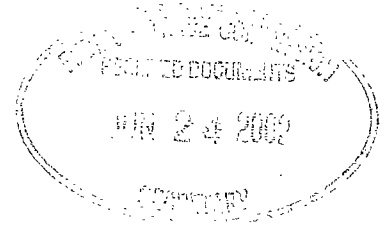


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



)
In the Matter of)

MSC.SOFTWARE CORPORATION,)
a corporation.)
_____)

) Docket No. 9299
)
)
)

**MOTION OF THIRD-PARTY IBM FOR LEAVE TO FILE REPLY TO
MSC.SOFTWARE CORPORATION'S RESPONSE TO THIRD-PARTIES'
APPLICATION FOR *IN CAMERA* TREATMENT**

Pursuant to 16 C.F.R. § 3.22(c), third-party International Business Machines, Inc. ("IBM") hereby respectfully moves for leave to file a Reply to Respondent MSC.Software Corporation's ("MSC") Response to Third-Parties' Application for *In Camera* Treatment. A Reply is necessary in order to address several issues raised by MSC including MSC's due process rights and reservation of the right to object to the *in camera* treatment of documents on an *ad hoc* basis during the hearing in this matter.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By: _____

Jonathan Abram

Charles S. Greene, III

OF COUNSEL:

Cari S. Robinson, Esq.
Corporate Litigation
44 South Broadway
White Plains, NY 10601

555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Dated: June 24, 2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June 2002, I caused a copy of the foregoing Motion of Third-Party IBM for Leave to File Reply to MSC.Software Corporation's Response to Third-Parties' Application for *In Camera* Treatment to be served upon the following parties as indicated:

The Honorable Donald S. Clark
Federal Trade Commission
600 Pennsylvania Avenue, N. W.
Room 159
Washington, D.C. 20580

ORIGINAL & TWO COPIES
BY HAND DELIVERY

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 104
Washington, D.C. 20580

TWO COPIES BY
HAND DELIVERY

Richard Dagen
Assistant Director
Complaint Counsel
Federal Trade Commission
601 Pennsylvania Avenue, N. W.
Suite 3031
Washington, D.C. 20580

BY HAND DELIVERY

Kent Cox
Complaint Counsel
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Suite 3031
Washington, D.C. 20580

BY HAND DELIVERY

Wayne Dale Collins
Shearman & Sterling
599 Lexington Avenue
New York, NY 10022-6069
(Dassault Systemes)

BY FIRST CLASS MAIL

Joseph G. Krauss
Hogan & Hartson LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
(Bath Iron Works)

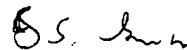
BY HAND DELIVERY

Prakash Krishnaswamy
1551 E. Lincoln Avenue
Madison Heights, MI 48071
(EASi)

BY FIRST CLASS MAIL

Michael R. Goldenberg
Goldenberg & Muri LLP
10 Weybosset Street
Providence, RI 02903
(Hibbitt, Karison & Sorensen, Inc.)

BY FIRST CLASS MAIL



Charles S. Greene, III

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

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

Third-party International Business Machines, Inc. ("IBM") respectfully makes this submission in reply to Respondent MSC.Software Corporation's ("MSC") Response to Third-Parties' Application for *in camera* treatment. On June 11, 2002, IBM moved for *in camera* treatment of certain highly confidential business documents that it had produced in response to a third-party subpoena in this matter, and which MSC intends to introduce into evidence.

As discussed more fully in its motion, the documents at issue are among IBM's most sensitive business documents for the latest version of its CATIA computer analysis and simulation software, which--among other things--describe IBM's current strategic marketing plan, contain current customer data, and are subject to confidentiality or non-disclosure agreements. Each was designated as confidential under the protective order governing discovery material when it was produced, and IBM intends to request the return of each of these documents at the

conclusion of this investigation. Public disclosure of these documents would result in severe injury to IBM.

Although MSC “takes no position” on any of the motions for *in camera* treatment from third-parties to which its Response is addressed, including IBM’s,¹ MSC does raise several issues that it asks the Administrative Law Judge to consider while reaching a decision on these third-party motions. If the Administrative Law Judge were to consider these issues, it would essentially add factors to the test for determining whether documents should be accorded *in camera* treatment,² and, in effect, increase the difficulty of meeting that test. IBM respectfully submits that the Administrative Law Judge should consider only those factors enumerated in Bristol-Meyers Co. in light of the fact that IBM is a third-party to this action.

As an initial matter, IBM’s request for *in camera* treatment does not threaten any due process right MSC may have for a corporate representative to be present during the hearing in this matter. IBM does not object to the documents cited in its motion being disclosed to an MSC corporate representative during the hearing, subject to the terms of the protective order. IBM, however, reiterates its objection to public disclosure of any of the documents listed in Exhibit B of its Motion for *In Camera* Treatment of Certain Highly Confidential Business Documents.

¹ See MSC Response at 1.

² See Bristol-Meyers Co., 90 F.T.C. 455 (1977) (listing factors to be considered in determining whether a document should be accorded *in camera* treatment).

Further, MSC's "belief" that the decision on whether to accord *in camera* treatment to third-party documents should be made using the same standard for third-parties as for MSC is incorrect. See MSC Response at 2. As the Commission has stated, a request for *in camera* treatment by a company such as IBM, which is not a party to the FTC proceedings, should be given "special solicitude." In re Crown Cork & Seal Co., 71 F.T.C. 1714 (1967) ("[P]etitioner's plea warrants special solicitude coming as it does from a third party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors...).

MSC also raises the specter of a completely unmanageable hearing if third-party documents are provided *in camera* treatment. See MSC Response at 1-2. In keeping with the Commission's guidance that its proceedings should remain as transparent as possible,³ IBM seeks *in camera* treatment in its motion for only the most sensitive documents listed by MSC, or parts thereof, comprising a total of six documents. Six *in camera* documents will not create a wholly unmanageable hearing.

Moreover, disclosure of such documents would likely impede future investigations because companies will be reluctant to produce confidential documents, which supposedly fall within a protective order, if those documents will subsequently be disclosed. The Commission has determined that the consideration of whether disclosing documents will discourage full cooperation from companies in

³ See, e.g., General Foods Corp., 95 F.T.C. 352 (1980).

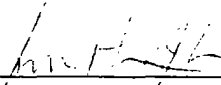
the future is part of the Bristol-Meyers Co. calculus. General Foods Corp., 95 F.T.C. 352 (1980).

Finally, MSC seems to request that it be given the right to challenge the confidentiality designations of documents on an *ad hoc* basis during the hearing. See MSC Response at 3. MSC should not be given that right. Because IBM is not a party to this investigation, it will not be represented at the hearing, and will be unable to make on-the-spot arguments supporting the confidentiality of its designated documents. If MSC wishes to challenge any of IBM's confidentiality designations, MSC should be required to do so now while IBM can protect its interest in keeping these sensitive business documents confidential.

For the foregoing reasons as well as those stated in IBM's motion, IBM respectfully requests that the Administrative Law Judge grant its Motion for *In Camera* Treatment of Certain Highly Confidential Business Documents.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By:  _____

Jonathan Abram

Charles S. Greene, III

OF COUNSEL:

Cari S. Robinson, Esq.
Corporate Litigation
44 South Broadway
White Plains, NY 10601

555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Dated: June 24, 2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24TH day of June 2002, I caused a copy of the foregoing Third-Party IBM's Reply to MSC.Software Corporation's Response to Third-Parties' Application for *In Camera* Treatment to be served upon the following parties as indicated:

The Honorable Donald S. Clark
Federal Trade Commission
600 Pennsylvania Avenue, N. W.
Room 159
Washington, D.C. 20580

ORIGINAL & TWO COPIES
BY HAND DELIVERY

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 104
Washington, D.C. 20580

TWO COPIES BY
HAND DELIVERY

Richard Dagen
Assistant Director
Complaint Counsel
Federal Trade Commission
601 Pennsylvania Avenue, N. W.
Suite 3031
Washington, D.C. 20580

BY HAND DELIVERY

Kent Cox
Complaint Counsel
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Suite 3031
Washington, D.C. 20580

BY HAND DELIVERY

Marimichael O. Skubel
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Counsel for MSC Software Corporation

BY HAND DELIVERY

John D. Harkrider
Axinn, Vestrop, Harkrider
1370 Avenue of the Americas
New York, New York 10019
Counsel for MSC Software Corporation

BY FIRST CLASS MAIL

Thomas A. Donovan
Kirkpatrick & Lockhart LLP
Henry W. Oliver Building
535 Smithfield Building
Pittsburg, PA 15222
(Anays, Inc.)

BY FIRST CLASS MAIL

Paul M. Porter
Hill, Farrer & Burrill
300 South Grand Avenue
37th Floor
Los Angeles, CA 90071
(Schaeffer Automated Simulation)

BY FIRST CLASS MAIL

Howard B. Iwroy, Esq.
Honingman Miller Schwartz and Cohn
2290 First National Nuilding
Detroit, MI 48226
(Allain Engineering, Inc.)

BY FIRST CLASS MAIL

Stephen D. Bolorjack
Ford Motor Company
One American Road, Room 418
Dearborn, MI 48126-2798
(Ford Motor Company)

BY FIRST CLASS MAIL

J. Thomas Scott
5400 Legacy Drive
Suite II3-3A-05
Plano, TX 75024
(Electronic Data Systems)

BY FIRST CLASS MAIL

Wayne Dale Collins
Shearman & Sterling
599 Lexington Avenue
New York, NY 10022-6069
(Dassault Systemes)

BY FIRST CLASS MAIL

Joseph G. Krauss
Hogan & Hartson LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
(Bath Iron Works)

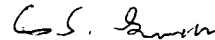
BY HAND DELIVERY

Prakash Krishnaswamy
1551 E. Lincoln Avenue
Madison Heights, MI 48071
(EASi)

BY FIRST CLASS MAIL

Michael R. Goldenberg
Goldenberg & Muri LLP
10 Weybosset Street
Providence, RI 02903
(Hibbitt, Karison & Sorensen, Inc.)

BY FIRST CLASS MAIL



Charles S. Greene, III