

DRAFT CHARGING LETTER

Mr. Sandeep M. Divekar  
General Manager  
Multigen-Paradigm, Inc.  
2044 Concourse Drive  
San Jose, CA 95131

Re: Investigation of Multigen-Paradigm Inc., regarding the unauthorized export of software, software documentation and technical support to distributors and customers in the People's Republic of China and other countries identified herein.

Dear Mr. Divekar:

The Department of State ("Department") charges that Multigen-Paradigm Inc, (hereinafter "MPI" or "Respondent") violated the Arms Export Control Act ("Act") and the International Traffic in Arms Regulations ("ITAR" or "Regulations") in connection with their misconduct related to the unauthorized export of certain ITAR controlled Vega software products, associated technical manuals, license keys required to operate the software and the provision of annual support services to customers and distributors in the People's Republic of China and other countries enumerated below. Twenty-four (24) violations are alleged at this time. The Department reserves the right to revise this draft charging letter, including through a revision to incorporate additional charges stemming from the same misconduct of MPI in these matters, in connection with any administrative proceeding initiated by the Directorate of Defense Trade Controls ("DDTC") to impose debarment or civil penalties pursuant to 22 C.F.R. § 128.3.

PART I - RELEVANT FACTS

Jurisdictional Requirements:

- (2) MPI is a corporation organized under the laws of the State of California.
- (3) MPI, during the period covered by the charges set forth herein, was engaged in the manufacture and export of defense articles and defense services. MPI registered

with the Department of State, Directorate of Defense Trade Controls (DDTC) in accordance with Section 38 of the Act and § 122.1 of the Regulations on May 23, 2001.<sup>1</sup>

(4) MPI is a U.S. person within the meaning of § 120.15 and, as such, is subject to the jurisdiction of the United States, in particular with regard to the Act and Regulations.

(5) Sea Stars (China) Co., Ltd. and Chess Technologies, Ltd. and other persons so identified below are all foreign persons within the meaning of § 120.16 of the Regulations.<sup>2</sup>

Background:

(6) MPI is a developer, producer and exporter of visual sensor simulation software whose products have commercial and military utility. MPI stated that its customer base is primarily comprised of military and governmental entities or customers, who use the software in applications run on computer systems in simulation training for aircraft, helicopters, artillery, ground battlefield, tanks and missiles.

(7) Computer Associates International, Inc., ("CA") acquired MPI in April 2000. MPI is a wholly owned subsidiary of CA. The unlawful exports came to the attention of MPI in the course of the acquisition of MPI by CA.<sup>3</sup>

(8) On September 25, 2001, MPI, through its outside counsel, submitted a request for a Commodity Jurisdiction determination ("CJ") for the company's Vega simulation software product line.

(9) On August 1, 2002, MPI submitted an initial notification to DDTC regarding the unauthorized export of defense articles and technical data to customers and distributors in the People's Republic of China. On August 13, 2002, MPI submitted an initial notification to DDTC regarding the unauthorized export of defense articles and technical data to other countries.

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<sup>1</sup> At the time MPI registered with the Department of State, the Defense Trade Controls Office was organized as the Office of Defense Trade Controls.

<sup>2</sup> MPI entered distribution agreements with five distributors in the PRC who market and sell MPI's products, namely Beijing Teamsun Technology Co.Ltd., HWA Create Co. Ltd, Lantech Engineering, Ltd., Sea Stars (China) Co., Ltd and Chess Technologies. For the purposes of this draft charging letter the transactions cited pertain to Sea Stars and Chess Technologies.

<sup>3</sup> As the parent company of MPI, Computer Associates would retain ultimate responsibility for its subsidiaries, although MPI maintains independent registration at DDTC. Although not a respondent to this draft charging letter, its acquisition of MPI in April 2000, would make it ultimately accountable for regulatory issues, arising from the conduct of such business prior, as well as subsequent, to the acquisition of MPI.

(10) On September 30, 2002, DDTC issued a determination to MPI in CJ 124-01 that Vega SensorWorks; Vega Sensor Vision; Vega RadarWorks; Vega MOSART Atmospheric Option, Vega Texture Material Mapper Option as well as the core Vega software when it is paired with any of the foregoing modules are controlled under Category IX (c) of the U.S. Munitions List (USML). These modules were developed to provide a physics-based, mathematically realistic visual simulation of USML-controlled infrared, image intensified, and electro-optic sensors and radars that are employed by the U.S. and other armed forces. These modules are coupled with environmental and atmospheric models and applied to simulate terrain and targets to provide a realistic virtual environment for military training and experimentation. The primary market for this technology is the military training and war fighting simulation communities.

(11) Between October and May 2003, MPI submitted three comprehensive voluntary disclosure reports to DDTC pertaining to DTC case No. VD 02-247, which relates to MPI's unauthorized exports of defense articles, defense services and technical data involving their ITAR controlled software products. Specifically, on October 18, 2002, MPI submitted a voluntary disclosure relating to unauthorized exports to parties in the People's Republic of China. MPI submitted additional information concerning these exports on December 3, 2002 and December 12, 2002. On February 14, 2003, MPI submitted its disclosure relating to unauthorized exports to certain non-NATO countries.<sup>4</sup> On May 16, 2003, MPI submitted its final disclosure relating to unauthorized exports to parties in NATO, Major Non-NATO and other countries.<sup>5</sup> During this time period, MPI maintained a dialogue with the Department concerning this disclosure. MPI also submitted additional information and made records available to the Department to assist with the Department's review of the voluntary disclosure reports.

(12) Vega software is a product that was developed and marketed by MPI and is used by software developers to create visual simulation applications. Vega is comprised of a core software module plus a family of optional software modules, some of which as described in paragraph ten (10) has specific application for military training and war fighting simulation and is ITAR controlled.

(13) MPI's international sales of its ITAR controlled Vega Software products were made directly through a series of distributors who were assigned a specific territory, such as the PRC. MPI entered into agreements with distributors worldwide who marketed and sold MPI's products. MPI's distributors submitted purchase orders to MPI on behalf of potential customers. MPI then exported the ITAR-controlled products without State Department authorization as required by the Regulations directly to the distributor who delivered the products to the customer and received payment on behalf of MPI.

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<sup>4</sup> The countries covered by this disclosure are as follows: India, Israel, Singapore, South Korea, Taiwan, and the United Arab Emirates.

<sup>5</sup> The countries covered by this disclosure are as follows: Canada, Czech Republic, Germany, Italy, The United Kingdom, Spain, France, Japan, Australia, Peru, Ireland, Sweden, and Finland.

(14) After receiving a copy of MPI software, a distributor or end-user obtained a "license key" to operate the software. The license key (s) enabled the distributor or end-user to operate the software. The provision of the license keys was an unauthorized export. After MPI provided the permanent license key to the distributor, MPI was unable to track the distributor's provision of the key to the end-user or user. In addition to issuing permanent keys to end users, MPI provided temporary keys to distributors that were valid for 21 days. These keys were not restricted to use in one particular computer and provided access to the complete line of Vega Software so that MPI's distributors could provide a customer access to Vega software in emergency situations, e.g., customer's hardware failure. MPI did not require distributors to document or report the use of these temporary keys. Further MPI also provided each distributor with other temporary keys that were valid for up to six months to permit the distributor to conduct demonstrations of MPI's products for prospective customers.

(15) In conjunction with the sale of its products, MPI offered end-users the option to purchase annual support or maintenance for each of its products. MPI also provided annual support for its distributors for the use of the software, as required, to ensure that the distributors are able to sell MPI products. MPI's provision of software, documentation and support to these modules to its five distributors in the PRC for demonstration and marketing purposes also constituted unauthorized exports. The provision of this support was also provided to other MPI distributors worldwide and constituted unauthorized exports.

#### Unauthorized Exports of Software, Technical Support and Training to MPI's Distributors and End Users

(16) Since 1997 MPI made six (6) transactions that have resulted in the export of ITAR-controlled Vega products to two distributors in the PRC without appropriate authorization from DDTC. Additional unauthorized exports occurred as a result of MPI's provision of software to its distributors for marketing purposes, as well as its provision of technical support and training to certain distributors.

(17) Since 1997 MPI participated in thirty-two (32) international sales that resulted in the export of ITAR-controlled Vega products to other specified destinations without appropriate authorization from DDTC. Additional unauthorized exports occurred as a result of MPI's provision of software to its distributors for marketing purposes, as well as its provision of technical support and training for the products to certain distributors and end-users.

(18) Since 1997 MPI participated in one hundred three (103) international sales that resulted in the export of ITAR-controlled Vega products to NATO, Major Non-NATO and other countries without appropriate authorization from DDTC. Additional unauthorized exports occurred as a result of MPI's provision of software to its

distributors for marketing purposes, as well as its provision of technical support and training for the products to certain distributors and end-users.

(19) The software products, training and annual support provided to MPI's distributors constitutes an export of technical data and defense services as defined in the ITAR, sections 120.10 and 120.9 respectively, requiring an approval from the Department, which MPI failed to obtain.

(20) The products exported by MPI were developed, in part, to support military simulation and training events and they provided the end-users with an improved ability to develop tactics for the use of USML-controlled infrared, image intensified, and electro-optics sensors. The MPI products can be used as part of hardware-in-the-loop simulators used to develop and test advanced missile systems.

(21) Multiple unauthorized entities, i.e., distributors, end-users and potential customers, were given unfettered access to this USML-controlled software for periods ranging from weeks to months for testing purpose with no specific means of determining who had possession, access to or the ability to design or modify an existing piece of technology utilizing this software.

(22) MPI stated in their initial submission to DDTC in October 2002, that their "export compliance program has been, and remains informal, primarily implemented through patterns of activity designed to address the requirements of U.S. law while meeting industry standards and business needs. In the past, export licensing and compliance were not a primary focus for MPI, despite the fact that international transactions constituted a significant percentage of the company's business." As a result of the acquisition of MPI by Computer Associates and their subsequent review of MPI's export practices, this matter was identified by CA and reported to DDTC. The facts subsequently reported by MPI to DDTC in their disclosure, confirmed MPI's lack of focus, understanding and commitment to export compliance. However, since October 2002, MPI has implemented several procedures to implement a compliance program, has exerted greater control and provided oversight of the exports of Vega ITAR controlled software products. As the basis for this compliance program, MPI conducted a comprehensive review of past transactions and submitted the results of this review to DDTC in the voluntary disclosures noted above.

#### Licensing & Reporting Requirements:

(23) § 126.1 (a) of the Regulations provides that it is the policy of the United States to deny, among other things, licenses and other approvals, destined for or originating in certain countries, including China. Federal Law (22 U.S.C. 2151 note) provides that licenses to the PRC of any defense article on the USML are suspended unless the President makes a report and waives these sanctions. No Presidential waiver has been granted for the export of these items to China.

(24) § 126.1 (e) of the Regulations provides that no sale or transfer and no proposal to sell or transfer any defense service may be made to any country referred to in this section and that any person who knows or has reason to know of any actual transfer of such services must immediately inform DDTC.

(25) § 127.1 (a) (1) of the Regulations provides that it is unlawful to export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required without first obtaining the required license or written approval from DDTC.

## PART II - THE CHARGES

### Charges 1-2: Unlawful Exports to the Peoples Republic of China

(26) During the period February 1999 through April 30, 2002, MPI exported ITAR controlled Vega software products to two (2) distributors in the People's Republic of China (PRC), and caused the unauthorized export of ITAR controlled software products to eighteen (18) end-users in the PRC on six (6) separate occasions without appropriate authorization from the Department of State as required by § 127.1 (a) (1) of the Regulations and also in violation of § 126.1 (a) and § 126.1 (e) of the Regulations.

### Charges 3-9: Unlawful Exports to other non-NATO countries

(27) During the period between June 1997 and July 2002, MPI exported ITAR controlled Vega software products to seven (7) distributors in India, Israel, Singapore, Australia, South Korea, Taiwan and France and caused the unauthorized export of ITAR controlled software products to seventy (70) end-users on thirty-two (32) separate occasions violating § 127.1 (a) (1) of the Regulations.

### Charges 10-24: Unlawful Exports to NATO, Major Non-NATO and other countries

(28) During the period between December 1996 and June 2002, MPI exported ITAR controlled Vega software products to fifteen (15) distributors in Australia, Japan, Canada, Czech Republic, France, Italy, Spain, United Kingdom, Sweden and Peru and caused the unauthorized export of ITAR controlled software products to two hundred six (206) end-users on one hundred three (103) separate occasions violating § 127.1 (a) (1) of the Regulations.

### Administrative Proceedings:

(29) Pursuant to 22 CFR § 128, administrative proceedings are instituted against MultiGen Paradigm, Inc. for the purpose of obtaining an Order imposing civil

administrative sanctions that may include the imposition of debarment or civil penalties. The Assistant Secretary for Political Military Affairs shall determine the appropriate period of debarment, which generally shall be for a period of three years in accordance with § 127.7. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with § 127.10.

A respondent has certain rights in such proceedings as described in § 128, a copy of which I am enclosing. Furthermore, pursuant to § 128.11 cases may be settled through consent agreements, including after service of a charging letter. Please be advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the Arms Export Control Act and the International Traffic in Arms Regulations. The Department of State's decision to pursue one type of enforcement action does not preclude it or any other department or agency from pursuing another type of enforcement action.

Sincerely,

David C. Trimble  
Director  
Defense Trade Control Compliance

Enclosures