

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of	)	
	)	
ASPEN TECHNOLOGY, INC.,	)	Docket No. 9310
	)	
Respondent	)	
	)	

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**MOTION OF THIRD-PARTY CONOCOPHILLIPS FOR  
*IN CAMERA* TREATMENT OF CERTAIN COMPETITIVELY  
SENSITIVE BUSINESS DOCUMENTS**

Pursuant to 16 C.F.R. § 3.45(b), ConocoPhillips hereby moves for *in camera* treatment of certain competitively sensitive business documents that it produced in response to a third-party subpoena in this matter.<sup>1</sup> Each of these documents was designated as confidential pursuant to the protective order entered in this proceeding. Respondent, Aspen Technology, Inc. (“Aspen Tech”) and Complaint Counsel have now notified ConocoPhillips that they intend to introduce the documents that are the subject of this motion into evidence at the administrative hearing. See Letter from Aspen Tech dated April 13, 2004 (attached as Exhibit A).

As described in more detail below, the documents at issue (the “Confidential Documents”) collectively reveal the competitively sensitive terms and conditions on which ConocoPhillips does business with Simulation Sciences, Inc., a competitor of Aspen Tech.

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<sup>1</sup> The Scheduling Order established April 23, 2004 as the deadline for seeking *in camera* treatment; on April 23rd, ConocoPhillips filed an unopposed motion to extend the deadline until April 30, 2004.

## **I. DESCRIPTION OF CONOCOPHILLIPS CONFIDENTIAL DOCUMENTS**

ConocoPhillips seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibit B:

- (1) current computer program license agreements with Simulation Sciences, Inc., Proposed RX 1391-001-023 (COP 000082-000104);
- (2) summary of computer license agreements with Simulation Sciences, Inc., Proposed RX 1394 (COP 000081-000081);
- (3) process simulation software comparison between Aspen Technology, Inc. and Simulation Sciences Proposed CX 1069-001-007 (COP 000269-000275).

## **II. LEGAL STANDARD**

Each of the Confidential Documents should be accorded *in camera* treatment based on the factors set forth in *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977):

- (1) the extent to which the information is known outside of [the] business;
- (2) the extent to which it is known by employees and others involved in [the] business;
- (3) the extent of measures taken by [the business] to guard the secrecy of the information;
- (4) the value of the information to [the business] and it [its] competitors;
- (5) the amount of effort or money expended by [the business] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Administrative law judges have broad discretion in applying these factors to determine whether information warrants *in camera* treatment. *See In re General Foods Corp.*, 95 F.T.C. 352 (1980). Moreover, as the Commission has stated, a request for

*in camera* treatment by a company such as ConocoPhillips, which is not a party to the FTC proceeding, should be given “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) (“[P]etitioner’s plea warrants special solicitude coming as it does from a third-party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors”); accord *Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (requests for *in camera* treatment by third parties should be given special solicitude because, as a policy matter, such treatment encourages the third party to cooperate with future adjudicative discovery requests).

### **III. THE CONFIDENTIAL DOCUMENTS MEET THE STANDARD FOR IN CAMERA TREATMENT**

Each of the three Confidential Documents merits *in camera* treatment for the reasons discussed below and in the Declaration of Bruce W. Colgate, Manager, Controls and Modeling, ConocoPhillips Company (attached as Exhibit C).

#### **A. Current computer license agreements, Proposed RX 1391-001-023.**

These Confidential Documents reveal the terms and conditions of ConocoPhillips’ long-term computer program license agreements with a competitor of Aspen Technology; public disclosure of these terms would cause ConocoPhillips serious and substantial competitive injury.

The terms and conditions of these computer license agreements are the result of bargaining between the parties; they are thus unique to this agreement and proprietary to the parties. Disclosure of this valuable competitive information, not otherwise available, to third-party competitors and others would put ConocoPhillips at a competitive

disadvantage in current and future license agreements and negotiations with licensors and its own competitors.

B. Summary of computer program license agreement with Simulation Sciences, Inc., Proposed RX 1394-001.

This Confidential Document provides a summary of computer program licenses, the term of these licenses, the total contract revenues and the annual royalty payments to Simulation Sciences, Inc., a competitor of Aspen Technology. Public disclosure of the terms, total contract revenues, and annual royalty payment would cause ConocoPhillips serious and substantial competitive injury. For example, third-party knowledge of the expiration date of an existing license would put ConocoPhillips at a competitive disadvantage in negotiating a new license agreement with a third party.

C. Process simulation software comparison between Aspen Technology, Inc. and Simulation Sciences, Proposed CX 1069-001-007.

This Confidential Document sets forth sensitive information, including strategies and formulae used to evaluate business opportunities, the significance of which is not likely to diminish in the foreseeable future. Public disclosure of this information would compromise ConocoPhillips' negotiating position in future business opportunities.

For the reasons set forth above, ConocoPhillips respectfully requests *in camera* treatment for the above Confidential Documents for a period of five (5) years.

#### IV. CONCLUSION

For the foregoing reasons, ConocoPhillips respectfully requests that the Administrative Law Judge enter an order under 16 C.F.R. § 3.45(b), granting *in camera* treatment to the ConocoPhillips Confidential Documents described above and attached as Exhibit B, and specifying that they not be placed in the public record of this proceeding for the next five (5) years.

Respectfully submitted,

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Veronica G. Kayne (D.C. Bar No. 358510)

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Counsel for ConocoPhillips Company

DATED: April 30, 2004

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of ) ) ASPEN TECHNOLOGY, INC., ) ) Respondent ) )	Docket No. 9310
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**ORDER GRANTING CONOCOPHILLIPS’  
MOTION FOR *IN CAMERA* TREATMENT OF  
CERTAIN COMPETITIVELY SENSITIVE BUSINESS DOCUMENTS**

After consideration of Third-Party ConocoPhillips’ Motion for *In Camera* Treatment of Certain Competitively Sensitive Business Documents, it is hereby ORDERED that ConocoPhillips Company’s motion is granted for the reasons set forth therein.

The following exhibits and corresponding Bates numbered pages shall receive *in camera* treatment for a period of five (5) years.

<b>Exhibit #</b>	<b>Beginning Bates #</b>	<b>Ending Bates #</b>
RX 1391-001-023	COP 000082	COP 000104
RX 1394	COP 000081	COP 000081
CX 1069-001-007	COP 000269	COP 000275

Date: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, Veronica G. Kayne, certify that on April 30, 2004, I caused an original and two (2) copies of the Motion of Third-Party ConocoPhillips For *In Camera* Treatment of Certain Competitively Sensitive Business Documents (including exhibits thereto and a proposed order) to be filed by hand and one electronic copy of the Motion to be filed with:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room H-159  
Washington, D.C. 20580  
secretary@ftc.gov

I also certify that on April 30, 2004, I caused two (2) copies of the Motion (including exhibits thereto and proposed order) to be served by hand upon:

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

I also certify that on April 30, 2004, I caused one copy of the Motion (including exhibits thereto and proposed order) to be served by U.S. mail and facsimile upon:

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

Peter Richman  
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**COPY CERTIFICATION**

I, Veronica G. Kayne, certify that the electronic version of the Motion of Third-Party ConocoPhillips For *In Camera* Treatment of Certain Competitively Sensitive Business Documents filed with the Secretary of the Federal Trade Commission is a true and accurate copy of the paper original and that a paper copy with an original signature was filed on the same day.

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Dated: April 30, 2004