

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



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

Docket No. 9299

**THIRD-PARTY HIBBITT, KARLSSON & SORENSEN, INC.'S
MOTION TO EXTEND TIME TO MOVE TO QUASH OR LIMIT, OR
COMPLY WITH, SUBPOENA DUCES TECUM
SERVED BY MSC.SOFTWARE CORPORATION**

Third-Party Hibbitt, Karlsson & Sorensen, Inc. ("HKS") hereby moves, pursuant to Rule 4.3(b) of the Federal Trade Commission's Rules of Practice ("Rules"), to extend the time within which HKS must move to quash or limit, or comply with, the Subpoena Duces Tecum ("the Subpoena") issued on behalf of MSC Software Corporation ("MSC") and directed to HKS from February 22, 2002 until and including March 29, 2002.¹ The extension of time that HKS requests is both reasonable and necessary in view of the scope and breadth of the Subpoena, the very limited period of time that HKS has been afforded to respond to the Subpoena and HKS's efforts to work cooperatively to meet MSC's legitimate discovery needs.

HKS requires a reasonable opportunity to gather, review and prepare for delivery those documents that are responsive to the Subpoena. HKS also requires a reasonable opportunity to evaluate documents and to formulate methods to eliminate undue burdens and costs associated with responding to the Subpoena, to protect confidential and extremely sensitive information and, if necessary, to prepare a motion to quash or limit

¹ A copy of the Subpoena is attached hereto as "Exhibit A."

those portions of the Subpoena as to which HKS and MSC cannot reach agreement. In addition, HKS requires a reasonable opportunity to propose certain beneficial changes to the confidentiality order that, in HKS's opinion, are needed to protect current customer-specific business activities and other ultra sensitive materials from disclosure. To HKS's knowledge, no third-party discovery target had the opportunity to participate and be heard in framing the confidentiality order, the terms of which, when coupled with the Subpoena, directly impact HKS's proprietary and commercial information.

Background²

On January 29, 2002, HKS received the Subpoena by certified mail. Although the Subpoena is dated December 13, 2001, MSC did not mail the Subpoena to HKS until January 25, 2002. MSC also did not give HKS any forewarning that MSC intended to serve the Subpoena.

The Specifications, Definitions and Instructions of the Subpoena comprise thirteen pages. The Specifications consist of 25 separately numbered paragraphs, which, with subparts, seek in excess of 50 categories of materials over a period exceeding five years. As particularized by its Definitions and Instructions, the Subpoena calls for the production of virtually all of HKS's business and financial records, including highly sensitive and current confidential commercial, research, development and proprietary information. This material also includes documents and information that are otherwise privileged or subject to confidentiality agreements with third parties which may implicitly, or do explicitly, require HKS to provide such parties with notice of the

² See Affidavit of E. Paul Sorensen in Support of Motion to Extend Time to Move to Quash or Limit, or Comply With, Subpoena Duces Tecum Served by MSC Software Corporation, which is attached hereto as "Exhibit B."

Subpoena and an opportunity to challenge the production of any documents or information.

The original return date of the Subpoena was February 13, 2002. Therefore, the Subpoena allowed HKS only eleven business days for compliance. Immediately upon receipt, HKS's counsel contacted counsel for MSC to discuss cooperative compliance, narrowing the scope of the Subpoena and extending the time within which HKS was required to move to quash or limit, or comply with, the Subpoena. Substantial progress was made. As a result of those discussions, HKS provided certain preliminary information requested by MSC, and MSC agreed to a brief extension, until and including February 22, 2002, of the time within which HKS was required to move to quash or limit, or comply with, the Subpoena.

HKS is a relatively small, thinly staffed company that is not publicly traded and has maintained the privacy of its operations. Nevertheless, HKS personnel promptly devoted attention to this matter, identified those persons most likely to possess material responsive to the Subpoena and began to gather potentially responsive documents. Initially, HKS calculated that it would require at least 180 hours of employee time to locate, review and evaluate all potentially responsive documents and information. To date, HKS's employees and outside counsel have devoted more than 100 hours to responding to the Subpoena. As a result of the work done thus far, HKS now estimates that it will require a total of 350 hours to review and prepare documents for delivery, including determining whether particular documents are covered by applicable privileges or otherwise subject to confidentiality agreements under which third parties must at least be given notice and an opportunity to object to production.

The time that has been afforded to HKS remains inadequate for HKS to locate, review and process documents for production and to otherwise respond to the Subpoena.

Argument

In accordance with Rule 4.3(b), the Administrative Law Judge is authorized to grant extensions of time for good cause shown. The extension requested by HKS is based on good cause and is reasonable in view of the breadth and scope of the Subpoena, which calls for the production of virtually all of HKS's business and financial records over the past five years, including its most sensitive commercial and technical information, and which requires refinement and discussion in order to meet the legitimate needs of the parties involved.

HKS has made diligent efforts to respond to the Subpoena in a timely fashion. HKS immediately contacted counsel for MSC to discuss compliance, refining the scope of the Subpoena and affording HKS a reasonable opportunity to move to quash or limit, or comply with, the Subpoena. HKS promptly identified to MSC those persons most likely to possess materials responsive to the Subpoena. Also, HKS began searching the files of those persons and gathering responsive documents.

Consequently, HKS has provided counsel for MSC with an organizational chart, HKS's product brochures and a complete set of proprietary ABAQUS® manuals, consisting of thirteen separate volumes. In addition, HKS is in the process of delivering further documents responsive to the Subpoena.

As noted above, HKS's employees and outside counsel have devoted in excess of 100 hours to efforts related to responding to the Subpoena and HKS now anticipates that it will require a further 250 hours to review and prepare documents for production.

Additional time also is necessary to negotiate procedures for providing and protecting certain material.

The efforts to comply with the Subpoena already have diverted key HKS personnel from business and operations in a way that is particularly burdensome to a small company and, therefore, the Subpoena has substantially disrupted and interfered with business and operations. HKS has incurred and continues to incur considerable expenses, including attorneys' fees, in connection with responding to the Subpoena.

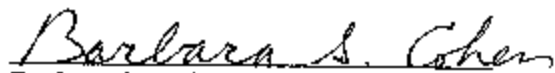
As framed, the Subpoena imposes on HKS, a non-party to this proceeding, an undue and excessive burden and expense. The Subpoena calls for the production of more than five years' worth of virtually all of HKS's business records, including its most sensitive commercial and proprietary information, as well as information that is otherwise privileged. Nonetheless, HKS has negotiated conscientiously with MSC's counsel to facilitate appropriate discovery.

HKS must be afforded a reasonable and adequate opportunity within which to respond to the Subpoena, including moving to quash or limit the Subpoena. Although HKS does not wish to be critical of MSC's defense of this case, the fact remains that the Subpoena was dated December 13, 2001, but MSC did not forward it to HKS until January 25, 2002. Thus, it may not fairly be said that affording HKS a reasonable opportunity to respond would impair MSC's ability to obtain discovery and prepare its case. Had MSC served the Subpoena when it was prepared, then HKS might have been provided an adequate period of time within which to respond. HKS has acted promptly to work out a plan and agreement to comply and will continue to act promptly and conscientiously.

Conclusion

Accordingly, HKS respectfully requests an Order, in the form attached hereto, granting HKS's motion and extending the time within which HKS must move to quash or limit, or comply with, the Subpoena until and including March 29, 2002.

HIBBITT, KARLSSON & SORENSEN, INC.
By its attorneys,


Barbara S. Cohen (R.I. Bar. No. 2848)
GOLDENBERG & MURI LLP
10 Weybosset Street
Providence, RI 02903
Telephone: (401) 421-7300
Facsimile: (401) 421-7352
E-mail: bsc@goldenberg-muri.com

Dated: February 21, 2002

CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I, the undersigned, hereby certify that on the 21st day of February, 2002, I caused a paper copy of the attached Hibbitt Karlsson & Sorensen, Inc.'s Motion to Extend Time to Move to Quash or Limit, or Comply With, Subpoena Duces Tecum Served by MSC Software Corporation and Proposed Order to be served upon the following persons as specified:

By Federal Express Overnight Delivery:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room 106
Washington, D.C. 20580

By Federal Express Overnight Delivery:

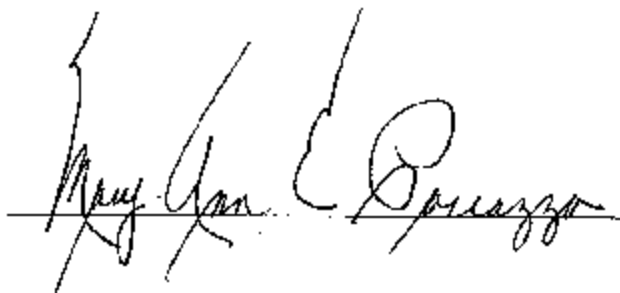
Richard B. Dagen, Assistant Director
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W., Suite S3030
Washington, D.C. 20580

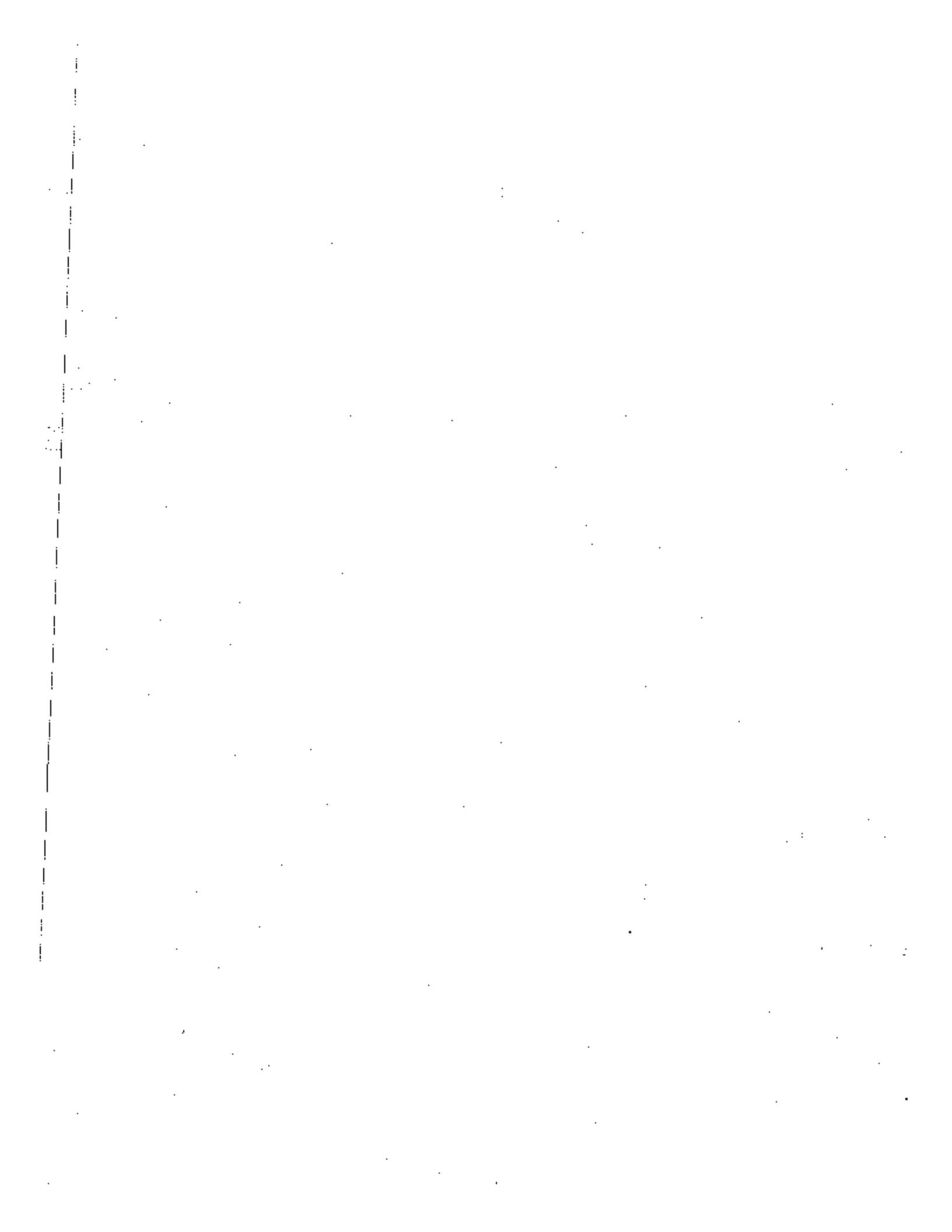
By Federal Express Overnight Delivery:

P. Abbot McCartney, Senior Complaint
Officer
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W. Suite S3030
Washington, D.C. 20580

By Facsimile and First Class Mail:

Tefft W. Smith, Esq.
Gregg F. LoCasio, Esq.
Kirkland & Ellis
655 15th Street, NW
Washington, DC 20005

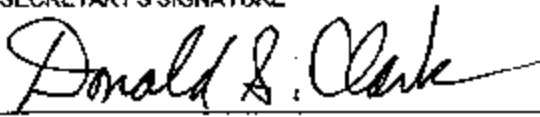






SUBPOENA DUCES TECUM

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

1. TO Hibbit Karlsson & Sorensen, Inc. c/o H. David Hibbit, President 1080 Main Street Pawtucket, RI 02860	2. FROM Hibbit, Karlsson & Sorensen, Inc. c/o Michael R. Goldenberg, Esq. 10 Weybosset Street Providence, RI 02903
UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION	
<p>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.</p>	
3. PLACE OF PRODUCTION OR INSPECTION Kirkland & Ellis c/o Gregg LoCascio 655 15 th Street, NW Washington, DC 20005 (202) 879-5000	4. MATERIAL WILL BE PRODUCED TO Gregg LoCascio
5. DATE AND TIME OF PRODUCTION OR INSPECTION February 13, 2002, at 12:00p.m.	
6. SUBJECT OF PROCEEDING In the matter of MSC. Software Corporation, Docket No.9299	
7. MATERIAL TO BE PRODUCED See attached definitions, instructions and specifications	
8. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL REQUESTING SUBPOENA Gregg LoCascio Counsel to Respondent MSC Software Corporation 655 15 th Street, NW Washington, DC 20005 (202) 879-5000
DATE ISSUED DEC 13 2001	SECRETARY'S SIGNATURE 

GENERAL INSTRUCTIONS

APPEARANCE

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

MOTION TO LIMIT OR QUASH

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

TRAVEL EXPENSES

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

This subpoena does not require approval by OMB under 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.

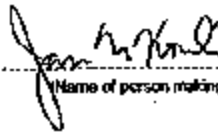
by leaving copy at principal office or place of business, to wit:

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

on the person named herein on:

1/25/02

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



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

Associate

.....
(Official title)

In the Matter of MSC Software Corporation, F.T.C. Docket No. 9299
SUBPOENA DUCES TECUM ISSUED ON BEHALF OF
RESPONDENT MSC.SOFTWARE CORPORATION TO
HIBBITT, KARLSSON & SORENSEN, INC. (HKS)

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 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, MSC requests that documents be produced as their responsiveness is identified. MSC is prepared to provide third party temporary lawyers and legal assistants - at MSC's expense - to assist in the search for responsive documents. MSC 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 HKS's control.

SPECIFICATIONS

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

I. HKS Organizational Documents:

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, or analysis for the company as a whole and any HKS business involved in Relevant Products or Services.
3. Documents sufficient to show, for any Relevant Product or Service and for each year, the number of people involved in (i) technical support; (ii) research and development; (iii)

consulting and other value added services, 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.

II. Documents Relating to MSC, UAI, & CSAR and the FTC Investigation At Issue:

4. All documents relating to MSC.
5. All documents relating to CSAR.
6. All documents relating to UAI.
7. All documents relating to any analysis or discussion of MSC's acquisition of CSAR or UAI or the FTC's investigation or litigation concerning MSC's acquisitions of CSAR and UAI.
8. All documents relating to any communications with any third-party (including customers of HKS) concerning MSC's acquisition of CSAR or 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, including any documents, testimony or statements provided to or shared with the Federal Trade Commission.

III. HKS Market Analysis Documents:

10. All annual or multi-year business or strategic plans prepared by or for HKS analyzing competition for any Relevant Product or Service.
11. All documents relating to (i) plans or activities by any company other than HKS to develop, market, or sell any Relevant Product or Service, or (ii) HKS's interpretation, analysis, response, reaction, or plans to coordinate, join, or investigate such company's activities or plans.
12. All stock analysts' or other investment community analyses, recommendations, or research reports relating to HKS generally or to any Relevant Product or Service.
13. For the company as a whole and for each business unit, product line, and product related to the Relevant Product or Service, one copy of each quarterly or annual budget financial statement, income statement, balance sheet, operating reports, capital investment plans, financial plans (actual or forecast), sales plans (actual or forecast), revenue plans (actual or forecast).

IV. HKS' Relevant Product Capability & Strategic Documents:

14. Documents sufficient to show the functionality of Relevant Products or Services made or sold by HKS, including the performance capabilities of such product and the compatibility of such product with other software, input parameters, output parameters, and pre- and post-processors.
15. All documents relating to any plan, decision, or effort by HKS or any other company (other than MSC, CSAR or UAI) to offer or develop a Nastran-based FEA solver.
16. All documents relating to any analysis or discussion of whether to include in any pre- or post-processor offered by HKS the capability to translate and/or integrate MSC, CSAR or UAI code and/or solver results into any other company's codes and/or solver results, and vice-versa.
17. All documents relating to any meeting of or decision making by the HKS board of directors or of any HKS board, executive, or management committee concerning any Relevant Product or Service, including:
 - a. all announcements of, agendas for, and minutes of any meeting or decision making;
 - 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.

V. HKS Competition For Relevant Products or Services.

18. All documents relating to any competitive bidding by HKS against MSC, CSAR, or UAI or product comparisons or benchmarking between an HKS Relevant Product or Service and a Relevant Product or Service offered by MSC, CSAR, UAI, or any other firm offering an FEA solver.
19. Documents sufficient to identify with particularity any instances of HKS gaining or losing business or market share from or to MSC, CSAR, or UAI.
20. 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.
21. All documents relating to switching, including shifts in utilization, between or among any Relevant Product or Service and any other product or service, including:
- a. the relative ease or difficulty of switching;
 - b. the estimated, projected or actual costs incurred by users to switch;
 - c. the time required to switch;
 - d. the degree of switching possible;
 - e. 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;
 - f. 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;
 - g. the cost of and time required for training;

- h. 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;
 - i. the effect of switching on customer or collaborator relationships;
 - j. the effect of unlimited usage contracts or paid up licenses on switching;
 - k. the possible loss or cost of complementary software used with the product or service;
 - l. the use, availability, and the availability and effect of translators and AP209 exchange format standards; and
 - m. governmental, customer, contractual, industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.
22. All documents relating to the competition among and between Relevant Products and Services designed for use on workstations and those designed for use on stand-alone computers such as Windows-based computers.

VI. HKS Marketing Materials and Customer Information

23. For each Relevant Product or Service offered for sale or licensing by HKS, all selling aids and promotional materials and all manuals, including instructional and installation manuals.
24. Documents sufficient to identify or describe, for each year, the customers who purchased any FEA solver from HKS, the products such customers purchased, the annual amount (in dollars and in units) for each product, and the projects for which such products or services were used.
25. All documents demonstrating use or proposed use of Relevant Products or Services made or sold by HKS for United States government contracts or Federal Aviation Authority certified uses.

DEFINITIONS

1. The terms "your company," "the company," or "HKS" mean Hibbitt, Karlsson & Sorensen, Incorporated, its domestic and foreign parents, predecessors, successors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, attorneys, 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 "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.
6. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
7. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
8. 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.
9. The terms "and" and "or" have both conjunctive and disjunctive meanings.
10. The terms "each," "any," and "all" mean "each and every."
11. The term "including" means including but not limited to.

12. 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.
13. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
14. 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.
15. 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.
16. 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 or computer aided engineering (CAE) software that functions as FEA software.
17. 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.
18. 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 or computer aided engineering (CAE) software that competes with can be perform functions similar to an FEA solver.

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 redact, mask, cut, expunge, edit or delete any responsive document or portion thereof in any manner.
2. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and information dated, generated, received, or in effect after January 1, 1997.
3. The geographic scope of search is the world.
4. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, the company must submit legible copies. However, if the coloring of any document communicates substantive information, the company must submit the original document or a like-colored photocopy. Electronic documents shall be produced, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. Electronic mail messages shall also be provided, even if only available on backup or archive tapes or disks. Computer files shall be printed and produced in hard copy or produced in machine-readable form (provided that counsel for MSC determine prior to submission that it would be in a format that allows them to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
5. Magnetic media shall be submitted in the following forms and formats:
 - a. Magnetic storage media. counsel for MSC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). Counsel for MSC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not

be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system, counsel for MSC will accept data provided on 8mm DAT created using TAR or DD.

b. File and record structures.

- (i) Magnetically-recorded information from centralized non-microcomputer-based systems:
 - (a) File structures. Counsel for MSC will accept sequential files only. All other file structures must be converted into sequential format.
 - (b) Record structures. Counsel for MSC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.
- (ii) Magnetically-recorded information from microcomputers. Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.

c. Documentation.

- (i) Data must be accompanied by the following information:
 - (a) full path name of the file; and
 - (b) the identity of the media on which on which it resides, *e.g.* the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names.

Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.

- (ii) Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media.
- (iii) For all sequential files, the documentation also must include:
 - (a) the number of records contained in the file;
 - (b) the record length and block size ; and
 - (c) the record layout, including the name of each element, the element's size in bytes, and the element's data type.

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

- d. Shipping. Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**
 - e. Virus Checks: Media will be scanned for computer viruses. Infected media will be returned for replacement.
6. The company shall mark each submitted page or sheet with its corporate identification, *i.e.*, HKS, and with consecutive document control numbers.
 7. 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. 19 shall be produced in file folders segregated by customer and in chronological order within each customer file.
 8. 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.
 9. 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.

10. 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.

11. 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.
12. 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.

13. 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.
14. To furnish a complete response, the person supervising compliance with this Subpoena must submit a signed and notarized copy of the attached verification form along with the responsive materials.

VERIFICATION

I personally supervised the preparation and assembly of this response in accordance with the Definitions and Instructions set forth in Subpoena *Duces Tecum* Issued on Behalf of Respondent MSC Software Corporation in *MSC Software Corporation*, Docket No. 9299. All copies submitted in lieu of originals are true, correct and complete copies of the original documents. This response is complete and correct to the best of my knowledge and belief.

Signed: _____

Name: _____

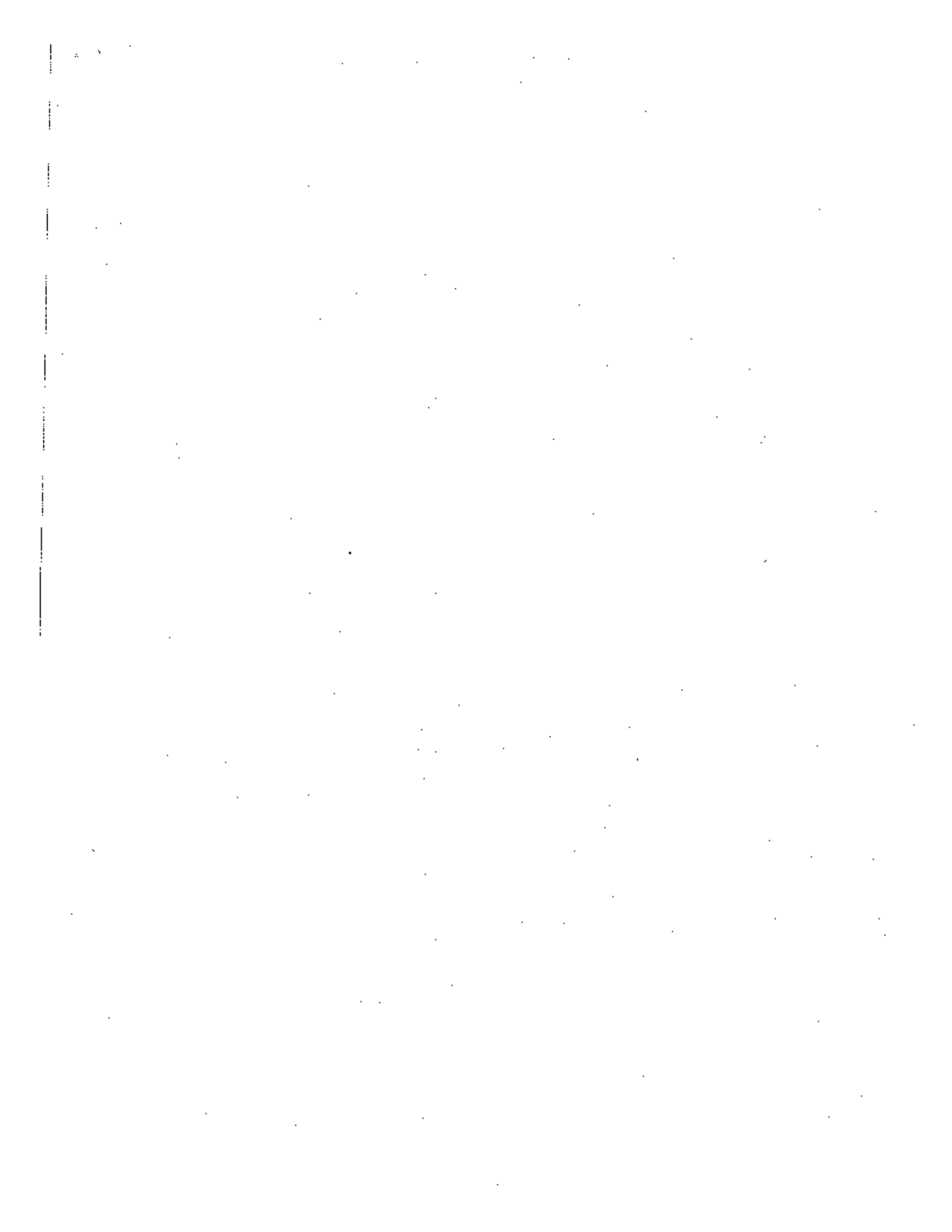
Title: _____

Date: _____

Subscribed and sworn to before me this ____ day of

Notary Public

My Commission expires



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

**AFFIDAVIT OF E. PAUL SORENSEN IN SUPPORT OF MOTION
OF THIRD-PARTY HIBBITT, KARLSSON & SORENSEN, INC.
TO EXTEND TIME TO MOVE TO QUASH OR LIMIT, OR COMPLY WITH,
SUBPOENA DUCES TECUM SERVED BY MSC SOFTWARE CORPORATION**

I, E. Paul Sorensen, being first duly sworn on oath, hereby depose and say as follows:

1. I am the Vice-President for Sales and Marketing of Hibbit, Karlsson & Sorensen, Inc. ("HKS") and I am authorized to make this affidavit on behalf of HKS. I make this affidavit in good faith and on the basis of personal knowledge of the facts set out herein.

2. HKS is a Rhode Island corporation located in Pawtucket, Rhode Island. HKS develops and supports the ABAQUS® suite of engineering analysis software programs, which are known for their nonlinear finite element analysis capabilities. HKS has approximately 200 employees at its headquarters in Pawtucket, Rhode Island. In addition, HKS has 17 branch offices or subsidiaries located throughout the United States and in nine foreign countries. Approximately 120 persons are employed at the branch offices or by the subsidiaries. HKS does not have an in-house legal staff. HKS is and has always been a privately held company.

3. I have reviewed the Subpoena Duces Tecum ("the Subpoena") that was served by MSC Software Corporation ("MSC") on HKS's agent for service of process by certified mail, return receipt requested. Although the Subpoena is dated December 13, 2001, it was not forwarded to HKS until January 25, 2002 and it was not received by HKS until January 29, 2002.

4. The Specifications, Definitions and Instructions of the Subpoena comprise 13 pages. The Subpoena lists 25 separate Specifications which, including subparts, request more than 50 different categories of materials. In view of the Definitions and Instructions stated in the Subpoena, the Subpoena calls for the production of virtually all of HKS's business and financial records, including highly sensitive and confidential commercial, research, development and proprietary information, over a period exceeding five years. This material also includes documents and information that are otherwise privileged or subject to confidentiality agreements with third parties which may require HKS to provide such parties with notice of the Subpoena and an opportunity to challenge the production of any documents or information.

5. Immediately upon receipt of the Subpoena, HKS's counsel contacted counsel for MSC to discuss narrowing the scope of the Subpoena and extending the time within which HKS was required to move to quash or limit, or comply with the Subpoena. As a result of those discussions, HKS provided certain preliminary information requested by MSC and MSC agreed to a brief extension, from February 13 until February 22, 2002, of the return date of the Subpoena.

6. HKS personnel promptly identified those persons most likely to possess material responsive to the Subpoena and began to gather that material. Initially, we

estimated that it would require at least 180 hours of employee time to locate, review and evaluate all documents and information that are potentially responsive. As of this date, HKS personnel and outside counsel have devoted more than 100 hours to efforts related to responding to the Subpoena. As a result of the work done thus far, we now estimate that it will require an additional 250 hours to review and prepare documents for delivery, including determining whether particular documents are covered by applicable privileges or otherwise subject to confidentiality agreements under which third parties must at least be given notice and an opportunity to object to production.

7. The efforts to comply with the Subpoena have unduly disrupted and interfered with HKS's customary business and operations, and continue to unduly disrupt and interfere with HKS's customary business and operations, because, among other things, these efforts have required HKS to re-assign personnel and put off other scheduled projects. Moreover, HKS has incurred and continues to incur substantial expenses, including attorneys' fees, in connection with responding to the Subpoena.

8. The Subpoena imposes on HKS, a non-party to this proceeding, an undue and excessive burden and expense. The Subpoena literally calls for the production of more than five years' worth of virtually all of HKS's business records, including its confidential, proprietary and otherwise privileged documents, as well as those of its subsidiaries and representatives. The Subpoena requires HKS to locate, review and evaluate this enormous quantity of material in a very compressed timeframe. The burden and expense that the Subpoena imposes on HKS greatly outweigh any likely benefit that the Subpoena may yield.

9. HKS is unable to accomplish the tasks imposed by the Subpoena in the inordinately short period of time that MSC has afforded HKS. The oppressiveness of the Subpoena and the substantial burden and expense it imposes on HKS are compounded by the fact that MSC unduly delayed in serving the Subpoena. Although the Subpoena is dated December 13, 2001, MSC did not forward the Subpoena to HKS until January 25, 2002 and it was not received by HKS until January 29, 2002. MSC could have provided HKS with an adequate period within which to respond to the Subpoena. Instead, however, MSC failed to serve the Subpoena for more than six weeks.

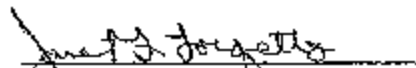
10. For these reasons, HKS respectfully requests an extension of the time within which it must move to quash or limit, or comply with, the Subpoena until and including March 29, 2002.



E. Paul Sorensen

STATE OF RHODE ISLAND
PROVIDENCE COUNTY

Subscribed and sworn to before me this 20 day of February, 2002.



Notary Public

My Commission Expires: August 6, 2005

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

Docket No. 9299

**ORDER GRANTING HIBBITT, KARLSSON & SORENSEN, INC.'S MOTION
TO EXTEND TIME**

Third-Party Hibbitt, Karlsson & Sorensen, Inc. ("HKS") has submitted a motion to extend the time within which HKS must move to quash or limit, or comply with, the Subpoena Duces Tecum ("Subpoena") served by Respondent MSC.Software Corporation.

Upon consideration of the motion, it is hereby ORDERED that HKS's motion is granted and that the time within which HKS may move to quash or limit, or may comply with, the Subpoena is extended until and including March 29, 2002.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Dated:

2002
MAR 29 11:00 AM '02
FEDERAL TRADE COMMISSION