



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

In the Matter of
ASPEN TECHNOLOGY, INC.,
Respondent.

Docket No. 9310

FIRST REVISED SCHEDULING ORDER

On January 23, 2004, the parties filed a joint motion to amend the scheduling order. The parties have demonstrated good cause for revising the scheduling order. With a few modifications from the proposal submitted by the parties, the joint motion is GRANTED.

On January 8, 2004, Respondent filed a motion for extension of time and for modification of the scheduling order to allow for depositions upon written questions in Japan. Complaint Counsel did not oppose that motion. Respondent's motion for extension of time is GRANTED.

The Scheduling Order is revised as follows:

- March 2, 2004 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, discovery for purposes of authenticity and admissibility of exhibits, and deposition by written questions of four Japanese witnesses.
March 5, 2004 - Complaint Counsel provides expert witness reports.
March 12, 2004 - Complaint Counsel provides final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness.
- Complaint Counsel serves on Administrative Law Judge final witness and exhibit lists, including designated testimony to be

presented by deposition, and a brief summary of the expected testimony of each witness.

- March 15, 2004 - Respondent's Counsel provides final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness.
- Respondent's Counsel serves on Administrative Law Judge final witness and exhibit lists, including designated testimony to be presented by deposition, and a brief summary of the expected testimony of each witness.
- March 16, 2004 - Parties that intend to offer into evidence at the hearing confidential materials of an opposing party or non-party must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- March 19, 2004 - Respondent's Counsel provides expert witness reports.
- March 20, 2004 - Close of discovery for limited purpose of taking deposition by written questions of four Japanese witnesses.
- March 24, 2004 - Deadline for filing motions for summary decision.
- March 26, 2004 - Identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in the opposing party's expert reports. If material outside the scope of fair rebuttal is presented, the opposing party will have the right to seek appropriate relief (such as striking rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports).
- March 26, 2004 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- March 26, 2004 - Deadline for filing motions *in limine* and motions to strike.
- April 7, 2004 - Complaint Counsel files pretrial brief, not to exceed 50 pages.
- April 9, 2004 - Deadline for depositions of experts (including rebuttal experts).
- April 9, 2004 - Exchange and serve courtesy copy on Administrative Law Judge objections to final proposed witness lists and exhibit lists. Exchange

objections to the designated testimony to be presented by deposition and counter designations.

- April 14, 2004 - Exchange proposed stipulations of law, facts, and authenticity.
- April 14, 2004 - Deadline for filing responses to motions for summary decision.
- April 23, 2004 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- April 23, 2004 - Respondent's Counsel files pretrial brief, not to exceed 50 pages.
- April 26, 2004 - Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable.
- April 28, 2004 - Deadline for Complaint Counsel to file reply pretrial brief, not to exceed 15 pages.
- April 28, 2004 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

### **ADDITIONAL PROVISIONS**

All "additional provisions" set forth in the September 16, 2003 Scheduling Order remain the same with one exception. Additional provision 17 is revised as follows:

17. The parties shall provide one another, and the Administrative Law Judge, no later than seventy-two hours in advance, a schedule that identifies by day the party's best estimate of the witnesses to be called to testify during the upcoming week of the hearing. The parties further shall provide one another with copies of any demonstrative exhibits seventy-two hours before they are used with a witness. Proposed hearing witnesses located outside the United States must make themselves available for deposition before their scheduled testimony if not previously deposed. Complaint Counsel and Respondent's Counsel will use best efforts to make the witnesses available

for deposition for two days, but in no circumstances later than the day before the scheduled testimony. All such depositions of foreign witnesses appearing live shall be taken during the normal business hours unless otherwise agreed to by the parties.

ORDERED:

  
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Stephen J. McGuire  
Chief Administrative Law Judge

Date: January 28, 2004