

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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

Docket No. 9299

**THIRD-PARTY ANSYS, INC.'S MOTION TO LIMIT SUBPOENA  
DUCES TECUM SERVED BY MSC.SOFTWARE CORPORATION**

Third party, ANSYS, Inc. ("ANSYS") moves, pursuant to Rule 3.34(a) of the Federal Trade Commission's Rules of Practice ("Rules"), to limit the Subpoena *Duces Tecum* issued on behalf of MSC.SOFTWARE Corporation ("MSC") and served on ANSYS (the "Subpoena").<sup>1</sup> Counsel for ANSYS has conferred with counsel for MSC and has been unable to reach agreement regarding the proper scope of the aspects of the Subpoena addressed herein. Therefore, this motion is necessary.<sup>2</sup>

**I. INTRODUCTION**

This is an administrative action by the Federal Trade Commission alleging that MSC monopolized and attempted to monopolize the market for advanced versions of NASTRAN ("Advanced NASTRAN"), a highly differentiated form of engineering simulations software, by acquiring Universal Analytics, Inc. ("UAI") and Computerized Structural Analysis & Research Corporation ("CSAR"), the only two rival suppliers of Advanced NASTRAN. See generally, FTC Complaint ("Complaint"). The central issue in the case is whether MSC, by

<sup>1</sup> Attached hereto as Exhibit A.

<sup>2</sup> See Rule 3.22(f) Statement of Thomas A. Donovan ("Rule 3.22(f) Statement"), attached hereto as Exhibit B.

acquiring UAI and CSAR, is now able to impose monopolistic price increases on existing Advanced NASTRAN users who are locked into Advanced NASTRAN because of substantial past investments and prohibitively high switching costs. See Complaint ¶¶ 17, 18, 19, 37, 38, 39.

In an obvious attempt to shift this tribunal's focus away from the customers now held captive by MSC and onto activities that simply do not affect the Advanced NASTRAN market, MSC has served an overly broad subpoena on ANSYS, a third party witness that does not presently distribute any NASTRAN products. Despite not presently distributing any NASTRAN products, ANSYS acknowledges that certain aspects of its business activities are relevant to the instant litigation. For example, ANSYS has agreed to distribute a new NASTRAN product being developed by SAS LLC ("SAS"). ANSYS does not resist legitimate, reasonable discovery related to that new product.<sup>3</sup> Also, ANSYS acknowledges that, under limited circumstances, its ANSYS solver is a substitute for NASTRAN. ANSYS does not resist legitimate, reasonable discovery related to such competition.

After receiving the Subpoena, ANSYS, on several occasions, proposed reasonable modifications to the scope of the Subpoena in order to limit the production to documents that would adequately define the nature and extent of competition (actual and potential) between ANSYS and MSC's Advanced NASTRAN, while eliminating unreasonable burdens on ANSYS. See Rule 3.22(f) Statement. MSC has consistently refused to agree to such reasonable modifications. Although the established trial schedule obviously mandates that the parties focus their discovery on material and truly disputed issues of fact, MSC seeks to bog the proceeding down by compelling ANSYS, a third party witness, to produce an enormous quantity of material of little or no significance to the dispute. Notwithstanding MSC's intransigence, ANSYS has proceeded to, and is presently in the process of, collecting and producing documents that demonstrate the nature and extent of relevant competition between ANSYS and MSC. MSC,

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<sup>3</sup> As discussed in more detail below, however, ANSYS requests reasonable limits necessary to protect ANSYS' bargaining position with respect to an offer to purchase the products that complaint counsel seek to compel MSC to divest.

however, is not satisfied with ANSYS' reasonable efforts and instead is pushing for compliance with numerous highly objectionable aspects of the Subpoena that affect aspects of ANSYS' business that are unrelated to any material issues in this litigation and would require the production of an unreasonable volume of materials. As demonstrated below, MSC's position is really an attempt to single out and harass ANSYS because of ANSYS' relationship with SAS, which is developing a NASTRAN product that MSC perceives as a future threat to its present monopoly.

## II. BACKGROUND

### A. **ANSYS is a Third Party Witness that Does Not Presently Market Any NASTRAN Products, and Only One of Its Products Competes, Under Limited Circumstances, with MSC's Advanced NASTRAN.**

ANSYS is a third party witness. ANSYS never initiated any complaint to the FTC regarding MSC's acquisitions, and it is not a litigant in this case. Nor did ANSYS produce any documents to the FTC in the course of its pre-complaint investigation. Additionally, ANSYS does not presently market any NASTRAN products. Instead, ANSYS presently markets a variety of proprietary, non-NASTRAN-based engineering simulation software products, and several related products and services. See Affidavit of Michael Wheeler (Wheeler Aff.) at ¶ 4.<sup>4</sup> Many of ANSYS' products and services simply do not compete with MSC's Advanced NASTRAN solver, either because they are not solvers at all or because they offer radically different functionality at a different price. Wheeler Aff. at ¶ 8.<sup>5</sup> Nevertheless, the Subpoena demands production of virtually all of ANSYS' documents regarding all of its products. Wheeler Aff. at ¶ 5.

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<sup>4</sup> Attached hereto as Exhibit C.

<sup>5</sup> The following ANSYS products and services, which are covered by the Subpoena, do not compete with MSC's Nastran solver, either because they are not solvers at all or because they offer radically different functionality at a different price: ANSYS Consulting Services, the DesignSpace family of products, the AT\*SOLUTIONS family of products (AI\*EMAX, AI\*WORKBENCH), the ICFM CFD family of products, and the family of products developed by ANSYS' CAD/CAE division. Wheeler Aff. at ¶ 8.

ANSYS acknowledges that its top-level finite element analysis solver ("FEA solver"), marketed as part of the "ANSYS Software Suite" (hereinafter the "ANSYS Solver"), competes with MSC's Advanced NASTRAN solver for new customers who do not have their own customer requirements regarding the solver to be used and who have not yet made (or whose own customers have not made) substantial investments in the creation of ancillary models, software or data collections which are only compatible with NASTRAN software. Wheeler Aff. at ¶ 6. However, ANSYS has had little success in persuading existing Advanced NASTRAN customers with substantial investments in Advanced NASTRAN to switch to ANSYS. Wheeler Aff. at ¶ 7. Recognizing that such efforts are relevant, ANSYS is producing to MSC documents relating to efforts it has made to induce established NASTRAN customers to switch to ANSYS' Solver, as well as any documents relating to MSC's effort to sell NASTRAN as a substitute for ANSYS' Solver.

**B. The Overly Broad Subpoena Served on ANSYS.**

Despite common industry knowledge of the nature and limited extent of competition between Advanced NASTRAN and the ANSYS, on December 18, 2001, MSC served the Subpoena at issue here on ANSYS. The Subpoena consists of twenty-eight numbered Specifications, containing at least sixty separate document requests (counting subparts)<sup>6</sup> and seven pages of "Instructions" and "Definitions." The Subpoena essentially parrots the subpoena served on MSC by Complaint Counsel, and demands the production of virtually all documents relating to development, financing and sales of all ANSYS products to virtually all customers, regardless of whether those sales were competitive with MSC's NASTRAN solver. The Subpoena, as MSC seeks to enforce it, calls for the production of virtually all of the documents in ANSYS' possession, relating to virtually all of ANSYS' products, without geographic limitation,<sup>7</sup> even

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<sup>6</sup> Pursuant to the Administrative Law Judge's Scheduling Order dated November 13, 2001, MSC was limited to 100 document requests even from Complaint Counsel. It is likely that MSC is well over its allotted limit.

<sup>7</sup> ANSYS has 11 active subsidiaries and, with its subsidiaries, employs 440 employees in 21 offices. Fourteen of those offices are located outside the United States. See Affidavit of David S. Secunda in Support of Third Party

though, as demonstrated above, most of ANSYS' products, and most of ANSYS' operations, are simply not material to the issues in this litigation. *Secunda Aff.* at ¶ 4; *Wheeler Aff.* at ¶ 5.

MSC's apparent justification for the breadth of the Subpoena is that a "properly defined" relevant market includes all FEA solvers and any related products. According to MSC, in such a "properly defined" relevant market, competition is "robust" and "disciplines" the price of MSC's Advanced NASTRAN solver. *See Answer* at p. 1. As demonstrated below, the discovery MSC is now pursuing is not reasonably calculated to establish this defense, and MSC is not entitled to conduct a fishing expedition into all of ANSYS' documents in an attempt to find one needle in the haystack that might have some relevance to their defense.

Significantly, MSC's proffered justification for the breadth of the Subpoena is belied by the discovery that MSC has chosen to take. If MSC were genuinely interested in attempting to determine the extent to which other FEA solvers and related products constrained the pricing of MSC's Advanced NASTRAN, it naturally would have sent similar subpoenas to other major FEA solver developers. Such developers include Dassault Systemes, EDS PLM Solutions, Parametric Technology Corporation and Hibbett, Karlson and Sorenson. *See Wheeler Aff.* at ¶ 10. With respect to the issues involved in this litigation, the ANSYS solver is no different from those of these other producers. Indeed, of the currently available FEA solvers, CATIA V5R7, marketed by Dassault Systemes, is the closest substitute for MSC's Advanced NASTRAN. *See Wheeler Aff.* at ¶ 10. Significantly, however, it is ANSYS' information and belief that MSC has not subpoenaed Dassault or any of the other above-identified FEA solver developers.<sup>3</sup> MSC's failure to subpoena other FEA solver manufacturers is damning. Only by subpoenaing all major FEA solver manufacturers could MSC get a representative picture of the supposed FEA solver market that MSC contends is the relevant market in this case. MSC's

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ANSYS Inc.'s Motion to Extend Time to Respond and/or Move to Limit or Quash Subpoena Duces Tecum Served by MSC Software Corporation ("*Secunda Aff.*") at ¶ 2, attached hereto as Exhibit D.

<sup>3</sup> MSC's Counsel has refused to tell ANSYS' counsel whether it has issued such subpoenas. ANSYS' counsel is unaware that any such subpoenas have been served.

failure to subpoena these other manufacturers and instead to single out ANSYS, conclusively shows that the present Subpoena is not part of an effort to develop relevant information.

Why then has MSC singled out ANSYS? The answer is two fold (and obvious): (1) to harass ANSYS because of its relationship with SAS, a start-up company that is attempting to develop a competing Advanced NASTRAN product and (2) in retaliation for ANSYS' offer to purchase the UAI and CSR assets from MSC, on terms which MSC has viewed as inadequate. Both of these patently improper motivations are discussed in detail below.

### **C. ANSYS' Relationship with SAS.**

In November, 2001, ANSYS announced that it had entered into a strategic partnership with SAS to develop and distribute a NASTRAN product which will eventually be competitive with MSC NASTRAN.<sup>9</sup> SAS' effort to develop an Advanced NASTRAN product is headed by Dr. Richard MacNeal, founder and former chairman of MSC.<sup>10</sup>

MSC has an obvious competitive incentive to harass ANSYS and SAS in an effort to delay the effective distribution of SAS NASTRAN. MSC also has an obvious incentive to attempt to use its subpoena power to obtain competitive information concerning SAS NASTRAN. The fact that MSC is selectively using its subpoena power to achieve these objectives is confirmed by MSC's failure to serve subpoenas on other major FEA solver marketers.

### **D. ANSYS' Offer to Purchase the UAI and CSAR Assets.**

Shortly after the FTC announced that it was seeking divestiture of MSC's UAI and CSAR assets, ANSYS approached MSC with an offer to purchase the UAI and CSAR assets. ANSYS was aware that MSC had previously entertained a similar offer from SAS, which had not

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<sup>9</sup> See Exhibit E.

<sup>10</sup> MSC has also served a document subpoena on SAS.

resulted in a completed transaction. The price offered by ANSYS reflected the circumstances that: (1) MSC had “retired” the UAI and CSAR assets, making no updates or improvement to the software since its purchase and (2) the assets are worth less to ANSYS than to MSC, since ANSYS lacks MSC’s ability to derive monopoly profits from the ownership of the assets.

Instead of welcoming ANSYS’ offer as a solution to its antitrust problems, MSC reacted as one would expect a monopolist to react – with bitter hostility. MSC’s hostile response labeled ANSYS’ offer “absurd” and accused ANSYS (without any foundation) of employing the FTC as a “tool” to impair MSC. See Letter from L.A. Greco to M.J. Wheeler, dated December 12, 2001.<sup>11</sup> MSC further announced that it was preparing to serve a broad subpoena on ANSYS in retaliation for ANSYS’ offer. Id. Incredibly, although MSC acknowledged that the subpoena would impose significant burdens on ANSYS, it disingenuously attempted to shift blame those burden onto Complaint Counsel, which of course had no role whatsoever in serving the Subpoena. Id.

#### **E. ANSYS’ Efforts To Reasonably Narrow The Subpoena.**

In its Response to ANSYS’ Motion for an Extension of Time, MSC has falsely described ANSYS’ response to the Subpoena. MSC falsely accuses ANSYS of completely “refus[ing] to produce relevant documents or to comply with the subpoena.”<sup>12</sup> Nothing could be further from the truth. To the contrary, from moment it received the Subpoena, ANSYS has attempted to negotiate in good faith with MSC to limit the Subpoena to documents reasonably calculated to demonstrate the competitive picture (actual and potential) between ANSYS’ Solver and MSC’s Advanced NASTRAN. See Rule 3.22(f) Statement. In this vein, ANSYS has repeatedly offered to produce, and has produced, several unobjectionable categories of documents on a rolling basis. MSC, however, has repeatedly rejected ANSYS’ reasonable

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<sup>11</sup> Attached hereto as Exhibit F.

<sup>12</sup> This statement is particularly troubling because it was made in a response brief, to which MSC knew ANSYS was permitted no reply, and because it likely influenced the Administrative Law Judge’s ruling on the motion to extend.

efforts to limit the immense bulk of documents to be produced. Incredibly, even though ANSYS offered to agree to the existence of certain competition (discussed above), the existence of which should not be a material dispute in the litigation, MSC has refused to forego forcing ANSYS to collect and produce documents related to such competition. Notwithstanding MSC's unreasonable positions, ANSYS has undertaken an extensive search for documents and information that adequately demonstrate the nature and extent of competition between the ANSYS solver and Advanced NASTRAN, where that competition is material to the litigation.

As outlined in Mr. Secunda's Affidavit, dated January 17, 2002 ("Secunda 1/17/02 Aff.")<sup>13</sup>, ANSYS has conducted (1) manual searches of the files and (2) electronic searches of computers<sup>14</sup> of the nineteen ANSYS executives and employees who would reasonably be expected to have information related to the following issues:

- Competition with MSC's NASTRAN solver, CSAR or UAI.<sup>15</sup>
- ANSYS' relationship with SAS.<sup>16</sup>
- NASTRAN-based solvers.<sup>17</sup>
- Communications with the FTC regarding this matter.<sup>18</sup>
- Efforts by ANSYS to develop a NASTRAN-based Solver, including any efforts to develop a NASTRAN translator.<sup>19</sup>
- Marketing plans and business plans for solvers and products incorporating solvers that compete with NASTRAN solvers.<sup>20</sup>
- Efforts to switch NASTRAN customers to ANSYS.<sup>21</sup>

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<sup>13</sup> Attached hereto as Exhibit G.

<sup>14</sup> Computer searches included hard drives and server directories.

<sup>15</sup> This information is reasonably responsive to Specification numbers 3, 4, 5, 15, 16 and 18.

<sup>16</sup> This information is reasonably responsive to Specification numbers 6 and 20.

<sup>17</sup> This information is reasonably responsive to Specification number 7.

<sup>18</sup> This information is reasonably responsive to Specification numbers 8 and 9.

<sup>19</sup> This information is reasonably responsive to Specification number 10.

<sup>20</sup> This information is reasonably responsive to Specification numbers 6 and 18.



- Sales to new customers who have not already made the choice between NASTRAN and ANSYS.<sup>22</sup>
- Sales efforts with respect to customers lost to NASTRAN.<sup>23</sup>
- NASTRAN customers to whom ANSYS has attempted to sell ANSYS solvers and new customers who had not made the NASTRAN/ANSYS choice at the time ANSYS was trying to make the sale.<sup>24</sup>

Secunda 1/17/02 Aff. at ¶ 4. The nineteen executives and employees were selected because they represent those whose files ANSYS would search in order to locate pertinent information if ANSYS were searching for such information in the ordinary course of its business. Secunda 1/17/02 Aff. at ¶ 5. These searches conducted by ANSYS are more than sufficient to paint an accurate, representative picture of the nature and extent of actual and potential competition between ANSYS and MSC.

Thus far, ANSYS' efforts have consumed approximately 100 man-hours. Secunda 1/17/02 Aff. at ¶ 7. ANSYS expects to devote additional man-hours to the search for relevant information. Secunda 1/17/02 Aff. at ¶ 7. These figures do not include the time spent by ANSYS' counsel reviewing documents for privileged and confidential material or the hours devoted to responding to and briefing issues before this tribunal. Thus far, ANSYS has collected 4 boxes of hard copy documents and 2.13 gigabytes of electronic files (consisting of over 1000 documents and hundreds of emails). Secunda 1/17/02 Aff. at ¶ 8. These documents must be reviewed by ANSYS for production and reviewed by counsel for privileged and/or confidential information. Secunda Aff. at ¶ 8. Currently, three of the four boxes and all of the electronic files are backlogged because ANSYS and its counsel were forced to turn resources to this motion, which could have been avoided if MSC were willing to be reasonable. The burdens imposed on

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<sup>21</sup> This information is reasonably responsive to Specification numbers 17, 18, 19 and 25.

<sup>22</sup> This information is reasonably responsive to Specification numbers 17, 18, 19 and 25.

<sup>23</sup> This information is reasonably responsive to Specification numbers 17, 18, 19 and 25.

<sup>24</sup> This information is reasonably responsive to Specification numbers 17, 18, 19 and 25.

ANSYS already are bordering on unreasonable in light of the fact that ANSYS is a third party. Simply, the time has come to say enough is enough.

### **III. ARGUMENT**

Rule 3.34(c) provides that discovery shall be limited by the Administrative Law Judge if:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(iii) The burden and expense of the proposed discovery outweigh its likely benefit.

16 C.F.R. § 3.34(c).

As discussed above, the efforts undertaken thus far by ANSYS are reasonably calculated to uncover documents that accurately depict the nature and extent of relevant competition between ANSYS and MSC's NASTRAN, as such information is material to the allegation that MSC's acquisition of the only other two existing producers of NASTRAN-based solvers give it pricing leverage over customers with substantial investments in NASTRAN. As discussed below, any obligations imposed by the Subpoena that go beyond the efforts undertaken thus far are unduly burdensome and are not likely to yield additional material information. Simply stated, there are more convenient, less burdensome routes to resolving the contested facts that are material to the litigation. MSC's failure to agree to taking these routes, discussed below, are unreasonable and indefensible.

#### **A. The Production of Documents Concerning ANSYS Products that Do Not Compete With Advance NASTRAN is Unreasonable.**

MSC's Subpoena defines the "Relevant Product or Service" as "any software product that contains FEA software . . . and any services provided in connection with FEA

software....” The term “Relevant Product or Service” also includes all computer aided design (CAD) software that functions as a FEA software. Moreover, “FEA software” is defined extraordinarily broadly to encompass not only all software products offering finite element analysis, but also “all value-added enhancements, features, modules, applications, application programming interfaces...[and] all products that integrate or combine the FEA software with any other product.” These definitions are hopelessly overbroad as applied to ANSYS because they sweep up every product and service offered by ANSYS without regard to its competitive significance to MSC’s NASTRAN solver. Wheeler Aff. at ¶ 5, 8-9. Incredibly, despite being so advised, MSC refuses to exclude from the definition of “Relevant Product or Service” numerous ANSYS products that do not compete in any way with MSC NASTRAN. See Rule 3.22(f) Statement.

For example, MSC refuses to exclude an ANSYS software product known as “DesignSpace.” DesignSpace is not a substitute for MSC’s NASTRAN because it: (i) has far more limited functionality than the ANSYS solver or MSC’s solver and sells for a fraction of the price (approximately 10%); (ii) is intended for and is used for different purposes than the ANSYS or the MSC solver, and (iii) is used by different users than either the ANSYS solver or the MSC solver. Wheeler Aff. at ¶ 9. While the MSC NASTRAN solver is designed for use by professional analysts, DesignSpace is designed for use by product designers. DesignSpace is also used at a different period in the design process than solvers. Wheeler Aff. at ¶ 9. It cannot perform the complex calculations for which solvers are used. Wheeler Aff. at ¶ 9. In short, information concerning DesignSpace is of no significance in a case about MSC NASTRAN.

Numerous other ANSYS products and services, as identified in Mr. Wheeler’s Affidavit, have no relevance to this case. These include: ANSYS Consulting Services, the AI\*SOLUTIONS family of products (AI\*EMAX, AI\*WORKBENCH), the ICEM CFD family of products, and the family of products developed by ANSYS’ CAD/OE division. Wheeler Aff. at ¶ 8. AI\*EMAX is a high frequency electromagnetics tool. AI\*EMAX is irrelevant because

MSC/NASTRAN does not have this capability. Wheeler Aff. at ¶ 9. AI\*WORKBENCH is a toolkit for building a CAE user interface and does not include any solver. Wheeler Aff. at ¶ 9. CADOE is a technology developer in the area of design of experiments, and does not produce a solver. Wheeler Aff. at ¶ 9. ICEM CFD is a pre and post processor for the computational fluid dynamics marketplace. It does not include any solver. Wheeler Aff. at ¶ 9.

As established above (and in Mr. Wheeler's Affidavit), many of ANSYS' products and services simply do not compete with MSC's Advanced NASTRAN, the only product at issue in this litigation. The only ANSYS product that competes with MSC's Advanced NASTRAN is the ANSYS Solver. Despite this fact, MSC inexplicably refuses to limit its subpoena to the ANSYS Solver. MSC attempts to justify its refusal under the guise of needing information concerning the scope of "full corporate competition" are hollow. The full scope of corporate competition is simply not at issue in this case. The only product at issue is MSC's Advanced NASTRAN. Accordingly, the definition of "Relevant Product or Service" in the Subpoena should be limited to the ANSYS Solver, the only ANSYS product with any competitive significance.

**B. The Production of Voluminous Documents That Address Competition Which ANSYS Readily Acknowledges Exists is Unreasonable.**

As demonstrated through Mr. Wheeler's Affidavit, ANSYS acknowledges that it competes with MSC for certain new FEA solver users. On the other hand, there are established users of the ANSYS solver who do not use NASTRAN-based solvers. Since Mr. Wheeler is on the FTC's witness list, these facts can be established in less than five minutes of testimony at the trial of this matter, or in deposition. To the extent those facts are relevant at all to this litigation, the documents are unnecessarily cumulative and duplicative. Requiring ANSYS to produce volumes of documents on these subjects is unnecessarily burdensome. Enormous volumes of material that are responsive to the Subpoena go to these uncontested facts. Specification numbers 14, 15, 16, 17, 18, 19, 20, 22, 24, 25 and 26 each require the production of large volumes of documents that relate to these uncontested and immaterial facts. Specification

number 14 goes so far as to demand that ANSYS open up all of its board of directors minutes and proceedings for no reason beyond the fact that it markets the ANSYS solver. Specification number 15 similarly demands undifferentiated access to ANSYS' business plans and Specification number 16 demands every document mentioning any other company's offering or planning to offer a solver. Specification number 18 broadens the demand to all documents regarding the "design, development, enhancement, research, manufacturing, distribution, licensing, marketing sale, support or service" of any solver or any service related to a solver. Such an all-encompassing, undifferentiated demand that a third party pull up a fleet of trucks (and ships for overseas offices) and disgorge all of its documents imposes burdens that are wholly unnecessary to litigating the material, contested issues in the case. The burdens are even more unconscionable when considering the highly confidential and competitively sensitive nature of the information included in the enormous volume of documents demanded. No confidentiality order can be guaranteed to be foolproof, and the risks to a third party witness clearly outweigh the benefits to the litigants when the litigants make such unfocused, all-encompassing demands for documents.

The lack of significance of these documents to this litigation is manifest from the fact that similar demands have not been made on other producers of comparable solvers. Moreover, MSC's Subpoena specifically suggests stipulations as a means of avoiding the burden of the producing documents, and ANSYS has proposed that a stipulation regarding competition for customers other than established NASTRAN users be used to avoid such back-breaking production of documents by ANSYS. But MSC has refused to utilize this less-burdensome means of narrowing the issues. Accordingly, one can only conclude that MSC is interested in burdening and harassing ANSYS, not in expeditiously developing relevant facts.

There is simply no justification for forcing ANSYS to endure the time and expense of locating, reviewing and producing reams of additional documents to demonstrate facts that ANSYS does not deny. Accordingly, the Subpoena should be limited so as to relieve

ANSYS of the obligation of searching for or collecting any additional documents related to competition between ANSYS and MSC for new customers, or ANSYS' sales to customers for whom NASTRAN is not competitive.

**C. MSC's Definition of ANSYS is Overly Broad and a Search of the Files and Computers of the Nineteen Employees Whose Files and Computers Have Been Searched is Reasonably Calculated to Capture Relevant Documents.**

The Subpoena defines ANSYS as

ANSYS, Incorporated, its domestic and foreign parents, predecessors, successors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, consultants, agents and representatives of the foregoing.

As discussed above, ANSYS has eleven active subsidiaries, within which it employs 440 employees in 21 offices worldwide. Read literally, the Subpoena requires ANSYS to search the files of every and of these 440 employees in 21 offices, without regard to the likelihood that they possess relevant information not otherwise available for production. This is unduly burdensome.

In contrast to the positions taken by MSC, the approach undertaken by ANSYS is reasonable. ANSYS identified the employees who might reasonably be expected to have information relevant to the issues in this action. Using this criteria, nineteen individuals (including executives and line employees) were identified. These are the individuals whose paper files and computers ANSYS would search if it were seeking the same information in the ordinary course of its business. *Secunda* 1/17/02 Aff. at ¶ 5. There is no legitimate reason to believe that searching beyond the files of these individuals would yield much, if any, additional significant relevant information.

Any suggestion otherwise by MSC is baseless speculation about what might be in the files of other individuals. Obviously, ANSYS knows best where relevant documents are (and are not) likely to be found. For instance, the additional individuals whom MSC identified on

January 17, 2002 as persons whose files should be searched include persons who work exclusively on products with no finite element analysis capacity. They also include persons with no more than a ministerial role in processing daily orders from established customers (the classic "inside sales" role). These individuals would have no contact with customers regarding any choice between MSC and ANSYS solvers. Further, any significant information from field sales would be routed to individuals whose files have already been included in the search. In addition, MSC's counsel's concept of "shared files" is simply not relevant to the way that ANSYS functions. MSC's speculation is insufficient to trump ANSYS' ordinary business practices and Mr. Secunda's sworn statement that it is unlikely that any significant, additional, relevant, non-duplicative information exists in others files.

**D. Searching Server Backup Tapes is Unreasonable.**

MSC has unreasonably refused to excuse ANSYS from searching server backup tapes. Searching backup tapes is unreasonable for numerous reasons.

First, server backup tapes are not considered by ANSYS to be normal business records. ANSYS does not search backup tapes for information in the ordinary course of its business. See Affidavit at Gary Piganell ("Piganell Aff.") at ¶ 5.<sup>25</sup> ANSYS should not be required to search in places in response to the Subpoena that ANSYS would not search if it were looking for information in the ordinary course of business.

Second, the burden of searching backup tapes is unquestionably excessive. ANSYS backs up its email and document servers weekly. ANSYS has approximately 541 backup tapes from these servers covering the period since 1997 to present. Additionally, before a tape can be searched, it must first be restored. Restoration takes approximately 3 to 4 hours per tape. Accordingly, simply restoring the backup tapes would take between 1623 and 2324 man hours. See Piganell Affidavit at ¶ 4.

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<sup>25</sup> Attached hereto as Exhibit 11.

Third, the likelihood that searching backup tapes would yield additional responsive information is low because the ANSYS employees whose computers are being searched routinely save copies of significant electronic documents (including emails) to the hard drives of their computers. See Secunda 1/17/02 Aff. at ¶ 6. On the other hand, each backup tape would produce voluminous duplication of materials that ANSYS is already producing. Such duplication would multiply the burden of categorizing the documents, placing appropriate confidentiality legends on them, reviewing the documents for privilege and copying them.

Despite the burdens outlined above and despite being told that ANSYS does not consider its backup tapes to be business records, MSC has refused to excuse ANSYS from searching such records. This position is unreasonable. ANSYS simply should not be required to search records in response to the Subpoena that ANSYS would not search if it were looking for the requested information in the ordinary course of its business.

**E. ANSYS Should Not Be Forced to Produce Documents Revealing Its Negotiating Strategy with MSC Regarding the Proposed Purchase of the CAI and CSAR Assets.**

Numerous Specifications arguably call for documents that would reveal ANSYS' negotiating strategy related to its offer to purchase the UAI and CSAR assets from MCS. These include Specification numbers 3, 4, 5, 6, 10 and 23. Forcing ANSYS to produce such documents would unduly prejudice ANSYS' negotiating position and would interfere with the possibility of settlement of this matter. ANSYS cannot be expected to negotiate in the future with a party that has forcibly been made privy to ANSYS' negotiating strategy. While MSC may protest that it has no interest in settling this litigation through a sale to ANSYS, this would certainly not be the first instance in which such categorical rejection metamorphosed into negotiations.

Moreover, the protections afforded by the Amended Protective Order in this case are not adequate to protect this information. Designating such documents "Restricted Confidential, Attorneys Eyes Only" will not protect ANSYS' negotiating position because



MSC's antitrust counsel has conducted on behalf of MSC the discussions which have occurred regarding such a sale.

**F. Specification Number 22 is Unreasonable.**

Specification number 22 seeks

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

MSC cannot reasonably demand tabulation of the number of technical support and research personnel employed by ANSYS, year-by-year. The relationship of the number of those persons to the issues in this litigation is highly tenuous, if not totally fanciful. A substantial amount of those persons' time is devoted, as explained in Section A above, to products that do not even compete with MSC's NASTRAN product at issue in this litigation. Even with respect to the number of individuals working on the ANSYS solver from time to time, MSC is simply grasping at straws. If the availability of qualified personnel were a material issue in this case, there are far more effective and efficient ways of addressing the issue than MSC's draconian document demands.

In any event the information requested from ANSYS has no probative value absent a representative sampling of information from across the industry. Does the addition or deletion of one or two technical people at ANSYS convey any meaningful information regarding the availability of technical talent to the industry as a whole? As discussed above, MSC is not pursuing such information for the entire industry. Instead, it is singling out ANSYS.

Specification number 22's further request for "all documents relating to the need or desire to hire, or difficulties or issues associated with hiring additional personnel to assist in research and development activities or technical support" is unreasonably vague and overbroad.

How is each request by ANSYS to hire a technical person material to this litigation? Is every document related to such "issues associated with hiring" as proposed salaries and healthcare benefits material to MSC's market power over embedded NASTRAN customers? Rather than thinking about what evidence is material to its case, MSC has chosen to harass ANSYS with demands for mountains of minutia as a penalty for ANSYS' having had the temerity to assist SAS in attempting to break into MSC's NASTRAN fiefdom.

**G. Specification Number 11 is Unreasonable.**

Specification number 11 seeks:

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

This specification is objectionable in two significant respects. First, with respect to financial statements, profit and loss statements and balance sheets, ANSYS does not maintain such documents by product line. Instead, ANSYS reports such information for ANSYS as a whole. Moreover, since ANSYS is a publicly traded company, ANSYS' financial information is readily available to MSC through public sources. Accordingly, this portion of the Subpoena should be quashed.

Second, with respect to financial and revenue plans or forecasts, such information has minimal, if any, relevance to the issues in this litigation. As demonstrated above, only the ANSYS Solver competes with MSC's NASTRAN product and such competition is limited to a limited group of ANSYS' customers. Under such circumstances, knowing the revenues ANSYS anticipates from customers who do not view NASTRAN as a substitute does not advance any material issues in this litigation. Moreover, to the extent that such information might provide any minimal insight into the relevant product market as MSC seeks to define it (i.e. all FEA solvers), such information is only helpful in conjunction with similar information from a representative

sample of all of the major FEA solver manufacturers. Since MSC has not subpoenaed these manufacturers, the ANSYS' information is of no probative value.

**H. The Production of Documentation Regarding All Criteria Used to Determine the Purchase Price For Any Actual or Potential Acquisition is Unduly Burdensome.**

Specification number 23 demands the production of:

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

As part of its production of materials relating to ANSYS' relationship with SAS in connection with the development and distribution of a new NASTRAN product, ANSYS is producing, subject to "ATTORNEYS EYES ONLY" confidentiality protection, materials falling within this specification. But MSC is not satisfied with materials relating to the valuation of NASTRAN products. Instead, MSC demands every document related to any criteria used for valuing any actual or potential acquisition or divestiture of any producer or marketer of solvers, and any value-added ancillary products or service.

MSC's only justification for demanding this information has been to party an anticipated argument from Complaint Counsel that the prices paid by MSC for CSAR and UAI reflected the price increases that MSC expected to be able to impose on entrenched NASTRAN users as a result of the elimination of competition from UAI and CSAR. Of course, the most probative evidence to support or refute Complaint Counsel's argument will be found in the files of CSAR, UAI and MSC.

The relevance of any information in ANSYS' files is highly questionable at best. The criteria relevant to valuation in such a transaction vary depending upon the nature of the product or service, the maturity of the product, the presence or absence of economies of scope or

scale, the magnitude of the transaction, the nature of the assets to be conveyed and the nature of the customer relations involved. No effort has been made by MSC to limit its request to industry-recognized formulae or rules of thumb. Nor has any effort been made to limit the request to documents relating to truly comparable transactions with respect to the nature of the product or services, the nature and extent of competition, the maturity of the product, or the extent of the market development effort necessary to develop a demand for the product or service. The extraordinary breadth of the document demand and the attenuated logical connection between (i) the broad spectrum of materials requested and (ii) the argument MSC hopes to parry, demonstrate that MSC is merely on a fishing expedition hoping to net one or two documents that will reflect some mathematical relationship (whether relevant or not) which MSC can wave before the tribunal as purported justification for its acquisition prices. The burdens which such a fishing expedition place on ANSYS are unreasonable in light of the tenuousness of the information's connection to the issues in the litigation. If MSC wants information on the valuation of producers of NASTRAN solvers, let them look to the valuation performed in the transaction by which Dassault became a 10% shareholder in MSC itself. Those valuation issues are far more comparable to those in this litigation than the valuations in any ANSYS transactions, other than possibly the SAS transaction for which materials are being produced.

**I. Specification Number 29 is Unreasonably Burdensome.**

Specification number 29 seeks, among other things, documents sufficient to show all of ANSYS' "document retention and destruction systems, policies, procedures, and practices . . . (including all documents sufficient to identify each instance where the company's document retention policy has not been followed)." Not content with imposing those burdens, MSC further demands the identification of all persons "responsible for managing such systems, policies, procedures or capabilities" and a description of "all electronic data information systems of the company" and an explanation of all backup procedures, as well as a calculation of the cost of recovery of backup files.

All of the information reasonably necessary to litigate this case is information that one would expect ANSYS to retain in the ordinary course of its business and to be reasonably accessible in the ordinary course of its business. This is not, after all, a horizontal conspiracy case where the nature of the allegation suggests that relevant evidence will be kept hidden. In this case, any fact which is not important enough for ANSYS to retain in a readily accessible place simply is not going to be critical to this case.

Detailed explanations of ANSYS' document retention and electronic information systems are simply an unwarranted burden. MSC's demand for an exhaustive search for instances where someone has deviated, in some way, from the letter of company policy is simply absurd. MSC is not looking for facts material to Complaint Counsel's claim. MSC is simply looking to punish a new entrant into the NASTRAN market through the imposition of crushing costs and enormous dislocation of the day-to-day business activities of ANSYS' personnel while simultaneously gaining the benefit of delaying this proceeding by demanding the production of enormous quantities of documents, which cannot reasonably be produced in the time allowed by the established schedule. This tribunal should not countenance such chicanery. Specification number 29 should be eliminated.

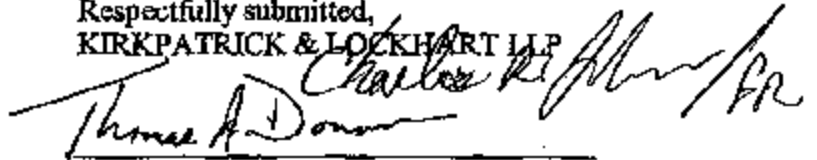
#### IV. CONCLUSION

For all of the foregoing reasons, ANSYS respectfully requests an Order in the attached form, limiting the Subpoena. In the alternative, if the Administrative Law Judge determines that MSC requires any further documents, ANSYS requests that MSC be required to bear ANSYS' costs in identifying and producing such additional materials.<sup>26</sup>

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<sup>26</sup> See Federal Trade Commission v. Winters National Bank and Trust Co., 509 F. Supp. 1228, 1233 (S.D. Ohio 1981) (third party, non-target of FTC investigation is entitled to reimbursement of cost of compliance with subpoena); Securities and Exchange Comm'n v. Arthur Young & Company, 584 F.2d 1018 (D.C. Cir. 1978) (enforcement of subpoena conditioned upon reimbursement of costs of compliance to the extent that the expenses of compliance would otherwise become unreasonable); United States v. Friedman, 532 F.2d 928, 937 (3d Cir. 1976) (cost of complying with subpoena may be reimbursed where such costs exceed what the respondent may reasonably be expected to bear as a cost of doing business).

Respectfully submitted,  
KIRKPATRICK & LOCKHART LLP



Thomas A. Donovan, Pa. LD. No. 20314  
Joseph C. Safar, Pa I.D. No. 78205

Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222  
Telephone: (412) 355-6500  
Facsimile: (412) 355-6501

Counsel for ANSYS, Inc.

Dated: January 18, 2002

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF  
MSC.SOFTWARE CORPORATION,  
a corporation

Docket No. 9299

**ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2002, upon consideration of Third Party ANSYS Inc.'s Motion to Limit Subpoena *Duces Tecum* Served by MSC Software Corporation, it is hereby ORDERED, that said motion is GRANTED and the Subpoena is limited as follows:

1. The definition of "Relevant Product or Service" is limited to the ANSYS Solver as defined in ANSYS' motion and any Nastran-based solvers.
2. Specification numbers 14, 15, 16, 17, 18, 19, 20, 22, 24, 25 and 26 are limited to documents relating to competition with Nastran-based solvers for existing users of Nastran-based solvers or ANSYS' Solver.
3. For purposes of defining the scope of the necessary search for responsive materials, "ANSYS" is defined to consist of the office and files to which ANSYS would in the ordinary course of its business refer in order to obtain information on the specified subjects.
4. ANSYS is excused from restoring and searching server backup tapes.
5. Specification number 22 is deleted.
6. Specification number 3 is limited to documents relating to solvers.
7. Specification numbers 11 and 23 are deleted.

8. ANSYS is excused from producing documents which reveal its negotiating strategy with respect to its offer to purchase Nastran-based products from MSC.

---

D. Michael Chappell  
Administrative Law Judge







## SUBPOENA DUCES TECUM

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

<b>1. TO</b> ANSYS, Inc. c/o David S. Secunda South Pointe 275 Technology Drive Canaburg, PA 15317	<b>2. FROM</b>  <p style="text-align: center;"><b>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</b></p>
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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.

<b>3. PLACE OF PRODUCTION OR INSPECTION</b>  Kirkland & Ellis 655 15 <sup>th</sup> Street, NW Washington, DC 20005 (or at a place to be agreed upon)	<b>4. MATERIAL WILL BE PRODUCED TO</b>  Marimichael O. Skubel
<b>5. DATE AND TIME OF PRODUCTION OR INSPECTION</b>  January 4, 2002 at 12:00 p.m.	

**6. SUBJECT OF PROCEEDING**

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

**7. MATERIAL TO BE PRODUCED**

See attached Specifications, Definitions and Instructions

<b>8. ADMINISTRATIVE LAW JUDGE</b>  The Honorable D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	<b>9. COUNSEL REQUESTING SUBPOENA</b>  Marimichael O. Skubel Kirkland & Ellis 655 15 <sup>th</sup> Street, NW Washington, DC 20005 (202) 879-5034 Counsel for MSC Software Corp.
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<b>DATE ISSUED</b>  DEC 13 2001	<b>SECRETARY'S SIGNATURE</b> 
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### GENERAL INSTRUCTIONS

**APPEARANCE**

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

**MOTION TO LIMIT OR QUASH**

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

**TRAVEL EXPENSES**

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

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

**RETURN OF SERVICE**

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

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

.....  
.....  
.....  
.....

*on the person named herein on:*

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

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

.....  
*(Official title)*

**CERTIFICATE OF SERVICE**

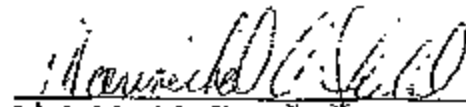
This is to certify that on December 18, 2001, I caused a copy of the attached Subpoena Duces Tecum Issued on Behalf of *MSC Software Corporation* to be sent via registered mail, upon the following persons for service:

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

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

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

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



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

**In the Matter of MSC Software Corporation, F.T.C. Docket No. 9299**  
**SUBPOENA DUCES TECUM ISSUED ON BEHALF OF**  
**RESPONDENT MSC SOFTWARE CORPORATION**

Unless modified by agreement with Respondent MSC Software Corporation (hereinafter "MSC"), each specification of this Subpoena requires a complete search of "your company" as defined in Paragraph "1" of the Definitions, which appear after the following Specifications.

If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in a way that is consistent with MSC's need for documents and information, you are encouraged to discuss such possible modifications with the MSC attorney identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. Counsel for MSC is prepared immediately to discuss reasonable means of limiting the scope of any required search for responsive documents and any other reasonable modifications of this Subpoena in a desire to minimize the cost, expense, and time required to comply with this Subpoena, including but not limited to agreeing to fact stipulations in the form of sworn declarations.

To facilitate the speed of your response, defendants request that documents be produced as their responsiveness is identified. Defendants are prepared to provide third party temporary lawyers and legal assistants – at MSC's expense but under ANSYS's control – to assist in the search for responsive documents. Defendants will make persons available at any and all document production sites to take receipt of and copy responsive documents, or to arrange for copying under ANSYS's control.

**SPECIFICATIONS**

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

1. One copy of each organization chart and personnel directory in effect since January 1, 1997, for the company as a whole, and for each of the company's facilities or divisions involved in any activity relating to any Relevant Product or Service.
2. Documents sufficient to identify, for each year, all personnel responsible for, or involved in, (1) the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any Relevant Product or Service; or (2) financial reporting, accounting, analysis for the company.
3. All documents relating to MSC.
4. All documents relating to CSAR.
5. All documents relating to UAI.

6. All documents relating to SAS, Harry G. Schaeffer, Richard H. McNeal, or Michael J. Krauski.
7. All documents relating to Nastran-based FEA solvers.
8. All documents relating to any communications with any third-party concerning MSC's acquisitions of CSAR and UAI or the FTC's investigation or litigation concerning MSC's acquisitions of CSAR and UAI.
9. All documents relating to any communications with the Federal Trade Commission concerning any Relevant Product or Service, MSC's acquisitions of CSAR and UAI, or any actual or potential customer of any Relevant Product or Service.
10. All documents relating to any plan, decision, or effort by ANSYS to offer or develop a Nastran-based FEA Solver.
11. For the company as a whole and for each business unit, product line, and product, one copy of each quarterly or annual budget financial statement, income statement, balance sheet, operating reports, capital investment plans, financial plan or forecast, sales plan or forecast, revenue plan or forecast.
12. All stock analysts' or other investment community analyses, recommendations, or research reports relating to the company, to any Relevant Product or Service, or to computer aided engineering products and services in general.
13. All documents relating to any communications concerning any Relevant Product or Service between or among the company and Daratech or any individual stock analyst or other person engaged in, or associated with, the investment community, including correspondence, press releases, notes, agendas, scripts, transcripts and recordings.
14. All documents relating to any meeting of or decision making by the board of directors or of any board, executive, or management committee concerning any Relevant Product or Service, including:
  - a. all announcements of, agendas for, and minutes of any meeting;
  - b. all memoranda, reports, presentations, or other documents distributed to or presented to such board or committees, including all documents relied upon to prepare the memorandum, report, or presentation; and
  - c. all documents relating to the deliberations and decision making of the board or committee, including notes taken by any persons participating in any such meeting or decision making.

15. All annual or multi-year business or strategic plans prepared by or for an Officer or Director of ANSYS for purposes of analyzing competition for any Relevant Product or Service.
16. All documents relating to (i) plans or activities by any company other than ANSYS to develop, market, or sell any Relevant Product or Service, or (ii) ANSYS's interpretation, analysis, response, reaction, or plans to coordinate, join, or investigate such company's activities or plans.
17. All documents relating to prices of any Relevant Product or Service, excluding actual invoices and signed contracts, but including (i) documents referring to negotiations or bidding for any Relevant Product or Service, (ii) summaries or reports of pricing by ANSYS or any other provider of any Relevant Product or Service; and (iii) documents discussing future pricing plans or projections or historical pricing; and (iv) methodologies, formulae, practices, or policies for determining actual or offered prices.
18. All documents relating to competition in the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any Relevant Product or Service, including all documents relating to:
  - a. the market share or competitive position of the company or any of its competitors;
  - b. the relative strengths or weaknesses of any person producing or selling any product or service competing with any Relevant Product or Service;
  - c. the relative strengths and weaknesses and differences in capabilities, features, enhancements, and modules between or among any Relevant Product or Service;
  - d. any actual or potential conditions affecting the supply, demand, entry, cost, price, quality, features, enhancements, modules, or applications relating to any Relevant Product or Service;
  - e. efforts to win customers or sales from other companies, or the loss of customers or revenues due to competition or sales by other companies;
  - f. the effects of competition from any supplier of any Relevant Product or Service, including MSC, UAI and CSAR, on sales, pricing, revenues, customers, development, features, enhancements, modules, or applications;
  - g. customers' use of in-house codes, traditional methods of product testing, or prototyping; and
  - h. the use of unlimited usage agreements and paid-up licenses.

19. All documents relating to switching, including shifts in utilization, between or among any Relevant Product or Service and any other product or service, including the relative ease or difficulty of switching; the estimated, projected or actual costs incurred by users to switch; the time required to switch; the degree of switching possible; the effect on a user's price from switching or shifting utilization or threatening to switch or shift or the availability of the opportunity to switch or shift; the cost of switching attributable to lost productivity while gaining proficiency in the new product or service or from use of a less than optimum product or service; the cost of and time required for training; the cost of and time required for translating or converting existing files, models, routines, commands, DMAP alters, or other legacy materials to the new product or service; the effect of switching on customer or collaborator relationships; the effect of unlimited usage contracts or paid up licenses on switching; the possible loss or cost of complementary software used with the product or service; the use, availability, and the availability and effect of translators and AP209 exchange format standards; and governmental, customer, contractual, or industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.
20. All documents relating to actual, attempted, or potential entry into the market for any Relevant Product or Service, including the actual or expected cost likelihood, form and timing of such entry.
21. All documents relating to the design, development, marketing, sale or announcement of any MSC.Nastran product for Windows, and all documents relating to any response, plans, change in strategy or conduct by ANSYS as a result of MSC's offering of an MSC.Nastran for Windows product.
22. Documents sufficient to show, for each year, the number of people involved in (i) technical support, and (ii) research and development; and all documents relating to the need or desire to hire, or the difficulties or issues associated with hiring, additional personnel to assist in research and development activities or technical support.
23. All documents relating to financial or economic methodologies, formulae, or performance models or criteria used by the company or any person for valuing or determining the purchase prices for any actual, attempted, or potential acquisitions, divestitures, joint ventures, alliances, or mergers of any kind involving the licensing or sale of any Relevant Product or Service.
24. All documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, or promoting the use of any particular Relevant Product or Service.
25. Documents sufficient to identify or describe, for each year, the customers who purchased any Relevant Product or Service from ANSYS, the products such customers purchased, the



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

26. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Relevant Product or Service for the period January 1, 1997, to the present, including:
- a. the date of transaction,
  - b. the amount of the transaction,
  - c. the quantity,
  - d. the type and duration of the contract or license,
  - e. a description of each product or service licensed or sold (including product number or code),
  - f. the contract number,
  - g. the location, including physical address and serial number, of the computer where the software is located or service rendered,
  - h. the SIC code, trade or industry category, and business group of the customer, and
  - i. the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.
27. For each Relevant Product or Service offered for sale or licensing, all selling aids and promotional materials and all manuals, including instructional and installation manuals.
28. Documents sufficient to describe each Relevant Product or Service offered by ANSYS, including the functionality of each such product or service and the types of projects for which each such product or service is suitable.
29. Documents sufficient to show or describe the following:
- a. all document retention and destruction systems, policies, procedures, and practices of the company (including all documents sufficient to identify each instance where the company's document retention policy has not been followed);
  - b. the persons responsible for managing such systems, policies, procedures, or capabilities;

- c. all electronic data and document management information systems of the company;
- d. all network-accessible documents, information and financial data systems;
- e. all backup procedures; and
- f. the process and cost of recovery of backup files, including documents sufficient to show:
  - (i) the cost of recovery of backup files generally; and
  - (ii) the cost of recovery of backup files containing documents responsive to this document Subpoena.

#### DEFINITIONS

1. The term "the company" or "ANSYS" means ANSYS, Incorporated, its domestic and foreign parents, predecessors, successors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.
2. The term "MSC" means MSC Software Inc. or any of its officers, directors, employees, consultants, or agents to the extent such individuals are acting on behalf of MSC Software, Inc.
3. The term "UAI" means Universal Analytics, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing.
4. The term "CSAR" means Computerized Structural Analysis and Research Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing.
5. The term "SAS" means Shaeffer Automated Simulation, LLC, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing.
6. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents"

includes electronic correspondence and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of the company. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Unless otherwise specified, the term "documents" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans, engineering blueprints, and source code.

7. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
8. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
9. The term "documents sufficient to show" means documents that are necessary and sufficient to provide the specified information. If summaries, compilations, lists, or synopses are desired as a basis for providing the requested information, MSC is prepared to discuss the form and content of such summaries, compilations, lists, or synopses in order to minimize burden.
10. The terms "and" and "or" have both conjunctive and disjunctive meanings.
11. The terms "each," "any," and "all" mean "each and every."
12. The term "including" means including but not limited to.
13. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.
14. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
15. The term "agreement" or "contract" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.
16. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
17. The term "Relevant Product or Service" as used herein means any software product that contains FEA software (either as a stand-alone product or embedded as part of a broader software product) and any services provided in connection with or relating to FEA software,

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

18. The term "Nastran" means all software products, regardless of platform on which the software operates, based in whole or in part on the Nastran code or Nastran kernel developed originally either by the National Aeronautical and Space Administration ("NASA") or by any person acting pursuant to a development contract with NASA, and includes any program released into the public domain by NASA or the University of Georgia; all value-added enhancements, features, modules, applications, applications programming interfaces, programming languages, and Direct Matrix Abstraction Programming ("DMAP") for any Nastran product; all products that integrate or combine Nastran with any other product; and all services relating to Nastran, including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation for Nastran products. The term also includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, Working Model, Elfini, GPS, Cosmos, or any other solver licensed or sold by MSC.
19. The term "FEA software" means all software products offering finite element analysis, including Nastran, regardless of platform on which the software operates, and includes all value-added enhancements, features, modules, applications, applications programming interfaces, and programming languages for the software, all products that integrate or combine the FEA software with any other product, and all services relating to maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, training, and hot line and 1-800 consultation for FEA products. The term "FEA software" includes, but is not limited to, software that has embedded FEA solver functionality, or any computer aided design (CAD) software that competes with can be perform functions similar to an FEA solver.
20. The term "minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the relevant product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.
21. The term "non-recoverable costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

#### INSTRUCTIONS

1. Except for privileged material, the company shall produce each responsive document in its

entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Except for privileged material, the company shall not mask, cut, expunge, edit or delete any responsive document or portion thereof in any manner.

2. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and information dated, generated, received, or in effect after January 1, 1997.
3. The geographic scope of search is the world.
4. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, the company must submit legible copies. However, if the coloring of any document communicates substantive information, the company must submit the original document or a like-colored photocopy. Electronic documents shall be produced, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. Electronic mail messages shall also be provided, even if only available on backup or archive tapes or disks. Computer files shall be printed and produced in hard copy or produced in machine-readable form (provided that counsel for MSC determine prior to submission that it would be in a format that allows them to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
5. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media: counsel for MSC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Omega 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) Omega DITTO mini data cartridges (2000 MB capacity). Counsel for MSC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system, counsel for MSC will accept data provided on 8mm DAT created using TAR or DD.
  - b. File and record structures.
    - (i) Magnetically-recorded information from centralized non-microcomputer-based systems:

- (a) File structures. Counsel for MSC will accept sequential files only. All other file structures must be converted into sequential format.
  - (b) Record structures. Counsel for MSC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.
- (ii) Magnetically-recorded information from microcomputers. Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.
- c. Documentation.
- (i) Data must be accompanied by the following information:
    - (a) full path name of the file; and
    - (b) the identity of the media on which it resides, *e.g.* the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.
  - (ii) Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media.
  - (iii) For all sequential files, the documentation also must include:
    - (a) the number of records contained in the file;

- (b) the record length and block size ; and
- (c) the record layout, including the name of each element, the element's size in bytes, and the element's data type.

The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

- d. Shipping. Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**
  - e. Virus Checks: Media will be scanned for computer viruses. Infected media will be returned for replacement.
6. As to Specification No. 26, submit all computer data in machine readable form in Excel (.xls) 2000 or prior version, or Lotus-compatible (.wk1) format, or in ASCII delimited, comma separated or fixed length field format, with field names as the first record.
  7. The company shall mark each submitted page or sheet with its corporate identification, *i.e.*, ANSYS, and with consecutive document control numbers.
  8. Responsive documents from each person's files shall be produced together in file folders that segregate the person's files. Documents responsive to Specification No. 16 shall be produced in file folders segregated by customer and in chronological order within each customer file.
  9. For each box containing responsive documents the company shall:
    - a. number each box; and
    - b. mark each box with the name(s) of the person(s) whose files are contained in that box, and the corresponding consecutive document control numbers for each such person's documents.
  10. Where identical copies are found in more than one person's files, the company must produce one copy from each person's files, or otherwise identify the person from whom identical copies of the document are found.
  11. If it is claimed that any document, or portion thereof, responsive to any request or Specification is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:

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

For each author, addressee, and recipient, state the person's full name, title, and employer of firm, and denote all attorneys with an asterisk. The description of the subject matter shall include the number of the pages of each document and shall describe the nature of each document in a manner that, without revealing information itself privileged or protected, will enable counsel for MSC to assess the applicability of the privileged or protection claimed. Any part of a document to which you do not claim privilege or work product should be produced in full.

12. If there are no documents responsive to any particular request or Specification, the company shall state so in its answer to the document request or Specification.
13. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business, but the company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
14. In lieu of original documents, the company may submit legible copies of documents so long as the company verifies with the attached form that they fully and accurately represent the originals.



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



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF	)	
MSC.SOFTWARE CORPORATION,	)	
a corporation	)	Docket No. 9299

**RULE 3.22(f) STATEMENT OF COUNSEL**

1. I, Thomas A. Donovan, as counsel for ANSYS, Inc. ("ANSYS"), certify that I conferred with MSC's counsel regarding the issues raised in the attached Third Party ANSYS Inc.'s Motion to Limit Subpoena *Duces Tecum* Served by MSC Software Corporation and was unable to reach agreement regarding such issues. Therefore, the attached motion is necessary.

2. Specifically, I conferred with MSC's counsel on December 26, 2001, January 3, 2002, January 16, 2002 and January 17, 2002 in an effort reasonably to limit the scope of the Subpoena. MSC's counsel Colin Kass has participated in each of these conversations, as I have on behalf of ANSYS. Mr. Kass' colleague Tefft Smith and my colleague Joseph Safar participated in some of the discussions. I and my colleague Joseph C. Safar also exchanged correspondence, dated December 27, 2001, January 8, 2002, January 9, 2002 and January 17, 2002 with MSC's counsel. Copies of the correspondence are attached hereto.

3. For example, we were unable to reach an agreement with MSC's counsel regarding the following issues concerning the proper scope of the Subpoena in general:

a. Mr. Safar and I have advised MSC's counsel that the defined terms "Relevant Product or Service" and "FEA Solver", when applied to ANSYS, encompassed every product and service without regard to whether it competes in any way with MSC's NASTRAN solver, which is the product at issue in this litigation. We further advised counsel for ANSYS of the nature and extent of competition between the ANSYS' solver and MSC's NASTRAN solver, as outlined in the affidavit of Michael J. Wheeler. Notwithstanding this information, MSC's counsel refused to modify, in any way, the definition of "Relevant Product or Service".

b. We advised MSC's counsel that ANSYS did not dispute, and was willing to provide testimony through an affidavit, deposition or at trial, that ANSYS' solver competes with MSC's NASTRAN solver for new customers who have not yet made (or whose own customers have not made) substantial investments in ancillary equipment facilities, data collections or other tools that are compatible only with NASTRAN, or whose customers demand the use of NASTRAN. Notwithstanding this offer, MSC's counsel refused to excuse ANSYS from collecting and producing documents proving the existence of such competition.

c. We advised MSC's counsel of the steps taken by ANSYS to identify relevant documents and the identity of the nineteen individuals whose hard copy and electronic files were being searched for documents and e-mail, as outlined in the Affidavit of David S. Secunda, dated January 17, 2001. We further advised MSC's counsel that these files represented the locations where ANSYS would search for information on these topics if ANSYS were searching for such information in the ordinary course of its business. Notwithstanding this

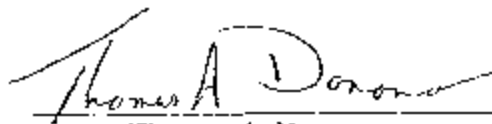
information, MSC counsel refused to agree that the searches being conducted on the individuals' files being searched were sufficient.

d. We inquired of MSC's counsel whether MSC has sent subpoenas to other major FEA solvers developers. MSC's counsel refused to answer.

e. We advised MSC's counsel of the burden of restoring server backup tapes, as outlined in the affidavit of Gary Figanell, and the fact that searching backup tapes was unlikely to yield additional, non-duplicative information, beyond that uncovered by the searched discussed above. Notwithstanding this information, MSC's counsel refused to excuse ANSYS from restoring and searching backup tapes.

f. MSC's counsel refused to excuse ANSYS from producing documents that would divulge its negotiating strategy with respect to its offer to purchase the assets Complaint Counsel seek to divest.

4. By way of further example, I was not able to reach an agreement with MSC's counsel regarding the proper scope of paragraphs 11 and 23 of the Specifications.

  
\_\_\_\_\_  
Thomas A. Donovan

## Kirkpatrick & Lockhart LLP

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December 27, 2001

### VIA FACSIMILE

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

Thomas A. Donovan  
412.355.6466  
Fax: 412.355.6501  
tdonovan@kl.com

### Re: ANSYS, Inc.

Dear Mr. Smith:

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

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

1. Any files in the executive offices at ANSYS' headquarters which are filed under the names of MSC, CSAR or UAI;
2. A corporate organization chart for ANSYS;
3. Documents relating to the relationship with Schaeffer Automated Simulation, LLC, announced in ANSYS' November 27, 2001 press release;
4. Readily available and readily identifiable documents, if any, located in the executive offices within ANSYS' headquarters in which Nastran-based FEA solvers are the primary subject of discussion;
5. Any readily available and readily identifiable documents concerning MSC's acquisitions of CSAR or UAI which are contemporaneous with those acquisitions;
6. Non-privileged documents, if any, responsive to paragraphs 9 and 10 of the Subpoena; and

**Kirkpatrick & Lockhart LLP**

Tefft W. Smith, Esquire  
December 27, 2001  
Page 2

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

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

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

Very truly yours,

  
Thomas A. Donovan

TAD/drt

**KIRKLAND & ELLIS**  
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To Call Writer Directly:  
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colin\_kass@dc.kirkland.com

(202) 879-9000

Facsimile:  
(202) 879-5200

December 27, 2001

VIA FACSIMILEThomas A. Donovan, Esq.  
Kirkpatrick & Lockhart, LLP  
535 Smithfield Street  
Pittsburgh, PA 15222-2312Re: *In the matter of MSC Software Corporation*, Docket No. 9299 (F.T.C.)

Dear Tom:

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

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

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

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



## KIRKLAND &amp; ELLIS

Thomas A. Donovan, Esq.  
December 27, 2001  
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2. You proposed that ANSYS would produce "[a] corporate organization chart for ANSYS." Without waiving the right to seek any additional documents, we have no modification to this proposal at this time.
3. You proposed that ANSYS would produce "[d]ocuments relating to the relationship with Schaeffer Automated Simulation, LLC, announced in ANSYS' November 27, 2001 press release." Without waiving the right to seek any additional documents, we have no modification to this proposal at this time.
4. You proposed that ANSYS would produce "[r]eadily available and readily identifiable documents, if any, located in the executive offices within ANSYS' headquarters in which Nastran-based FEA solvers are the primary subject of discussion." The use of the qualifiers "readily available," "readily identifiable," and "primary" are vague and ambiguous and do not permit a full understanding of the types of documents that ANSYS is agreeing to produce. Before we can agree to this proposal, you will need to clarify how you meant these qualifiers to limit the scope of ANSYS' search or production.
5. You proposed that ANSYS would produce "[a]ny readily available and readily identifiable documents concerning MSC's acquisitions of CSAR or UAI which are contemporaneous with those acquisitions." Without waiving the right to seek any additional documents, we would be willing to agree to this proposal subject to clarification of, and agreement on, the terms "readily available" and "readily identifiable."
6. You proposed that ANSYS would produce "[n]on-privileged documents, if any, responsive to paragraphs 9 and 10 of the Subpoena." Without waiving the right to seek any additional documents, we would be willing to agree to this proposal so long as any privileged documents (responsive to this or any other request) withheld from production are reported on a privilege log.
7. You proposed that ANSYS would produce "[r]eadily available and readily identifiable documents in ANSYS' headquarter offices relating to any efforts by ANSYS to persuade customers to switch from Nastran-based solvers to the ANSYS Solver products." Without waiving the right to seek any additional documents, we

## KIRKLAND &amp; ELLIS

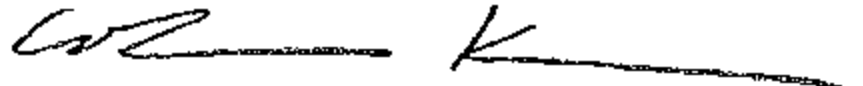
Thomas A. Donovan, Esq.  
December 27, 2001  
Page 3

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Colin R. Kass", written over a horizontal line.

Colin R. Kass

## Kirkpatrick & Lockhart LLP

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January 8, 2002

Thomas A. Donovan  
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tdonovan@kl.com

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

RE: In Re MSC Software Corporation Subpoena to ANSYS, Inc.

Dear Mr. Kass:

As we discussed in our telephone call, this letter will summarize ANSYS' position with respect to the production of documents in response to MSC Software's ("MSC") subpoena relating to the FTC's adjudicative proceeding, Case No. 9299 (the "Subpoena"). We invite constructive suggestions from you, both in the areas specifically discussed below and otherwise. Since complaint counsel are entitled to receive the same documents from ANSYS, I am forwarding a copy of this letter to complaint counsel.

The references in the following section of this discussion refer to the paragraphs of my letter of December 27, 2001 to your colleague, Tefft Smith.

As set forth in paragraphs 1 and 5, we will look in those portions of the executive offices of ANSYS' headquarters where we would anticipate that discussions of the solver activities of MSC, CSAR or UAI are likely to be found, and we will forward copies of the appropriate materials, subject to appropriate confidentiality protections, unless we advise you by way of a privilege log or motion to quash or limit that such materials have been withheld.

In connection with paragraph 2, we will forward a copy of a chart showing the corporate organization of ANSYS and its affiliates as well as certain personnel charts. If you believe you need further organization charts after receiving them, we will consider your explanation of what else you need and why.

As reflected in paragraph 3 of the December 27 letter, we will provide documents relating to the relationship with SAS LLC announced in the November 27, 2001 press release. However, we will not produce documents that reflect ANSYS' negotiating strategy with respect to the offer it has made to MSC to purchase certain assets that the FTC is seeking to compel MSC to divest. To do so would give MSC an unfair advantage in any future discussions regarding such a transaction. While MSC has to date refused even to discuss such a transaction, attitudes may change in the future, and it would be counterproductive to sabotage

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**Kirkpatrick & Lockhart LLP**

Colin R. Kass, Esquire  
January 8, 2002  
Page 2

through document discovery any possibility of such a transaction that would settle the current litigation between MSC and the FTC.

In connection with paragraph 4, we are collecting documents relating to NASTRAN-based solvers from appropriate headquarters and sales personnel. I expressed to you our frustration with agreeing to provide these materials in the face of what appears to be near-total intransigence from MSC with respect to narrowing the all-encompassing scope of MSC's subpoena. Nevertheless, we will produce such materials unless we advise you of our intent not to do so through a privilege log or a motion to quash. As noted above, we do not intend to divulge ANSYS' negotiating strategy with respect to its offer to MSC.

In connection with paragraph 6 of the December 27<sup>th</sup> letter, any documents located through a reasonable search reflecting communications with the FTC regarding MSC or regarding ANSYS' efforts to develop a NASTRAN-based solver will be produced, unless they are listed on a privilege log or are the subject of a motion to quash or limit.

Pursuant to paragraph 7, ANSYS will look in those locations where it would in the ordinary course of business look for documents relating to any effort by ANSYS to persuade customers using NASTRAN-based solvers to purchase ANSYS solvers, as well as efforts to attract customers who have not made a choice between NASTRAN-based and other solvers, and documents related to any ANSYS solver customers known to have purchased NASTRAN-based solvers.

In the following discussion, unlike that above, paragraph numbers will refer to paragraphs of the Subpoena. In response to paragraph 11 of the Subpoena, we will review what documents exist and will advise whether there are any (other than the publicly available financial data) which would provide information of a materiality which would outweigh the risks and costs of disclosure.

You indicated that you would consider limiting paragraph 12 of the Subpoena to documents relating to ANSYS. ANSYS continues to seek to understand the relevance of the requested information to the litigation.

With respect to much of the Subpoena, including but not limited to paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 25, 26 and 27, ANSYS continues to question how information not related to NASTRAN, NASTRAN-users or customers considering a choice between NASTRAN-based and non-NASTRAN-based solvers has relevance which outweighs the burdens, expenses and risks of identification and disclosure. Although ANSYS is not willing to cooperate with a general fishing expedition through virtually all of ANSYS' files, we invite you to suggest criteria in addition to the foregoing criteria which will identify truly meaningful documents. For example, we have suggested that it may be useful for you to identify specific customers with respect to which files might contain material information. I am sure that with your greater familiarity with your defenses, you could identify useful criteria which would substantially reduce the burden involved in your all-encompassing document requests.

## Kirkpatrick & Lockhart LLP

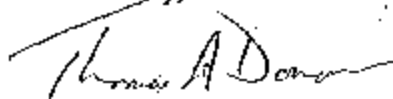
Colin R. Kass, Esquire  
January 8, 2002  
Page 3

Early in our conversations regarding the Subpoena, counsel for MSC suggested that it might be possible to reduce the burden on ANSYS by ANSYS and MSC agreeing to stipulations (or presumably affidavits) in lieu of extensive document production. We proposed agreeing with you regarding MSC's share of all finite element analysis solver sales, in lieu of producing documents under paragraphs 25 and 26 of the Subpoena. You have declined to do so. Accordingly, we would invite your proposals on what stipulations would in your view alleviate your desire for the tremendous breadth of documentation your Subpoena encompasses.

During our telephone conversation I broached the subject of agreeing that documents in the files of Kirkpatrick & Lockhart LLP would not be produced or logged. Such an agreement would alleviate any necessity for arguing about whether those documents are in the custody or control of ANSYS. It would also alleviate the burden of numerous hours spent preparing privilege logs for a minimal number, if any, of non-privileged documents which are not duplicated in files of persons within ANSYS. Kirkpatrick & Lockhart LLP's work for ANSYS is limited to specific matters for which we are retained to provide legal, not business, advice, primarily in corporate and business matters. I have confirmed that on such engagements the usual practice in communications from Kirkpatrick & Lockhart LLP to third parties in connection with such work for ANSYS is to copy one or more ANSYS executives on such communications. Accordingly, there is little chance that any non-privileged documents in Kirkpatrick & Lockhart LLP's files are not duplicated in the files of top executives at ANSYS' headquarters. You have agreed to consider this matter, and I urge you again to cooperate in avoiding an egregious waste of time.

Lastly, you have agreed to consider whether the documents which we provide to you are sufficient to cover the subjects of interest to you. We are working to begin providing documents to you as soon as possible, and I firmly believe that those materials will provide a very accurate picture of the competitive situation. I urge you to consider carefully and with an open mind whether any further information will indeed be necessary.

Sincerely,



Thomas A. Donovan

TAD/drt

cc: Peggy Bayer, Esq.  
David Secunda, Esq.

**KIRKLAND & ELLIS**  
PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS655 Fifteenth Street, N.W.  
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To Call Writer Directly:  
(202) 879-5172  
colin\_kass@dc.kirkland.com

January 9, 2002

**VIA FACSIMILE**Thomas A. Donovan, Esq.  
Kirkpatrick & Lockhart, I.L.P.  
535 Smithfield Street  
Pittsburgh, PA 15222-2312Re: *In the matter of MSC Software Corporation*, Docket No. 9299 (F.T.C.)

Dear Tom:

As you know, on January 7, 2002, we served by fax our Response to your Motion for an Extension of Time. In that Response, we explained the necessity of quickly resolving the scope of the subpoena. In light of the minimal progress made in our prior discussions with you, we asked the tribunal to deny ANSYS's Motion for an Extension of Time and to set a briefing schedule on a motion to quash with all deliberate speed. Because of ANSYS's continued refusal to search for and produce highly relevant and responsive information, we continue to believe that this is the correct approach to resolving any differences between ANSYS and MSC, including the fundamental issues of relevance and confidentiality. Unfortunately, your letter, which was sent late in the day on January 8, 2002 and which purports to "summarize ANSYS's position" with respect to MSC's subpoena, completely ignores our Response.

Nevertheless, it is good to see that MSC's Response has prompted ANSYS to make some commitments to produce documents, and we look forward to reviewing them. As I previously indicated, we too firmly believe that a rolling production of documents will assist us in determining the necessity of additional discovery, if any. While your January 8<sup>th</sup> proposal does advance the ball towards resolving MSC's need for discovery, a number of material issues remain that must be resolved in order to assure that MSC is able to adequately prepare its defense.

To facilitate this discussion, I note that, in your most recent proposal, you refer to both the specifications laid out in your December 27<sup>th</sup> proposal and the actual subpoena. Because the December 27<sup>th</sup> proposal was an *interim* proposal, it did not address the majority of the types of documents called for by the subpoena, nor did it identify your objections to the subpoena. Thus, using it as a basis for defining the scope of the subpoena makes little sense.

## KIRKLAND &amp; ELLIS

January 9, 2002

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As I urged on our last teleconference, I believe it is essential that ANSYS state its objections to the subpoena on a specification by specification basis, and describe exactly what search it intends to perform or how it intends to limit each specification. Then, when it comes time for ANSYS to move to quash the subpoena, both parties will clearly understand the issues. In that vein, I will respond to your January 8<sup>th</sup> proposal within the framework of the subpoena.

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

Your January 8<sup>th</sup> proposal states that you will produce "a copy of a chart showing the corporate organization of ANSYS and its affiliates as well as certain personnel charts." As this commitment appears slightly broader than what you proposed during our January 3<sup>rd</sup> teleconference, I assume that ANSYS has relented following our Response to your Motion for Extension of Time. But because the qualifier "certain" is unclear, we obviously must reserve the right to ask for additional organization charts. As I explained, our ability to negotiate the appropriate scope of ANSYS's search or the scope of the subpoena is dependent on our understanding of where the relevant documents reside. But, assuming the organization chart you produce covers the relevant people at ANSYS, it may be sufficient.

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

This involves the same issues as Request No. 1.

3. **All documents relating to MSC.**

In your January 8<sup>th</sup> proposal, you agreed to "look in those portions of the executive offices of ANSYS' headquarters where [ANSYS] would anticipate that discussions of the solver activities of MSC, CSAR, or UAI are likely to be found...." As I previously explained, we believe the scope of your search is far too narrow. There may be numerous relevant documents outside the "executive offices" that relate to MSC. Indeed, from our discussions, you indicated that you would only be searching the files of approximately five people. We believe this is wholly inadequate, although we may be willing to consider sampling of sales persons (or other limitations on which locations need to be searched) as a starting point. In addition, your January 8<sup>th</sup> proposal makes no mention of e-

## KIRKLAND &amp; ELLIS

January 9, 2002

Page 3

mails or electronic data. I believe we had discussed this previously, and that you were willing to search e-mails and electronic data for responsive information. If I am incorrect, please let me know. Also, your January 8<sup>th</sup> proposal is limited to "discussions of solver activities." It is unclear what you mean to exclude by this qualification, but the subpoena is not so limited. We believe we are entitled to any documents in ANSYS's files that discuss MSC or competition within the FEA solver market.

4. All documents relating to CSAR.

This involves the same issues as Request No. 3 in so far as it relates to CSAR.

5. All documents relating to UAI.

This involves the same issues as Request Nos. 3 and 4 insofar as it relates to UAI.

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

Your January 8<sup>th</sup> letter differs slightly from what I believe we have previously discussed. Previously, we discussed treating SAS in a similar manner to MSC, UAI, and CSAR. Your December 27<sup>th</sup> letter relates only to "documents relating to the relationship with SAS LLC announced in the November 27, 2001 press release." This represents substantially less than what is called for by the subpoena, i.e., *all* documents relating to SAS. Your proposal, in some respects, is even less comprehensive than your search for documents relating to MSC, CSA, and UAI. We believe the same search criteria should apply for SAS as applies to these other entities.

In addition, we disagree with your refusal to produce documents "reflecting ANSYS' negotiating strategy with respect to the offer it has made to MSC to purchase certain assets ...." If ANSYS's offer of \$500,000 was not made in good faith, then it demonstrates that ANSYS is using the litigation to obtain a competitive advantage in the market. If ANSYS's offer was made in good faith, it demonstrates the lack of value or competitive significance of UAI and CSAR. In either event, ANSYS's documents relating to SAS, UAI, CSAR, and SAS are all highly relevant. Your objection, which appears to relate solely to confidentiality, is not a sufficient basis to withhold these documents. As you know, there is a Protective Order in this case, which was entered by the Administrative Law Judge. It is our position that this Protective Order adequately protects all confidential information. If you intend to withhold any documents on the basis of confidentiality, you must raise this issue with the ALJ.



## KIRKLAND &amp; ELLIS

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

It appears that your January 8<sup>th</sup> proposal goes further than your December 27<sup>th</sup> proposal by, for example, eliminating the qualifying "readily available and readily identifiable" language. In light of the elimination of such qualifying language, it appears as though ANSYS is prepared to respond fully to this specification (including the production of e-mails and electronic data) and will be able to certify compliance with this specification of the subpoena as written. If this is not correct, please let me know.

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

Your January 8<sup>th</sup> proposal does not specifically address this specification. Please let me know what objections, if any, ANSYS has to complying with this specification.

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

Your January 8<sup>th</sup> proposal states that ANSYS will produce "any documents located through a reasonable search reflecting communications with the FTC regarding MSC or regarding ANSYS's efforts to develop a NASTRAN-based solver ... unless they are listed on a privilege log or are the subject of a motion to quash." Your proposal is less broad than the subpoena, as it omits communications relating to any "Relevant Product or Service." If you have objections to producing such documents, please let me know.

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

Your January 8<sup>th</sup> proposal does not specifically address this specification. Please let me know what objections, if any, ANSYS has to complying with this specification.

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January 9, 2002

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

Your January 8<sup>th</sup> proposal states that you will "advise whether there are any [documents] (other than publicly available financial data) which would provide information of a materiality which would outweigh the risks and costs of disclosure." While we eagerly await to see what, if anything, ANSYS is prepared to produce, ANSYS's stated refusal to produce responsive documents is unacceptable. We believe that this information is relevant and that the Protective Order adequately preserves the confidentiality of this information. If you disagree, it is an issue you should raise in a motion to quash.

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

Your January 8<sup>th</sup> proposal notes that MSC would be willing to "consider limiting paragraph 12 of the subpoena to documents that relate to ANSYS." I note, however, that you have not committed to producing such documents. Nevertheless, we will so limit this specification.

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

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

14. All documents relating to any meeting or decision making by the board of directors or of any board, executive, or management committee concerning any Relevant Product or Service, including:
- a. all announcements of, agendas for, and minutes of any meeting;

## KIRKLAND &amp; ELLIS

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- h. all memoranda, reports, presentations, or other documents distributed to or presented to such board or committees, including all documents relied upon to prepare the memorandum, report, or presentation; and**
- c. all documents relating to the deliberations and decision making of the board or committee, including notes taken by any persons participating in any such meeting or decision making.**

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

- 17. All documents relating to prices of any Relevant Product or Service, excluding actual invoices and signed contracts, but including (i) documents referring to negotiations or bidding for any Relevant Product or Service, (ii) summaries or reports of pricing by ANSYS or any other provider of any Relevant Product or Service; and**

## KIRKLAND &amp; ELLIS

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(iii) documents discussing future pricing plans or projections or historical pricing; and  
(iv) methodologies, formulae, practices, or policies for determining actual or offered prices.

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. However, your proposal does note elsewhere that "ANSYS will look in those locations where it would in the ordinary course of business relating to any effort by ANSYS to persuade customers using NASTRAN-based solvers to purchase ANSYS solvers, as well as efforts to attract customers who have not made a choice between NASTRAN-based and other solvers, and documents relating to any ANSYS solver customers known to have purchased NASTRAN-based solvers." Your proposal, however, fails to capture documents that relate to ANSYS's attempts to retain its existing customers who may consider switching all or part of their usage to a NASTRAN-based solver. In addition, your proposal fails to capture documents relating to ANSYS's pricing or competitive strategies with respect to any Relevant Product or Service. If you have objections to producing these documents, please let me know.

18. All documents relating to competition in the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any Relevant Product or Service, including all documents relating to:
- a. the market share or competitive position of the company or any of its competitors;
  - b. the relative strengths or weaknesses of any person producing or selling any product or service competing with any Relevant Product or Service;
  - c. the relative strengths and weaknesses and differences in capabilities, features, enhancements, and modules between or among any Relevant Product or Service;
  - d. any actual or potential conditions affecting the supply, demand, entry, cost, price, quality, features, enhancements, modules, or applications relating to any Relevant Product or Service;
  - e. efforts to win customers or sales from other companies, or the loss of customers or revenues due to competition or sales by other companies;

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- f. the effects of competition from any supplier of any Relevant Product or Service, including MSC, UAI and CSAR, on sales, pricing, revenues, customers, development, features, enhancements, modules, or applications;
- g. customers' use of in-house codes, traditional methods of product testing, or prototyping; and
- h. the use of unlimited usage agreements and paid-up licenses.

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal does not address this specification. As a result, ANSYS's objections, if any, to this specification are unclear. It is also unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal does not address this specification. As a result, ANSYS's objections, if any, to this specification are unclear. It is also unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

**KIRKLAND & ELLIS**

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

Your January 8<sup>th</sup> proposal does not address this specification. As a result, ANSYS's objections, if any, to this specification are unclear. It is also unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

- 25. Documents sufficient to identify or describe, for each year, the customers who purchased any Relevant Product or Service from ANSYS, the products such customers purchased, the amount of such purchases, and the projects for which such products or services were used.**

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

- 26. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Relevant Product or Service for the period January 1, 1997, to the present, including:**
- a. the date of transaction,**
  - b. the amount of the transaction,**
  - c. the quantity,**
  - d. the type and duration of the contract or license,**
  - e. a description of each product or service licensed or sold (including product number or code),**
  - f. the contract number,**
  - g. the location, including physical address and serial number, of the computer where the software is located or service rendered,**

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- h. the SIC code, trade or industry category, and business group of the customer, and**
- i. the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.**

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal only discusses this specification generically in connection with a broad relevance objection. As a result, it is unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

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

Your January 8<sup>th</sup> proposal does not address this specification. As a result, ANSYS's objections, if any, to this specification are unclear. It is also unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

- 29. Documents sufficient to show or describe the following:**
- a. all document retention and destruction systems, policies, procedures, and practices of the company (including all documents sufficient to identify each instance where the company's document retention policy has not been followed);**
  - b. the persons responsible for managing such systems, policies, procedures, or capabilities;**



## KIRKLAND &amp; ELLIS

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Page 12

- c. all electronic data and document management information systems of the company;
- d. all network-accessible documents, information and financial data systems;
- e. all backup procedures; and
- f. the process and cost of recovery of backup files, including documents sufficient to show:
  - (i) the cost of recovery of backup files generally; and
  - (ii) the cost of recovery of backup files containing documents responsive to this document Subpoena.

Your January 8<sup>th</sup> proposal does not address this specification. As a result, ANSYS's objections, if any, to this specification are unclear. It is also unclear what ANSYS is prepared to search for and produce. Please let me know as soon as possible.

\* \* \*

As the foregoing makes clear, there are a number of specifications for which it is unclear what ANSYS is willing to search for and produce. As I have noted throughout our discussions, it is perhaps best if we can reach agreement as to where ANSYS will look for responsive documents. I believe this can only be done if you produce a sufficiently detailed organization chart and are willing to discuss where the documents called for by the subpoena are likely to reside. Perhaps we can agree on a broad search with respect to certain individuals and then targeted searches for specific information with respect to other individuals. For example, based on your representation that it is the usual practice for Kirkpatrick & Lockhart to forward any materials it receives from third-parties to executives at ANSYS and that, as a result, any non-privileged documents in Kirkpatrick & Lockhart's files would be found in such executives' offices, MSC will agree that there is no need to produce or log documents found in the files of Kirkpatrick & Lockhart.

Also, as we previously discussed, we would be open to obtaining information in the form of stipulations or written answers. So for example, the request for all organization charts could be satisfied by a prepared written response identifying all relevant personnel. Similarly, as I explained on January 3<sup>rd</sup>, we would be willing to accept a computer-generated report detailing the

## KIRKLAND &amp; ELLIS

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requested financial information in specification 11. This would prevent ANSYS from having to search for and produce numerous pre-existing financial statements. There may be other specifications, such as specification 28, for which a written response would be adequate and less burdensome than a document production.

However, while MSC is willing to work with you to minimize the burden on ANSYS, it is not willing to sacrifice its ability to obtain highly relevant information. So for example, your attempt to limit the information called for by specifications 25 and 26 is unacceptable. MSC clearly needs access to ANSYS's customer list and electronic database. Your effort to deny us access to this information by proposing to stipulate to ANSYS's market share is inadequate and unreasonable.

I look forward to your response.

Respectfully,



Colin R. Kass

cc: Peggy D. Bayer, Esq.

# Kirkpatrick & Lockhart LLP

Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222-7312  
412.355.6500  
www.kl.com

January 16, 2002

Joseph C. Safar  
412.355.6443  
Fax: 412.355.6504  
jsafar@kl.com

## VIA FACSIMILE

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

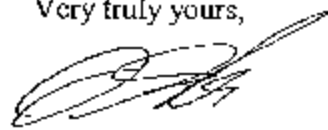
RE: In Re MSC Software Corporation Subpoena to ANSYS, Inc.

Dear Colin:

In advance of our Rule 3.22(f) conference scheduled for 2:30 p.m. today, enclosed are ANSYS organizational charts, Bates stamped 01801 through 01822. It is our hope that, based on these charts, we will be able to reach an agreement concerning the proper scope of the employees whose files should be searched in response to your subpoena. Please note that these documents are designated Restricted Confidential, Attorneys Eyes Only.

If you have any questions, please do not hesitate to call.

Very truly yours,



Joseph C. Safar

JCS:dlk  
Enclosures

cc: Peggy Bayer (w/encl.)  
Thomas A. Donovan, Esq. (w/encl.)

## Kirkpatrick & Lockhart LLP

Henry W. Oliver Building  
535 Smilfield Street  
Pittsburgh, PA 15222-2312  
412.355.6500  
www.kl.com

January 17, 2002

Thomas A. Donovan  
412.355.6466  
Fax: 412.355.6501  
tdonovan@kl.com

### VIA FACSIMILE

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

RE: Subpoena to ANSYS, Inc.

Dear Mr. Kass:

This letter will confirm our agreement by telephone on January 16, 2002 that MSC will not object to an extension until January 31, 2002 for the rolling production of documents by ANSYS. This extension is particularly necessary for the review and production of electronic materials, which is in process. We are relying upon this agreement in excluding the issue of our time for responding from our motion to quash or limit the MSC subpoena.

We are awaiting your response with respect to specification numbers 1 and 2 (the organizational charts produced yesterday), with respect to specification number 29 and with respect to the scope of the individuals whose files have been searched.

Sincerely,



Thomas A. Donovan

TAD/drg

cc: David Secunda, Esq.

# Kirkpatrick & Lockhart LLP

Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222-2312  
412.355.6500  
www.kl.com

January 17, 2002

Joseph C. Safar  
412.355.6443  
Fax: 412.355.6501  
jsafar@kl.com

## VIA FAX & FEDERAL EXPRESS

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

RE: In Re MSC Software Corporation Subpoena to ANSYS, Inc.

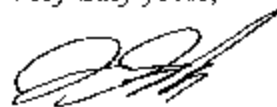
Dear Colin:

As you requested, we are re-sending the last four pages of the organizational charts that we faxed to you yesterday, Bates stamped 01818 through 01822. We are also sending, via Federal Express, the entire Bates range, 01801 through 01822.

Please advise us as soon as possible whether you are prepared to commit that these documents satisfy specification numbers 1 and 2 of the Subpoena.

If you have any questions, please do not hesitate to call.

Very truly yours,



Joseph C. Safar

JCS:dlk

Enclosures

cc: Peggy D. Baycr, Esq. (w/encl. via mail)  
Thomas A. Donovan, Esq. (w/o encl.)

**KIRKLAND & ELLIS**  
PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

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

Colin R. Kass  
 To Call Writer Directly:  
 (202) 879-5172  
 colin\_kass@dc.kirkland.com

(202) 879-5000

Facsimile:  
 (202) 879-5200

January 17, 2002

**VIA FACSIMILE**

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

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

Dear Tom and Joe:

As we discussed during yesterday's telephonic meet and confer, we view ANSYS's proposed search as inadequate to satisfy either MSC's need for discovery from ANSYS or ANSYS's obligations under the subpoena. My understanding is that Kirkpatrick & Lockhart does *not* plan to conduct any independent search. Instead, you simply intend to ask some 19 employees (of over 400) to forward a limited set of documents to you for your review and production. It is also my understanding that you have asked these 19 employees to search for less than what is called for by the subpoena. The proposed search has numerous deficiencies, which I will outline in brief in this letter.

*First*, we believe that any search should be broadened to include additional relevant people, such as Bill Bryan, David Sonnet, Lynn Rowles (and her direct reports), Ravi Kumar, John Priess, Less Stobler, Andy Farrington, Rex Dixon, Scott Hanratty, Bert Murray, John Terens, Terry Horley, Gerry Kyle, Peter Kingman, Janet Swaysland, Stephen Scampol, Stephen Meinshein, Andy Bowe, Mark Swenson, Lisa Kitts, Mike Odel, Robert Bayes, Janet Wolf, Karen Love, Chuck Norton, Cliff Bliss, Brian Tabert, Jeff Spire, Glenn Hartung, Kim Kirley, and Raiza Lolia. We have attached a marked-up version of the organization charts you provided, which identifies these individuals. In addition, we believe that ANSYS should search all marketing or sales people having any responsibility for any of the following customers (including their divisions and affiliates): Boeing, Caterpillar, DaimlerChrysler, DERA, U.S. Department of Defense, Embraer, Ford, GM, Honeywell, Hughes, Lockheed, NASA, U.S. Navy, Orbital, PLM Solutions, Pratt & Whitney, Raytheon, Robert Bosch Corp., and TRW Space and Electronics. Further, we believe that, because Kirkpatrick & Lockhart is not intending to conduct an independent search, an e-mail should be sent to all ANSYS

## KIRKLAND &amp; ELLIS

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employees residing in the United States asking them to forward responsive documents or respond that they have no such documents in their possession, custody, or control.

*Second*, we believe that any search of these people should include not just a search of their hard-drives, but also a search of any e-mails they have sent or received that reside on the company's e-mail server. As you have not explained whether the company's e-mail server automatically deletes e-mails after a certain period, we believe that further discussions are necessary to determine the necessary scope of any search of backed-up e-mails.

*Third*, we believe that any search should include a search of shared files, as well as the files of any assistant or direct report that would have responsive information.

*Fourth*, ANSYS's unilateral narrowing of the scope of the document subpoena is improper and unjustifiable. We understand – based on your representation of what Mr. Michael Wheeler had said – that MSC and ANSYS compete aggressively for new customers. We believe ANSYS also competes aggressively for current customers as well, and does so for virtually every application. In addition, as your own web-site makes clear, ANSYS competes against MSC in the broad MCAE and FEA solver marketplaces by offering customers a broad range of integrated products and services. Your continuous efforts to exclude documents that do not mention the word NASTRAN or involve competition for “NASTRAN solvers” – a term that has no meaning in the CAD/CAE industry to our knowledge – is improper and unjustifiable. For example, your position that ANSYS will not produce documents discussing how ANSYS sets its prices for any product or service is unreasonable. We believe that, at least as to the 19 people you identified and the additional people identified in this letter, ANSYS should conduct a *thorough* search for *all* documents responsive to the subpoena as written.

*Fifth*, yesterday, you stated that ANSYS would be willing to stipulate to the fact that ANSYS competes against MSC for new customers. You explained that it would be unduly burdensome to produce all the documents that relate to such competition. Although we appreciate your willingness to stipulate to this fact, we believe that such a stipulation is insufficient. The documents are highly relevant and go to the core of one of the FTC's primary theories, that ANSYS is an inferior and low-quality solver that does not compete against MSC.NASTRAN because it cannot perform the same functions. We obviously disagree – as apparently ANSYS does as well – with the FTC's position, but the evidence contained in your documents are necessary to effectively put the lie to the FTC's argument.

*Sixth*, you asked whether your production of organization charts is sufficient to satisfy your obligation under Request Nos. 1 and 2 of the subpoena. As I explained yesterday, the fax – which

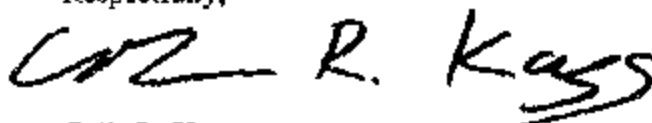
## KIRKLAND &amp; ELLIS

January 17, 2002

Page 3

you sent less than five minutes before the meet and confer – is not fully legible. I understand that you will send a legible copy by mail. I also understand that the organization chart does not cover a majority of ANSYS's current employees nor does it include former employees who have worked for ANSYS during the relevant period as specified in the subpoena. That said, I believe that the organization chart you provided will be adequate to satisfy our needs at this time. We reserve the right to ask for additional organization charts or documents sufficient to identify current or former ANSYS employees not listed on the charts provided, but we would be willing to do so either through an informal letter request or a new subpoena.

Respectfully,

A handwritten signature in black ink, appearing to read "Colin R. Kass". The signature is written in a cursive, somewhat stylized font.

Colin R. Kass

Enclosure

cc: Peggy D. Bayer, Esq.





UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

\_\_\_\_\_) )  
IN THE MATTER OF ) )  
MSC.SOFTWARE CORPORATION, ) Docket No. 9299  
a corporation ) )  
\_\_\_\_\_) )

**AFFIDAVIT OF MICHAEL J. WHEELER IN SUPPORT OF ANSYS INC.'S MOTION TO  
LIMIT SUBPOENA DUCES TECUM SERVED BY MSC.SOFTWARE CORPORATION**

Commonwealth of Pennsylvania )  
Washington County ) ss:  
)

MICHAEL J. WHEELER, being duly sworn, deposes and says:

1. My name Michael J. Wheeler. I am employed by ANSYS, Inc. ("ANSYS") as Vice President of the Mechanical Business Unit. Prior to January 12, 2002, I served as the Vice President of Marketing.

2. I have reviewed the Subpoena *Duces Tecum* issued on behalf of MSC.Software Corporation ("MSC") and served on ANSYS in the above captioned matter (the "Subpoena").

3. I am familiar with the various products and services developed and marketed by ANSYS. I am also familiar with the nature and extent of competition faced by ANSYS' products.

4. ANSYS presently develops and markets a variety of proprietary, non-Nastran-based engineering simulation software products and related products and services.

5. As defined in the Subpoena, the term "Relevant Product or Service", which incorporates the defined term "FEA Solver", covers every product and service offered by ANSYS.

6. The only product presently offered by ANSYS that is viewed by customers or prospects as a substitute for MSC's Nastran solver is ANSYS' top-level finite element analysis solver ("FEA solver"), marketed as part of the "ANSYS Software Suite" (hereinafter the "ANSYS Solver"). However, the ANSYS Solver competes with MSC's Nastran solver principally for new customers who have not yet made (or whose own customers have not made) substantial investments in the creation of ancillary models, software or data collections which are only compatible with NASTRAN software. For such new users, the ANSYS Solver and the Nastran Solver are both suited for many of the same applications, although each product offers distinct and valuable functionalities the other does not.

7. ANSYS has had little success in persuading existing Nastran customers with substantial investments in Nastran (or customers who face demands from their own customers regarding the use of Nastran-based or other specified systems) to switch to the ANSYS Solver. The bulk of the sales of the ANSYS Solver do not involve competition with Nastran-based solvers, such as those offered by MSC or previously offered by UAI or CSAR.

8. The following ANSYS products and services, which are covered by the Subpoena, do not compete with MSC's Nastran solver, either because they are not solvers at all or because they offer radically different functionality at a different price: ANSYS Consulting Services, the DesignSpace family of products, the AI\*SOLUTIONS family of products (AI\*EMAX, AI\*WORKBENCH), the ICEM CFD family of products, and the family of products developed by our CADDF division.

9. DesignSpace has some limited finite element analysis capabilities. However, these capabilities represent but a fraction of the capabilities of the ANSYS Solver or


the MSC's Nastran solver. DesignSpace sells for a fraction of MSC's Nastran's price (approximately 10%). Further, DesignSpace is intended for, and is used by, different users at different stages of the product design process. DesignSpace is used by product designers. MSC Nastran is used by professional engineering analysts. DesignSpace is not capable of performing the type of finite element analysis required by professional engineering analysts in the automotive and aerospace industries. AI\*EMAX is a high frequency electromagnetics tool. MSC/NASTRAN does not have this capability. AI\*WORKBENCH is a toolkit for building a CAE user interface and does not include any solver. CADOE is a technology developer in the area of design of experiments, and does not produce a solver. ICEM CFD is a pre and post processor for the computational fluid dynamics marketplace. It does not include any solver.

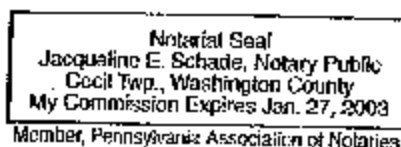
10.. Several other firms develop and market FEA solvers. These firms include Dassault Systemes, EDS PLM Solutions, Parametric Technology Corporation and Hibbett, Karlson and Sorenson. Of the products marketed by these firms, the CATIA V5R7 solver, marketed by Dassault Systemes, is the closest substitute for MSC's Nastran solver.

FURTHER, affiant sayeth not

  
Michael J. Wheeler

Sworn to and subscribed before  
me this 17<sup>th</sup> day of January, 2002:

  
[Notary Public]  
My commission expires:





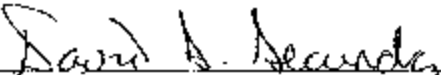


without geographic limitation, even though many of ANSYS' products, and most of ANSYS' operations, are not material to the issues in this litigation.

5. Conducting an evaluation of the potentially responsive documents and information during the period prior to January 1, 2002 would substantially interfere with numerous important year-end business activities of ANSYS, including the procurement and recording of orders for our products. The fourth quarter of the calendar regularly represents for ANSYS the largest sales volume of any quarter of the year, making it the busiest of the year for our employees in both obtaining and booking those revenues. Moreover, as is common throughout the nation, many of our employees schedule vacation time during the last ten days of the year in order to spend the holidays with their families.

6. Due to the above-described year-end activities, ANSYS employees do not have time, prior to the new year, to assist in adequately evaluating the burdens and other issues associated with responding to the Subpoena. For the same reasons, ANSYS employees not have time, prior to the new year, to assist in locating documents and information responsive to the Subpoena. January 31, 2002 is a reasonable deadline for the above activities.

FURTHER, affiant sayeth not.

  
\_\_\_\_\_  
David S. Secunda

Sworn to and subscribed before  
me this 2<sup>nd</sup> day of December, 2001:

  
\_\_\_\_\_  
[Notary Public]

My commission expires:

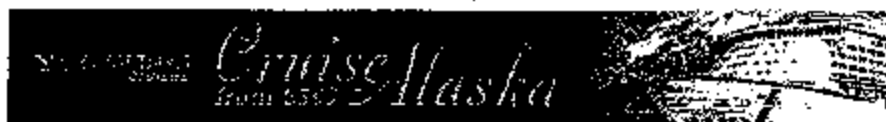
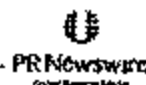
Notarial Seal  
Darlene R. Tchirkow, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires June 2, 2003







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Tuesday November 27, 9:04 am Eastern Time

**Press Release**

*SOURCE: ANSYS, Inc.*

Related Quote		
ANSS	26.24	0.00
delayed 20 mins - disclaimer		
Quote Data provided by Reuters		
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## ANSYS, Inc. and SAS LLC Enter Into Strategic NASTRAN Partnership

### Agreement Includes Joint Development of New NASTRAN Solution And Exclusive OEM Distribution

CANONSBURG, Pa., Nov. 27 /PRNewswire/ -- ANSYS®, Inc. (Nasdaq: ANSS - news), the global innovator of simulation software and technologies designed to optimize product development processes, today announced a strategic OEM partnership with SAS LLC, a provider of NASTRAN simulation software and services. The global alliance is focused on the joint development of a new NASTRAN computer-aided engineering solution that will be distributed exclusively by ANSYS, Inc.

ANSYS, Inc. has been selected by SAS to be the sole distributor and support network for the new NASTRAN solution. The NASTRAN solution is also being developed in coordination with key aerospace and automotive companies, providing additional guidance about the core capabilities needed. Development of the new NASTRAN product is being driven by Dr. Richard MacNeal, founder and former chairman of MacNeal-Schwendler Corporation, and Dr. Harry Schaeffer to advance current NASTRAN capabilities.

"This joint development effort will provide companies with the next generation of NASTRAN solutions. As we work together to broaden users options, we also will provide the most innovative NASTRAN product implementation ever produced," commented Dr. Harry Schaeffer, president of SAS LLC and Dr. Richard MacNeal.

"ANSYS, Inc. was the perfect partner for our initiatives. They have a proven dedication to providing the highest-quality solutions through

ADVERTISEMENT

**STOP**  
paying high  
interest rates

highly-skilled and reliable global sales and distribution networks."

"By being data compatible, this new offering directly addresses the inertia against change within the NASTRAN user community," stated Don Brown, chairman of D H Brown & Associates. "Combining this with the unique open architecture of the AI\*Workbench platform will dramatically broaden the opportunities for users and ANSYS, Inc. as a supplier."

The solution will integrate the technologies of ANSYS, Inc., CADOE S.A., ICEM CFD Engineering and SAS LLC to provide users with the most comprehensive NASTRAN product. Building off of ANSYS, Inc. architecture, NASTRAN will also be fully compatible with existing customer data and processes, and will provide a unique open architecture design and economic solutions for complex product and manufacturing processes.

"We are fortunate to have the technology and expertise of the pioneers of NASTRAN technology to make this offering the richest solution available," stated Michael J. Wheeler, vice president of marketing for ANSYS, Inc. "The inclusion of this technology further advances ANSYS, Inc.'s support of the overall product development process. This new solution will allow companies upgrade their simulation tools and processes with minimal impact on the existing infrastructure."

The NASTRAN solution is expected to ship in early 2002. ANSYS, Inc. is providing an Early Adopter Program that is now available for organizations that want to ensure long-term affordability for their NASTRAN usage. For more information, please email [earlyadopter@ansys.com](mailto:earlyadopter@ansys.com).

#### About SAS LLC

Implemented by the pioneers of NASTRAN technology, SAS LLC provides worldwide software and services that improve engineers' ability to perform automated simulation of product and process performance.

#### About ANSYS, Inc.

ANSYS, Inc., founded in 1970 as Swanson Analysis Systems, Inc., develops and globally markets engineering simulation software and technologies widely used by engineers and designers across a broad spectrum of industries, including aerospace, automotive, manufacturing, electronics and biomedical. Headquartered at Southpointe in Canonsburg, PA, ANSYS, Inc. employs 400 people and focuses on the development of open and flexible solutions that enable users to analyze designs directly on the desktop, providing a common platform for fast, efficient and cost-conscious product development, from design concept to final-stage testing and validation. ANSYS, Inc. distributes its ANSYS®, DesignSpace®, AI\* Solutions(TM) and ICEM-CFD Engineering products through a network of channel partners in 37 countries, in addition to its own direct sales offices in 18 strategic locations throughout the world. For additional information on ANSYS, Inc., please visit <http://www.ansys.com>.

ANSYS is registered in the U.S. Patent and Trademark Office. All other trademarks and registered trademarks are the property of their respective owners.

*SOURCE: ANSYS, Inc.*

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[Questions or Comments?](#)





MSC Software Corporation  
2 MacArthur Place  
Santa Ana, CA 92707 USA

December 12, 2001

Michael J. Wheeler  
Vice President  
ANSYS, INC.  
Southpointe  
275 Technology Drive  
Canonsburg, PA 15317

714.540.8900  
Fax: 714.784.4056  
www.mssoftware.com

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

Dear Mr. Wheeler:

We have now had an opportunity to review the letter you sent yesterday and can only conclude that ANSYS is not acting in good faith. ANSYS' "offer" of \$500,000 to obtain numerous rights to the UAI and CSAR source codes and to MSC/Nastran is absurd. Either ANSYS has no real intention of negotiating a deal or ANSYS believes the UAI and CSAR codes are essentially worthless. ANSYS' failure to provide a good faith offer for these codes clearly demonstrates ANSYS' belief that it can succeed alone in its recently-announced plans to provide FEA solver customers with a Nastran-based solver.

We view ANSYS' "offer" as a device to impair one of its principal FEA solver competitors. Obviously - and your counsel has admitted as much in his discussions with our outside counsel, Tefft Smith of Kirkland & Ellis - ANSYS has aligned itself with the FTC in its litigation against MSC in an effort to diminish MSC's competitiveness in the FEA solver market by imposing the burden and expense of litigation.

While we had hoped to conduct fruitful negotiations to rid MSC of this burdensome litigation, it is now clear that ANSYS plans to use the FTC as a tool in its effort to avoid the competitive vigor that MSC brings - and will continue to bring - to the FEA solver marketplace. We will govern ourselves accordingly.

As a courtesy, I am providing you notice that our counsel will shortly forward a subpoena to ANSYS for the production of documents, which will be substantially similar to the document requests served on MSC by the FTC. We have instructed our counsel - and they already have offered to your counsel - to work with you in an attempt to minimize the regrettable burdens imposed by the FTC and its case.

Sincerely,

Paul A. Greco  
Chief Financial Officer



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF )  
MSC.SOFTWARE CORPORATION, ) Docket No. 9299  
a corporation )

**AFFIDAVIT OF DAVID S. SECUNDA IN SUPPORT OF ANSYS INC.'S MOTION TO  
LIMIT SUBPOENA DUCES TECUM SERVED BY MSC.SOFTWARE CORPORATION**

Commonwealth of Pennsylvania )  
Washington County ) ss:

DAVID S. SECUNDA, being duly sworn, deposes and says:

1. My name David S. Secunda. I am employed as Corporate Counsel and Secretary of ANSYS, Inc. ("ANSYS").
2. I have supervised the search for and collection of documents in response to the Subpoena *Duces Tecum* issued on behalf of MSC.Software Corporation ("MSC") and served on ANSYS in the above captioned matter (the "Subpoena").
3. In response to the Subpoena, ANSYS has conducted and/or is in the process of completing both manual searches of files and electronic searches of the computers (including emails) of the following nineteen ANSYS executives and employees (including one former executive): Jim Cashman, CEO; David Secunda, Corporate Counsel and Secretary; Ann Stanton, Marketing; Paul Bemis, former Vice President of Marketing (hard copy files only); Brian Butcher, former Vice President of Worldwide Sales, currently Vice President of Strategic Business Development; Bud Dunbar, Director, Mergers and Acquisitions; Dave Conover,

Corporate Fellow (functions as a Vice President of Product Development); Gary Carter, Vice President of European Sales; Peter Smith, Chairman of the Board (hard copy files and emails that his former administrative assistance was copied on); Jim Gregory, Vice President of North American Sales; Jim Tung, Vice President of International Sales; Joe Fairbank, Vice President of Worldwide Sales and Support; Joe Solcecki, Chief Technologist; Lynn Salsbury, Marketing; Mark Ingrund, Vice President of Product Development; Mike Wheeler, Vice President of Marketing; Paul Johnson, Vice President of Product Creation; Ray Browell, Marketing; and Maria Shields, CFO.

4. These nineteen executive and employee files and computers have been and/or are being searched for documents related to the following topics:

- Competition with MSC's Nastran solver, CSAR or UAI.
- ANSYS' relationship with SAS.
- NASTRAN-based solvers.
- Communications with the FTC regarding this matter.
- Efforts by ANSYS to develop a NASTRAN-based Solver, including any efforts to develop a NASTRAN translator.
- Marketing plans and business plans for solvers and products incorporating solvers that compete with Advance Nastran solvers.
- Efforts to switch NASTRAN customers to ANSYS.
- Sales to new customers who have not already made the choice between NASTRAN and ANSYS.
- Sales efforts with respect to customers lost to NASTRAN.
- NASTRAN customers to whom ANSYS has attempted to sell ANSYS solvers and new customers who had not made the NASTRAN/ANSYS choice at the time ANSYS was trying to make the sale.



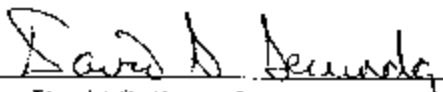
5. The nineteen executives above were chosen because they represent the individuals whose files and computers ANSYS would search in order to locate information of the type listed above if ANSYS were in need of that information in the ordinary course of its business.

6. The likelihood that searching server backup tapes would yield additional, non-duplicative information is low because the ANSYS employees whose computers are being searched routinely save copies of significant electronic documents (including emails) to the hard drives of their computers.

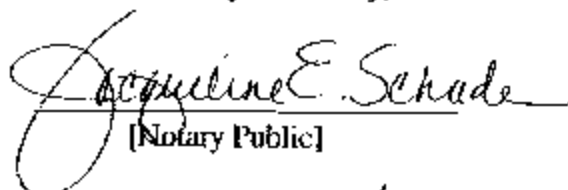
7. Thus far, ANSYS' efforts have consumed nearly 100 man-hours. ANSYS expects to devote additional man-hours to its search for relevant documents. These figures do not include the time spent by ANSYS' counsel reviewing documents for privileged and confidential material or the hours devoted to responding to and briefing issues before this tribunal.

8. Thus far, ANSYS has identified 4 boxes of documents and 2.13 gigabytes of electronic files (consisting of over 1000 documents and hundreds of emails). These documents are currently being reviewed for production and must be reviewed by counsel prior to production for the presence of privileged and/or confidential material.

FURTHER, affiant sayeth not.

  
\_\_\_\_\_  
David S. Secunda

Sworn to and subscribed before  
me this 17th day of January, 2002:

  
\_\_\_\_\_  
[Notary Public]

My commission expires: JAN. 27, 2003



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF	)	
MSC SOFTWARE CORPORATION,	)	
a corporation	)	Docket No. 9299

**AFFIDAVIT OF GARY PIGANELL IN SUPPORT OF ANSYS INC.'S MOTION TO  
LIMIT SUBPOENA DUCES TECUM SERVED BY MSC SOFTWARE CORPORATION**

Commonwealth of Pennsylvania )  
Washington County ) ss:

GARY PIGANELL, being duly sworn, deposes and says:

1. My name Gary Piganell. I am employed by ANSYS, Inc. ("ANSYS") as Director of Information Technology.

2. ANSYS backs up its Microsoft Exchange (email) server on a weekly basis. E-mail remains on the server for as long as the user does not delete an email. The email server weekly backup tapes are retained for 7 years. The total number of backup tapes for the period from 1997 to present is approximately 260.


3. ANSYS backs up its Microsoft NT (document) servers on a weekly basis. The administrative file server weekly backup tapes are retained for 7 years. The development server backup tapes are retained for 1 year, with 1 tape being retained per week for the last 3 months and 1 tape being retained per month for the previous 9 months. Accordingly, the total number of server backup tapes for the period from 1997 to present is approximately 281.

4. ANSYS does not have the ability to search backed up data directly.

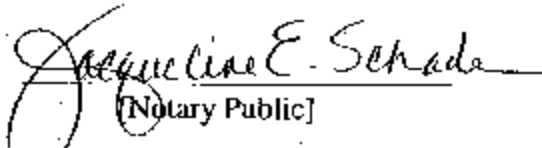
Instead, in order to search such data, the data must first be restored. It takes approximately 3 to 4 hours per tape to restore data. Accordingly, it would take 1623 to 2324 manhours to restore the Exchange and NT server backup tapes. Stated otherwise, it would take a single individual, assigned exclusively to the task of restoring backup tapes, approximately 10 to 14 months to complete the task. These estimates above do not include the time required to search the restored data, review potentially responsive material or identify the enormous volume of duplicative material.

5. ANSYS does not consider its backup tapes to be business records and does not restore and search backup tapes in the ordinary course of its business. Instead, such tapes are maintained in order to restore ANSYS' servers in case of a catastrophic failure.

FURTHER, affiant sayeth not.

  
Gary Piganell

Sworn to and subscribed before  
me this 17<sup>th</sup> day of January, 2002:

  
[Notary Public]

My commission expires:

Notarial Seal  
Jacqueline E. Schade, Notary Public  
Cecil Twp., Washington County  
My Commission Expires Jan. 27, 2003  
Member, Pennsylvania Association of Notaries

PUBLIC

**CERTIFICATE OF SERVICE AND ELECTRONIC FILING**

The undersigned certifies that a true and correct copy of the foregoing THIRD-PARTY ANSYS, INC.'S MOTION TO LIMIT SUBPOENA *DUCES TECUM* SERVED BY MSC.SOFTWARE CORPORATION was served this 18th day of January, 2002, on the following persons in the manner indicated:

**Via Facsimile and First Class Mail:**

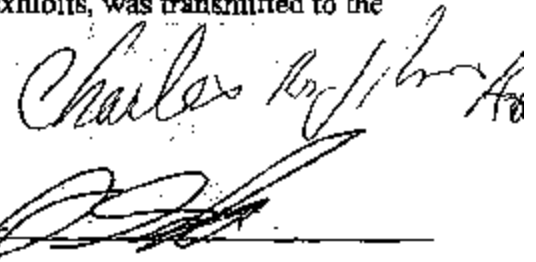
Tefft W. Smith, Esq.  
Kirkland & Ellis  
655 15<sup>th</sup> Street, NW  
Washington, DC 20005

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

**Via Hand Delivery:**

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
Washington, DC 20580

and that a true and correct electronic copy of the same, minus exhibits, was transmitted to the Secretary of the Commission.

  
Charles R. Johnson  
Attorney