

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MSC.SOFTWARE CORPORATION,

Plaintiff(s),

CASE NUMBER: 07-12807

HONORABLE VICTORIA A. ROBERTS

v.

ALTAIR ENGINEERING, INC., MARC
KLINGER, ANDREA PERTOSA, STEPHAN
KOERNER, TOM RIEDEMAN, RAJIV RAMPALLI
MARK KRUEGER, and MICHAEL HOFFMAN,

Defendant(s).

ORDER

In a letter dated March 6, 2009, MSC requested a status conference to discuss five issues: (1) amending its Complaint to add a claim for copyright infringement; (2) Altair's alleged violation of its limited license for Adams/Solver and Adams/View; (3) Joe Gibbs Racing, Toyota Motor Company, and Bernd Richter's alleged violation of their third party licenses; (4) the Expert Reports and Supplemental Disclosures that were due on April 6, 2009; and (5) the deposition of Dr. Gisli Ottarsson.

A. Amendment of Complaint for Copyright Infringement; Altair's Alleged Violation of its Limited License for Adams/Solver and Adams/View; and Joe Gibbs Racing, Toyota Motor Company, and Bernd Richter's Alleged Violation of their Third Party Licenses

MSC believes Altair: (1) infringed upon its copyrighted source code by copying significant portions; and (2) used Adams/Solver and Adams/View for "benchmarking" or to assist with developing competitive products, in violation of the limited license Altair holds for those products.

MSC believes Joe Gibbs Racing, Toyota Motor Company, and Bernd Richter provided Altair the results of Adams/Solver and Adams/Car simulations for Altair's use in "benchmarking" its products against MSC's products, in violation of their third party licenses.

MSC asks the Court to re-designate documents and deposition testimony as "All Attorneys Eyes Only" so it can discuss potential claims against Altair and third parties with Douglas Campbell, its General Counsel. In the alternative, MSC asks the Court to "clarify" that the Amended Stipulated Protective Order does not preclude it from filing a separate action for copyright infringement.

MSC's request is **DENIED**.

This request must be included in the motion MSC will submit to the Court regarding documents it seeks to have re-designated. The motion will be referred to Special Master Hollaar for a recommendation. The parties will then have 10 days to object, 10 days to respond, and 5 days to reply to Special Master Hollaar's recommendation.

Once the re-designation issue is settled, MSC may or may not be in a position to discuss additional claims with Mr. Campbell.

B. Expert Reports and Supplemental Disclosures

In its Order dated February 5, 2009, the Court required MSC to "provide the factual basis for every element of its trade secret misappropriation claim, if it is not included in the expert reports."

MSC seeks: (1) clarification on the scope of the "factual basis" the Court

envisions; and (2) an order allowing it to designate its expert report as “Attorneys Eyes Only.”

MSC’s first request is addressed in a separate Order dated May 15, 2009, an e-mail sent by the Court on May 28, 2009, and an Order entered on June 4, 2009 which further clarifies.

MSC’s second request was resolved in an e-mail dated April 7, 2009.

C. Deposition of Dr. Gisli Ottarsson

In an Order dated February 2, 2009, counsel was given until February 6, 2009 to decide when and where Dr. Gisli Ottarsson’s deposition would occur. MSC says negotiations are continuing regarding the conditions under which Dr. Ottarsson will appear for deposition in the United States, but it may be necessary to take his deposition in Iceland.

Oral argument on this issue was heard on June 3, 2009. Based on the discussion, MSC may take Dr. Ottarsson’s deposition in Iceland or the United States, and has until **August 7, 2009** to do so.

IT IS ORDERED.

s/Victoria A. Roberts

Victoria A. Roberts
United States District Judge

Dated: June 4, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on June 4, 2009.

s/Linda Vertriest

Deputy Clerk

