

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

IN THE MATTER OF)	
)	
ASPEN TECHNOLOGY, INC.,)	Docket No. 9310
)	
Respondent.)	
)	

**MOTION FOR LEAVE TO FILE RESPONDENT
ASPEN TECHNOLOGY, INC.'S REPLY TO COMPLAINT COUNSEL'S
OPPOSITION TO RESPONDENT'S MOTION TO EXTEND DISCOVERY
AND MODIFY THE SCHEDULING ORDER**

Pursuant to Rule 3.22(c) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.22(c), Aspen Technology, Inc. ("AspenTech") respectfully requests leave to file the attached Reply to Complaint Counsel's Opposition to Respondent's Motion to Extend Discovery and Modify the Scheduling Order. Complaint Counsel's opposition mischaracterizes the basis for AspenTech's motion to extend discovery and unfairly alleges that AspenTech has failed to act diligently in discovery. AspenTech respectfully submits that the attached Reply Memorandum rebuts Complaint Counsel's assertions and will further assist the Court in considering AspenTech's Motion to Extend Discovery and Modify the Scheduling Order Dated September 16, 2003.

Date: November 20, 2003

Respectfully submitted by:

A handwritten signature in black ink, appearing to read "George S. Cary", with a long, sweeping underline.

George S. Cary
David I. Gelfand
Mark W. Nelson
Jeremy J. Calsyn
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COUNSEL FOR ASPEN TECHNOLOGY, INC.

and schedule the depositions of these witnesses.² The discovery obtained from third parties may also lead to additional witnesses being identified in the future. This will compound the difficulties of completing discovery within the current schedule.

Complaint Counsel's argument that AspenTech has not acted diligently is unfair and inappropriate. Much of the attention of the company and its attorneys during the initial weeks of the discovery period was consumed by Complaint Counsel's request for hundreds of thousands of documents. Now that depositions have begun, Complaint Counsel has insisted on taking depositions even of AspenTech employees who were previously deposed by Complaint Counsel during the pre-Complaint investigation, and has declined to agree to any time limits on these depositions. Complaint Counsel had a year of pre-Complaint discovery and has had three months of expansive further discovery. Under these circumstances, Complaint Counsel should not be heard to object to AspenTech's request for a modest additional amount of time to pursue its necessary discovery.

Moreover, contrary to Complaint Counsel's assertion, AspenTech has acted diligently in this case and devoted tremendous resources to complying with Complaint Counsel's requests for documents and other information (both before and after the Complaint was filed). AspenTech promptly issued subpoenas to third parties and began the time-consuming process of attempting to negotiate scope and scheduling issues with third parties. AspenTech has also scheduled a number of its own employees for deposition by Complaint Counsel, including those who have been deposed before. It has also begun the difficult task of trying to line up foreign witnesses to give depositions overseas for use at trial. All of this takes time.

² This often necessitates numerous discussions over a period of many days or weeks. Complaint Counsel's failure to assist us with discovery from their own witnesses – and their failure even to put their own witnesses on notice that they were being listed as witnesses – is one of the reasons that the process has been so time-consuming.

With the exception of Complaint Counsel's refusal to provide any meaningful response to AspenTech's request for admissions, which is the subject of a separate motion to compel, we do not contend that Complaint Counsel have violated the Court's rules. The fact remains, however, that Complaint Counsel have imposed huge discovery burdens on AspenTech, have delayed as much as possible their own discovery obligations,³ have refused to narrow the issues for discovery and trial, and have decided to force AspenTech to go to the greatest lengths possible to prepare and present its defense. This is why discovery will require more time than expected. Given the seriousness of this case and the possible consequences to AspenTech and its customers, good cause for an extension plainly exists.

Complaint Counsel's suggestion that it is premature to seek an extension is incorrect. The reason for seeking an extension now is to ensure that discovery can be completed in an orderly fashion. It is clear now that the parties will have to obtain and review documents from each other and a number of third parties, identify further witnesses, and schedule dozens of depositions over the next three months (which includes the holiday season).

Complaint Counsel waited over one year before filing their Complaint. An additional two months of discovery will not have a material effect on the overall timing of the disposition of this case. It is not in the public interest to rush to judgment in this case and deprive AspenTech of a full and fair opportunity to conduct discovery.

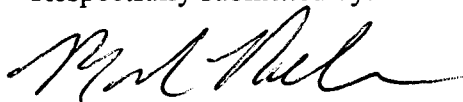
³ For example, Complaint Counsel originally promised to produce documents as soon as the protective order was issued. The protective order was issued on September 16, but no documents were produced until two months later, immediately after AspenTech filed its motion for extension. Complaint Counsel suggest that this delay should be ignored because the volume of documents was small. To the contrary, the fact that the volume of documents was small means that Complaint Counsel could easily have produced them in September.

CONCLUSION

For the foregoing reasons, and those set forth in AspenTech's motion, the Court should grant the requested extension of time.

Date: November 20, 2003

Respectfully submitted by:



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CERTIFICATE OF SERVICE

I, Sean D. Corey, hereby certify that on November 20, 2003, I caused a true and correct copy of the attached *Motion for Leave to File Respondent Aspen Technology, Inc.'s Reply to Complaint Counsel's Opposition to Respondent's Motion to Extend Discovery and Modify the Scheduling Order* and *Respondent Aspen Technology, Inc.'s Reply to Complaint Counsel's Opposition to Respondent's Motion to Extend Discovery and Modify the Scheduling Order* to be served upon the following persons:

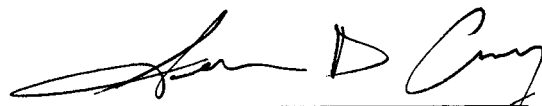
By hand delivery:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Room H-112
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

By hand delivery and e-mail:

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Sean D. Corey