

**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
FOR EXTENSION OF DISCOVERY DEADLINE TO ALLOW FOR
DISCOVERY OF A NEW THEORY OF COMPETITIVE HARM**

Respondent Aspen Technology, Inc. (“AspenTech”) is filing this motion because Complaint Counsel have recently added a witness from Heat Transfer Research, Inc. (“HTRI”) to testify about a new theory of competitive harm. Complaint Counsel has added this witness and this theory at a time when AspenTech has no opportunity to take discovery about it under the existing scheduling order. Accordingly, AspenTech requests that leave be granted to serve subpoenas *duces tecum* and subpoenas *ad testificandum* to obtain discovery from HTRI and any other person or company that might have evidence related to this new theory of competitive harm, and that the close of discovery be extended by four weeks for the limited purpose of allowing AspenTech time to complete this discovery. Additionally, AspenTech requests leave to add to their Final Witness List, after the March 15 deadline, one or more witnesses who will testify to matters pertaining to Complaint Counsel’s new theory of competitive harm. Complaint Counsel have indicated that they do not oppose allowing AspenTech a reasonable opportunity to take discovery of HTRI but they do not agree with the other relief requested herein.

ARGUMENT

By letter dated February 10, 2004, Compliant Counsel added “a witness to be designated” from HTRI to their witness list to testify about “the effects of the transaction on competition in thermal design technology, research efforts, and thermal design software development and interfaces with process engineering simulation software.” Complaint Counsel then informed us that they were looking further into whether they intended to go forward with a witness from HTRI. By letter dated February 19, 2004, Complaint Counsel designated Fernando Aguirre, Vice President Business Development, as their witness. Mr. Aguirre’s testimony will include “HTRI’s concerns regarding the transaction’s effect on HTRI’s continued ability to interface its thermal design software with AspenTech and Hyprotech process engineering simulation software and the subsequent effect on HTRI’s ability to conduct thermal design research and software development.”

The subject matter about which Mr. Aguirre will testify is a new theory of competitive harm. Complaint Counsel had not previously indicated that they would present testimony from this witness or even that they would present arguments related to thermal design software. Thermal design software is not a relevant product market alleged in the complaint and has not previously been the subject of discovery in this case.

AspenTech is prejudiced by the late assertion of this new theory of competitive harm because the deadline for issuing discovery requests was January 15, 2004 under the September 16, 2003 Scheduling Order, as modified on January 28, 2004 (the “Scheduling Order”). The passage of this deadline and the upcoming March 2, 2004 close of discovery effectively prevent AspenTech from taking discovery or preparing a defense to Complaint Counsel’s new allegation. Complaint Counsel has of course acknowledged the need for

AspenTech to take discovery of HTRI itself. In order to adequately prepare a response to Complaint Counsel's new theory of competitive harm, however, AspenTech may have to take discovery of other industry players as well. (We are in the process of determining whether such other discovery is needed.) It is also possible that AspenTech would need to obtain a new expert in this area and/or identify additional fact witnesses.

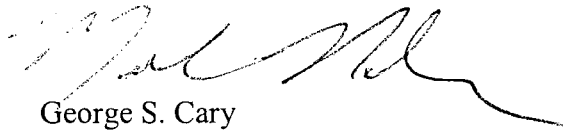
The Scheduling Order may be modified "upon a showing of good cause." Rule 3.21, 16 C.F.R. 3.21. If Complaint Counsel are allowed to present a case based on a theory of competitive harm due to alleged effects on thermal design software, allowing AspenTech a reasonable opportunity to take discovery relating to this theory plainly constitutes good cause.

CONCLUSION

AspenTech is already finding it difficult to complete discovery in the time allotted by the Scheduling Order. Accordingly, AspenTech respectfully requests that it be granted leave to serve subpoenas *duces tecum* and subpoenas *ad testificandum* to obtain discovery on HTRI and any other person or company related to Complaint Counsel's new theory of competitive harm, and that the discovery deadlines under the Scheduling Order be extended by at least four weeks in order to allow AspenTech to complete this discovery. AspenTech also respectfully requests that it be allowed to add witnesses relating to this theory after the March 15 deadline for AspenTech's Final Witness List. A proposed order has been attached.

Date: February 25, 2004

Respectfully submitted by:

A handwritten signature in black ink, appearing to read "George S. Cary", with a long horizontal flourish extending to the right.

George S. Cary
David I. Gelfand
Mark W. Nelson
Jeremy J. Calsyn
Tanya N. Dunne

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COUNSEL FOR ASPEN TECHNOLOGY, INC.

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ORDER GRANTING MOTION TO FOR LEAVE AND EXTENSION OF TIME

On February 25, 2004, Respondent filed a motion for leave and extension of time to allow for discovery related to heat transfer software. Respondent's motion for leave and extension is GRANTED. For the limited purpose of obtaining discovery related to heat transfer software, Respondent is granted an extension in the close of discovery until March 30, 2004. Further, Respondent will be permitted to add one or more witnesses to their Final Witness List who will testify to matters related to heat transfer software.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I, Mark W. Nelson, hereby certify that on February 25, 2004, I caused a true and correct copy of the attached *Respondent Aspen Technology, Inc.'s Motion for Extension of Discovery Deadline to Allow for Discovery of a New Theory of Competitive Harm* to be served upon the following persons:

By hand delivery:

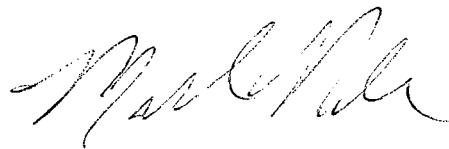
Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
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Washington, D.C. 20580

By hand delivery and e-mail:

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Mark W. Nelson