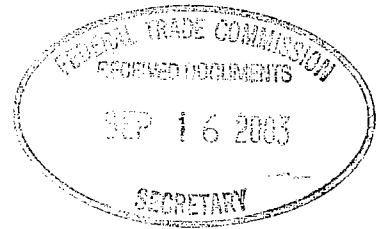


UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



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In the Matter of )  
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 )

ASPEN TECHNOLOGY, INC., )  
 )  
 )

Respondent. )  
\_\_\_\_\_  
 )

Docket No. 9310

**SCHEDULING ORDER**

- October 9, 2003 - Complaint Counsel provides preliminary witness list (not including experts) with description of proposed testimony.
- October 16, 2003 - Respondent's Counsel provides preliminary witness list (not including experts) with description of proposed testimony.
- January 6, 2004 - Complaint Counsel provides revised witness list, including preliminary rebuttal witnesses, with description of proposed testimony.
- January 9, 2004 - Respondent's Counsel provides revised witness list, including preliminary sur-rebuttal witnesses, with description of proposed testimony.
- January 15, 2004 - Exchange expert witness disclosures.
- January 15, 2004 - Deadline for issuing document requests, requests for admission, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
- February 17, 2004 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- February 20, 2004 - Complaint Counsel provides expert witness reports.
- February 27, 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 1, 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 2, 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 5, 2004

- Respondent's Counsel provides expert witness reports.

March 10, 2004

- Deadline for filing motions for summary decision.

March 12, 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 12, 2004

- Deadline for filing motions for *in camera* treatment of proposed trial exhibits.

March 12, 2004

- Deadline for filing motions *in limine* and motions to strike.

March 23, 2004

- Deadline for filing responses to motions *in limine*, motions to strike and motions for *in camera* treatment of proposed trial exhibits.

March 24, 2004

- Complaint Counsel files pretrial brief, not to exceed 50 pages, and proposed findings of fact and conclusions of law. To the extent

possible, findings of fact shall be supported by document citations and deposition citations. Conclusions of law shall be supported by legal authority.

- March 26, 2004 - Deadline for depositions of experts (including rebuttal experts).
- March 26, 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.
- March 31, 2004 - Exchange proposed stipulations of law, facts, and authenticity.
- March 31, 2004 - Deadline for filing responses to motions for summary decision.
- April 9, 2004 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- April 9, 2004 - Respondent's Counsel files pretrial brief, not to exceed 50 pages, and proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- April 12, 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 14, 2004 - Deadline for Complaint Counsel to file reply pretrial brief, not to exceed 15 pages, and any reply findings of fact and conclusions of law.
- April 14, 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

1. Pursuant to the FTC Rules of Practice § 3.21(c)(2), extensions or modifications of the deadlines set forth in this scheduling order will be made by the Administrative Law Judge only upon a showing of good cause.

2. There is no limit to the number of sets of interrogatories the parties may issue, as long as the total number, including all subparts, does not exceed twenty-five. Additional interrogatories will be permitted only for good cause upon application to and approval by the Administrative Law Judge. Responses or objections to interrogatories and requests for admission shall be due within twenty days of service of the discovery request. Objections to requests for production shall be due within ten days, and the documents and materials shall be produced within thirty days, of service of the discovery request. Any motion to compel responses to discovery requests shall be filed within five days of impasse. For requests for production served prior to this order's issuance, objections to requests for production shall be due within ten days of the date of this order, and the documents and materials shall be produced within thirty days of the date of this order.

3. The parties shall serve all pleadings, motions, discovery requests, responses to discovery requests, objections to discovery requests, and briefs on each other in both hard copy and electronically through e-mail (formatted in WordPerfect or Word). Responses or objections to each discovery request shall be preceded by the specific discovery request to which the response or objection pertains.

4. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. For subpoenas *duces tecum*, the party issuing the subpoena shall provide copies of the subpoenaed documents and materials to the other party within five business days of receiving them. For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other party before the deposition date is scheduled. Additionally, the deposition of any person may be recorded by videotape, provided that the party seeking the deposition notifies the deponent and the other party of its intention to record the deposition by videotape at least five days in advance of the deposition.

5. Service of all papers filed with the FTC's Office of the Secretary shall be made on the other party, and two courtesy copies shall be given to the Administrative Law Judge by 5:00 p.m. (EST) on the designated date. Unless requested, the parties shall not serve courtesy copies on the Administrative Law Judge of any papers (such as discovery requests and responses) that are not required to be filed with the Office of Secretary.

6. Service on the parties shall be by electronic mail (formatted in WordPerfect or Word) and shall be followed promptly by delivery of an original by hand or by U.S. mail, first class postage prepaid, to the following addresses:

(a) For Complaint Counsel:

Peter Richman  
Phillip L. Broyles  
Federal Trade Commission  
601 New Jersey Ave., N.W.  
Room NJ-7172A  
Washington, D.C. 20580

[prichman@ftc.gov](mailto:prichman@ftc.gov)  
[pbroyles@ftc.gov](mailto:pbroyles@ftc.gov)  
[eboynton@ftc.gov](mailto:eboynton@ftc.gov)  
[lesposito@ftc.gov](mailto:lesposito@ftc.gov)  
[mlehner@ftc.gov](mailto:mlehner@ftc.gov)

(b) For Respondent Aspen Technology, Inc.:

Mark W. Nelson  
George S. Cary  
Cleary, Gottlieb, Steen & Hamilton  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-1801

[mnelson@cgsh.com](mailto:mnelson@cgsh.com)  
[gcary@cgsh.com](mailto:gcary@cgsh.com)  
[icalsyn@cgsh.com](mailto:icalsyn@cgsh.com)  
[tdunne@cgsh.com](mailto:tdunne@cgsh.com)

7. All pleadings, motions, and briefs that cite to unpublished opinions not available on LEXIS or WestLaw shall include such cases as exhibits.

8. Memoranda in support of, or in opposition to, any non-dispositive motion, shall not exceed ten pages.

9. The preliminary and revised witness lists shall represent the parties' good faith designation of all potential witnesses the parties reasonably expect may be called at the hearing. A party shall notify the other party promptly of changes in preliminary and revised witness lists to facilitate completion of discovery within the dates of the scheduling order. After the submission of the final witness lists, additional witnesses may be added only: (a) by order of the Administrative Law Judge, upon a showing of good cause; (b) by agreement of the parties, with notice to the Administrative Law Judge; or (c) if needed to authenticate, or provide the evidentiary foundation for, documents in dispute, with notice to the other party and the Administrative Law Judge. Opposing counsel shall have a reasonable amount of time to subpoena documents for and depose any witness

added to the witness list pursuant to this paragraph, even if the discovery takes place during the hearing.

10. The final exhibit lists shall represent the parties' good faith designations of all exhibits the parties reasonably expect may be used in the adjudicative proceedings, other than demonstrative and summary exhibits. Additional exhibits may be added after the submission of the final lists only: (a) by order of the Administrative Law Judge, upon a showing of good cause; (b) by agreement of the parties, with notice to the Administrative Law Judge; or (c) where necessary for purposes of impeachment, with reasonable notice to the other party.

11. At the time an expert is first listed as a witness by a party, the listing party shall provide the other party with: (a) materials fully describing or identifying the background and qualifications of the expert; (b) a list of publications and all prior cases in which the expert has testified or has been deposed; and (c) transcripts of such testimony in the possession, custody, or control of the expert or listing party.

12. The parties shall provide for each testifying expert witness a written report containing the information required by the FTC Rules of Practice § 3.31(b)(3). Drafts of expert reports and notes taken by expert witnesses need not be produced.

13. Motions for *in camera* treatment of evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sep. 19, 2000) and must be supported by a declaration or affidavit by a person qualified to explain the nature of the evidence.

14. The procedure for marking of exhibits used in the adjudicative proceedings shall be as follows: (a) Complaint Counsel's exhibits shall bear the designation CX and Respondents' exhibits shall bear the designation RX; and (b) both sides shall number the first page of each exhibit with a single series of consecutive numbers. So, for example, Complaint Counsel's first exhibit shall be marked CX-1. When an exhibit consists of more than one page, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, all exhibit numbers must be accounted for, even if a particular number is not actually used at the hearing.

15. At the final prehearing conference, the parties will be required to introduce all exhibits they intend to use in the adjudicative proceedings. The parties further will be required to give the originals of exhibits to the court reporter, which the court reporter will keep.

16. Applications for the issuance of subpoenas commanding a person to attend and give testimony at the hearing must comply with 16 C.F.R. § 3.34, must demonstrate that the subject is located in the United States, and must be served on opposing counsel.

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.


18. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.

19. Fact witnesses shall not be allowed to provide expert opinions.

20. Properly admitted deposition testimony is part of the record and may not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court.

21. In accordance with the FTC Rules of Practice § 4.7, there shall be no *ex parte* communications between any party and the Administrative Law Judge or his attorney advisor, unless such communications have been expressly consented to by the parties.

ORDERED:

  
Stephen J. McGuire  
Chief Administrative Law Judge

Date: September 16, 2003