

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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

PUBLIC VERSION

Docket No. 9299

**MSC'S OPPOSITION TO HARRY SCHAEFFER'S
MOTION TO QUASH DEPOSITION SUBPOENA**

MSC is again being stonewalled by Complaint Counsel and the third-parties with whom Complaint Counsel has been coordinating. This time it is Harry Schaeffer, the founder and chief architect of a new Nastran-based solver called AI*NASTRAN, who is seeking to avoid being deposed. The facts here are egregious, and this Court should order Dr. Schaeffer to sit for deposition.

AI*NASTRAN conclusively establishes that entry is not difficult, within the meaning of the 1992 *Merger Guidelines*. In December 2001, Dr. Schaeffer, through SAS, announced an alliance with

MSC's number one competitor, ANSYS, to develop and market AI*NASTRAN as part of ANSYS's total solution offerings.¹ [REDACTED]

see also AI*NASTRAN Brochure (attached as Exhibit 2). Unlike UAI and CSA, which ANSYS

¹ In addition to Dr. Schaeffer, SAS was founded by Dr. Richard McNeal, MSC's former Chairman, CEO, and founder. Dr. McNeal, however, is not on Complaint Counsel's witness list. This is not surprising, since as early as the late 1980's, Dr. McNeal proclaimed ANSYS as MSC's strongest competitor. *The MacNeal-Schendler Corporation, The First Twenty Years*, at 94 (1988) ("Three important finite element programs were introduced in the United States in the same year as NASTRAN. They were ANSYS..., MARC ..., and the SAP program.... Over the years, the ANSYS program has become our strongest competitor.") (attached as Exhibit 3).

has described as “knock-offs” and “point solutions,” AI*NASTRAN has access to significant development and marketing support, making AI*NASTRAN substantially more competitive – and viable – than UAI and CSA combined.

[REDACTED]

Because Dr. Schaeffer’s AI*NASTRAN throws a wrench into Complaint Counsel’s entry arguments, Dr. Schaeffer has resisted providing needed discovery. Moreover, since the beginning of the litigation, Dr. Schaeffer has been coordinating with the FTC and third-parties to obtain a personal benefit from this litigation.

[REDACTED]

² Significantly, despite authoring this e-mail, Dr. Schaeffer did not produce this and other damaging evidence to MSC. There is no question that the subpoena issued to Dr. Schaeffer called for this type of document. Indeed, after SAS has made a paltry document production to MSC, MSC admonished Dr. Schaeffer’s counsel to double check Dr. Schaeffer’s and SAS’s paper and electronic files, since it appeared relevant documents were missing. Despite Dr. Schaeffer’s failure to object to producing such responsive information, MSC has found numerous documents authored or received by Drs. Schaeffer and McNeal (or other SAS employees) that have not been produced.

[REDACTED]

³ This Opposition contains information from third-parties that have been designated confidential. MSC has done this because it is critical that, in making its decision on Dr. Schaeffer's Motion, this Court be fully informed of the relevant facts, including behind-the-scenes *coordinated* efforts to use this litigation to harm MSC in the market. Under the current Protective Order, MSC may not provide other third-party confidential information to Dr. Schaeffer. Thus, MSC has filed this Opposition under seal, and has provided counsel for Dr. Schaeffer a redacted version. MSC, of course, is more than happy to provide Dr. Schaeffer the non-public version if the court expressly allows.

4

[REDACTED]

In light of this coordination among ANSYS, SAS, and Lockheed Martin to manipulate these proceedings for their own benefit, Complaint Counsel – not surprisingly – is seeking to rely on Dr. Schaeffer’s testimony at trial, and has listed Dr. Schaeffer on their so-called Trial Witness List. Indeed, these three parties constitute almost a third of Complaint Counsel’s witness list.

Despite the clear relevance of Dr. Schaeffer’s testimony, however, Dr. Schaeffer is seeking to play games with the discovery cut-off to avoid providing MSC with information. The proof of Dr. Schaeffer’s game playing is that, rather than seeking to reschedule his deposition for “good cause,” Dr. Schaeffer’s Motion is calculated to *avoid any pre-trial confrontation* with MSC. But Dr. Schaeffer’s evasiveness has not been done forthrightly; it is being achieved by stalling and stonewalling.

Shortly after Complaint Counsel provided MSC with its Trial Witness List, MSC contacted Dr. Schaeffer’s counsel. During this conversation, Dr. Schaeffer’s counsel told MSC that Dr. Schaeffer would make himself available for an interview, and the parties broadly discussed the contours of the interview, including some of the topics that would be addressed. At the end of the

[REDACTED]

conversation, MSC asked for, and Dr. Schaeffer's counsel *agreed* to, provide MSC with possible interview dates.

On Thursday, May 16, 2002, after hearing no response from Dr. Schaeffer's counsel, MSC called Dr. Schaeffer counsel, and was told that, after speaking with ANSYS, Dr. Schaeffer had "*changed his mind*" and was no longer willing to provide an interview. MSC explained to Dr. Schaeffer's counsel that it could not go blind into trial, and that it would be forced to take a deposition in light of Dr. Schaeffer's new-found unwillingness to cooperate voluntarily. MSC asked for, and again Dr. Schaeffer's counsel *agreed* to look into, possible deposition dates.

On Monday, May 20th, after hearing no response from SAS, MSC issued a subpoena *ad testificandum* to Dr. Schaeffer, which it served by fax and Federal Express. (Attached as Exhibit 11). In order to provide as much time as possible, the deposition was noticed for May 28th, the last day of fact discovery.⁵ On May 21st, Dr. Schaeffer's counsel wrote MSC demanding that the deposition be canceled, since in his view there was inadequate time to prepare for the deposition. MSC wrote back explaining that it was perfectly amenable to holding the deposition in early June (and even proposed June 3rd or 4th) if Complaint Counsel would agree. MSC copied Complaint Counsel on this response (and also provided Complaint Counsel with Dr. Schaeffer's letter), so that Complaint Counsel could weigh in. Complaint Counsel did not. See May 21, 2002 Letter from C.Kass to P.Porter (attached as Exhibit 12).

⁵ Also, while the deposition was technically noticed for the Kirkland & Ellis offices of Washington, D.C. or a "mutually agreed upon location," MSC simultaneously left a voicemail for Dr. Schaeffer's counsel indicating that it was perfectly amenable to holding the deposition in Los Angeles if Dr. Schaeffer would prefer.

On May 22nd, rather than seek a mutually beneficial date for all three parties (MSC, Complaint Counsel, and Dr. Schaeffer), Dr. Schaeffer filed a Motion to Quash the subpoena. Prior to receiving this Motion, but after its filing, MSC again called Dr. Schaeffer's counsel. Dr. Schaeffer's counsel represented – as it does in its motion – that it is impossible to hold the deposition prior to close of discovery. Based on this representation, MSC called Complaint Counsel and asked whether they would be willing to hold the deposition in early June in light of Dr. Schaeffer's alleged representation of "good cause." Complaint Counsel, rather than determining whether Dr. Schaeffer could in fact establish good cause, simply responded with their usual refrain: No! They provided no explanation, and did not support their refusal with a claim of prejudice.⁶

As a result, it is now necessary for this Court to decide when Dr. Schaeffer's deposition should be held. As MSC has previously explained, it has a due process right to obtain discovery from Dr. Schaeffer. *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) ("We start with the premise that pre-trial discovery is ordinarily 'accorded a broad and liberal treatment.' ... If no claim of privilege applies, a non-party can be compelled to produce evidence regarding any matter 'relevant

⁶ At that point, MSC asked Complaint Counsel whether they would support MSC's opposition to Dr. Schaeffer's Motion to Quash, since it was Complaint Counsel – not MSC – that was insisting that the deposition be held prior to the close of discovery and it was Complaint Counsel – not MSC – that chose not to accept Dr. Schaeffer's claim of "good cause." Complaint Counsel refused to tell MSC what its position was, instead saying, in essence, that MSC would find out Complaint Counsel's position when it receives Complaint Counsel's Response to Dr. Schaeffer's Motion to Quash.

Of course, MSC has no way of telling exactly what position Complaint Counsel will take, but it suspects that Complaint Counsel will not oppose Dr. Schaeffer's motion, saying that MSC has dragged its feet. Of course, that is decidedly not the case. Complaint Counsel did not inform MSC that Schaeffer was a real trial witness – if indeed he is – until it provided MSC with its so-called Trial Witness List. At that point, MSC took immediate action to interview or depose Dr. Schaeffer. Thus, it was Complaint Counsel's gamesmanship with the witness list and Dr. Schaeffer's stonewalling – and shifting positions – that have been responsible for this press of time. Surprisingly, Dr. Schaeffer appears to be the only one that is objecting to the press of time the he himself primarily created.

to the subject matter involved in the pending action' or 'reasonably calculated to lead to the discovery of admissible evidence.'... This broad right of discovery is based on the general principle that litigants have a right to 'every man's evidence,'... and that wide access to relevant facts serves the integrity and fairness of the judicial process by promoting the search for the truth." Dr. Schaeffer is a trial witness for Complaint Counsel who clearly has relevant information that is damaging to Complaint Counsel's case. Significantly, Dr. Schaeffer does not claim otherwise; rather his entire motion to quash is based on timing.

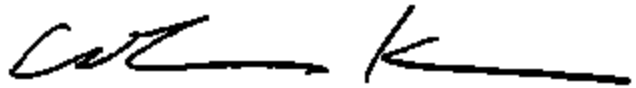
MSC does not take a position on whether Dr. Schaeffer's claimed excuse for not being available on the 28th constitutes "good cause."⁷ MSC simply does not care whether the deposition is in May or early June. But whether this court accepts Dr. Schaeffer's excuse for delay as sufficient to establish "good cause" or not, MSC simply cannot be deprived of the right to take Dr. Schaeffer's deposition. MSC fully complied with this Court's scheduling order. The deposition notice was filed and served during the discovery period, provided more than one week's notice, and was scheduled to be completed within the discovery period. As such, there is no basis for denying MSC the right to depose Dr. Schaeffer, especially when the problem Dr. Schaeffer raises – the lack of preparation time for the deposition – was due to his own conduct, including his renegeing on the agreement to provide an interview, his delay (and ultimate failure) to provide dates for the interview, and his delay (and again ultimate failure) to provide dates for his deposition.

⁷ MSC notes that, in its May 3, 2002 Second Revised Scheduling Order, this Court stated that it would allow depositions beyond the discovery cut-off period for "good cause."

CONCLUSION

This Court should not countenance Dr. Schaeffer's gamesmanship. MSC has fully complied with the Court's Scheduling Order, and it has a right to confront its accusers and take Dr. Schaeffer's deposition.

Respectfully submitted,



Tefft W. Smith (Bar No. 458441)
Marimichael O. Skubel (Bar No. 294934)
Michael S. Becker (Bar No. 447432)
Colin R. Kass (Bar No. 460630)
Bradford E. Biegon (Bar No. 453766)
Larissa Paule-Carres (Bar No. 467907)
KIRKLAND & ELLIS
655 15th Street, N.W., 12th Floor
Washington, DC 20005
(202) 879-5000 (Phone)
(202) 879-5200 (Facsimile)

*Counsel for Respondent
MSC Software Corporation*

Dated: May 23, 2002

CERTIFICATE OF SERVICE

This is to certify that on May 23, 2002, I caused a copy of the non-public, redacted non-public and public versions of MSC's Opposition to Harry Schaeffer's Motion to Quash Deposition Subpoena to be served upon the following persons by hand delivery:

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

Richard B. Dagen, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

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

Karen Mills, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

and that I cause the non-public redacted and public versions of MSC's Opposition to Harry Schaeffer's Motion to Quash Deposition Subpoena to be served upon the following person by facsimile and overnight mail:

Paul Porter, Esq.
Hill, Farrer & Burrill LLP
300 South Grand Avenue
37th Floor
Los Angeles, California 90071



David S. Shotlander
KIRKLAND & ELLIS
655 15th Street, NW
Washington, D.C. 20005
(202) 879-5000 (tel.)
(202) 879-5200 (fax)

Exhibit 1
Redacted Pursuant to
Protective Order

AI* NASTRAN™

For more than 40 years, NASTRAN® has been the standard simulation and analysis software of the automotive and aerospace industries. Companies developing products such as next-generation fighter aircraft, cutting-edge sports cars and rugged trucks have relied upon NASTRAN to prove concepts and prevent catastrophic failures. Traditionally, these companies have had few options in their choice of commercially available NASTRAN packages.

Now, AI* NASTRAN from ANSYS Inc. presents the automotive and aerospace industries with a competitive choice.

AI* NASTRAN is specifically designed to serve the demanding simulation and analysis needs of automotive and aerospace companies. Built from the same base code as the original NASTRAN—the software that helped make the awe-inspiring *Apollo* space missions a reality.

AI* NASTRAN solves extremely large and complex problems including airframe, turbine design, noise/vibration/harshness (NVH) and durability analyses. Plus, AI* NASTRAN is designed to fit easily into established development processes. It quickly processes input data generated from leading NASTRAN pre-processors such as MSC/PATRAN, HyperMesh[®] and FEMAP[®] and generates binary output files that are also fully compatible with existing post-processing software.

AI* NASTRAN, available soon from ANSYS Inc., an innovator and proven leader in the simulation software market for more than 30 years.

Image courtesy of the Center for Aerospace Structures, University of Colorado, Boulder, CO, U.S.A.

ANALYSIS TYPES

Static Analysis

- Static with Imperfections
- Differential Stiffness
- Piecewise Linear
- Cyclic Symmetry
- Linear Buckling

Heat Transfer

- Steady State (Linear and Non-linear)
- Transient (Linear and Non-linear)
- NOD Factor Calculations

Structural Dynamics

- Normal Modes
- Frequency Response (Direct and Modal)
- Transient Response (Direct and Modal)
- Complex Eigen Solution (Direct and Modal)
- Normal Modes with Differential Stiffness
- Normal Modes with Cyclic Symmetry

Field Problems

- Magnetic Field Analysis
- Piezoelectric Analysis

Element Types

• 1-D

- ROD, BEAM, BAR, ELBOW, BEND, COMROD

• 2-D

- QUAD4, TRIA3, SHEAR, QUAD6, TRIA6

• 3-D

- HEXA, HEX8, PENTA, TETRA

• Axisymmetric

- TRIA3G, TRAP3G, TOR3D3, TRIAAX, TRAPAX, TRIA6

• Spring

- ELAST, ELAS2, ELAS3, ELAS4

• Rigid

- RR0D, RBAR, RBE1, RBE2, RBE3, RSPLINE, RTEPLT, CRIGD1, CRIGD2, CRIGD3

• Special Purpose

- MASS1, CONM1, CONM2, GENEL, DMI, VISC

Material Types

- Isotropic
- Orthotropic
- Anisotropic
- Composites



T H E

M A C H E A L - S C H W E N D L E R

C O R P O R A T I O N

The First Twenty Years

At one point we were approached by CDC with an offer of better support if we would also enter into an exclusive agreement with them. We were not impressed with the quality of their financial projections or with the arrogant manner of the young executives they sent to talk to us. In the long run it was fortunate that we did not enter into an exclusive agreement with them because the data center business has declined in relative importance due to the increased availability of computers. For example, at the present time the revenues from the CDC data center network, which at one point accounted for 60% of our total revenues, now represent less than 5%. The determining factor in our decision was, however, that we enjoyed our independence and would not have relished marching to another company's tune.

Three important finite element programs were introduced in the United States in the same year as NASTRAN. They were ANSYS which was developed by John Swanson, MARC which was developed by Pedro Marcal, and the SAP program which was developed at the University of California at Berkeley. Over the years the ANSYS program has become our strongest competitor. It has a strong base in nuclear engineering and machine design, and it is very often the first to introduce new technology. The MARC program was initially very strong in nonlinear analysis but has lost ground in recent years. The SAP program was developed from the viewpoint of ease of use and is a favorite with universities. A number of important European finite element programs were introduced about the same time. The SFSAM 69 program, which was developed by det Norske Veritas, a Norwegian classification agency similar to Lloyd's Register, bears mention because of its very strong superelement capability.

During the 1970's our most important competitor was COSMIC NASTRAN. We were both a competitor of theirs and a beneficiary of NASA's enormous prestige, as manifested in their ability to generate publicity for NASTRAN. For example, they produced a film about NASTRAN which featured Rod Serling as the narrator. NASA officials also regularly went to congressional hearings and mentioned the NASTRAN program as one of the significant fallout benefits of the space program. We came to regard the COSMIC program as our natural prey because we had no difficulty showing favorable comparisons with it. We could simply state that we had all of the capabilities in COSMIC plus a list of additional ones. Since NASA did not put nearly as much effort as we did into new capability and virtually none at all into user services, they began to lose ground to us.

By 1978 we had more installations than NASA did and a much larger total revenue. The one advantage COSMIC NASTRAN had over MSC/NASTRAN was that it was less expensive. Before 1976 it could

Exhibit 4
Redacted Pursuant to
Protective Order

Exhibit 5
Redacted Pursuant to
Protective Order

Exhibit 6
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Protective Order

Exhibit 7
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Exhibit 8
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Protective Order

Exhibit 9
Redacted Pursuant to
Protective Order

Exhibit 10
Redacted Pursuant to
Protective Order



SUBPOENA AD TESTIFICANDUM

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

1. TO

Harry G. Schaeffer
2400 N. Lincoln Ave.
Altadena, CA 91001

Harry G. Schaeffer
c/o Paul M. Porter
Hill, Farrer & Burrill LLP
One California Plaza, 37th Floor,
300 South Grand Avenue
Los Angeles, California 90071

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

3. PLACE OF HEARING

Kirkland & Ellis
655 15th Street, NW
Washington, DC 20005
(or mutually agreed upon location)

4. YOUR APPEARANCE WILL BE BEFORE

Colin R. Kass

5. DATE AND TIME OF HEARING OR DEPOSITION

May 28, 2002, at 8:30 a.m.

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Colin R. Kass
Counsel to Respondent MSC Software Corporation
655 15th Street, NW
Washington, DC 20005
(202) 879-5000

DATE ISSUED

MAY 17 2002

SECRETARY'S SIGNATURE

GENERAL INSTRUCTIONS

APPEARANCE

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

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

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

CERTIFICATE OF SERVICE

This is to certify that on May 20, 2002, I caused a copy of the attached Subpoena Ad Testificandum Issued on Behalf of Respondent *MSC Software Corporation* to Harry Schaeffer of Schaeffer Automated Simulation to be sent by facsimile and Federal Express, upon the following person for service:

Harry G. Schaeffer
Schaeffer Automated Simulation
2400 N. Lincoln Ave.
Altadena, CA 91001


Harry G. Schaeffer
c/o Paul M. Porter
Hill, Farrer & Burrill LLP
One California Plaza, 37th Floor,
300 South Grand Avenue
Los Angeles, California 90071

This is to further certify that on May 20, 2002, I caused a copy of the attached Subpoena Ad Testificandum Issued on Behalf of Respondent *MSC Software Corporation* to Harry Schaeffer of Schaeffer Automated Simulation to be served by hand delivery, upon the following persons:

Richard B. Dagen, Esquire
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

Karen Mills, Esquire
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

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



Colin R. Kass
Kirkland & Ellis
655 15th Street, N.W.
Washington, DC 20005
Phone: (202) 879-5172
Facsimile: (202) 879-5200

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
cdlin_kass@dc.kirkland.com

(202) 879-5000

Facsimile:
(202) 879-5200

May 21, 2002

VIA FACSIMILE

Paul Porter, Esq.
Hill, Farrer & Burrill LLP
One California Plaza, 37th Floor
300 South Grand Avenue
Los Angeles, CA 90071

Dear Paul:

I write in response to your letter of earlier today, which I am enclosing for Complaint Counsel's benefit. As I indicated in my voicemail to you yesterday, I issued the subpoena because you indicated last Thursday that you would not be making Mr. Schaeffer available, despite your earlier representations that you would make him available. During that discussion on Thursday, you indicated that Mr. Schaeffer's current position was that he would only make himself available if subpoenaed for a deposition. At that point, I asked you to provide possible dates to hold that deposition. Hearing nothing, I issued the subpoena for the last day of the fact discovery period.

Your letter indicates that May 28th is not acceptable, and that you would like to schedule the deposition at a later point. MSC is not opposed to holding the deposition after the close of the discovery period, but Complaint Counsel has insisted on a showing of good cause to hold depositions after May 28th.¹ If you would like to hold the deposition after May 28th, you will either have to convince Complaint Counsel or obtain an order from the FTC Administrative Law Judge permitting the deposition to be held at a later date.

As for the location of the deposition, while the deposition is noticed for the Washington Offices of Kirkland & Ellis or "at a place to be agreed upon," as I indicated to you in yesterday's voicemail, MSC would be happy to hold the deposition in Los Angeles. Accordingly, once the issue of the date is resolved – be it May 28th, which we will assume for the present and insist upon absent

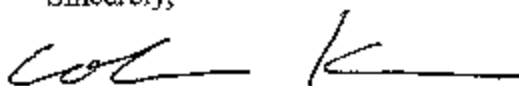
¹ If you decide to pursue discussions with, and are successful in convincing, Complaint Counsel to agree to post-pone the deposition until after May 28th, MSC suggests June 3rd or 4th as acceptable alternative dates.

KIRKLAND & ELLIS

Paul Porter, Esq.
May 21, 2002
Page 2

some agreement from Complaint Counsel, or some other date – we will plan on holding the deposition in your offices.

Sincerely,

A handwritten signature in black ink, appearing to read "Colin R. Kass". The signature is written in a cursive style with a large, prominent "K" at the end.

Colin R. Kass

cc: Peggy D. Bayer, Esq.

HILL, FARRER & BURRILL LLP

A LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW
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300 SOUTH GRAND AVENUE
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FACSIMILE TRANSMITTAL SHEET

DATE: May 21, 2002	NUMBER OF PAGES: 3
FROM: Paul M. Porter, Esq.	CLIENT/MATTER NO.: S1024-004

<i>NAME</i>	<i>FAX NO.</i>	<i>PHONE NO.</i>
Colin Kass, Esq.	(202)879-5200	202 879-5172

MESSAGE:

IMPORTANT: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT READING, DISSEMINATING, DISTRIBUTING OR COPYING THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE, WHO WILL ARRANGE TO RETRIEVE IT AT NO COST TO YOU. THANK YOU.

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E-MAIL: A.CLARK@HFBLLP.COM

May 21, 2002

VIA FACSIMILE AND U. S. MAIL

Colin Kass, Esq.
 Kirkland & Ellis
 655 Fifteenth Street, N.W.
 Washington D.C. 20005

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

Dear Mr. Cass:

I received today your subpoena for the deposition of Dr. Harry Schaeffer at your office in Washington D.C. on Tuesday, May 28, 2002. Unfortunately, neither Dr. Schaeffer nor I are available to attend the deposition in Washington D.C. on such short notice, much less to travel on a holiday weekend. And beyond our unavailability, it would be impossible for Dr. Schaeffer and I to get together to prepare for the May 28 deposition. Specifically, it is Tuesday today, and Dr. Schaeffer is out of state all of the rest of the week. Monday is a holiday, and you've set the deposition in Washington D.C. the day after that. Though we recognize your right to conduct discovery, we hope you recognize our right to be provided with sufficient time to plan and prepare for the deposition. The minimal notice you provided is simply inadequate.

In addition, we also expect that if there is going to be a deposition of Dr. Schaeffer, that deposition will be conducted in Los Angeles where Dr. Schaeffer and I reside. The inconvenience and lost time involved in Dr. Schaeffer and I traveling to Washington D.C. for a deposition in your case would be significant, as would the monetary expense of that trip, the attorneys fees, etc. For convenience, you may use my office in Los Angeles for the rescheduled deposition if you like.

As I've advised, we will attend a deposition on a mutually convenient date in Los Angeles if we are provided sufficient notice. In this regard, we are willing to work with you toward scheduling a date

Colin Kass, Esq.

May 21, 2002

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for the deposition that would provide us with ample opportunity to plan and prepare for it. Please contact me with your available dates for the deposition.

I trust that we will be able to find a mutually convenient date for the deposition, and toward that end I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. M. Porter", with a horizontal line extending to the right.

PAUL M. PORTER

OF

HILL, FARRER & BURRILL LLP

cc: Alfred M. Clark, III., Esq.
Dr. Harry G. Schaeffer