

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

IN THE MATTER OF)

ASPEN TECHNOLOGY, INC.,)

Respondent.)
_____)

PUBLIC RECORD VERSION

Docket No. 9310

**RESPONDENT ASPEN TECHNOLOGY, INC.'S
MOTION TO COMPEL RESPONSES BY COMPLAINT COUNSEL
IN RESPONSE TO ASPENTECH'S FIRST SET OF INTERROGATORIES**

Aspen Technology, Inc. (“AspenTech”) served two interrogatories on Complaint Counsel.¹ One interrogatory asked Complaint Counsel to identify the third-party witnesses with whom Complaint Counsel have communicated about this case and to summarize what those third-parties said.² The other interrogatory asked Complaint Counsel to identify evidence, if any, that AspenTech’s acquisition of HyproTech has affected pricing, innovation or any other aspect of competition relating to the software products at issue in this case. Both of these interrogatories sought information about evidence that might support Complaint Counsel’s theories (or rebut those theories) so that AspenTech can focus its discovery efforts and prepare its defense.

Consistent with their practice of stonewalling in response to any attempt by AspenTech to conduct discovery, Complaint Counsel asserted several objections to these interrogatories and refused to provide any responsive information.³ Accordingly, pursuant to Rule 3.38(a) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.38(a), AspenTech respectfully

¹ A copy of AspenTech’s First Set of Interrogatories is attached hereto as Exhibit A.

² AspenTech is not seeking to compel Complaint Counsel to turn over their notes of interviews, which might implicate the work product doctrine. AspenTech seeks only a description of what was discussed with third-parties who have communicated with Complaint Counsel.

³ A copy of Complaint Counsel’s objections are attached hereto as Exhibit B.

moves the Court to compel Complaint Counsel to respond to AspenTech's First Set of Interrogatories. AspenTech conferred with Complaint Counsel on November 10 and November 21, 2003, in an effort to resolve the issues raised in this motion but was unable to do so. A statement to that effect, in accordance with Rule 3.22(f) of the Commission's Rules of Practice, 16 C.F.R. § 3.22(f), is attached as Exhibit C.

BASIS FOR MOTION

Before addressing the specific interrogatories at issue in this motion, we begin with an example to show the potential for injustice and unfairness if Complaint Counsel are allowed to avoid responding to AspenTech's discovery requests. As the Court is aware, AspenTech submitted to the Commission's investigative staff (now Complaint Counsel) written statements from 64 customers expressing support for AspenTech's acquisition of Hyprotech, and in many cases explaining that the customer did not view AspenTech's products as interchangeable with Hyprotech's products. One of these 64 customers is [REDACTED], a division of [REDACTED], which is a [REDACTED] and a user of AspenTech's products' chemical modeling and simulation capabilities. [REDACTED] explained in its statement that it has not found Hyprotech products suitable for the design and modeling of chemical processes and polymers production facilities. This was the subject of several of AspenTech's requests for admission.

As with all of AspenTech's admission requests, Complaint Counsel refused to admit or deny any of the factual points contained in [REDACTED] statement.⁴ However, despite Complaint Counsel's protests that they cannot be expected to confirm any factual information

⁴ Among other simple matters, Complaint Counsel refused to admit or deny that the copy of [REDACTED] statement submitted to them was authentic, or even that [REDACTED] is a division of [REDACTED]. More importantly, Complaint Counsel refused to admit or deny that [REDACTED] has found that Hyprotech products are unsuitable for design and modeling of chemical processes and did not meet its needs with respect to polymer modeling. Although Complaint Counsel argue elsewhere that they should have no obligation to respond to such "personal opinions" in these statements, customers' perceptions of their ability to substitute different software products will be important to define markets and assess competition in this case. Complaint Counsel should deny statements of customers' perceptions they intend to dispute and admit those they do not.

relating to product usage by AspenTech's customers, AspenTech has learned that Complaint Counsel did in fact interview [REDACTED] about its statement.⁵ Moreover, Complaint Counsel obtained its own statement from [REDACTED] explaining that [REDACTED] uses modeling software for polymers, which is one of the areas that Hyprotech's software cannot handle.⁶ In other words, Complaint Counsel confirmed the accuracy of [REDACTED] written statement and obtained its own statement supporting a factual point that AspenTech maintains in its defense.

By refusing to admit or deny AspenTech's admissions requests, Complaint Counsel left AspenTech guessing about whether these points would be in issue. Then, by refusing to respond to AspenTech's interrogatories, Complaint Counsel concealed the fact that it had confirmed the accuracy of [REDACTED] statement and that Complaint Counsel had obtained a further statement from [REDACTED] that supports AspenTech's defense.⁷ Complaint Counsel's tactics are manifestly unfair because they leave AspenTech in the dark about what issues are actually in dispute and force AspenTech to devote its scarce resources to following up with dozens of potential witnesses whose testimony might not even be necessary. This is precisely what the discovery mechanisms contained in the Commission's rules were intended to avoid.⁸

Interrogatory Number 1:

Identify each person with whom you have communicated regarding this Matter. For each such person, provide a written summary of what was said by both you and the person, state whether that person has given you a deposition, affidavit or other written statement (whether in final or draft form), and identify all documents and things provided to the FTC by that person and all documents and things provided by the FTC

⁵ See Declaration of Jeremy Calsyn at ¶ 4, attached hereto as Exhibit D.

⁶ See Clarifying Statement of [REDACTED], attached to Declaration of Jeremy Calsyn.

⁷ AspenTech learned about Complaint Counsel's discussions with [REDACTED] and about the further statement from [REDACTED] itself. Complaint Counsel did not disclose these discussions and did not provide AspenTech a copy of the statement.

⁸ "The purpose of discovery is to narrow and frame the issues between the parties." *Convergent Bus. Sys., Inc. v. Diamond*, 1989 WL 92038, at * 2 (E.D.N.Y. 1989) (granting motion to compel plaintiff to respond to interrogatories). When the Commission amended its Rules of Practice in 1978 to add a number of discovery devices, including interrogatories, it stated that the devices were "intended to shorten adjudicative proceedings by enabling the parties to more precisely define the actual issues." 43 Fed. Reg. 56862 (Dec. 4, 1978).

to that person. For each such person, state who initiated the communication, and if initiated by the FTC, state why the communication was initiated.

Complaint Counsel's Answer to Interrogatory 1:

Complaint Counsel object to Interrogatory 1 because it is vague, overly broad, unduly burdensome, and the burden and expense of complying with it substantially outweigh any possible benefit. Moreover, it seeks information protected from disclosure by the work product doctrine, attorney-client privilege, and government informant privilege. Subject to and without waiving these objections, as well as the General Objections above, Complaint Counsel refer Respondent to documents and information provided in Complaint Counsel's initial disclosures and in our response to Respondent Aspen Technology, Inc.'s First Request for the Production of Documents and Things. For the purpose of seeking or receiving information in connection with this matter Complaint Counsel have communicated with Respondent, AEA Technology, licensees and end-users of software licensed or sold by Respondent, and organizations that Respondent has represented compete with it in the license or sale of products relevant to this proceeding. These persons are encompassed in the set of individuals and organizations likely to have discoverable information identified in our initial disclosures. All non-privileged documents and things relevant to Interrogatory 1 will be produced in Complaint Counsel's initial disclosures and in our response to Respondent Aspen Technology, Inc.'s First Request for the Production of Documents and Things.

Complaint Counsel's answer to Interrogatory 1 fails to provide AspenTech any meaningful information about third-party statements that Complaint Counsel might use, or dispute, at the hearing. However, the views of a number of third-parties – most importantly customers of the products at issue – are highly relevant in this case. The example of [REDACTED], as described above, indicates that Complaint Counsel has been confirming information contained in customer statements and soliciting further statements. Complaint Counsel should provide AspenTech with information about these types of contacts so that AspenTech can plan accordingly.

Complaint Counsel's claim of attorney-client privilege is without merit because no attorney-client relationship is implicated. AspenTech has requested information about communications between Complaint Counsel and third-parties. With respect to Complaint Counsel's claim under the work product doctrine, AspenTech is not attempting to obtain Complaint Counsel's internal notes or memoranda. AspenTech only seeks disclosure of statements that third-parties have made to Complaint Counsel. This information, much of which

Complaint Counsel are likely to disclose at the hearing, should not be withheld now to prevent AspenTech from adequately preparing its defense. As noted above, the statements of third-parties are particularly important in this case because the views of customers regarding the functions and substitutability of various software products can be decisive to determine relevant markets and the nature of competition in those markets. Just as AspenTech should be entitled to learn Complaint Counsel's position with respect to the customer statements that are the subject of AspenTech's requests for admissions, AspenTech should also be entitled to learn the content of communications regarding this case that Complaint Counsel have had with third-parties.

Complaint Counsel's claim of government informant privilege depends on whether AspenTech has already been given the names of the persons in question and, if not, whether those persons have requested that their names not be supplied to AspenTech. *See, e.g., In re Champion Spark Plug Co.*, Dkt. 9141, 1981 FTC Lexis 109, at * 3 n.3 ("Since Complaint Counsel imply that the names of the 'informers' have already been given to respondent . . . the informer's privilege may have been waived."). Any concerns that Complaint Counsel have regarding the informant privilege should be allayed by marking sensitive information "Restricted Confidential" under the Protective Order Governing Discovery Material dated September 16, 2003. *See, e.g., Champion*, 1981 FTC Lexis 109, at * 3; *Beatrice Foods Co.*, 1979 FTC Lexis 598, at * 2 (referring to a protective order as a means to allow production of material otherwise subject to the informant privilege). Furthermore, to the extent that any documents responsive to Interrogatory 1 are statements made by witnesses that Complaint Counsel intend to call at the hearing (or substantially verbatim notes of such statements), they are "Jencks statements" and the Court may compel their disclosure in advance of the hearing.⁹

⁹ *See In re USLIFE Credit Corp.*, 91 F.T.C. 984 (1978) (Ordering production of Jencks statements before the hearing in light of the Commission's 1967 amendments to its Rules of Practice "favoring maximum pretrial discovery, without prejudice to either side, in order to expedite hearing").

In each case, Complaint Counsel's privilege claims in response to Interrogatory 1 are unsubstantiated. In accordance with Rule 3.38A, 16 C.F.R. §3.38A(a), AspenTech directed Complaint Counsel to provide a schedule identifying information to support claims of privilege for material withheld from their responses. AspenTech's Interrogatories, Instruction L. However, Complaint Counsel provided none of the requested information to demonstrate the validity of their claims, and there is reason to believe that Complaint Counsel will reveal much of this alleged privileged information at the hearing. In any event Complaint Counsel's general assertions of privileges are insufficient in an interrogatory response. *See, e.g., Omega Eng'g, Inc. v. Omega, S.A.*, 2001 WL 173765, at * 4 (D. Conn. 2001) (ordering a party objecting to an interrogatory to provide "sufficient information to assess the applicability of [that] privilege or protection, without revealing information which is privileged or protected." (citation omitted)).

Apart from Complaint Counsel's unsubstantiated privilege claims, its response is also inadequate because Complaint Counsel purport to provide information by referring to documents produced elsewhere, rather than specifically identifying responsive materials. Rule 3.35(c) states that an interrogatory response "shall include sufficient detail to permit the interrogating party to identify readily the individual documents from which the answer may be ascertained." 16 C.F.R. §3.38A(a). If Complaint Counsel choose to respond to an interrogatory by referring to documents, they should "describe precisely sufficient documents . . . to provide the information sought." *See, e.g., Champion*, 1981 FTC Lexis 109, at * 2-3 (ordering Complaint Counsel to amend interrogatory responses that referred to some 22,000 pages of documents produced by respondent, deposition testimony, and other materials); see also *Atlanta Shipping Corp. v. Cross & Brown Co.*, 113 F.R.D. 108, 111 (S.D.N.Y. 1986) (ordering plaintiff to amend interrogatory responses referring variously to 50 to 200 file boxes of documents); see also *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 564 (D. Kas. 1977) (a party may not "simply refer generically to past or future productions of documents." (citations omitted)).

Interrogatory Number 2:

Identify and describe all evidence (or alleged evidence) in your files that the Acquisition has affected, will affect . . . or is likely to affect, prices, innovation or other aspects of competition in the development, licensing, or sale of any relevant product (as defined in Paragraph 15 of the Complaint).

Complaint Counsel's Answer to Interrogatory 2:

Complaint Counsel object to Interrogatory 2 to the extent that it calls for a legal conclusion and to the extent that it seeks information protected by the work product doctrine, attorney-client privilege, government deliberative process privilege, or government informant privilege. Complaint Counsel also object that the interrogatory is vague, overly broad, unduly burdensome, and the burden and expense of complying with it substantially outweigh any possible benefit. Subject to and without waiving these objections, as well as the General Objections above, Complaint Counsel refer Respondent to documents and information provided in Complaint Counsel's initial disclosures and in our response to Respondent Aspen Technology, Inc.'s First Request for the Production of Documents and Things. We also refer Respondent to documents and information that it submitted to the FTC in the pre-complaint investigation and post-complaint phase of this matter, which demonstrate that the Acquisition has affected, will affect, or is likely to affect prices, innovation, or other aspects of competition in the development, licensing, or sale of the relevant products.

Complaint Counsel's answer to Interrogatory 2 fails to provide AspenTech any meaningful information about the evidence supporting their allegations. Complaint Counsel have asserted that "with each passing day, the harm suffered by the public (in the form of higher prices) continues to accrue,"¹⁰ but Complaint Counsel refuse to identify any evidence that prices have increased. Defendants are "entitled to know with some degree of precision the factual content of the charges levied against them." *Convergent Bus. Sys., Inc. v. Diamond*, 1989 WL 92038, at * 2 (E.D.N.Y. 1989). Complaint Counsel should not be allowed to wait until the parties designate trial exhibits after the close of discovery to indicate to AspenTech the evidence that supports the charges they have made in this case. Complaint Counsel are again unfairly attempting to increase AspenTech's discovery burden, and should be compelled to respond to Interrogatory 2 by providing relevant evidence.

¹⁰ "Complaint Counsel's Opposition to Respondent's Motion to Extend Discovery and Modify the Scheduling Order" dated November 19, 2003, at 7.

Complaint Counsel's objection that Interrogatory 2 requires a legal conclusion is incorrect. Interrogatory 2 calls for "evidence," which relates to facts. As one court stated in ordering an antitrust plaintiff to respond to an interrogatory calling for the factual basis of the plaintiff's claim of defendant's market power and dominance, "an interrogatory which inquires into the facts upon which certain vague and general allegations of a complaint are founded and the claimed relationship between such facts is not objectionable on the ground that it calls for a legal conclusion." *Sargent-Welch Scientific Co. v. Ventron Corp.*, 59, F.R.D. 500, 502 (N.D. Ill. 1973) ("[T]his type of discovery can be most useful in narrowing and sharpening the issues, which is a major purpose of discovery"); *see also In re Flowers Indus., Inc.*, Dkt. 9148, 1981 FTC Lexis 110, at *2 ("complaint counsel should answer the contention interrogatories by sufficiently identifying documents and stating facts, and by elaborating their legal contentions, so that respondent will have a current road map of where this case is headed").

Finally, Complaint Counsel's answer to Interrogatory 2 relies on unsubstantiated claims of privilege and vague references to documents produced elsewhere which are improper for the same reasons described above in reference to Complaint Counsel's answer to Interrogatory 1.

CONCLUSION

Complaint Counsel's responses to both of AspenTech's interrogatories are contrary to the Commission's Rules of Practice and the purpose of discovery as contemplated by those rules. It is in the public interest and necessary for a fair adjudication of this case to compel Complaint Counsel to provide meaningful responses to AspenTech's First Set of Interrogatories.

Date: December 1, 2003

Respectfully submitted by:



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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.)	
_____)	

**RESPONDENT ASPEN TECHNOLOGY, INC.'S
MOTION TO COMPEL RESPONSES BY COMPLAINT COUNSEL
IN RESPONSE TO ASPENTECH'S FIRST SET OF INTERROGATORIES**

EXHIBIT A

**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.)	

**RESPONDENT ASPEN TECHNOLOGY, INC.'S
FIRST SET OF INTERROGATORIES**

Pursuant to the Federal Trade Commission's Rule of Practice 3.35, 16 C.F.R. § 3.35 (2003), Respondent Aspen Technology, Inc. ("AspenTech"), hereby requests that Complaint Counsel produce all material responsive to the following requests, within its possession, custody or control, in accordance with the Scheduling Order entered in this Matter on September 16, 2003.

DEFINITIONS AND INSTRUCTIONS

For purposes of this request, the following definitions and instructions apply, unless the context requires otherwise:

- A. The term "Acquisition" means AspenTech's acquisition of Hyprotech from AEA Technology plc.
- B. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- C. The terms "Aspen," "AspenTech," "Aspen Technology", the "Company", or "Respondent" refer to Aspen Technology, Inc., its subsidiaries, directors, officers, employees, and agents.
- D. The terms "document," "documents" or "documentation" mean anything that may be considered to be a document or tangible thing within the meaning of Commission Rule of

Practice 3.34(b), 16 C.F.R. § 3.34(b) (2003), including the original and drafts of any kind of written, printed, recorded or graphic matter or sound reproduction, however produced or reproduced, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by notation, indication of copies sent or received or otherwise) regardless of whether designated “confidential,” “privileged” or other otherwise and including, but not limited to, any correspondence, paper, book, account, drawing, agreement, contract, e-mail, handwritten notes, invoice, memorandum, telegram, object, opinion, presentation, purchase order, report, records, transcript, summary, study, survey, recording of any telephone or other conversation, interviews or notes of any conference. The terms “document” or “documents” or “documentation” shall also include data stored, maintained or organized electronically or magnetically or through computer equipment, and film impressions, magnetic tape and sound or mechanical productions of any kind or nature whatsoever.

E. The term “Hyprotech” refers to Hyprotech Ltd. acquired by AspenTech from AEA Technology plc, including its general partners, officers, employees, agents and representatives.

F. The term “identify” means to specify in detail and to particularize the content of the answer to the question and not simply to state the reply in summary or outline form. In particular:

- a. when used in reference to a document, “identify” means to list every responsive document by production or exhibit number, if applicable, or other information sufficient for Respondent to locate and obtain the document.

- b. when used in reference to a natural person, “identify” means to set forth that person's (i) name; (ii) present or last known employer; (iii) present title or position and area or responsibility; and (iv) present or last known business and home address, telephone number and e-mail address.
- c. when used in reference to an entity other than a natural person, “identify” means to set forth its (i) name; (ii) address of its principal place of business or operation; and (iii) contact person’s name, telephone number, and e-mail address.
- d. when used in reference to data, information, or analysis, “identify” means to state with particularity the fact(s) that are informative and the person(s) possessing or document(s) containing the information together with the identifying information for the person(s) or document(s) if not already provided.

G. The term “Matter” refers to the FTC’s investigation of and subsequent complaint filed (Docket No. 9310) against AspenTech in connection with the Acquisition.

H. The term “person” means any natural person, corporation, partnership, firm, association, joint venture, trust, estate, or other legal or government entity.

I. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, or identifying.

J. The term “third party” means any person other than AspenTech; HyproTech; or the FTC.

K. The terms “you,” “your,” “FTC,” “Commission,” or “Complaint Counsel” mean the Federal Trade Commission, its Commissioners, employees, attorneys, accountants,

economists, staff, consultants, experts, agents, and representatives, and includes any third party representative or agent, wherever located, who is acting or purporting to act on its behalf.

L. Pursuant to Commission Rule of Practice 3.38A, 16 C.F.R. § 3.38A (2003), if any material responsive to any Specification is withheld from production, in whole or in part, on the ground that such material is privileged or otherwise protected from discovery: (i) identify each item or portion thereof by date, author, recipient, type, title, and specific subject matter; (ii) identify the names, addresses, positions held, and organizations of all authors and recipients of the each item; (iii) denote all attorneys with an asterisk; (iv) state the nature and basis of the claim that such material is privileged or otherwise protected from discovery with sufficient particularity and detail to permit the Administrative Law Judge to adjudicate the validity of such claim; and (v) produce all portions of such material that are not claimed to be privileged or otherwise protected from discovery.

M. These requests are continuing in character and you must supplement your answers pursuant to Commission Rule of Practice 3.31(e), 16 C.F.R. § 3.31(e) (2003), which provides that “[a] party is under a duty seasonably to amend a prior response to an interrogatory ... if the party learns that the response is in some material respect incomplete or incorrect.”

INTERROGATORIES

1. Identify each person with whom you have communicated regarding this Matter. For each such person, provide a written summary of what was said by both you and the person, state the method, date, and duration of all such communications, state whether that person has given you a deposition, affidavit or other written statement (whether in final or draft form), and identify all documents and things provided to the FTC by that person and all documents and

things provided by the FTC to that person. For each such person, state who initiated the communication, and if initiated by the FTC, state why the communication was initiated.

2. Identify and describe all evidence (or alleged evidence) in your files that the Acquisition has affected, will affect in or is likely to affect, prices, innovation or other aspects of competition in the development, licensing, or sale of any relevant product (as defined in Paragraph 15 of the Complaint).

Date: October 16, 2003

Respectfully submitted by:

/s/

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COUNSEL FOR ASPEN TECHNOLOGY, INC.

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

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

**RESPONDENT ASPEN TECHNOLOGY, INC.'S
MOTION TO COMPEL RESPONSES BY COMPLAINT COUNSEL
IN RESPONSE TO ASPENTECH'S FIRST SET OF INTERROGATORIES**

EXHIBIT B

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

In the Matter of)	
)	
ASPEN TECHNOLOGY, INC.,)	Docket No. 9310
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Respondent.)	
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**COMPLAINT COUNSEL’S OBJECTIONS AND RESPONSES
TO ASPEN TECHNOLOGY, INC.’S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 3.35 of the Federal Trade Commission’s (“FTC”) Rules of Practice, Complaint Counsel submit these Objections and Responses to Respondent Aspen Technology Inc.’s (“AspenTech”) First Set of Interrogatories. The provision of a response to any interrogatory shall not constitute a waiver of any applicable objection, privilege, or other right.

GENERAL OBJECTIONS

The following general objections are incorporated into each of Complaint Counsel’s responses to AspenTech’s interrogatories.

- A. Complaint Counsel object to the interrogatories, definitions, and instructions to the extent that they seek to impose obligations broader than those required or authorized by the Federal Trade Commission Rules of Practice or any applicable order or rule of this court.
- B. Complaint Counsel object to the interrogatories to the extent that they seek information protected from disclosure by privilege, including, but not limited to: (1) the work product doctrine; (2) attorney-client privilege; (3) government deliberative process privilege; and (4) government informant privilege.

The inadvertent disclosure of any privileged information shall not constitute a waiver of the applicable privilege.

- C. Complaint Counsel object to the interrogatories to the extent that they seek information not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Respondent.
- D. Complaint Counsel object to the interrogatories to the extent that they seek information that can be ascertained from sources that are more convenient, less burdensome, or less expensive for Respondent than for Complaint Counsel.

- E. The failure of Complaint Counsel to object to any specific interrogatory on a particular ground is not a waiver of the right to object on any additional ground(s). Complaint Counsel reserve the right to amend or supplement the objections and responses to these interrogatories consistent with further investigation and discovery.
- F. Complaint Counsel's responses to AspenTech's First Set of Interrogatories should not be construed as: (1) an admission that the information called for by the interrogatories is relevant; (2) a waiver of the general or specific objections asserted herein; or (3) an agreement that requests for similar information will be treated in a similar manner. Complaint Counsel specifically reserve: all objections as to the competency, relevance, and admissibility of the information provided; all objections as to burden, vagueness, unintelligibility, overbreadth, and ambiguity; and all rights to object to the use of any information in any proceeding.

SPECIFIC OBJECTIONS AND RESPONSES

1. Identify each person with whom you have communicated regarding this Matter. For each such person, provide a written summary of what was said by both you and the person, state the method, date, and duration of all such communications, state whether that person has given you a deposition, affidavit or other written statement (whether in final or draft form), and identify all documents and things provided to the FTC by that person and all documents and things provided by the FTC to that person. For each such person, state who initiated the communication, and if initiated by the FTC, state why the communication was initiated.

RESPONSE: Complaint Counsel object to Interrogatory 1 because it is vague, overly broad, unduly burdensome, and the burden and expense of complying with it substantially outweigh any possible benefit. Moreover, it seeks information protected from disclosure by the work product doctrine, attorney-client privilege, and government informant privilege. Subject to and without waiving these objections, as well as the General Objections above, Complaint Counsel refer Respondent to documents and information provided in Complaint Counsel's initial disclosures and in our response to Respondent Aspen Technology, Inc.'s First Request for the Production of Documents and Things. For the purposes of seeking or receiving information in connection with this matter Complaint Counsel have communicated with Respondent, AEA Technology, licensees and end-users of software licensed or sold by Respondent, and organizations that Respondent has represented compete with it in the license or sale of products relevant to this proceeding. These persons are encompassed in the set of individuals and organizations likely to have discoverable information identified in our initial disclosures. All non-privileged documents and things relevant to Interrogatory 1 will be produced in Complaint Counsel's initial disclosures and in our response to Respondent Aspen Technology, Inc.'s First Request for the Production of Documents and Things.

2. Identify and describe all evidence (or alleged evidence) in your files that the Acquisition has affected, will affect in [sic] or is likely to affect, prices, innovation or other aspects of competition in the development, licensing, or sale of any relevant product (as defined in Paragraph 15 of the Complaint).

RESPONSE: Complaint Counsel object to Interrogatory 2 to the extent that it calls for a legal conclusion and to the extent that it seeks information protected by the work product doctrine, attorney-client privilege, government deliberative process privilege, or government informant privilege. Complaint Counsel also object that the interrogatory is vague, overly broad, unduly burdensome, and the burden and expense of complying with it substantially outweigh any possible benefit. Subject to and without waiving these objections, as well as the General Objections above, Complaint Counsel refer Respondent to documents and information provided in Complaint Counsel's initial disclosures and in our response to Respondent Aspen Technology, Inc.'s First Request for the Production of Documents and Things. We also refer Respondent to documents and information that it submitted to the FTC in the pre-complaint investigation and post-complaint phase of this matter, which demonstrate that the Acquisition has affected, will affect, or is likely to affect prices, innovation, or other aspects of competition in the development, licensing, or sale of the relevant products.

I state under penalty of perjury that the above Complaint Counsel's Objections and Responses to Aspen Technology, Inc.'s First Set of Interrogatories was prepared and assembled under my supervision, and that the information contained herein is, to the best of my knowledge, true and correct.

/s/

Peter Richman
Lesli C. Esposito
Mary N. Lehner

Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
Washington, D.C.

Dated: November 4, 2003

CERTIFICATE OF SERVICE

I, Evelyn J. Boynton, hereby certify that I caused a copy of Complaint Counsel's
Objections and Responses to Aspen Technology, Inc.'s First Set of Interrogatories to be delivered
this day by electronic mail and by first-class mail to:

Mark W. Nelson
George S. Cary
Cleary, Gottlieb, Steen & Hamilton
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
mnelson@cgsh.com
gcary@cgsh.com

/s/

Evelyn J. Boynton
Merger Analyst
Federal Trade Commission

Dated: November 4, 2003

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

IN THE MATTER OF)
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ASPEN TECHNOLOGY, INC.,) Docket No. 9310
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RESPONDENT ASPEN TECHNOLOGY, INC.'S
MOTION TO COMPEL RESPONSES BY COMPLAINT COUNSEL
IN RESPONSE TO ASPENTECH'S FIRST SET OF INTERROGATORIES

EXHIBIT C

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

IN THE MATTER OF)	
)	STATEMENT
ASPEN TECHNOLOGY, INC.,)	PURSUANT TO
)	16 C.F.R. § 3.22(f)
Respondent.)	
)	Docket No. 9310

I, Mark W. Nelson, on behalf of Cleary Gottlieb Steen & Hamilton (“Cleary Gottlieb”) as counsel for Aspen Technology, Inc. (“AspenTech”), hereby represent that Cleary Gottlieb has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by AspenTech’s Motion to Compel Amended Responses by Complaint Counsel in Response to AspenTech’s First Set of Interrogatories and have been unable to reach such an agreement.

Cleary Gottlieb met with Complaint Counsel on November 10, 2003 by conference call to discuss these issues, and Complaint Counsel indicated that they would consider supplementing their interrogatory responses. During this call, David I. Gelfand and I were present for Cleary Gottlieb. Peter Richman, Mary Lehner, and others were present for Complaint Counsel.

Cleary Gottlieb met again with Complaint Counsel on November 21, 2003 at Cleary Gottlieb’s offices, and Complaint Counsel concluded that they would not supplement their interrogatory responses. Accordingly, the parties were at an impasse with respect to these issues. At this meeting, Mary Lehner was present for Complaint Counsel and I was present for Cleary Gottlieb.

Date: December 1, 2003

Respectfully submitted by:



Mark W. Nelson

CLEARY, GOTTlieb, STEEN & HAMILTON
2000 Pennsylvania Avenue, NW
Washington, D.C. 20006
Tel: 202-974-1500

COUNSEL FOR ASPEN TECHNOLOGY, INC.

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

_____)	
IN THE MATTER OF)	PUBLIC RECORD VERSION
)	
ASPEN TECHNOLOGY, INC.,)	
)	
Respondent.)	Docket No. 9310
_____)	

**RESPONDENT ASPEN TECHNOLOGY, INC.'S
MOTION TO COMPEL RESPONSES BY COMPLAINT COUNSEL
IN RESPONSE TO ASPENTECH'S FIRST SET OF INTERROGATORIES**

EXHIBIT D

[REDACTED]

CERTIFICATE OF SERVICE

I, Sean D. Corey, hereby certify that on December 1, 2003, I caused a true and correct copy of the attached *Respondent Aspen Technology, Inc.'s Motion to Compel Responses by Complaint Counsel in Response to Aspentech's First Set of Interrogatories* to be served upon the following persons:

By hand delivery:

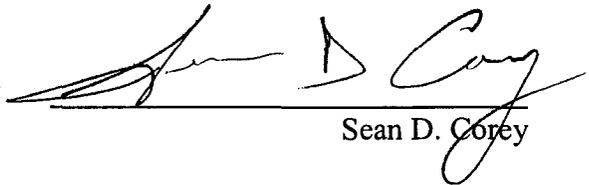
Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Room H-112
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

By hand delivery and e-mail:

Peter Richman
Lead Staff Attorney
Bureau of Competition
Federal Trade Commission
Room NJ-7172-A
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

Donald S. Clark, Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Phillip L. Broyles
Assistant Director
Bureau of Competition
Federal Trade Commission
Room NJ-7172-A
601 New Jersey Avenue, N.W.
Washington, D.C. 20001


Sean D. Corey