UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

COMPLAINT COUNSEL'S MOTION TO COMPEL COMPLIANCE WITH COMPLAINT COUNSEL'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

Complaint Counsel hereby move to compel compliance with Complaint Counsel's First Request for Production of Documents and Things (hereinafter "the Document Request"), served upon Respondent on November 21, 2001 (attached as Exhibit A). Respondent served written objections to the Document Request on Complaint Counsel on December 3, 2001 (attached as Exhibit B). Complaint Counsel and Respondent have conferred in an effort to resolve their disputes, and have resolved some of them by Complaint Counsel's modification of the Document Request (attached as Exhibit C). Respondent continues to object to much of the Document Request, but has failed to produce support for its objections (Rule 3.22 statement attached as Exhibit D). Consistent with the Scheduling Order, the Document Request called for production of responsive documents by December 12, 2001. However, Respondent did not produce any responsive documents by that date, and to this date has failed to produce any documents responsive even to those aspects of the Document Request to which it does not object.

In order to move discovery forward, Complaint Counsel move that Respondent be ordered to begin immediately to comply with the modified Document Request and to complete its response no later than January 25, 2002. A proposed Order is attached as Exhibit E.

STATEMENT OF FACTS

Complaint Counsel sought to proceed expeditiously with discovery pursuant to the Scheduling Order issued in this case, serving the Document Request on Respondent on November 21, 2001. That same day, Complaint Counsel contacted Respondent's Counsel to confer immediately about the Document Request, even providing a personal telephone number where Complaint Counsel could be reached during the Thanksgiving holiday.

Respondent chose not to confer before serving written objections to the Document Request on Complaint Counsel on the evening of December 3, 2001. Upon receiving the objections, Complaint Counsel telephoned Respondent's counsel to arrange to confer, and requested that Respondent document the general burden claims made, and suggest specific modifications that might remedy them. Complaint Counsel and Respondent met face-to-face on December 6, 2001, to discuss Respondent's objections to the Document Request. At that meeting and subsequently, despite repeated solicitations from Complaint Counsel, Respondent has failed or refused to supply Complaint Counsel with support for most of its objections. As to those instances where Respondent's Counsel did suggest modification to reduce a documented burden and supplied information sufficient to allow Complaint Counsel to determine that a modification would not unduly compromise discovery of relevant information, Complaint Counsel has agreed to modify the Document Request (modification letter attached as Exhibit C).

Respondent has thus far provided no responsive documents called for by the Document Request. It has offered to begin production on January 3, 2002, to provide a rolling production, and to complete production by February 8, 2002, but only as to those responsive documents to which it does not object. Under this schedule, the response would not begin until more than

three weeks after the response date set under the Scheduling Order, and the twenty day response period for completing a response under the Scheduling Order would be enlarged by a factor of roughly four times, to nearly two and a half months.

Respondent's delay in conferring and cooperating toward seeking modifications, Respondent's failure thus far to comply with the Document Request in any respect, and Respondent's expressed intention to object to and refuse to produce responsive documents based on unsubstantiated objections, together effectively already have cost Complaint Counsel at least one month of discovery and on an ongoing basis jeopardize Complaint Counsel's ability to meet subsequent Scheduling Order deadlines. Respondent's delay of discovery may compromise Complaint Counsel's: (1) ability to do additional discovery, including to effectively depose those MSC current or former executives and employees scheduled for early January; (2) ability to determine the need for and select expert witnesses by January 7, 2002; (3) ability to provide expert witness reports by February 7, 2002; and (4) ability to provide a revised witness list, including preliminary sur-rebuttal witnesses, by March 1, 2002. This Court's Scheduling Order leaves little room for slippage of discovery of this kind.

In order to alleviate the prejudice to their case and prepare for the upcoming depositions of MSC personnel, Complaint Counsel have asked Respondent to prioritize its rolling production as follows: (1) produce responsive documents by December 21, 2001, from MSC files maintained by or for the following individuals to be deposed: Mr. Beer, Mr. Brown, Mr. Cully, Mr. Curry, Mr. Hart, Mr. Jones, Mr. Louwers, and Mr. Riordan; (2) produce on January 3, 2002, all responsive documents relating to the following customers: Boeing, all NASA centers, Lockheed, GM, Chrysler, and Ford; and (3) produce on January 3, 2002, all MSC board minutes.

Respondent has not indicated that it intends to comply with this request, and thus far has failed to provide the requested priority responses within the period sought.

ARGUMENT

Complaint Counsel is entitled to obtain document discovery from Respondent of information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Respondent in this matter. 16 C.F.R. §§ 3.37(a) and 3.32(c)(1). Consistent with Rule 3.37(a), Complaint Counsel served upon Respondent a Document Request that specifies "with reasonable particularity the documents or things to be inspected," and "a reasonable time, place, and manner of making the inspection."

Respondent has failed to satisfy orally or in writing its burden of showing that its objections to the Document Request justify delay or non-compliance under the Rules. Pursuant to Rule 3.31(c)(1), information is properly subject to discovery if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Rule 3.31(c)(1) provides that discovery may be limited by the Administrative Law Judge if he determines that:

> (i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
>
> (iii) The burden and expense of the proposed discovery outweigh its likely benefit.

Respondent did not object to the return date specified in the Document Request, which conformed to the terms of the Scheduling Order. Respondent evokes language from Rule 3.31(c)(1) in its objections to the Document Request, but has failed and refused to provide factual support for most of its objections. In light of this failure to even minimally comply with

document discovery, Complaint Counsel are entitled to an order compelling Respondent to respond, pursuant to Rule 3.38(a).

1. Respondent's Objections to Instructions Are Groundless

Respondent raises several groundless objections to the Instructions accompanying the Document Request. Respondent objects to Instruction 12, claiming that it requires MSC to produce several identical copies of documents. It does not. Complaint Counsel wrote both Instruction 11 and Instruction 12 to provide Respondent with the option of choosing the least burdensome method of production by giving Respondent the option of producing or otherwise identifying identical documents, and the persons in whose files they are found. When Complaint Counsel pointed this language out to Respondent in the first Rule 3.22 conference, Respondent acknowledged that it likely would be more convenient to produce identical copies in the case of documents not voluminous or difficult to copy, but that it would be less burdensome to produce a single copy and identify the persons in whose files the document was found only where the document had many pages, was bound, or otherwise would be difficult to photocopy. Instruction 12 puts control over how to comply with the Document Request in the least burdensome manner in Respondent's own hands.

Respondent's objection to producing privileged documents is also groundless, as Instruction 13 recognizes Respondent's right to make privilege claims, and specifies what information must be provided to make the claim.

2. Respondent's General Objections to the Document Request Are Groundless

Respondent raises a variety of general objections to the Document Request that mischaracterize the terms of the request, misinterpret or misapply the Rules of Practice, show

disregard for the Protective Order, or are otherwise without basis. Respondent evokes language from Rule 3.31(c)(1) in its objections to Complaint Counsel's Document Request, but Respondent has failed to supported most of its broad claims, and Respondent is not entitled to relief beyond the modifications of the Document Request already made by Complaint Counsel.

Respondent objects to production of documents and things unrelated to the aerospace and automotive industries, based on Respondent's reading the Complaint to allege anticompetitive effects only in these industries. Respondent misreads the Complaint (Complaint attached as Exhibit F). While the Complaint illustrates the anticompetitive effects of MSC's acquisitions of UAI and CSAR by referring to the automotive and aerospace industries, the Complaint does not limit its allegations to these industries, and the scope of allowable discovery accordingly is broader than just those industries.

Respondent objects to producing documents before Complaint Counsel has provided documents as part of its mandatory Initial Disclosures under Rule 3.31. However, Rule 3.31(a) expressly provides that parties shall, to the greatest extent practicable, conduct discovery simultaneously. The Rules therefore do not contemplate that one party's discovery would be delayed pending another party's compliance with discovery. Moreover, on December 11 and 21, 2001, after appropriate notice to third parties, Complaint Counsel produced to Respondent non-privileged third party documents. Complaint Counsel will continue to supply discoverable third party documents to Respondent, consistent with the notice and confidentiality rights of third parties.

Respondent objects to searching for or producing responsive documents and information in Part 3 discovery to the extent that the time period for which discovery is sought in Part 3

exceeds the time period for which Respondent agreed to produce documents in Part 2 discovery. The Rules provide no support for the contention that the scope of Part 2 discovery limits the scope of Part 3 discovery. Moreover, Respondent's present counsel (who did not represent Respondent during the Part 2 investigation), is simply wrong in contending that the FTC agreed to limit Part 2 discovery to the period since January 1, 1997. In fact, the FTC staff and Complaint Counsel consistently in both Part 2 and Part 3 maintained that discoverable information is likely to be found and a search is necessary going back to January 1, 1995.

Respondent objects to producing documents or data in any way other than the way they are maintained in the ordinary course of business. However, Rule 3.37(a) expressly provides that "[a] party shall make documents available as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request." In many cases, where the Document Request instructions specify that responsive information be organized or identified in a particular manner, it is in fact because Complaint Counsel anticipated and sought to reduce any burden on Respondent that might be caused by Respondent producing documents as they are maintained in the ordinary course of business. For example, Respondent has objected to the way Specification 22 asks for data to be produced. However, Complaint Counsel has stated Respondent should produce the data in the format agreed to by Respondent during the Part 2 investigation of this case precisely because Respondent and Complaint Counsel already had conferred on the best way Respondent could produce responsive information, and it was determined that producing data this way was less burdensome than producing all of the underlying data as maintained in the ordinary course of business.

Respondent objects to searching for responsive documents at all of its business locations

around the world, and argues that such discovery is not necessary because MSC has admitted that the relevant geographic market is the world. But Complaint Counsel are entitled to discovery, regardless of where files are located, of information relevant to all the issues in the case, including defenses and questions of remedy. The relevant geographic market is only one of many issues in this case, and an admission by Respondent that the relevant geographic market is the world does not moot all other discovery. In fact, Respondent continues to assert that it has the right to search its non-U.S. offices for documents favorable to its case, and offers to produce to Complaint Counsel those documents from non-U.S. offices and files that Respondent intends to offer in its own support. This position by MSC effectively concedes that responsive, relevant, discoverable documents may exist in foreign files, but would deprive Complaint Counsel of discovery while reserving to Respondent the right to use such documents defensively. Moreover, despite Complaint Counsel's repeated requests that Respondent identify the concrete burden imposed by a worldwide search, in terms of the necessary time and the volume of documents to be examined or produced, Respondent continues to make only general claims of burden.

With respect to customer contract files maintained both in the United States and in non-U.S. offices of MSC, Respondent has supplied some information sought by Complaint Counsel to assess the claims of burden and the effect of proposed modifications on the scope of information to be obtained under the Document Request. In light of this information, Complaint Counsel has agreed to modify the Document Request as described in Complaint Counsel's letter of December 26, 2001 (attached as Exhibit C).

Respondent's further claims that the discovery sought is unreasonably cumulative or duplicative of the investigation made in the Part 2 phase of this case also have no basis. The

scope of the Document Request goes beyond the scope of Part 2 discovery earlier directed to the Respondent. It is by no means clear that a complete response was provided by the Respondent even to the more limited Phase 2 discovery. Furthermore, the current Document Request avoids any issues of unnecessary duplication by specifying under Instruction 12 that documents produced in response to Part 2 discovery need not be produced again.

Respondent objects to Specification 2's request for production of documentation about document retention and destruction policies, computerized backup procedures, and the cost and recovery of backup computer files and documents. Respondent claims this Specification calls for production of documents not kept in the ordinary course of business. During the Part 2 investigation, however, Respondent claimed that it would be burdensome to produce responsive documents from backup computer files. While Respondent has been silent on this issue in Part 3, and has not objected to production of responsive documents from backup computer files, Complaint Counsel anticipate that Respondent will simply decline or refuse to produce responsive documents from its backup computer files and/or make belated burden claims later in the case. Having failed to object to production from backup computer files, and having refused to provide information that would show the extent of any purported burden, Respondent should be precluded from making burden claims later and should be required now to produce responsive documents and information from its backup computer files.

3. Respondent's Objections to the Document Request Not Timely Raised Have Been Waived

To the extent Respondent did not raise objections to the Document Request in its December 3, 2001, written objections, Respondent has waived those objections, and is precluded

from raising them under the Commission's Rules and the Scheduling Order entered in this case. The Rules and Scheduling Order set forth the deadlines for the filing of objections to discovery. Objections not raised are waived. Subsequent to serving its objections on Complaint Counsel, Respondent has sought to raise additional objections to the Document Request not raised in its written objections, and seeks modifications of such aspects as the date of required production and the continuing obligation to produce responsive documents. Any objection Respondent did not raise by December 3, 2001, has been waived, and an order to compel compliance with the Document Request, as modified, is appropriate.

THE PROPOSED ORDER

With this motion, Complaint Counsel submit a proposed Order for entry by Your Honor. The Order directs the Respondent to comply with the Document Request, as modified by Complaint Counsel in light of the information provided by Respondent during the consultations over the past month. The proposed Order requires that the Respondent begin production immediately, produce responsive documents on a rolling basis, and comply fully by January 25, 2002. The latter date is abundantly generous, providing Respondent with sixty-five days from service of the Document Request within which to complete its response, far in excess of the twenty days provided under the Scheduling Order. Finally, in order to alleviate the prejudice already suffered by Complaint Counsel, the proposed Order requires the Respondent to provide promptly certain specified categories of documents to be used in connection with the scheduled depositions of present and former MSC executives and employees, which are to begin shortly after the beginning of the New Year.

CONCLUSION

For the reasons set forth above, Complaint Counsel request that their Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things be granted.

Respectfully Submitted,

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EXHIBIT A

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

COMPLAINT COUNSEL'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS ISSUED TO RESPONDENT MSC.SOFTWARE CORPORATION

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, Complaint Counsel hereby request that Respondent MSC.Software Corporation (hereinafter "MSC") produce all documents and other things responsive to the following requests, within its possession, custody, or control within twenty days of service of this request, in accordance with the Definitions and Instructions set forth below. Objections shall be due within ten days of service.

DEFINITIONS

A. The term "the company" or "MSC" means MSC.SOFTWARE Corporation, its domestic and foreign parents, predecessors, successors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, consultants, 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.

B. 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. 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 UAI. When "company" is used in any specification, it includes UAI for purposes of producing documents, information, and things separately for UAI.

C. 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. 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 CSAR. When "company" is used in any specification, it includes CSAR for purposes of producing documents, information, and things separately for CSAR.

D. 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 and engineering blueprints.

E. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.

G. 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 available that provide the information, these may be provided in lieu of the underlying documents.

H. The terms "and" and "or" have both conjunctive and disjunctive meanings.

I. The terms "each," "any," and "all" mean "each and every."

J. The term "including" means including but not limited to.

K. 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.

L. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.

M. 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.

N. 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.

O. The term "relevant product" and "relevant service" as used herein means Nastran and FEA software and any services provided in connection with or relating to either Nastran or 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.

P. 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.

Q. 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.

R. The term "minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the relevant product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

S. The term "non-recoverable costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

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 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, 1995. The company shall supplement, amend, or correct the disclosure and responses to these requests on a continuing basis, within 20 days of ascertaining that it possesses any additional responsive information. This request shall be deemed continuing in nature.

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 Complaint Counsel determine prior to submission that it would be in a format that allows the agency 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. The FTC 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). The FTC 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 the FTC 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. The FTC will accept sequential files only. All other file structures must be converted into sequential format.

(b) Record structures. The FTC 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. As to Specification No. 22, submit all data from MSC's Oracle or other data bases in machine readable form in Excel (.xls) 2000 or prior version, or Lotus-compatible (.wk1) format, or in ASCII delimited, comma separated or fixed length field format, with field names as the first record. Additionally, Complaint Counsel wishes to consult prior to submission of responses to Specification Nos. 3 and 22 to assure that the machine readable data are in a format that allows use of the computer files.

7. Except where otherwise indicated, MSC shall respond to each specification separately for MSC, UAI, and CSAR by producing documents, information, and things based upon their original source. For example, when "company" is used in the specifications it means producing documents, information, and things separately for MSC, UAI, and CSAR.

8. The company shall mark each submitted page or sheet with its corporate identification, *i.e.*, MSC, and with consecutive document control numbers. Where documents are from the former files of UAI or CSAR, the company shall either mark each submitted page with the further corporate identification, *i.e.*, "MSC-UAI," and "MSC-CSAR" or supply a log identifying such files or documents.

9. 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. 16 shall be produced in file folders segregated by customer and in chronological order within each

customer file.

10. 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, with the name of the company originally creating the files, *i.e.*, MSC, UAI, or CSAR, and the corresponding consecutive document control numbers for each such person's documents.

11. 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.

12. If the company has produced documents responsive to this request in the course of the pre-complaint investigation of this matter, FTC File No. 001-0077, those documents need not be produced again, unless identical copies are found in more than one person's files. In such a case, the company must produce or identify from each person's files all identical copies of documents previously produced in the pre-complaint investigation.

13. If it is claimed that any document, or portion thereof, is responsive to any request 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 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 Complaint Counsel 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.

14. If there are no documents responsive to any particular request, the company shall state so in its answer to the document request.

15. 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.

16. 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.

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

SPECIFICATIONS

1. One copy of each organization chart and personnel directory in effect since January 1, 1995, 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 show all document retention and destruction systems, policies, procedures, capabilities, and personnel of the company:

   a. the persons responsible for managing such systems, policies, procedures, or capabilities;

   b. any special policies or procedures put into place by MSC as a result of the Federal

Trade Commission's investigation of the company's acquisitions of UAI and CSAR;

c. all electronic data and document management information systems of the company;

d. all network-accessible documents, information and financial data systems;

e. all backup procedures; and

f. the process and cost of recovery of backup files including documents sufficient to show:

(i) the cost of recovery of backup files generally,

(ii) the cost of recovery of backup files containing documents responsive to the Federal Trade Commission's June 28, 2000, Subpoena Duces Tecum to MSC.Software, and

(iii) the cost of recovery of backup files containing documents responsive to this document request.

3. All budget and financial statements, including financial projections, income statements, balance sheets, general ledgers, capital investment plans, operating reports, budget and operating results for individual business groups and product lines, and board or management financial performance summaries, presentations or other management reporting packages, together with all documents relied upon to compile such documents, including documents sufficient to show and all computerized data containing detailed income statement and balance sheet line items; and all documents analyzing, interpreting, or otherwise discussing the information, figures, or trends found or identified in such budget or financial statements.

4. All stock analysts' or other investment community analyses, recommendations, or research reports relating to the company, to any relevant product or service, or to computer aided engineering products and services in general, including all Daratech tables, analyses, and research reports.

5. All documents recording or relating to any communications between or among the company and any individual stock analyst or other person engaged associated with the investment community, including correspondence, press releases, notes, agendas, scripts, transcripts and recordings.

6. All documents relating to any meeting of or decision making by the board of directors or of any board, executive, or management committee, including:

   a. all announcements of, agendas for, and minutes of any meeting;

   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.

7. All documents relating to MSC's acquisitions of UAI or CSAR and the post-acquisition integration of UAI or CSAR into MSC, including:

   a. all pre-acquisition communications between the parties relating to the transaction or its effects, including any plans, proposals, agreements, contracts, executive and employee agreements, distribution agreements, covenants not to compete, licenses, patents, copyrights, trade secrets, and trademarks;

   b. all documents relating to changes and plans for changes in MSC's, UAI's, or CSAR's operations, structure, policies, pricing, strategies, corporate goals, financing, business, officers, employees, product lines, product features, development, or enhancements, any other area of corporate activity as a result of either acquisition, including whether to honor existing UAI or CSAR contracts;

   c. all documents relating to former UAI and CSAR customers' continued use of UAI Nastran, CSAR Nastran, Astros, Gensa and to switching to or substitution of other products after the discontinuation of such UAI and CSAR products, including all contracts and pricing documents for such products;

   d. all documents relating to changes or threatened changes in usage of Nastran for any customer or potential customer or changes in the company's revenue attributable to Nastran following the acquisitions;

   e. all documents relating to the reasons for each acquisition;

   f. all board and management committee documents relating to UAI and CSAR or to the proposed acquisitions or their effects, including memoranda, reports, correspondence, minutes, notes, presentations and agendas, as well as all documents used to prepare such memoranda, correspondence, minutes, notes,

presentations, and agendas, Excel worksheets, and communications from regional executives or other sales representatives;

g. all documents relating to any person's valuation of UAI and of CSAR;

h. all documents relating to all statements or actions by any person in support of, in opposition to, or otherwise expressing opinions about either acquisition or its effects;

i. all documents relating to MSC's accounting or tax treatment of each acquisition, including any writeoff of goodwill from each acquisition;

j. all documents relating to any efficiencies, cost savings, economies, synergies, or consumer or other benefits from each acquisition and whether such efficiencies, cost savings, economies, synergies, or other benefits could be achieved without acquiring UAI or CSAR;

k. documents sufficient to show the name, address, and job responsibilities of all persons employed by or acting as a consultant or agent to either UAI or CSAR at any time since January 1, 1998, and whether MSC hired or retained the person as an employee, consultant, or agent for any period since making each acquisition; all employment or consulting contracts with each such person; and all documents relating to salaries, compensation, bonuses, stock options, or other financial incentives paid or provided to the person by any person; and

l. all documents relating to each job, program, or project assigned or given by MSC to each former UAI or CSAR employee, consultant, or agent employed or retained by MSC, including documents sufficient to show (i) the contribution and performance of each such person to the job, program, or project, (ii) the goal or objective of the job, program, or project, (iii) the dates the job, program, or project began and concluded, (iv) the personnel requirements for the job, program, or project, (v) the name, address, and job responsibilities of other persons working on job, program, or project, (vi) the job's, program's, or project's budget, including personnel costs, and (vii) the recruiting efforts undertaken to staff the program or project.

8. All documents relating to the competitive significance, actual or projected financial status or condition, and long term viability of UAI or CSAR prior to their acquisitions by MSC, including UAI's or CSAR's intentions or attempts to sell UAI or CSAR, UAI's or CSAR's plans to exit the market or to cease supplying any relevant product or service, and ability to engage in the continuing sales, licensing, marketing, development, programming, and customer support of any relevant product or service.

9. All documents relating to any person's plans relating to any relevant product or service or to any product or service compatible with any relevant product or service, including business plans; short term and long range strategic plans and objectives; joint venture, partnering, strategic alliance, and acquisition strategies and plans; budgets, financial statements, and financial projections; personnel recruitment or reassignment plans; plans for new products or product enhancements, features, modules, applications, or services; research or development plans; strategies for product integration; distribution plans and agreements; sales or marketing plans; plans regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, plans and strategies for use of unlimited usage agreements and paid-up licenses; customer support services and customer-funded development plans; analyses of customer satisfaction; and plans for participation in or adoption of the AP209 exchange format standard.

10. All documents relating in any person's prices, pricing decisions, pricing proposals, licensing fees, or cost of services relating to any relevant product or service generally or with respect to any particular customer or groups of customers, including standard and non-standard price lists, discount schedules and practices, pricing formulae for CMV, GLV, and BLV factors, campus and token pricing systems, pricing commitments, pricing for features, modules, and enhancements, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, cost analyses, supply and demand analyses, analyses regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, pricing negotiations, pricing for unlimited usage contracts, paid-up licence pricing, guidance to marketing or sales personnel regarding prices, presentations to customers relating to prices, pricing for development contracts, on-site and off-site service contracts, price for web sales and licensing, and all documents considered by or emanating from person, committee, or group making a pricing decision, recommendation, or proposal, including pricing packaging group and global pricing package committee.

11. 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 products or services;

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 products or services, 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. lock-in effects or switching costs, including the use of unlimited usage agreements and paid-up licenses.

12. All documents relating to switching, including shifts in utilization, between or among any relevant product or service and any other product or service, including the relative ease or difficulty of switching; the estimated, projected or actual costs incurred by users to switch; the time required to switch; the degree of switching possible; 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; 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; the cost of and time required for training; 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; the effect of switching on customer or collaborator relationships; the effect of unlimited usage contracts or paid up licenses on switching; the possible loss or cost of complementary software used with the product or service; the use, availability, and the availability and effect of translators and AP209 exchange format standards; and governmental, customer, contractual, or industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.

13. All documents relating to actual, attempted, or potential entry into the market for any relevant product or service, including all documents relating to:

a. the timeliness, conditions, costs, attractiveness, likelihood, or competitive significance of any such entry,

b. the effects of unlimited usage contracts, paid up licenses, or any existing contracts by existing firms upon such entry;

c. the requirements for such entry including research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, trademarks, sales and marketing activities, securing a sufficient customer base to achieve minimum viable scale, personnel and staffing, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

d. the effects of open or closed software architecture and applications programming interfaces and the availability of translators, AP209 exchange format standards, trademarks, copyrights, patents, or other technology upon such entry;

e. the total costs required for such entry, including:

(i) the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the licensing or sale of the product or service; and

(ii) the methods and amount of time necessary to recover such costs; and the total non-recoverable costs entailed in satisfying the requirements for entry; and

f. the minimum viable scale, the minimum and optimum number of products or services, requirements for multi-product, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete successfully in the licensing or sale of such relevant products or services.

14. All documents relating to the development or acquisition, including licensing, of any features, enhancements, modules, or applications for any Nastran product since January 1, 1995, including any such development or acquisition considered but not undertaken during that period, including:

a. documents sufficient to show the feature, enhancement, module, or application, the price or charge to the customer for each such feature, enhancement, module, or application, the date each such feature, enhancement, module, or application was added, and the function and benefits of such feature, enhancement, module, or application;

b. for all features, enhancements, modules, and applications developed in-house or considered for in-house development, all documents relating to the in-house

development, development plans and strategies, time lines for development, budget and projected revenue for the development, personnel requirements, and the identity of customers likely to license the developed product; and any analyses whether to develop in-house or to acquire or license such feature, enhancement, module, or application;

c. for all features, enhancements, modules, and applications co-developed with a customer or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer customer's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of other customers likely to license the developed product;

d. for all features, enhancements, modules, and applications co-developed with another supplier of FEA software or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer supplier's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of customers likely to license the developed product; and

e. for all features, enhancements, modules, and applications acquired, including licensing, by the company or considered for acquisition, all documents relating to the acquisition or licensing of such feature, enhancement, module, or application, the projected revenue for the feature, enhancement, module, and application, the identity of customers likely to license the developed product, and any analyses whether to develop in-house or to acquire or license such feature, enhancement, module, or application.

15. All documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any other software products, including any customer's pre- and post-processors or input or output file formats or models, the customer's ability to switch among Nastran products, or the cost, time required, ease, or difficulty of switching from any Nastran product supplied by MSC to any other product.

16. All documents relating to the licensing or sale of any relevant product or service to all customers, including customer-funded development, including

a. all contracts, license agreements, offers, bids, bid solicitations, or proposals for contracts and licensing agreements and all documents interpreting, modifying, or amending such contracts, license agreements, offers, bids, or proposals;

b. strategic, sales, and marketing plans for licensing and serving the customer, including sales call reports and sales presentations and pitches;

c. price lists, negotiation correspondence, price escalation calculations, documents relied upon to formulate or calculate prices, projections of prices offered by other suppliers of relevant products or services;

d. field and headquarters sales and contract files;

e. reports of prior or existing usage; and

f. invoices for products and services; and record of payment for products or services.

17. All documents relating to personnel and staffing for the development and technical support of any relevant product and service, including:

a. all practices, policies, plans, agreements, and proposals relating to hiring and retention of employees, including recruiting efforts, employment incentives and bonuses, wage, salary, bonus, and stock option offers and agreements, incentives and restrictions on employee mobility, covenants not to compete, job advertisements, and the use of recruiting firms;

b. all documents relating to the use of off-shore developers and the use of contractors and consultants; and

c. all documents relating to the personnel and staffing needs for any general or specific job, program, or project, including customer-funded development projects.

18. All documents relating to any plans of, interest in, or efforts undertaken by the company or any other person for any acquisition, divestiture, joint venture, alliance, or merger of any kind involving the licensing or sale of any relevant product or service, including:

a. any acquisition, joint venture, alliance, or merger of any kind with UAI or CSAR by any person;

b. the divestiture or sale by MSC of any former UAI or CSAR assets, intellectual property, employees, contracts, customer relations, or UAI's or CSAR's former businesses as going concerns;

c. any strategic business relationship between MSC and Dassault Systemes or any Dassault affiliated person or between MSC and IBM or any IBM affiliated person; and

d. any acquisition of an interest in MSC by Dassault Systemes or any Dassault affiliated person.

19. All documents relating to financial or economic methodologies, formulae, or performance models or criteria used by the company or any person for valuing or determining the purchase prices for any actual, attempted, or potential acquisitions, divestitures, joint ventures, alliances, or mergers of any kind involving the licensing or sale of any relevant product or service.

20. All license agreements for any intellectual property, including patents, copyrights, trademarks, or trade secrets, owned by any person other than the company and included in or furnished with any Nastran product or service, including all documents modifying, amending, or interpreting such agreements, all documents relating to payment of any licensing fees, and all documents relating to the company's plans, actions, or efforts to enforce such agreements against any person.

21. All documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, or promoting the use of any particular relevant product, including Nastran.

22. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Nastran product or service for the period January 1, 1995, to the present, including:

a. the date of transaction,

b. the amount of the transaction,

c. the quantity,

d. the type and duration of the contract or license,

e. a description of each product or service licensed or sold (including product number or code),

f. the contract number,

g. the location, including physical address and serial number, of the computer where the software is located or service rendered,

h. the SIC code, trade or industry category, and business group of the customer, and

i. the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.

23. For each relevant product or service offered for sale or licensing, all selling aids and promotional materials and all manuals, including instructional and installation manuals.

Respectfully submitted,

Karen A. Mills
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2052
Facsimile (202) 326-3496

Dated: November 21, 2001

VERIFICATION

I personally supervised the preparation and assembly of this response in accordance with the Definitions and Instructions set forth in Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC.Software Corporation in 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

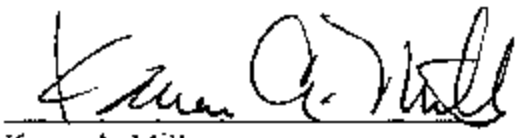
My Commission expires

CERTIFICATE OF SERVICE

This is to certify that on November 21, 2001, I caused a copy of the attached Complaint Counsel's First Request for Production of Documents and Things Issued to MSC.Software Corporation to be served upon the following person by facsimile transmission and by hand-delivery:

Marimichael O. Skubel, Esquire
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5034
Fax (202) 879-5200

Counsel for MSC.Software Corporation



Karen A. Mills
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2052
Facsimile (202) 326-3496

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF	)	
MSC.SOFTWARE CORPORATION,	)	Docket No. 9299
a corporation.	)	

RESPONDENT MSC.SOFTWARE CORPORATION'S RESPONSES AND OBJECTIONS TO COMPLAINT COUNSEL'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Rule 3.37 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, Respondent MSC.Software Corporation ("MSC") hereby provides its Responses and Objections to Complaint Counsel's First Request for the Production of Documents and Things.

GENERAL OBJECTIONS

The following general objections to Complaint Counsel's specifications are hereby incorporated into each of MSC's responses to each of Complaint Counsel's specifications for the production of documents and things as though fully set forth therein:

A. Objection to Identified Time Period Covered by Specifications. MSC objects to the time period Complaint Counsel have identified – January 1, 1995 – for all their specifications. Such a backward-looking inquiry is fundamentally at odds with the ultimate issue in this case – what has been the competitive effect of MSC's ***consummated*** acquisitions of Universal Analytics, Inc. ("UAI") and Computerized Structural Analysis and Research Corporation ("CSAR"). MSC has already searched its files, pursuant to Complaint Counsel's prior CIDs for information back to January 1, 1997. No possible justification can be given for seeking discovery – now – back to

January 1, 1995 as to anything, let alone the blunderbuss demands for the production of documents Complaint Counsel has made. *See, e.g.*, Specification No. 16 (relating to all contracts, sales call reports, correspondence, and invoices, etc. for all ales by MSC for any products). This is particularly true since MSC operates in a ***dynamic, high-tech industry*** subject to sudden and significant Schumpetterian competition. Given that the FTC Commissioners found sufficient "reason to believe" on October 9, 2001, that MSC's acquisition of UAI in June, 1999, and CSAR in November, 1999, to merit this administrative proceeding, MSC's production obligations should be limited to searching for responsive documents since November 17, 2000 (the date MSC certified its compliance with the FTC's subpoena and CID), absent specific good cause shown for other discovery.

B. Objection to Applying the Geographic Scope of the Search to the World. MSC objects to Complaint Counsel's instruction extending the geographic scope of the search for responsive documents and things to the world. MSC has admitted that the relevant geographic market is the world. However, to the extent that MSC intends to offer documents from foreign offices, MSC will search those offices. There is and there can be no showing of need for discovery from all of MSC's forty-five offices around the world.

C. Objection to Requests for Protected Information. MSC objects to Complaint Counsel's specifications to the extent that they call for the production of documents which are subject to the attorney-client privilege, are protected by attorney work product immunity, or any other evidentiary privilege or immunity.

D. Objection to Burdensomeness. MSC objects to Complaint Counsel's specifications to the extent that they are overly broad; unduly burdensome; unreasonably cumulative

or duplicative; seek information obtainable from some other source that is more convenient, less burdensome, or less expensive; seek information for which the burden and expense of production outweigh the benefit of having the information; and call for the production of documents and things not reasonably calculated to lead to the discovery of admissible evidence. MSC has already produced twenty-two boxes of documents during the course of the FTC's non-public investigation of MSC's 1999 acquisitions of CSAR and UAI. MSC objects to producing further documents in this case before the FTC has complied with its obligation to provide documents as part of its mandatory Initial Disclosures under Commission Rule of Practice 3.31, 16 C.F.R. § 3.31.

E. Objection to Definition of "The Company" and "MSC." MSC objects to Complaint Counsel's definition of "the company" and "MSC" to the extent it attempts to impose upon MSC an obligation to respond to these specifications on behalf of affiliates, joint ventures, directors, officers, employees, consultants, agents and representatives of the foregoing to the extent that MSC does not exercise control over such persons.

F. Objection to Definition of "Nastran." MSC objects to these specifications to the extent that Complaint Counsel's definition of "Nastran" calls upon MSC to produce documents and things unrelated to FEA solvers.

G. Objection to Produce Documents and Things Unrelated to the Aerospace and Automotive Industries and the Service Industries which Support Them. MSC objects to these specifications to the extent that they call upon MSC to produce documents and things unrelated to customers in the aerospace and automotive industries and the service industries which support them.

H. Objection to Imposition of Requirements Beyond Those Contained in the Commission's Rules. MSC objects to these specifications to the extent that they impose obligations

greater than those imposed by the Commission's Rules of Practice.

I. Objection to Complaint Counsel's Instruction No. 5 Regarding Format of Magnetic Media. MSC objects to Complaint Counsel's Instruction No. 5 regarding the formatting of magnetic media to the extent that it imposes obligations upon MSC beyond those required by Commission Rule of Practice 3.37, 16 C.F.R. § 3.37.

J. Objection to Complaint Counsel's Instruction No. 6 Regarding Format of Data Responsive to Specification No. 22. MSC objects to Complaint Counsel's Instruction No. 6 regarding the formatting of data responsive to Specification No. 22 to the extent that it imposes obligations upon MSC beyond those required by Commission Rule of Practice 3.37, 16 C.F.R. § 3.37.

K. Objection to Instructions Nos. 7 -10. MSC objects to Complaint Counsel's Instructions Nos. 7 - 10 to the extent that they call upon MSC to produce documents in a manner other than the way in which they were kept in the normal course of business and, therefore, seek to impose obligations upon MSC greater than those imposed by Commission Rule of Practice 3. 37, 16 C.F.R. § 3. 37.

L. Objection to Instruction No. 12. MSC objects to Complaint Counsel's Instruction No. 12 to the extent that it calls for MSC to produce copies of documents that are identical to those previously produced except for the fact that they are located in different files than those from which they were originally produced. Producing identical copies of previously-produced documents is unreasonably duplicative, cumulative, and burdensome.

M. Objection to Instruction No. 13. MSC objects to Complaint Counsel's Instruction No. 13 to the extent that it requires information to be contained within a privilege log

beyond that which is necessary to establish the grounds for an assertion of privilege or immunity with respect to that document. Specifically, MSC objects to Instruction Nos. 13g, 13h, and to the instruction that MSC identify the employer, firm, and title of each recipient, author, or addressee. MSC further objects to searching the files or logging any privileged documents from the files of outside counsel in this matter. MSC also further objects to logging any documents created after the date on which the FTC issued its Complaint in this matter.

N. MSC Responses Not an Admission of Complaint Counsel's Accuracy. MSC's production of any document or thing in response to these specifications is not an admission of the accuracy or completeness of any of Complaint Counsel's definitions. In addition, MSC's production of any document or thing in response to these specifications is not an admission regarding the admissibility, relevancy, responsiveness, or discoverability of such documents or things.

O. MSC's Agreement to Produce "Non-Privileged" Responsive Documents is an Agreement to Conduct a Reasonable Search. MSC's response to any specification that it intends to produce non-privileged responsive documents means that MSC agrees to conduct a reasonable search of its files for such documents and to produce such documents without waiving any of its general or specific objections or applicable privileges and immunities.

P. Reservation of Right to Further Object. MSC's enumeration of particular objections in response to Complaint Counsel's specifications is not, and should not be construed to be, a waiver of objections not so specified.

Q. Reservation of Right to Supplement. MSC reserves the right to supplement its responses to the specifications pursuant to Commission Rule of Practice 3.31, 16 C.F.R. § 3.31.

MSC'S RESPONSES AND OBJECTIONS TO COMPLAINT COUNSEL'S SPECIFICATIONS

1. One copy of each organization chart and personnel directory in effect since January 1, 1995, 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.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that such documents and things have not already been produced.

2. Documents sufficient to show all document retention and destruction systems, policies, procedures, capabilities, and personnel of the company:

   a. the persons responsible for managing such systems, policies, procedures, or capabilities;

   b. any special policies or procedures put into place by MSC as a result of the Federal Trade Commission's investigation of the company's acquisitions of UAI and CSAR;

   c. all electronic data and document management information systems of the company;

   d. all network-accessible documents, information and financial data systems;

   e. all backup procedures; and

   f. the process and cost of recovery of backup files including documents sufficient to show:

      (i) the cost of recovery of backup files generally,

      (ii) the cost of recovery of backup files containing documents responsive to the Federal Trade Commission's June 28, 2000, Subpoena Duces Tecum to MSC.Software, and

      (iii) the cost of recovery of backup files containing documents responsive to this document request.

RESPONSE: MSC objects to subpart "f.(iii)" as unduly burdensome because it imposes obligations upon MSC greater than those imposed by the Commission's Rules of Practice to the extent that the specification calls upon MSC to create information regarding "the cost of recovery of backup files containing documents responsive to this document request" which does not exist. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents responsive to this Specification to the extent they have not already been produced.

3. All budget and financial statements, including financial projections, income statements, balance sheets, general ledgers, capital investment plans, operating reports, budget and operating results for individual business groups and product lines, and board or management financial performance summaries, presentations or other management reporting packages, together with all documents relied upon to compile such documents, including documents sufficient to show and all computerized data containing detailed income statement and balance sheet line items; and all documents analyzing, interpreting, or otherwise discussing the information, figures, or trends found or identified in such budget or financial statements.

RESPONSE: MSC objects that the specification is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it calls for the production of documents and things unrelated to FEA solvers. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things pertain to FEA solvers and have not already been produced.

4. All stock analysts' or other investment community analyses, recommendations, or research reports relating to the company, to any relevant product or service, or to computer aided engineering products and services in general, including all Daratech tables, analyses, and research reports.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that have not already been produced.

5. All documents recording or relating to any communications between or among the company and any individual stock analyst or other person engaged [*sic*] associated with the investment community, including correspondence, press releases, notes, agendas, scripts, transcripts and recordings.

RESPONSE: MSC objects that the specification is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents and things unrelated to any issue in this case. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they pertain to FEA solvers and the specified documents and things relate to other specifications of this document request and to the extent that they have not already been produced.

6. All documents relating to any meeting of or decision making by the board of directors or of any board, executive, or management committee, including:

   a. all announcements of, agendas for, and minutes of any meeting;

   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.

RESPONSE: MSC objects that the specification is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents and things unrelated to any issue in this case. Subject to and without waiving its General

and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they pertain to FEA solvers and are responsive to other specifications of this document request and have not already been produced.

7. All documents relating to MSC's acquisitions of UAI or CSAR and the post-acquisition integration of UAI or CSAR into MSC, including:

   a. all pre-acquisition communications between the parties relating to the transaction or its effects, including any plans, proposals, agreements, contracts, executive and employee agreements, distribution agreements, covenants not to compete, licenses, patents, copyrights, trade secrets, and trademarks;

   b. all documents relating to changes and plans for changes in MSC's, UAI's, or CSAR's operations, structure, policies, pricing, strategies, corporate goals, financing, business, officers, employees, product lines, product features, development, or enhancements, any other area of corporate activity as a result of either acquisition, including whether to honor existing UAI or CSAR contracts;

   c. all documents relating to former UAI and CSAR customers' continued use of UAI Nastran, CSAR Nastran, Astros, Gensa and to switching to or substitution of other products after the discontinuation of such UAI and CSAR products, including all contracts and pricing documents for such products;

   d. all documents relating to changes or threatened changes in usage of Nastran for any customer or potential customer or changes in the company's revenue attributable to Nastran following the acquisitions;

   e. all documents relating to the reasons for each acquisition;

   f. all board and management committee documents relating to UAI and CSAR or to the proposed acquisitions or their effects, including memoranda, reports, correspondence, minutes, notes, presentations and agendas, as well as all documents used to prepare such memoranda, correspondence, minutes, notes, presentations, and agendas, Excel worksheets, and communications from regional executives or other sales representatives;

g. all documents relating to any person's valuation of UAI and of CSAR;

h. all documents relating to all statements or actions by any person in support of, in opposition to, or otherwise expressing opinions about either acquisition or its effects;

i. all documents relating to MSC's accounting or tax treatment of each acquisition, including any writeoff of goodwill from each acquisition;

j. all documents relating to any efficiencies, cost savings, economies, synergies, or consumer or other benefits from each acquisition and whether such efficiencies, cost savings, economies, synergies, or other benefits could be achieved without acquiring UAI or CSAR;

k. documents sufficient to show the name, address, and job responsibilities of all persons employed by or acting as a consultant or agent to either UAI or CSAR at any time since January 1, 1998, and whether MSC hired or retained the person as an employee, consultant, or agent for any period since making each acquisition; all employment or consulting contracts with each such person; and all documents relating to salaries, compensation, bonuses, stock options, or other financial incentives paid or provided to the person by any person; and

l. all documents relating to each job, program, or project assigned or given by MSC to each former UAI or CSAR employee, consultant, or agent employed or retained by MSC, including documents sufficient to show (i) the contribution and performance of each such person to the job, program, or project, (ii) the goal or objective of the job, program, or project, (iii) the dates the job, program, or project began and concluded, (iv) the personnel requirements for the job, program, or project, (v) the name, address, and job responsibilities of other persons working on job, program, or project, (vi) the job's, program's, or project's budget, including personnel costs, and (vii) the recruiting efforts undertaken to staff the program or project.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

8. All documents relating to the competitive significance, actual or projected financial status or condition, and long term viability of UAI or CSAR prior to their acquisitions by MSC, including UAI's or CSAR's intentions or attempts to sell UAI or CSAR, UAI's or CSAR's plans to exit the market or to cease supplying any relevant product or service, and ability to engage in the continuing sales, licensing, marketing, development, programming, and customer support of any relevant product or service.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

9. All documents relating to any person's plans relating to any relevant product or service or to any product or service compatible with any relevant product or service, including business plans; short term and long range strategic plans and objectives; joint venture, partnering, strategic alliance, and acquisition strategies and plans; budgets, financial statements, and financial projections; personnel recruitment or reassignment plans; plans for new products or product enhancements, features, modules, applications, or services; research or development plans; strategies for product integration; distribution plans and agreements; sales or marketing plans; plans regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, plans and strategies for use of unlimited usage agreements and paid-up licenses; customer support services and customer-funded development plans; analyses of customer satisfaction; and plans for participation in or adoption of the AP209 exchange format standard.

RESPONSE: MSC objects to this specification as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it calls for documents "relating to any person's plans relating to any relevant product or service or to any product or service compatible with any relevant product or service." The use of the term "compatible" extends the specification to include documents regarding competition in areas not relevant to any issue in this case. Subject to and without waiving its General and Specific Objections,

MSC will produce non-privileged documents and things responsive to this Specification to the extent that they pertain to FEA solvers and the specified documents and things have not already been produced.

10. All documents relating in [*sic*] any person's prices, pricing decisions, pricing proposals, licensing fees, or cost of services relating to any relevant product or service generally or with respect to any particular customer or groups of customers, including standard and non-standard price lists, discount schedules and practices, pricing formulae for CMV, GLV, and BLV factors, campus and token pricing systems, pricing commitments, pricing for features, modules, and enhancements, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, cost analyses, supply and demand analyses, analyses regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, pricing negotiations, pricing for unlimited usage contracts, paid-up licence pricing, guidance to marketing or sales personnel regarding prices, presentations to customers relating to prices, pricing for development contracts, on-site and off-site service contracts, price for web sales and licensing, and all documents considered by or emanating from person, committee, or group making a pricing decision, recommendation, or proposal, including pricing packaging group and global pricing package committee.

RESPONSE: MSC objects to this specification as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it calls for documents "relating in [*sic*] any person's prices, pricing decisions, pricing proposals, licensing fees, or cost of services relating to any relevant product or service generally or with respect to any particular customer or groups of customers," to the extent that the request calls for documents unrelated to FEA solvers. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things pertain to FEA solvers and have not already been produced.

11. 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 products or services;

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 products or services, 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. lock-in effects or switching costs, including the use of unlimited usage agreements and paid-up licenses.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that theythings have not already been produced.

12. All documents relating to switching, including shifts in utilization, between or among any relevant product or service and any other product or service, including the relative ease or difficulty of switching; the estimated, projected or actual costs incurred by users to switch; the time required to switch; the degree of switching possible; 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; 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; the cost of and time required for training; 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; the effect of switching on customer or collaborator relationships; the effect of unlimited usage contracts or paid up licenses on switching; the possible loss or cost of complementary software used with the product or service; the use, availability, and the availability and effect of translators and AP209 exchange format standards; and governmental, customer, contractual, or industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

13. All documents relating to actual, attempted, or potential entry into the market for any relevant product or service, including all documents relating to:

    a. the timeliness, conditions, costs, attractiveness, likelihood, or competitive significance of any such entry;

    b. the effects of unlimited usage contracts, paid up licenses, or any existing contracts by existing firms upon such entry;

    c. the requirements for such entry including research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, trademarks, sales and marketing activities, securing a sufficient customer base to achieve minimum viable scale, personnel and staffing, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

d. the effects of open or closed software architecture and applications programming interfaces and the availability of translators. AP209 exchange format standards, trademarks, copyrights, patents, or other technology upon such entry;

e. the total costs required for such entry, including:

(i) the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the licensing or sale of the product or service; and

(ii) the methods and amount of time necessary to recover such costs; and the total non-recoverable costs entailed in satisfying the requirements for entry; and

f. the minimum viable scale, the minimum and optimum number of products or services, requirements for multi-product, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete successfully in the licensing or sale of such relevant products or services.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

14. All documents relating to the development or acquisition, including licensing, of any features, enhancements, modules, or applications for any Nastran product since January 1, 1995, including any such development or acquisition considered but not undertaken during that period, including:

a. documents sufficient to show the feature, enhancement, module, or application, the price or charge to the customer for each such feature, enhancement, module, or application, the date each such feature, enhancement, module, or application was added, and the function and benefits of such feature, enhancement, module, or application;

b. for all features, enhancements, modules, and applications developed in-house or considered for in-house development, all documents relating to the in-house development, development plans and strategies, time lines for development, budget and projected revenue for the development, personnel requirements, and the identity of customers likely to license the developed product; and any analyses whether to develop in-house or to acquire or license such feature, enhancement, module, or application;

c. for all features, enhancements, modules, and applications co-developed with a customer or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer customer's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of other customers likely to license the developed product;

d. for all features, enhancements, modules, and applications co-developed with another supplier of FEA software or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer supplier's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of customers likely to license the developed product; and

e. for all features, enhancements, modules, and applications acquired, including licensing, by the company or considered for acquisition, all documents relating to the acquisition or licensing of such feature, enhancement, module, or application, the projected revenue for the feature, enhancement, module, and application, the identity of customers likely to license the developed product, and any analyses whether to develop in-house or to acquire or license such feature,

enhancement, module, or application.

RESPONSE: MSC objects that the specification is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it calls for the production of documents and things unrelated to FEA solvers. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things pertain to FEA solvers and have not already been produced.

15. All documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any other software products, including any customer's pre- and post-processors or input or output file formats or models, the customer's ability to switch among Nastran products, or the cost, time required, ease, or difficulty of switching from any Nastran product supplied by MSC to any other product.

RESPONSE: MSC objects to this specification because it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "[a]ll documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any other software products." The use of the terms "compatibility" and "interface" extend this specification to cover products other than FEA solvers. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they pertain to FEA solvers and the specified documents and things have not already been produced.

16. All documents relating to the licensing or sale of any relevant product or service to all customers, including customer-funded development, including

a. all contracts, license agreements, offers, bids, bid solicitations, or proposals for contracts and licensing agreements and all documents interpreting, modifying, or amending such contracts, license agreements, offers, bids, or proposals;

b. strategic, sales, and marketing plans for licensing and serving the customer, including sales call reports and sales presentations and pitches;

c. price lists, negotiation correspondence, price escalation calculations, documents relied upon to formulate or calculate prices, projections of prices offered by other suppliers of relevant products or services;

d. field and headquarters sales and contract files;

e. reports of prior or existing usage; and

f. invoices for products and services; and record of payment for products or services.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

17. All documents relating to personnel and staffing for the development and technical support of any relevant product and service, including:

a. all practices, policies, plans, agreements, and proposals relating to hiring and retention of employees, including recruiting efforts, employment incentives and bonuses, wage, salary, bonus, and stock option offers and agreements, incentives and restrictions on employee mobility, covenants not to compete, job advertisements, and the use of recruiting firms;

b. all documents relating to the use of off-shore developers and the use of contractors and consultants; and

c. all documents relating to the personnel and staffing needs for any general or specific job, program, or project, including customer-funded development projects.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

18. All documents relating to any plans of, interest in, or efforts undertaken by the company or any other person for any acquisition, divestiture, joint venture, alliance, or merger of any kind involving the licensing or sale of any relevant product or service, including:

a. any acquisition, joint venture, alliance, or merger of any kind with UAI or CSAR by any person;

b. the divestiture or sale by MSC of any former UAI or CSAR assets, intellectual property, employees, contracts, customer relations, or UAI's or CSAR's former businesses as going concerns;

c. any strategic business relationship between MSC and Dassault Systemes or any Dassault affiliated person or between MSC and IBM or any IBM affiliated person; and

d. any acquisition of an interest in MSC by Dassault Systemes or any Dassault affiliated person.

RESPONSE:. Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

19. All documents relating to financial or economic methodologies, formulae, or performance models or criteria used by the company or any person for valuing or determining the purchase prices for any actual, attempted, or potential acquisitions, divestitures, joint ventures, alliances, or mergers of any kind involving the licensing or sale of any relevant product or service.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things have not already been produced.

20. All license agreements for any intellectual property, including patents, copyrights, trademarks, or trade secrets, owned by any person other than the company and included in or furnished with any Nastran product or service, including all documents modifying, amending, or interpreting such agreements, all documents relating to payment of any licensing fees, and all documents relating to the company's plans, actions, or efforts to enforce such agreements against any person.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they have not been previously produced.

21. All documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, or promoting the use of any particular relevant product, including Nastran.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that the specified documents and things and have not already been produced.

22. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Nastran product or service for the period January 1, 1995, to the present, including:

a. the date of transaction,

b. the amount of the transaction,

c. the quantity,

d. the type and duration of the contract or license,

e. a description of each product or service licensed or sold (including product number or code),

f. the contract number,

g. the location, including physical address and serial number, of the computer where the software is located or service rendered,

h. the SIC code, trade or industry category, and business group of the customer, and

i. the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that have not already been produced.

23. For each relevant product or service offered for sale or licensing, all selling aids and promotional materials and all manuals, including instructional and installation manuals.

RESPONSE: Subject to and without waiving its General and Specific Objections, MSC will produce non-privileged documents and things responsive to this Specification to the extent that they have not already been produced.

Dated: December 3, 2001

Tefft W. Smith (Bar No. 458441)
Mari[illegible]acl O. Skubel (Bar No. 294934)
Michael S. Becker (Bar No. 447432)
Bradford E. Biegon (Bar No. 453766)
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(202) 879-5000 (tel.)
(202) 879-5200 (fax)

Counsel for Respondents,
MSC.Software Corporation

EXHIBIT C

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 26, 2001

Via Facsimile Transmission
(202) 879-5200

Marimichael O. Skubel, Esq.
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, DC 20005

Re: MSC.Software Corporation
FTC Docket No. 9299

Dear Ms. Skubel:

We received your December 21, 2001, letter proposing modification of Complaint Counsel's First Request for Production of Documents and Things, and the supporting information you sent. Based upon this information, and our previous meeting and telephone conferences, Complaint Counsel agree to modify Complaint Counsel's First Request for Production of Documents and Things as follows:

1. Specification 9 is modified at the beginning to read:

   All documents relating to any person's plans relating (a) to any relevant product or service, and (b) to any product or service compatible with any relevant product or service (where those plans affected or may affect compatibility with any relevant product, ability to interface with any relevant product, cost or difficulty of switching among products, ease of entry into the market for any relevant product or service, customer utilization of any relevant product, or the demand for any relevant product), including business plans . . . .

2. Specification 15 is modified to read:

   All documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any relevant product, or with any customer's pre- or post-processor, input or output file formats, customers' ability to switch among Nastran products, or the cost, time required, ease, or difficulty of switching from any Nastran Product supplied by MSC to any other product.

3. Responsive documents will be produced from MSC customer contract files for all years since January 1, 1995, for those Nastran customers who spent more than $25,000 in the aggregate on MSC products in any given year since January 1, 1995, provided, however, that responsive documents must be produced from customer contract files for all customers identified on Complaint Counsel's December 17, 2001, preliminary witness list, and for OAO Corporation and Hughes Space and Communications Company. This modification applies only to MSC customer contract files, and does not apply to UAI and CSAR customer contract files.

Complaint Counsel see no basis in the information you have provided for further modification of the Complaint Counsel's First Request for Production of Documents and Things.

Very truly yours,

Karen A. Mills (by PKC)

Karen A. Mills
Complaint Counsel

EXHIBIT D

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

Statement of Karen A. Mills Pursuant to 16 C.F.R. § 3.22(f)

Pursuant to 16 C.F.R. § 3.22(f), Karen A. Mills states as follows:

1. I am an attorney for the Federal Trade Commission. I serve as Complaint Counsel in *MSC.Software Corporation*, Docket No. 9299. I submit this declaration to represent that I conferred with Counsel for Respondent, Marimichael O. Skubel and Bradford Biegon, on December 6, 2001, in person, and with Marimichael O. Skubel many times between November 21, 2001, and the present by phone, in a good faith effort to resolve by agreement the issues raised in Respondent's objections to Complaint Counsel's First Request for Production of Document and Things (hereinafter "the Document Request").

2. On November 21, 2001, Complaint Counsel served on Respondent the Document Request. I called Marimichael Skubel by telephone on this same day and offered to confer at Respondent's earliest convenience, providing a telephone number where I could be reached even over the Thanksgiving holiday.

3. Respondent declined to confer with Complaint Counsel before filing objections to the Document Request on December 3, 2001.

4. After receiving Respondent's objections to the Document Request, I called Bradford Biegon to arrange a meeting to confer, and asked that Respondent come to the meeting prepared to supply documentation for its burden claims, suggestions for limiting the purported burden, and information needed by Complaint Counsel to assess the effect of suggested limitations on discovery.

5. I conferred with Marimichael Skubel and Bradford Biegon in-person on December 6, 2001. Respondent provided no factual or legal support for most of its general or specific objections or its burden claims, or for its objections to Instructions in the Document Request.

6. Although Complaint Counsel and Respondent reached an impasse at the December 6, 2001 meeting, Complaint Counsel continued to seek and be open to reviewing additional documentation of Respondent's legal and factual support for its objections, fully up

until the filing of this motion.

7. Complaint Counsel offered to consider modifying the Document Request if Respondent supplied information documenting purported burden claims, and provided Complaint Counsel with the information needed to design and assess proposed modifications. Complaint Counsel specified the type of information needed, and worked diligently with Respondent to determine how Respondent might supply that information.

8. At 4:45 p.m. on December 21, 2001, Respondent finally supplied information requested by Complaint Counsel that permitted Complaint Counsel to agree to modify the Document Request to satisfy some of the concerns raised by Respondent.

9. Complaint Counsel modified the Document Request in a letter of December 26, 2001.

10. Respondent has not withdrawn any of its written objections, and as to them, Complaint Counsel and Respondent are at an impasse.

11. In addition, Respondent has attempted to assert orally additional objections not raised in writing by the Scheduling Order's deadline for the serving of objections.

12. Respondent did not object to the production date in the Document Request, but also did not produce documents by the production date, December 12, 2001, which now has passed.

13. Although Respondent has offered to comply with the Document Request, subject to its objections, by February 8, 2001, Complaint Counsel have not been able to secure from Respondent any commitment that Respondent will comply with the Document Request as written and modified, or any commitment when it will do so.

Karen A Mills (by PJR)
Karen A. Mills

EXHIBIT E

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO COMPEL COMPLIANCE WITH COMPLAINT COUNSEL'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

IT IS HEREBY ORDERED that Complaint Counsel's Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things, as modified by Complaint Counsel's letter of December 26, 2001, is GRANTED.

Respondent shall begin compliance with Complaint Counsel's First Request for Production of Documents and Things, as modified by Complaint Counsel's letter of December 26, 2001, immediately, and continue production on a rolling basis.

Respondent shall comply fully with Complaint Counsel's First Request for Production of Documents and Things as modified by Complaint Counsel's letter of December 26, 2001, no later than January 25, 2002.

Furthermore, Respondent shall prioritize its rolling production as follows: Respondent shall: (1) produce responsive documents by December 28, 2001, from MSC files maintained by or for the following individuals: Mr. Beer, Mr. Brown, Mr. Cully, Mr. Curry, Mr. Hart, Mr. Jones, Mr. Louwers, and Mr. Riordan; (2) produce by January 3, 2002, all responsive documents relating to the following customers: Boeing, all NASA centers, Lockheed, GM, Chrysler, and Ford; and (3) produce by January 3, 2002, all MSC board minutes.

Dated: _____

_____
D. Michael Chappell
Administrative Law Judge

EXHIBIT F

001 0077
489428

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (hereafter "Commission"), having reason to believe that MSC.Software Corporation (hereafter "MSC" or "Respondent") acquired Universal Analytics Inc. (hereafter "UAI") and Computerized Structural Analysis & Research Corporation (hereafter "CSAR") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

RESPONDENT MSC.SOFTWARE CORPORATION

1. Respondent is a for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 2 MacArthur Place, Santa Ana, California 92707.

2. Respondent had approximately $178 million in annual revenue for the fiscal year ending December 31, 2000. Respondent is a developer and supplier of simulation computer software, including advanced simulation software used by the aerospace, automotive and other manufacturing industries. Respondent has long offered an advanced version of a linear structural analysis engineering software product called "Nastran."

3. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

THE ACQUISITION OF UNIVERSAL ANALYTICS INC.

4. Prior to its acquisition by Respondent, UAI was a privately-held corporation organized, existing and doing business under and by virtue of the laws of the State of California.

5. Since before the early 1970s, UAI had been a developer and supplier of simulation computer software, including advanced simulation software used by the aerospace, automotive and other manufacturing industries. UAI had long offered an advanced version of Nastran in competition with Respondent.

6. On or about June 24, 1999, Respondent acquired UAI for approximately $8.4 million.

THE ACQUISITION OF COMPUTERIZED STRUCTURAL ANALYSIS & RESEARCH CORPORATION

7. Prior to its acquisition by Respondent, CSAR was a privately-held corporation organized, existing and doing business under and by virtue of the laws of the State of California.

8. Since before 1986, CSAR had been a developer and supplier of simulation computer software, including advanced simulation software used by the aerospace, automotive and other manufacturing industries. CSAR had long offered an advanced version of Nastran in competition with Respondent.

9. On or about November 4, 1999, Respondent acquired CSAR for approximately $10 million.

TRADE AND COMMERCE

10. Developers of new industrial and consumer products may use computer-aided engineering analysis to simulate and evaluate the robustness of new product designs.

11. Computer simulations in the product development process typically utilize an analytical method called "finite element analysis" ("FEA"). FEA simulates how a structure would perform in response to a defined load. With finite element analysis, computerized models of structures are first divided into small elements, which form a finite element model, and then subjected to computer analysis to simulate the structure's performance. The software performing this computer analysis is often called a "solver" or "FEA solver."

12. FEA solvers have been developed to perform many different types of engineering analyses.

13. FEA solvers are differentiated software products with varying features and capabilities. FEA solvers may be differentiated by, among other characteristics, the types of analyses performed, price level, ease of use, speed, size and complexity of problems that can be analyzed, ability to perform system-type analysis, availability of complementary software, type of output and input file format utilized, and computer platform and operating system on which the solver operates. FEA solvers are also differentiated by their record of reliability.

14. "Nastran" is an FEA solver first developed by the U.S. National Aeronautics and Space Administration ("NASA") over 30 years ago to perform structural analysis for NASA projects. In developing Nastran, NASA wanted a solver to perform a broad range of structural analyses and have the capacity to be further developed and enhanced. After the initial development of Nastran, NASA released the Nastran source code into the public domain to allow broader use and commercial development. NASA registered "Nastran" as a U.S. trademark in 1976.

15. MSC, UAI and CSAR obtained the public domain version of Nastran from NASA and for many years have developed and further enhanced Nastran for licensing to commercial and government users. Each has used the Nastran trademark with permission from NASA. At the time of Respondent's acquisitions, the features and capabilities of each of these three advanced versions of Nastran were very similar.

16. The aerospace and automotive industries began using the advanced versions of Nastran in the 1970s for advanced linear structural analysis. Nastran has become the standard linear structural solver in these industries. Certain other manufacturing industries also utilize Nastran for advanced linear structural analysis.

17. Prior to Respondent's acquisitions, users of the advanced versions of Nastran offered by MSC, UAI, or CSAR could readily switch between these versions without substantial loss of functionality because each version offered very similar features and capabilities. Differences in functionality discourage switching from advanced versions of Nastran to other solvers even in response to a significant and nontransitory increase in price.

18. Prior to Respondent's acquisitions, users of the advanced versions of Nastran offered by MSC, UAI, or CSAR could readily switch between these versions relatively quickly and without spending significant switching costs and time. The advanced versions of Nastran were all derived from the same Nastran public domain code, offered very similar features and capabilities, and used generally the same input and output file formats. Differences in computer code, features and capabilities, and file formats discourage switching from advanced versions of Nastran to other solvers even in response to a significant and nontransitory increase in price.

19. Industry practices or the requirements of multi-party development projects sometimes dictate the use of advanced versions of Nastran, thereby discouraging substitution away from advanced versions of Nastran even in response to a significant and nontransitory increase in price.

20. Prior to Respondent's acquisitions, competition between MSC, UAI, and CSAR to license or sell advanced versions of Nastran was direct and vigorous and helped to hold down prices and to promote product innovation. Prior to Respondent's acquisitions, users had switched and had considered switching between these advanced versions of Nastran in response to relative changes in price and other competitive variables including product features, capabilities, and enhancements.

RELEVANT PRODUCT MARKETS

21. One relevant product market in which to assess the likely effects of Respondent's acquisitions of UAI and CSAR is the licensing or sale of advanced versions of Nastran.

22. Another relevant product market in which to assess the likely effects of Respondent's acquisitions of UAI and CSAR is the broader market consisting of the licensing or sale of FEA solvers for advanced linear structural analysis.

23. Within each of the relevant product markets, separate markets exist for the licensing or sale of the relevant product for specific industries or customer categories, in particular, the aerospace industry and the automotive industry.

RELEVANT GEOGRAPHIC MARKETS

24. The relevant geographic markets in which to assess the likely effects of Respondent's acquisitions of UAI and CSAR are

a. the United States; and

b. the world.

CONCENTRATION

25. Prior to Respondent's acquisitions, MSC, UAI, and CSAR were the only firms competing in the licensing or sale of advanced versions of Nastran. MSC was the dominant competitor with an estimated market share of 90 percent. The remaining share was roughly split between UAI and CSAR. The market for advanced versions of Nastran prior to the acquisitions

was highly concentrated with a Herfindahl-Hirschman Index ("HHI") exceeding 8100. (An HHI of 1800 characterizes a highly concentrated market.) Respondent's acquisitions of UAI and CSAR, together and individually, substantially increased that concentration so that the HHI is now 10,000.

26. Prior to Respondent's acquisitions, there were few suppliers competing in the licensing or sale of FEA solvers for advanced linear structural analysis other than MSC, UAI, and CSAR. Prior to Respondent's acquisitions, the market for FEA solvers for advanced linear structural analysis was highly concentrated. Respondent's acquisitions of UAI and CSAR, together and individually, substantially increased that concentration.

CONDITIONS OF ENTRY

27. Entry into licensing or sale of advanced versions of Nastran would not be timely, likely, or sufficient to prevent the anticompetitive effects. Entry is difficult because of the substantial cost and time needed to develop an advanced version of Nastran, validate simulation results, and establish a reputation for reliability.

28. Entry into the licensing or sale of FEA solvers for advanced linear structural analysis would not be timely, likely, or sufficient to prevent the anticompetitive effects. Entry is difficult because of the substantial cost and time needed to develop an FEA solver for advanced linear structural analysis, validate simulation results, and establish a reputation for reliability.

COUNT I

THE ACQUISITIONS VIOLATE CLAYTON ACT § 7 AND FTC ACT § 5

29. Respondent's acquisitions of UAI and CSAR, together and individually, have had or will have the effect of substantially lessening competition and tending to create a monopoly in the relevant markets by, among other things:

a. eliminating actual, direct, and substantial competition between MSC, UAI, and CSAR, all of which had the ability and incentive to compete, and before the acquisitions did compete, on price and product development and enhancements;

b. creating or enhancing MSC's power to raise prices above a competitive level or to withhold or delay product development and enhancements, thereby adversely affecting price and product innovation; and

c. preventing other suppliers of engineering software from acquiring UAI and CSAR and increasing competition.

30. Absent the relief described in the attached Notice of Contemplated Relief, Respondent's acquisitions of UAI and CSAR, together and individually, will continue to cause the effects on competition identified above.

31. The effect of Respondent's acquisitions of UAI and CSAR, together and individually, may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II

THE ACQUISITIONS CONSTITUTE UNLAWFUL MONOPOLIZATION IN VIOLATION OF FTC ACT § 5

32. The allegations contained in Paragraphs 1 through 28 are repeated and realleged as though fully set forth here.

33. Respondent has obtained or enhanced monopoly power in the markets for advanced versions of Nastran through the acquisitions.

34. Respondent acted willfully to acquire or enhance monopoly power in the markets for advanced versions of Nastran through the acquisitions.

35. Through the acquisitions, Respondent has engaged in unfair methods of competition in or affecting commerce by monopolizing the markets for advanced versions of Nastran in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

COUNT III

THE ACQUISITIONS CONSTITUTE AN UNLAWFUL ATTEMPT TO MONOPOLIZE IN VIOLATION OF FTC ACT § 5

36. The allegations contained in Paragraphs 1 through 28 are repeated and realleged as though fully set forth here.

37. Respondent has engaged in an anticompetitive course of conduct by willfully seeking to obtain or enhance monopoly power in the markets for advanced versions of Nastran through the acquisitions.

38. Respondent acted with a specific intent to monopolize, and to destroy competition in, the markets for advanced versions of Nastran through the acquisitions.

39. At the time Respondent acquired UAI and CSAR, it had a dangerous probability of success in monopolizing the markets for advanced versions of Nastran.

40. Through the acquisitions, Respondent has engaged in unfair methods of competition in or affecting commerce by attempting to monopolize the markets for advanced versions of Nastran in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. Part 3. A copy of Part 3 of the Rules is enclosed with this complaint.

You may file an answer to this complaint. Any such answer must be filed within 20 days after service of the complaint on you. If you contest the complaint's allegations of fact, your answer must concisely state the facts constituting each ground of defense, and must specifically admit, deny, explain, or disclaim knowledge of each fact alleged in the complaint. You will be deemed to have admitted any allegations of the complaint that you do not so answer.

If you elect not to contest the allegations of fact set forth in the complaint, your answer shall state that you admit all of the material allegations to be true. Such an answer will constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the ALJ will file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. Such an answer may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice.

If you do not answer within the specified time, you waive your right to appear and contest the allegations of the complaint. The ALJ is then authorized, without further notice to you, to find that the facts are as alleged in the complaint and to enter an initial decision and a cease and desist order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5

days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

A hearing on the complaint will begin on January 9, 2002, at 10 a.m., in Room 532, or such other date as determined by the ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the acquisitions of UAI and CSAR violate Section 7 of the Clayton Act, as amended, or Section 5 of the Federal Trade Commission Act, as amended, as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including but not limited to:

1. An order to create and divest up to two viable on-going businesses each engaged in the licensing or sale of an advanced version of Nastran in competition with MSC Nastran to up to two acquirers acceptable to the Commission, including but not limited to:

    a. divesting all software, intellectual property, and other assets for the operation of such businesses, including but not limited to the following for MSC Nastran and all MSC Nastran applications, features, enhancements, and library functions for all operating systems and computer platforms: the source code, object libraries, executable programs, test problems, test results, regression test software, development support software, trade secrets, trademarks, patents, know-how, interfaces with complementary software, APIs, manuals, guides, reports, and other documentation;

    b. facilitating the acquirers' recruitment of Respondent's employees, including but not limited to providing employee lists, personnel files, opportunities to interview and negotiate with the acquirers, eliminating any restrictions on or disincentives to accepting employment with the acquirers, and providing incentives for such employees to accept employment with the acquirers;

    c. providing Respondent's customer lists and account information to the acquirers;

    d. allowing Respondent's customers to terminate or rescind contracts or license agreements and to deal with the acquirers, including but not limited to eliminating any restrictions on or disincentives to terminating or rescinding such contracts or license agreements and otherwise refunding or returning consideration paid in advance pursuant to such contracts or license agreements;

e. furnishing to the acquirers such personnel, information, technical assistance, advice and training as are necessary;

f. for a defined period of time, maintaining open architecture for MSC Nastran and all input and output file formats so that users of MSC Nastran would not be impeded or penalized if they switched models, files, or complementary software to the divested versions of Nastran;

g. for a defined period of time, not restricting, precluding, or influencing a supplier of complementary software or services from dealing with the acquirers or the acquirers' products;

h. for a defined period of time, supporting fully the divested versions of Nastran with Patran and other MSC complementary software products, without charge to the acquirers and on the same basis as MSC Nastran is supported by Patran and other MSC complementary software products; and

i. such other or additional relief as is necessary to ensure the creation of up to two viable, competitive, and independent entities offering advanced versions of Nastran with the level of features and capabilities offered by MSC.

2. An order to provide prior notice of any acquisitions of firms engaged in the licensing or sale of advanced versions of Nastran or other solvers for advanced linear structural analysis.

3. Such other or additional relief as is necessary to correct or remedy the violations alleged in the complaint.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ninth day of October, 2001, issues its complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

CERTIFICATE OF SERVICE

This is to certify that on December 27, 2001, I caused a copy of Complaint Counsel's Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things to be served via hand-delivery upon the following persons:

The Honorable D. Michael Chappell
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