

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



\_\_\_\_\_)  
In the Matter of \_\_\_\_\_)  
MSC SOFTWARE CORPORATION, \_\_\_\_\_)  
a corporation. \_\_\_\_\_)

Docket No. 9299

**COMPLAINT COUNSEL'S RESPONSE TO  
RESPONDENT'S MEMORANDUM IN OPPOSITION TO  
COMPLAINT COUNSEL'S MOTION TO COMPEL COMPLIANCE WITH  
COMPLAINT COUNSEL'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS AND THINGS**

Shorn of its rhetoric, and its attacks on Complaint Counsel, Respondent's Memorandum in opposition to Complaint Counsel's Motion to Compel leaves little in dispute. Respondent has abandoned many of its earlier objections to the Document Request, and has agreed to search for and produce documents responsive to the Document Request despite many of its earlier objections. Nevertheless, our Motion to Compel is not moot, and should be granted. Since Respondent has demonstrated a disturbing habit of renegeing on promises made both to Complaint Counsel and to this court about its intention to cooperate with discovery, a Motion to Compel even as to those aspects of the Document Request that Respondent now agrees to



court in the context of our deposition dispute that its representations about future compliance with discovery cannot be trusted, Complaint Counsel's Motion to Compel is not mooted as to these withdrawn objections until Respondent actually produces the documents.

Furthermore, Respondent still refuses to comply with the Document Request in the following ways:

1. Respondent's failure to produce the documents requested in the Document Request.

2. Respondent's failure to produce the documents requested in the Document Request.

3. Respondent's failure to produce the documents requested in the Document Request.

4. Respondent's failure to produce the documents requested in the Document Request.

5. Respondent's failure to produce the documents requested in the Document Request.

6. Respondent's failure to produce the documents requested in the Document Request.

proof in seeking a Rule 3.31(c) limitation on the scope of discovery.

Privilege Log. Respondent has no sustainable basis for conditioning its own production of a privilege log on exchange of privilege logs with Complaint Counsel at some undefined "appropriate" time (Respondent's Memorandum at 9). The Rules of Practice, at 3.31(a), require that, to the greatest extent practicable, discovery should be conducted simultaneously, not sequentially, and the fact that a party is conducting discovery shall not operate to delay any other party's discovery. This is the second instance in which Respondent has flouted Rule 3.31(a), and sought to deprive Complaint Counsel of its right to conduct discovery. (See Second Supplement to Complaint Counsel's Motion to Compel Compliance with Subpoenas Ad

7 [REDACTED] 18 [REDACTED] An order of this court entered pursuant to this

Document Request seeks data in the form that was least burdensome to Respondent, based on

information provided by Respondent's counsel and information technology personnel during the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

For the reasons set forth above and in Complaint, Plaintiff's Motion to Compel

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Exhibit A**



UNITED STATES OF AMERICA

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

**Exhibit B**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
 )  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ )  
a corporation. )  
\_\_\_\_\_ )  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

January 1, 1995 as to anything, let alone the blunderbuss demands for the production of documents

Complaint has made. See also Specification No. 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

or duplicative; seek information obtainable from some other source that is more convenient, less

expensive, or less sensitive; seek information for which the burden is less

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

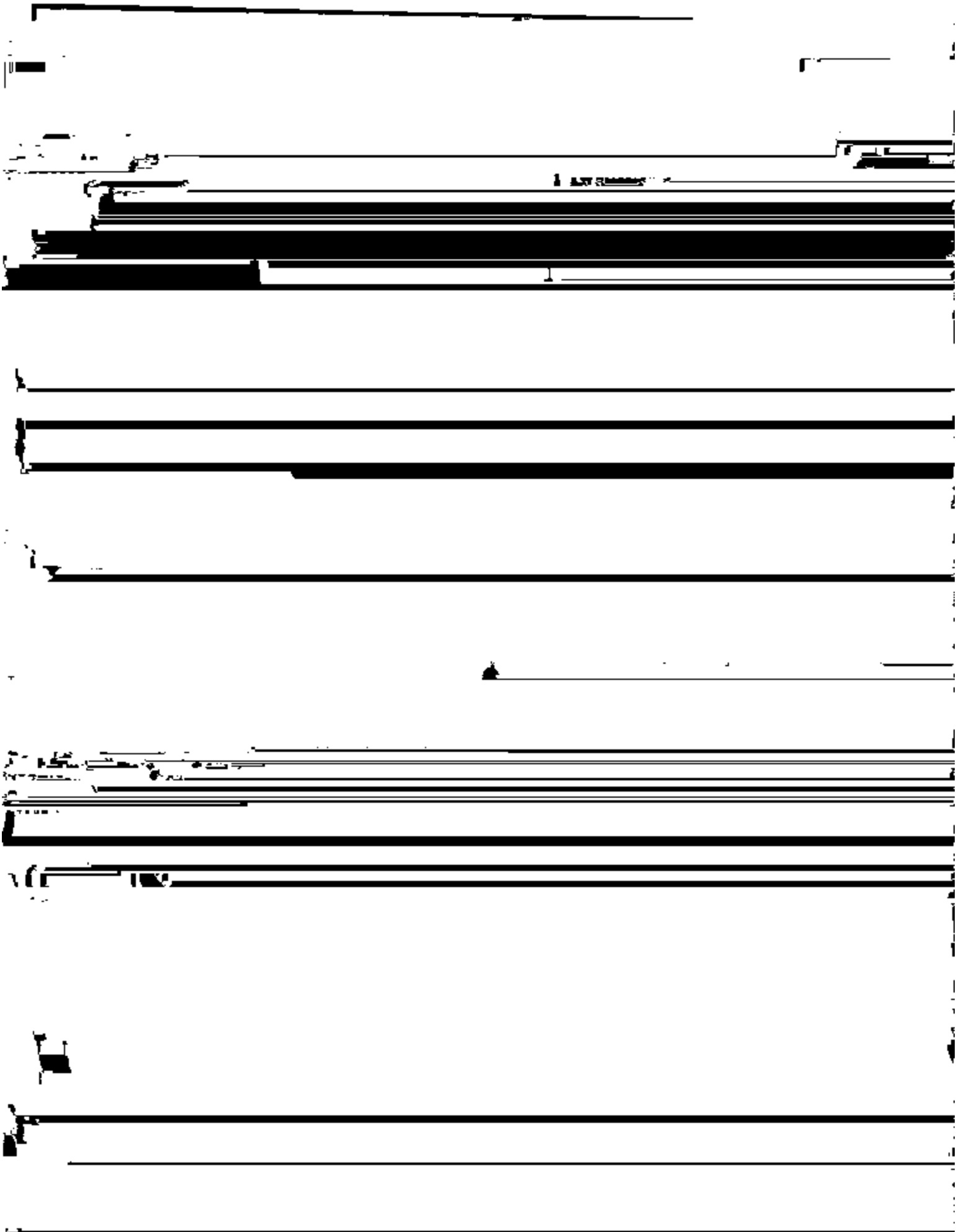
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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 seeks to prohibit the disclosure of the following information from the files of~~

2  
\_\_\_\_\_

11

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

1. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



**RESPONSE:** MSC objects to subpart "f.(iii)" as unduly burdensome because it imposes obligations

MSC asserts that those imposed by the Commission: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

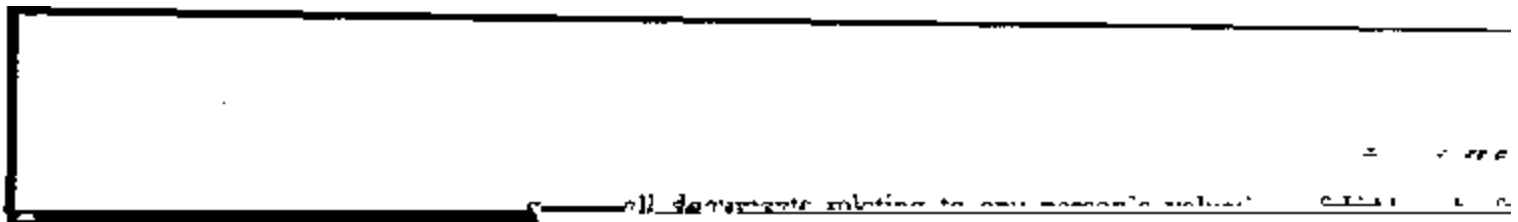
[REDACTED]

[REDACTED]

[REDACTED]

all documents relating to any person's values

CONFIDENTIAL



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

All documents relating to competition of the State

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

v

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

12. All documents relating to switching, including shifts in utilization, between

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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:

(1) the amount of such costs that would be incurred by the applicant

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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.

- 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

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

Documents sufficient to show all [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Dated: December 3, 2001



Tefft W. Smith (Bar No. 458441)  
Marilyn O. Skubel (Bar No. 294934)  
Michael S. Becker (Bar No. 447432)  
Bradford E. Biegon (Bar No. 453766)  
Larissa Paule-Carres (Bar No. 467907)  
KIRKLAND & ELLIS  
655 15<sup>th</sup> Street, N.W.  
Washington, D.C. 20005  
(202) 879-5000 (tel.)  
(202) 879-5200 (fax)

*Counsel for Respondents,*  
**MSC Software Corporation**



CERTIFICATE OF SERVICE

This is to certify that on December 3, 2001, I caused a copy of the attached Respondent

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]