

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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

Docket No. 9299

**MSC.SOFTWARE CORPORATION'S RESPONSE TO THIRD-PARTIES'  
APPLICATION FOR *IN CAMERA* TREATMENT**

A number of third-parties, including ANSYS, Inc., Schaeffer Automated Simulation, Altair Engineering, Ford Motor Company, Electronic Data Systems Corp., International Business Inc., Dassault Systemes, Bath Iron Works, EASi, and Kibbitt, Karlsson & Sorensen have sought *in camera* treatment for the vast majority of the documents they have produced. MSC takes no position on whether these third-parties have met the appropriate standard for confidentiality (either for whole documents or portions of documents) or whether they have supported their designations with sufficient factual showings.

MSC's only issue about these third-party efforts to seal this information concerns trial logistics. MSC is concerned that it will have to clear the courtroom throughout these proceedings to deal with such confidential information. MSC questions whether the need to use third-party documents can be easily separated into confidential and non-confidential proceedings. For example, it may be necessary to confront or impeach a witness about an event that is documented in the interview notes of a third-party. Sealing such information would require that the court room be

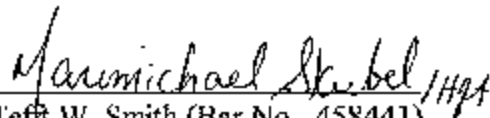
sealed in the middle of an examination depending on the witnesses's answers. Unfortunately, the practical result may be that significant portions of the proceedings will need to be sealed.

In making its decision concerning these third-party applications for *in camera* treatment, MSC also believes that the court should be guided by the fact that MSC has a constitutional due process right to have a corporate representative present for these proceedings. MSC needs to assist in the defense of its case and make its own independent determination concerning MSC's litigation strategy.

In addition, MSC believes that the same standard should apply to its own documents as apply to third-party competitor documents (both as to the extent of confidentiality that is accorded and as to the procedural requirements necessary to sustain an application for *in camera* treatment). MSC has produced substantially more documents in this litigation than any third-party. Thus, MSC has substantially more to lose than any third-party by the release of MSC's confidential information into the public record.

Finally, because the third-parties have sought confidential treatment of entire documents, MSC believes that it should be given the right to later challenge the confidentiality designations for certain *portions* of the documents on a case-by-case basis in order to facilitate the smooth presentation of evidence.

Respectfully submitted,



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Dated: June 19, 2002

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## CERTIFICATE OF SERVICE

This is to certify that on June 19, 2002, I caused a copy of Respondent MSC Software Corporation's Response to Third-parties' Application for *in Camera* Treatment to be served upon the following persons by:

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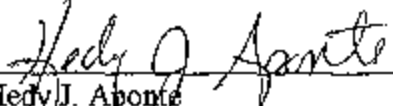
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