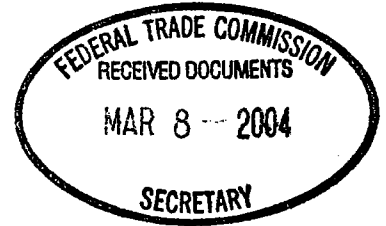


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

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

Docket No. 9310

**SECOND REVISED SCHEDULING ORDER**

On March 4, 2004, Respondent filed a motion to amend the scheduling order in the above stated proceeding. Respondent asserts that despite its diligence it cannot effectively meet the deadlines in the September 16, 2003 Scheduling Order, as amended on January 28, 2004. Respondent seeks to extend by four weeks the deadline for Respondent to furnish its expert reports and proposed exhibit list, as well as all subsequent deadlines, which would place the commencement of the hearing on May 26, 2004.

Complaint Counsel filed its opposition to Respondent's motion on March 8, 2004. Complaint Counsel asserts that Respondent has had ample time to conduct discovery and that any lack of preparation results from Respondent's failure to exercise diligence during the discovery phase. Complaint Counsel further asserts that the public interest militates against postponing the proceeding by an additional four weeks.

Complaint Counsel's arguments are unpersuasive. Discovery in this case has been extensive: Respondent has produced over 700 boxes of documents, more than 60 subpoenas *duces tecum* have been issued to third parties, resulting in thousands of additional documents being produced, and over 40 depositions of Respondent's employees and third parties have been conducted. Respondent has demonstrated good cause for revising the scheduling order. In addition, granting the extension for an additional four weeks would accommodate the Court's scheduling conflict with the trial scheduled in Docket 9313 for May 4, 2004.

Accordingly, Respondent's motion is **GRANTED**. With some modifications from the proposal submitted, including providing Complaint Counsel with additional time for its expert

witness reports, witness and exhibit lists, and rebuttal expert reports, the Scheduling Order is revised as follows:

- March 12, 2004 - Complaint Counsel provides expert witness reports.
- March 19, 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 the 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 20, 2004 - Close of discovery for limited purpose of taking deposition by written questions of four Japanese witnesses.
- March 25, 2004 - Close of discovery for limited purpose of obtaining discovery from HTRI on heat transfer software.
- April 12, 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 the 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.
- April 13, 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).
- April 14, 2004 - Respondent's Counsel provides expert witness reports.
- April 21, 2004 - Deadline for filing motions for summary decision.

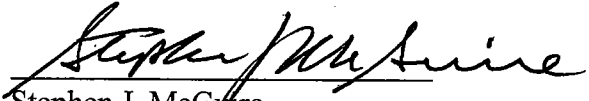
- April 23, 2004 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- April 23, 2004 - Deadline for filing motions *in limine* and motions to strike.
- April 27, 2004 - Identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited 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).
- May 5, 2004 - Complaint Counsel files pretrial brief, not to exceed 50 pages.
- May 7, 2004 - Deadline for depositions of experts (including rebuttal experts).
- May 7, 2004 - Exchange and serve courtesy copy on the 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.
- May 12, 2004 - Exchange proposed stipulations of law, facts, and authenticity.
- May 12, 2004 - Deadline for filing responses to motions for summary decision.
- May 21, 2004 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- May 21, 2004 - Respondent's Counsel files pretrial brief, not to exceed 50 pages.
- May 24, 2004 - Deadline for Complaint Counsel to file reply pretrial brief, not to exceed 15 pages.
- May 25, 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.

May 26, 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.

ORDERED:

  
Stephen J. McGuire  
Chief Administrative Law Judge

Date: March 8, 2004