

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



IN THE MATTER OF)
MSC.SOFTWARE CORPORATION,)

Docket No. 9299

a corporation.)
_____)

**MSC.SOFTWARE CORPORATION'S SUPPLEMENTAL FILING
ON PTC'S MOTION TO QUASH IN LIGHT OF
RECENT DISCUSSIONS**

As discussed in MSC.Software's original opposition, filed on March 1, 2002, since before PTC filed its Motion to Quash, the parties have been working towards resolving the issues related to the subpoena. While some progress has been made, there are still several topics that are outstanding.

In an effort to keep the Court apprised of agreements reached, and the status of those issues that remain unresolved, MSC.Software attaches hereto as Exhibit A its letter dated March 21, 2002 from Gregg LoCascio to Thane Scott, which addresses the proposal contained in PTC's March 13, 2002 letter (which was provided to Your Honor by PTC on March 20, 2002).

Negotiations between PTC and MSC relating to the subpoena are ongoing. Therefore, until the parties have reached an agreement or final impasse requiring judicial intervention, PTC's Motion to Quash remains not yet ripe.

Dated: March 27, 2002

Respectfully submitted,



Tefft W. Smith (Bar No. 458441)
Marimichael O. Skubel (Bar No. 294934)
Gregg F. LoCascio (Bar No. 452814)
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*Counsel for Respondents,
MSC Software Corporation*

CERTIFICATE OF SERVICE

This is to certify that on March 27, 2002, I caused a copy of the attached "MSC.Software's Supplemental Filing on PTC's Motion to Quash in Light of Recent Discussions" to be served upon the following persons:

BY HAND DELIVERY:

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

Richard B. Dagen, Esquire
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
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Federal Trade Commission
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BY OVERNIGHT DELIVERY:

Thane D. Scott, Esq.
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Counsel for Respondents,
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EXHIBIT

A

KIRKLAND & ELLIS
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665 Fifteenth Street, N.W.
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Gregg F. LoCasale
To Call Writer Directly:
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March 21, 2002

VIA FACSIMILE

Thane D. Scott, Esq.
Palmer & Dodge
111 Huntington Avenue
Boston, MA 02199-7613

Re: Subpoena to PTC in *FTC v. MSC Software*

Dear Thane:

We have received and reviewed PTC's March 13th response to MSC's proposal sent to you more than two weeks earlier on February 26, 2002. Your continuing habit of misrepresenting facts surrounding the subpoena and comments setting forth PTC's agreement with the FTC's case do not even merit a response.

I will, however, address your repeated efforts to explain away the reality that PTC's Pro/Mechanica product – which your client has previously admitted contains an FEA solver – is relevant to the FTC's suit against MSC. Indeed, PTC's efforts in this regard beg the question as to whether PTC is taking obstructionist tactics in an attempt to further PTC's competitive self-interest in an outcome adverse to MSC. Despite the fact that PTC's business interests may benefit from its refusal to produce documents, PTC remains under subpoena and is obligated to produce responsive documents.

Accordingly, what follows is MSC's position as a point-by-point response the document categories set forth in your letter:

Previously-offered materials:

PTC has previously -- and again by your recent letter -- offered to produce "any documents that refer to or concern MSC" or other Nastran-based solvers. We agree that those should be produced and look forward to receiving them shortly.

Category 1: PTC's organization chart containing personnel responsible for its FEA solver product(s).

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Your March 13th letter was the first mention that PTC does not maintain an organizational chart – something that comes as a surprise since you previously represented on February 7th that you would obtain a PTC organizational chart to assist our efforts at narrowing the scope of the search necessary to respond to the subpoena. We find it hard to believe that no documents identifying PTC personnel and their job titles and/or descriptions exist. If such a document does exist, we expect it to be produced.

However, in the event that you confirm that no such documents exist, MSC will accept PTC's offer to provide a chart identifying personnel from the CFO down to the level of Vice President in the Software Solutions organization, which you have represented has business responsibility for PTC's FEA solver capability.

Category 2: Documents sufficient to identify features and functionalities of PTC's FEA solver Pro/Mechanica.

In my February 26th letter, I made clear that "MSC will require that PTC provide materials sufficient to identify the features and functionalities of its FEA solver."

In response, you claim that "a description of the technical differences" between PTC and MSC's FEA solvers was included in PTC's motion to limit or quash. As you surely realize, the technical issues in the FTC's case require quite a bit more information than the conclusory paragraph in your brief in which you claim the products are "fundamentally different" based solely upon the same conclusory allegations from an affidavit of PTC's in-house counsel. That information is nothing more than a self-serving lay characterization geared towards trying to avoid responding to the subpoena.

In addition, your reference to PTC's web page for any remaining information is unacceptable. Upon receipt of your letter, I re-reviewed PTC's web page – including specifically the Pro/Mechanica page -- and reconfirmed that little, if any, detailed information about Pro/Mechanica's features and functionalities is provided.

As other companies have done, PTC should simply provide a copy of any manuals or user documentation for Pro/Mechanica in response to this category. We cannot imagine any burden or impediment to PTC doing so.

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Category 3: Documents relating to competition between MSC and other providers of FEA solvers or between versions of Nastran and other FEA solver products.

We disagree with your position that just because PTC provides functionality beyond an FEA solver in its Pro/Mechanica product that MSC's request is overbroad. Nevertheless, PTC's offer to produce documents in response to this category is acceptable provided that PTC provide documents relating to *any competition* between Pro/Mechanica and what you would classify as stand-alone FEA solvers (such as any form of Nastran, Ansys, Abaqus, etc.) in addition to those documents relating to competition involving FEA solver functionality between Pro/Mechanica and other CAE products with embedded FEA solver capability.

Category 4: CAE or FEA market and competitive analyses, including any evaluation by PTC of the market for stand-alone FEA solvers or FEA solvers that are incorporated into CBA software.

PTC has agreed to provide market and competitive analyses for stand-alone FEA solvers. However, PTC's response makes clear that it intends to withhold market analyses or competitive analyses relating to its Pro/Mechanica product -- even though that product contains an FEA solver. Your belief that such documents -- unless they specifically make reference to FEA solver functionality -- need not be produced is misguided in that it ignores situations where products are compared generally or as a whole. Accordingly, MSC must continue to demand these documents relating to the Pro/Mechanica product.

Category 5: Documents regarding market share and revenue information for PTC products containing FEA solvers.

PTC refuses to provide market share or revenue information for its Pro/Mechanica product despite the fact that it contains an FEA solver. Your concerns about the sensitive nature of those documents ignore the Protective Order entered by ALJ Chappell that was provided to you some time ago. Your statement that PTC will "argue strenuously against" providing its market share analyses only begs the question as to whether PTC business personnel -- as opposed to its lawyers -- consider FEA solver capabilities as a factor in Pro/Mechanica's competitive landscape. Similarly, your belief that certain information is "useless" to MSC's case is not determinative as to those materials' responsiveness. Accordingly, MSC continues to require that this information be produced.

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Category 6: Documents regarding UAI and CSAR, including any analyses of their FEA solvers, their corporate viability, market presence or strength, as well as any PTC evaluation of or investment in either UAI or CSAR.

PTC has now agreed to produce these materials. We agree that those should be produced and look forward to receiving them shortly.

Category 7: Documents regarding any communications or analyses relating to MSC's acquisitions of UAI or CSAR -- whether to the FTC, to customers, or internally.

PTC has now agreed to produce these materials. We agree that those should be produced and look forward to receiving them shortly.

Category 8: Documents regarding analyses or discussions relating to customer switching from MSC.Nastran to competitive solvers, including technologies addressing translations or other switching issues.

In an effort to avoid rehashing our differences over your belief that PTC's Pro/Mechanica cannot qualify as a "competitive solver," let me attempt to explain this category this way: MSC requests any PTC analyses or discussions relating to (i) attempts to replace seats or usage of MSC.Nastran with a PTC product (or instances where such switching took place); (ii) efforts to translate or technologies relating to translation of data from MSC.Nastran to any other product containing an FEA solver (including those of PTC); or (iii) feasibility or difficulties involved in customer switching between MSC.Nastran and any other product containing an FEA solver. Please let me know if this addresses your concerns.

As a final matter, as I have previously indicated, while MSC believes PTC's proposal to search only the files of Messrs. Underwood, Margaretos, Short and Katsis to be a step in the right direction toward obtaining a satisfactory production of materials while reducing the impact of the subpoena upon PTC, without an organizational chart or the benefit of reviewing the documents at issue, we cannot agree to exclude all other PTC personnel from the scope of the subpoena.

Similarly, to the extent those four gentlemen were chosen based upon the proposed subject-matter limitation in your original letter, they may not be appropriate on other categories that PTC now has agreed to produce. For example, if someone other than those four employees evaluated UAI or CSAR as a possible acquisition target or was involved in any analysis or

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discussion of MSC's acquisition of those companies, MSC believes those personnel must provide responsive documents. Please confirm that no other personnel were involved in discussions of that sort to ensure that responsive documents are not being excluded from production.

I propose that while MSC is reviewing the organizational document(s) provided, PTC provide materials from the personnel you have identified (and any others identified above) on a rolling basis. Upon receipt of those materials, we can address whether any personnel likely to have responsive documents have been excluded.

As I have previously indicated, MSC remains willing to work toward the efficient production of these materials without judicial intervention. To the extent we cannot reach agreement on certain items, please confirm that PTC will produce the already agreed-upon documents concurrently with the parties' efforts to resolve outstanding items either informally or with judicial involvement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gregg LoCascio", written over the typed name below.

Gregg LoCascio