.wki) 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.
5. Mark each submitted page or sheet with your name and with consecutive document control numbers.
  6. Responsive documents shall be produced together in file folders as they are kept in the usual course of business.
  7. For each box containing responsive documents you shall number each box; and mark each box with your name.
  8. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
    - a. the reason for withholding it or other information relating to it;

- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer, 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 Complaint Counsel 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.

- 14. If there are no documents responsive to any particular request, you shall state so in your response to the Subpoena.
- 15. If documents responsive to a particular specification no longer exist, but you have 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.
- 16. In lieu of original documents, you may submit legible copies of documents so long as you verify with the attached form that they fully and accurately represent the originals.
- 17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

## SPECIFICATIONS

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

1. All documents relating to MSC, UAI, or CSAR, including MSC's acquisition of UAI or CSAR.
2. All documents relating to the licensing or sale of any FEA software, including any documents relating to competition between any FEA software and any other product, software, or process.

**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 to Robert E. Louwers on Behalf of Complaint Counsel in *MSC Software Corporation*, in 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

**CERTIFICATE OF SERVICE**

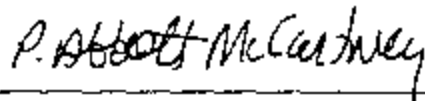
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Robert E. Louwers  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skube!, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



---

P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



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

1. TO

Todd L. Brown  
 MSC Software Corporation  
 2 MacArthur Place  
 Santa Ana, California 92707

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

Federal Trade Commission  
 Suite 3027  
 601 Pennsylvania Avenue, NW  
 Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Karen A. Mills, Complaint Counsel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

December 10, 2001, at 5:00 p.m.

6. SUBJECT OF PROCEEDING

In the matter of MSC Software Corporation, Docket No. 9399

7. MATERIAL TO BE PRODUCED

See attached definitions, instructions and specifications.

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell  
  
 Federal Trade Commission  
 Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
 Complaint Counsel  
 Federal Trade Commission  
 601 Pennsylvania Avenue, NW, Suite 3027  
 Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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

**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

## 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)



**SUBPOENA *DUCES TECUM* ISSUED TO  
TODD L. BROWN  
ON BEHALF OF COMPLAINT COUNSEL IN  
*MSC.SOFTWARE CORPORATION,*  
FTC Docket No. 9299**

Unless modified by agreement with Complaint Counsel of the Federal Trade Commission, each specification of this Request requires a complete search of documents in your possession, custody, or control, except documents in the possession, custody, or control of MSC Software Corporation that MSC will search in response to Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC Software Corporation. If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in any way that is consistent with Complaint Counsel's need for documents and information, you are encouraged to discuss such questions and possible modifications with Complaint Counsel identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. All modifications to this Subpoena must be agreed to in writing.

**DEFINITIONS**

- A. The term "MSC" means MSC SOFTWARE Corporation, 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 MSC.
- B. 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. 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 UAI.
- C. 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. 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 CSAR.
- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody or control. 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 your possession, custody or control. 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 and engineering blueprints.

- E. The term "person" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
- G. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- H. The terms "each," "any," and "all" mean "each and every."
- I. The term "including" means including but not limited to.
- J. 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.
- K. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- L. 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.
- M. 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 includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, and Working Model.

- N. 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.

### INSTRUCTIONS

1. Except for privileged material, 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, do 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, 1995.
3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, you may submit legible copies. However, if the coloring of any document communicates substantive information, you 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 your 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 Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
4. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC 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). The FTC 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 the FTC 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. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC 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 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.
5. Mark each submitted page or sheet with your name and with consecutive document control numbers.
  6. Responsive documents shall be produced together in file folders as they are kept in the usual course of business.
  7. For each box containing responsive documents you shall number each box; and mark each box with your name.
  8. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
    - a. the reason for withholding it or other information relating to it;

- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer, 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 Complaint Counsel 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.

- 14. If there are no documents responsive to any particular request, you shall state so in your response to the Subpoena.
- 15. If documents responsive to a particular specification no longer exist, but you have 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.
- 16. In lieu of original documents, you may submit legible copies of documents so long as you verify with the attached form that they fully and accurately represent the originals.
- 17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

## **SPECIFICATIONS**

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

1. All documents relating to MSC, UAI, or CSAR, including MSC's acquisition of UAI or CSAR.
2. All documents relating to the licensing or sale of any FEA software, including any documents relating to competition between any FEA software and any other product, software, or process.

**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 to Todd L. Brown on Behalf of Complaint Counsel in *MSC Software Corporation*, in 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



**CERTIFICATE OF SERVICE**

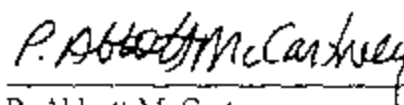
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Todd L. Brown  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



---

P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA DUCES TECUM

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

1. TO

Edward Jones  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

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

Federal Trade Commission  
Suite 3027  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Karen A. Mills, Complaint Counsel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

December 10, 2001, at 5:00 p.m.

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See attached definitions, instructions and specifications.

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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

**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 or:*

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

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

.....  
(Office title)

**SUBPOENA DUCES TECUM ISSUED TO  
EDWARD JONES  
ON BEHALF OF COMPLAINT COUNSEL IN  
MSC.SOFTWARE CORPORATION,  
FTC Docket No. 9299**

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4. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC 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). The FTC will accept 4mm & 8mm

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b. File and record structures.

(i) Magnetically-recorded information from centralized non-microcomputer-based systems:

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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 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.
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    - a. the reason for withholding it or other information relating to it;



- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer, 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 Complaint Counsel 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.

- 14. If there are no documents responsive to any particular request, you shall state so in your response to the Subpoena.
- 15. If documents responsive to a particular specification no longer exist, but you have 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.
- 16. In lieu of original documents, you may submit legible copies of documents so long as you verify with the attached form that they fully and accurately represent the originals.
- 17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

## **SPECIFICATIONS**

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

1. All documents relating to MSC, UAI, or CSAR, including MSC's acquisition of UAI or CSAR.
2. All documents relating to the licensing or sale of any FEA software, including any documents relating to competition between any FEA software and any other product, software, or process.

**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 to Edward Jones on Behalf of Complaint Counsel in *MSC Software Corporation*, in 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

**CERTIFICATE OF SERVICE**

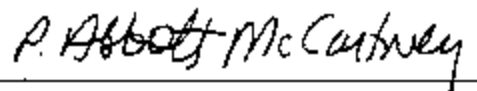
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Edward Jones  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marinichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA DUCES TECUM

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

1. TO

Thomas Cully  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

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

Federal Trade Commission  
Suite 3027  
601 Pennsylvania, NW  
Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Karen A. Mills, Complaint Counsel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

December 10, 2001, at 5:00 p.m.

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See attached definitions, instructions and specifications.

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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

### 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

### 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)

**SUBPOENA *DUCES TECUM* ISSUED TO  
THOMAS CULLY  
ON BEHALF OF COMPLAINT COUNSEL IN  
*MSC.SOFTWARE CORPORATION,*  
FTC Docket No. 9299**

Unless modified by agreement with Complaint Counsel of the Federal Trade Commission, each specification of this Request requires a complete search of documents in your possession, custody, or control, except documents in the possession, custody, or control of MSC.Software Corporation that MSC will search in response to Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC.Software Corporation. If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in any way that is consistent with Complaint Counsel's need for documents and information, you are encouraged to discuss such questions and possible modifications with Complaint Counsel identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. All modifications to this Subpoena must be agreed to in writing.

**DEFINITIONS**

- A. The term "MSC" means MSC.SOFTWARE Corporation, 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 MSC.
- B. 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. 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 UAI.
- C. 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. 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 CSAR.
- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody or control. 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 your possession, custody or control. 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 and engineering blueprints.

- E. The term "person" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
- G. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- H. The terms "each," "any," and "all" mean "each and every."
- I. The term "including" means including but not limited to.
- J. 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.
- K. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- L. 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.
- M. 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 includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, and Working Model.



- N. 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.

### INSTRUCTIONS

1. Except for privileged material, 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, do 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, 1995.
3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, you may submit legible copies. However, if the coloring of any document communicates substantive information, you 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 your 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 Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
4. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC 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). The FTC 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 the FTC 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. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC 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.
5. Mark each submitted page or sheet with your name and with consecutive document control numbers.
  6. Responsive documents shall be produced together in file folders as they are kept in the usual course of business.
  7. For each box containing responsive documents you shall number each box; and mark each box with your name.
  8. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
    - a. the reason for withholding it or other information relating to it;

- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer, 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 Complaint Counsel 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.

- 14. If there are no documents responsive to any particular request, you shall state so in your response to the Subpoena.
- 15. If documents responsive to a particular specification no longer exist, but you have 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.
- 16. In lieu of original documents, you may submit legible copies of documents so long as you verify with the attached form that they fully and accurately represent the originals.
- 17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

## SPECIFICATIONS

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

1. All documents relating to MSC, UAI, or CSAR, including MSC's acquisition of UAI or CSAR.
2. All documents relating to the licensing or sale of any FEA software, including any documents relating to competition between any FEA software and any other product, software, or process.

**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 to Thomas Cully on Behalf of Complaint Counsel in *MSC Software Corporation*, in 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

**CERTIFICATE OF SERVICE**

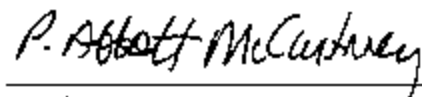
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Thomas Cully  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



---

P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA DUCES TECUM

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

1. TO

Bruce Hart  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

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

Federal Trade Commission  
Suite 3027  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. MATERIAL WILL BE PRODUCED TO

Karen A. Mills, Complaint Counsel

5. DATE AND TIME OF PRODUCTION OR INSPECTION

December 10, 2001, at 5:00 p.m.

6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See attached definitions, instructions and specifications.

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

## 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 copies 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 5 U.S.C. § 552a.



**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)

**SUBPOENA DUCES TECUM ISSUED TO  
BRUCE HART  
ON BEHALF OF COMPLAINT COUNSEL IN  
MSC.SOFTWARE CORPORATION,  
FTC Docket No. 9299**

Unless modified by agreement with Complaint Counsel of the Federal Trade Commission, each specification of this Request requires a complete search of documents in your possession, custody, or control, except documents in the possession, custody, or control of MSC Software Corporation that MSC will search in response to Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC Software Corporation. If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in any way that is consistent with Complaint Counsel's need for documents and information, you are encouraged to discuss such questions and possible modifications with Complaint Counsel identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. All modifications to this Subpoena must be agreed to in writing.

**DEFINITIONS**

- A. The term "MSC" means MSC SOFTWARE Corporation, 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 MSC.
- B. 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. 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 UAI.
- C. 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. 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 CSAR.
- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody or control. 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 your possession, custody or control. 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 and engineering blueprints.

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- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
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- I. The term "including" means including but not limited to.
- J. 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.
- K. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
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- M. 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 includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, and Working Model.

- N. 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.

### INSTRUCTIONS

1. Except for privileged material, 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, do 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, 1995.
3. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, you may submit legible copies. However, if the coloring of any document communicates substantive information, you 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 your 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 Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
4. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC 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). The FTC 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 the FTC 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. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC 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.
5. Mark each submitted page or sheet with your name and with consecutive document control numbers.
  6. Responsive documents shall be produced together in file folders as they are kept in the usual course of business.
  7. For each box containing responsive documents you shall number each box; and mark each box with your name.
  8. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
    - a. the reason for withholding it or other information relating to it;

- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer, 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 Complaint Counsel 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.

- 14. If there are no documents responsive to any particular request, you shall state so in your response to the Subpoena.
- 15. If documents responsive to a particular specification no longer exist, but you have 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.
- 16. In lieu of original documents, you may submit legible copies of documents so long as you verify with the attached form that they fully and accurately represent the originals.
- 17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

## SPECIFICATIONS

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

1. All documents relating to MSC, UAI, or CSAR, including MSC's acquisition of UAI or CSAR.
2. All documents relating to the licensing or sale of any FEA software, including any documents relating to competition between any FEA software and any other product, software, or process.



**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 to Bruce Hart on Behalf of Complaint Counsel in *MSC Software Corporation*, in 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

**CERTIFICATE OF SERVICE**

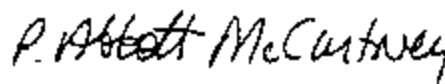
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Bruce Hart  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Duces Tecum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



---

P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Thomas C. Curry  
LMS International  
Suite 102  
15061 Springdale Street  
Huntington Beach, California 92649

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Suite 3001  
Federal Trade Commission  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other Complaint  
Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

December 5, 2001, at 9:30 a.m.

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

## 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 8, 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 8 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 8.

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 November 24, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Thomas C. Curry  
LMS International  
Suite 102  
15061 Springdale Street  
Huntington Beach, California 92649

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO  
George N. Riordan  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

2. FROM  
  
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Suite 3007  
Federal Trade Commission  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other  
Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

December 6, 2001, at 9:30 a.m.

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell  
  
Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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 8, 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 8 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 8.

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)

.....  
(Office title)

**CERTIFICATE OF SERVICE**

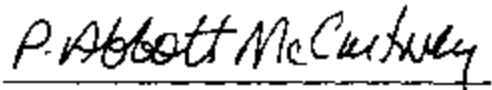
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

George N. Riordan  
MSC.Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC.Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496





# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO  
David Beer  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

2. FROM  
  
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING  
  
Suite 3001  
Federal Trade Commission  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE  
Karen A. Mills or other Complaint  
Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION  
December 10, 2001, at 9:30 a.m.

6. SUBJECT OF PROCEEDING  
  
In the matter of MSC Software Corporation, Docket No. 9299

7. ADMINISTRATIVE LAW JUDGE  
  
The Honorable D. Michael Chappell  
  
Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA  
Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED  
NOV 23 2001

SECRETARY'S SIGNATURE

### 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 8, 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 8 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 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

**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 November 24, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

David Beer  
MSC.Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC.Software Corporation

  
\_\_\_\_\_

P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



**SUBPOENA AD TESTIFICANDUM**  
**Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)**

1. TO

Robert E. Louwers  
 MSC Software Corporation  
 2 MacArthur Place  
 Santa Ana, California 92707

2. FROM

UNITED STATES OF AMERICA  
 FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Suite 3003  
 Federal Trade Commission  
 601 Pennsylvania Avenue, NW  
 Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other  
 Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

December 11, 2001, at 9:30 a.m.

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappel

Federal Trade Commission  
 Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
 Complaint Counsel  
 Federal Trade Commission  
 601 Pennsylvania Avenue, NW, Suite 3027  
 Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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 8, 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 8 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 8.

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 November 24, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Robert E. Louwers  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Todd L. Brown  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Suite 3001  
Federal Trade Commission  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other  
Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

December 12, 2001, at 9:30 a.m.

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

## 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 8, 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 8 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 8.

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 November 24, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Todd L. Brown  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marinichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



**SUBPOENA AD TESTIFICANDUM**  
 Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Edward Jones  
 MSC Software Corporation  
 2 MacArthur Place  
 Santa Ana, California 92707

2. FROM

UNITED STATES OF AMERICA  
 FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 8.

3. PLACE OF HEARING

Suite 300J  
 Federal Trade Commission  
 601 Pennsylvania Avenue, NW  
 Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other  
 Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

December 13, 2001, at 9:30 a.m.

8. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
 Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
 Complaint Counsel  
 Federal Trade Commission  
 601 Pennsylvania Avenue, NW, Suite 3027  
 Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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 8, 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 8 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 8.

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 November 24, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Edward Jones  
MSC.Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC.Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Thomas Cully  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Suite 3001  
Federal Trade Commission  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other Complaint  
Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

December 17, 2001, at 9:30 a.m.

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

## 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 8, 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 8 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 8.

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)

(Original title)

**CERTIFICATE OF SERVICE**

This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Thomas Cully  
MSC.Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC.Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC.Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Bruce Hart  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 8.

3. PLACE OF HEARING

Suite 3001  
Federal Trade Commission  
601 Pennsylvania Avenue, NW  
Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other  
Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

December 18, 2001, at 9:30 a.m.

8. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Avenue, NW, Suite 3027  
Washington, DC 20580

DATE ISSUED

NOV 23 2001

SECRETARY'S SIGNATURE

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 8, 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 8 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 8.

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)

.....  
(Office title)

**CERTIFICATE OF SERVICE**

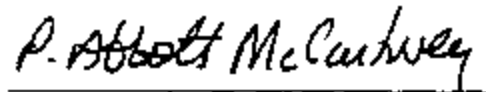
This is to certify that on November 24, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be sent by overnight express delivery for service on November 26, 2001, upon the following person:

Bruce Hart  
MSC Software Corporation  
2 MacArthur Place  
Santa Ana, California 92707

This is to further certify that on November 26, 2001, I caused a copy of the attached Subpoena *Ad Testificandum* Issued on Behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand delivery upon the following person:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Facsimile (202) 879-5200

Counsel for MSC Software Corporation



P. Abbott McCartney  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2695  
Facsimile (202) 326-3496

**EXHIBIT E**


CERTIFICATE OF SERVICE

This is to certify that on December 17, 2001, I caused a copy of Complaint Counsel's attached Response to Respondent MSC Software Corporation's Motion to Quash Subpoenas Ad Testificandum and Complaint Counsel's Motion to Compel Compliance with Outstanding Subpoenas Ad Testificandum and Duces Tecum to be sent via facsimile and served via hand-delivery upon the following persons:

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

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Fax (202) 879-5200

Counsel for MSC Software Corporation

  
\_\_\_\_\_  
Karen A. Mills  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2052  
Facsimile (202) 326-3496