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

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

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT ASPEN TECHNOLOGY, INC.'S MOTION TO AMEND THE SCHEDULING ORDER

Complaint Counsel oppose Respondent Aspen Technology, Inc.'s ("AspenTech") Motion To Amend The Scheduling Order ("Motion to Amend"). Respondent has failed to demonstrate the requisite "good cause" to extend the deadlines established in the Scheduling Order.[1] Respondent has had ample time to conduct discovery to build its defense and any lack of preparation results from Respondent's failure to exercise diligence during the discovery phase.

Moreover, in light of the extension granted to Respondent on January 28, 2004, the additional extension sought by Respondent would likely delay the initial decision beyond the one-year period provided by Rule 3.51(a) of the Federal Trade Commission's Rule of Practice ("FTC Rules"). An extension of the initial decision beyond the one-year period may be granted only upon a finding of "extraordinary circumstances." Respondent makes no attempt to demonstrate extraordinary circumstances in its motion.

ARGUMENT

Pursuant to FTC Rule 3.21(c)(2), a party seeking to extend any time specified in a scheduling order must show "good cause" for the extension. Good cause exists when a deadline

[1] September 16, 2003, Scheduling Order, as modified on January 28, 2004 ("Scheduling Order").

in the scheduling order "cannot reasonably be met despite the diligence of the party seeking the extension." *In the Matter of Chicago Bridge & Iron Co.*, 2002 FTC LEXIS 69, *2 (2002) (Attachment A) (citing *Bradford v. Dana Corp.*, 249 F.3d 807, 809 (8th Cir. 2001) (analyzing Rule 16(b) of the Federal Rules of Civil Procedure, analogous to FTC Rule 3.21(c)(2))). The party seeking the extension bears the burden of demonstrating that despite its diligence, a deadline cannot be met. Respondent has failed to provide any plausible reason for why Respondent cannot meet the deadlines in the current Scheduling Order.

I. Respondent Has Had Ample Time To Review Its Own Relevant Documents.

Respondent has had the opportunity to cull its own documents, and determine which documents are relevant to Respondent's defense.[2] Since the Complaint was filed seven months ago, Respondent has produced by its count approximately 100 boxes of electronic and paper documents, hardly an unmanageable amount. More importantly, Respondent has reviewed, document by document, every piece of discovery that came from Respondent's own files. Respondent determined what documents were responsive, what documents were privileged, how the documents would be produced, and with access to the author of each document, Respondent had advantages denied to Complaint Counsel. For these reasons, Respondent's assertion that Respondent has not been given ample time to review its own documents is unavailing.

Respondent's argument that it needs additional time (Motion to Amend at 4) ignores the requirements of FTC Rule 3.21. Under Rule 3.21(c)(2), Respondent must show *why* it requires additional time despite Respondent's diligence, not merely the fact that it requires additional

[2] Of the 700 boxes that Respondent alleges it has produced to Complaint Counsel over the course of 17 months, Respondent admits that over 600 boxes were provided during the pre-complaint investigation. *See* Respondent's November 12, 2003, Motion to Extend Time.

time. *In re Chicago Bridge & Iron Co.*, 2002 FTC LEXIS 69, at *2 (requiring the party seeking an extension to demonstrate that a deadline cannot be met despite the party's diligence). Respondent fails to explain how, despite having ample time and opportunity to perform a detailed review of its own documents, Respondent exercised diligence in conducting discovery of its documents.

Respondent raises nothing new now that it would not have known five weeks ago, when Respondent requested and received from Complaint Counsel agreement to a two-week extension to the original Scheduling Order.[3] Respondent has failed to show that a further extension is merited.

II. Respondent Has Had A Fair Opportunity To Conduct Discovery Of Third Parties.

Respondent's claim that "discovery in this case has been extensive and time consuming" does not provide good cause to amend the Scheduling Order. Complaint Counsel and Respondent have had equal time and opportunity to review and analyze third party documents and inquire into potential testimony of third party witnesses. Therefore, Respondent's argument that it has been disadvantaged in discovering information from third parties is unfounded. In fact, because of the staggered presentation of witness and exhibit lists, Complaint Counsel have had less time to analyze third party discovery than Respondent. Similarly, Respondent and its experts have had the same or better opportunity to review and address any information provided

[3] *See* Joint Motion To Amend Scheduling Order, January 23, 2004. Respondent could have saved the parties considerable time and expense if it had told Complaint Counsel it required a longer extension than agreed to by the parties.

by third parties as have Complaint Counsel and our expert.[4]

Respondent's assertions that it cannot complete timely discovery because of numerous third party documents and witnesses is insufficient to show good cause. Good cause requires the party moving for the extension to show that even though it exercised diligence, the deadlines could not be met. *In the Matter of Chicago Bridge & Iron Co.*, 2002 FTC LEXIS 69, *2 (2002). Respondent has failed to show that it exercised diligence in attempting to meet the revised Scheduling Order's deadlines. Instead of providing facts showing Respondent was diligent in conducting third party discovery, Respondent only asserts that discovery was too extensive to complete on time. Respondent cites no case law supporting its untenable position that good cause is satisfied by a mere showing that discovery was extensive.

III. Complaint Counsel Have Provided Respondent With Substantial Information Detailing Support For Complaint Counsel's Case Both Before And After The Issuance Of The Complaint.

Respondent's assertion that Complaint Counsel did not provide evidence in response to Respondent's discovery requests until January 13, 2004, (Motion to Amend at 3-4) is misleading.[5] In addition to providing Respondent with specific evidence supporting Complaint

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[4] Respondent's actions are contrary to its insistence that it needs more time to streamline the process. On March 2, 2004, the day discovery closed, Respondent provided 2002 and 2003 documents directly relevant to depositions already taken of AspenTech witnesses (Equistar, Cabot, Degussa), or of witnesses that until recently, AspenTech had listed, but whose depositions Complaint Counsel chose not to take (Bayer, Praxair), as well as one of Complaint Counsel's witnesses (Rohm & Haas). At the same time, Respondent has withheld as attorney-client protected documents shared with third parties such as Hercules, Frontier Refining, and other "potential witnesses." AspenTech Revised Log of Privileged Documents, March 2, 2004. Any and all of these documents are obviously relevant to Complaint Counsel's discovery process, and notwithstanding any work product assertion by Respondent's Counsel, had the existence of these documents been made clear before the close of discovery, Complaint Counsel would have sought their production from the third-party recipients.

[5] Respondent has long been aware of the details of Complaint Counsel's case and has been preparing its defense long before the Complaint was filed. *See* AspenTech Press Release, *AspenTech to Fight Federal Trade Commission Challenge*, August 7, 2003 ("Fifteen months ago, the FTC launched an investigation into the acquisition, with which AspenTech has cooperated fully. AspenTech has vigorously defended its position and

Counsel's case in responses to Respondent's discovery requests,[6] Complaint Counsel used over 80 exhibits from AspenTech documents during the investigational hearings in January and February of 2003. Complaint Counsel provided another 70 AspenTech documents supporting Complaint Counsel's claim during depositions of AspenTech employees and third party witnesses. Further, Complaint Counsel have described our case to Respondent during numerous telephone conversations and meetings both before and after the issuance of the Complaint.

Moreover, the fact that Respondent did not receive interrogatory responses until January 13, 2004, is due to Respondent's poorly crafted interrogatories. Instead of submitting well drafted interrogatories aimed at narrowing the relevant issues for trial, Respondent's First Set of Interrogatories, submitted on October 16, 2003, consisted of two overbroad interrogatories that this Court found improper.[7] It is disingenuous to argue that Complaint Counsel were not forthcoming with relevant information because it rightfully refused to answer objectionable interrogatories.

Further amending the Scheduling Order would do nothing to streamline the hearing in this case. Respondent's assertion that an extension is necessary in order to narrow its exhibits and witnesses, and would result in a more streamlined hearing, ignores persuasive law. In *Bradford*, the Eighth Circuit recognized that orders setting discovery and other pretrial deadlines

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continues to maintain that its acquisition did not lessen competition.") attached hereto as Attachment B.

[6] Complaint Counsel provided Respondent a detailed list of documents supporting Complaint Counsel's definition of the relevant product market. *See* Complaint Counsel's Objections And Responses To Respondent's Second Set Of Interrogatories, January 13, 2004, attached hereto as Attachment C; *see also* Complaint Counsel's Supplemental Responses To Respondent's Second Set Of Interrogatories, February 12, 2004, attached hereto as Attachment D.

[7] *See* Order Denying Motion To Compel Responses To Respondent's First Set Of Interrogatories, December 23, 2004.

were "a vehicle designed to streamline the flow of litigation," and would be enforced absent good cause. 239 F.3d at 809. The Court's recognition that scheduling orders serve to streamline litigation does not support Respondent's assertion that an extension would accomplish the same purpose. If Respondent has been unable to streamline its case thus far, an extension will provide little incentive for Respondent to do so.

Finally, the public interest militates against postponing the proceeding. This merger was consummated almost two years ago and any postponement would further aggravate the ongoing harm to consumers in the form of higher prices and decreased innovation. A delay would also further complicate the remedy of divestiture because with each day, Hyprotech assets become more entwined with AspenTech's assets. Respondent should be prevented from benefitting to the detriment of its customers by allowing any further delay in this proceeding. Moreover, Respondent's requested extension contradicts Respondent's public statements that each day of delay causes the company additional business harm.[8]

If Your Honor finds that good cause has been demonstrated, Complaint Counsel oppose Respondent's requested relief. A four-week extension is too long and would encroach on Rule 3.51(a)'s requirement that absent extraordinary circumstances, an initial decision must be filed one year after filing of the Complaint. Respondent has made no attempt to show extraordinary circumstances here.

Further, Respondent calls for extensions only as to Respondent's deadlines. Respondent's request for such a self-serving extension obviates Respondent's need to negotiate

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[8] *See* Excerpt From Aspen Technology, Inc.'s 10-Q for the period ending December 31, 2003 (2/17/04) ("*The FTC investigation and the related proceeding have had, and will continue to have, adverse effects on our operations.*") (emphasis in original), attached hereto as Attachment E.

good faith changes and prejudices Complaint Counsel's own trial preparation. If Your Honor chooses to grant an extension, Complaint Counsel respectfully request that it be fair to both parties and move all dates equally.

For the foregoing reasons, Respondent's Motion To Amend The Scheduling Order should be denied.

Respectfully Submitted,

Vadim Brusser

Peter Richman
Lesli C. Esposito
Mary N. Lehner
Vadim Brusser

Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
Washington, D.C.

Dated: March 8, 2004

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

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

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT ASPEN TECHNOLOGY, INC.'S MOTION TO AMEND THE SCHEDULING ORDER

ATTACHMENT A

In the Matter of CHICAGO BRIDGE & IRON COMPANY N.V., a foreign corporation, CHICAGO BRIDGE & IRON COMPANY, a corporation, and PITT-DES MOINES, INC., a corporation

DOCKET NO. 9300

Federal Trade Commission

2002 FTC LEXIS 69

ORDER ON RESPONDENTS' MOTION TO STRIKE WITNESSES

October 23, 2002

ALJ: [*1]

D. Michael Chappell, Administrative Law Judge

ORDER:

I.

On September 26, 2002, Respondents (Chicago Bridge and Iron ("CB&I") and Pitt-Des Moines ("PDM")) filed a Motion to Strike. On October 3, 2002, Complaint Counsel filed its opposition. Complaint Counsel subsequently filed an addendum to its opposition on October 4, 2002. For the reasons set forth below, the motion is GRANTED in part and DENIED in part.

II.

Respondents' motion seeks an order preventing Complaint Counsel from calling as witnesses at trial or otherwise presenting testimony from three fact witnesses on the grounds that the three proposed witnesses were not timely disclosed in accordance with the scheduling orders entered in this matter. The identities of these three witnesses were designated as confidential information by the parties in the confidential versions of their pleadings and need not be revealed in this Order for purposes of ruling on Respondents' motion. They are referred to throughout this Order as the first, second, and third witnesses, in alphabetical sequence, which is also the sequence in which they were first disclosed to Respondents and the sequence in which they are described in Respondents' motion. [*2]

Complaint Counsel asserts that there is good cause for permitting Complaint Counsel to present the testimony of these three CB&I customer witnesses who, only through discovery, Complaint Counsel learned may be able to provide relevant information.

III.

Commission Rule 3.21 requires Administrative Law Judges to enter a scheduling order that "establishes a scheduling of proceedings, including a plan of discovery . . . ." 16 C.F.R. § 3.21(c)(1). Pursuant to 16 C.F.R. § 3.21(c)(1), Additional Provision Number Four of the Scheduling Order, entered on February 20, 2002, states that "the final proposed witness list may not include additional witnesses not listed in the preliminary or revised preliminary witness lists previously exchanged unless by order of the Administrative Law Judge upon a showing of good cause." All subsequent revised scheduling orders state that the "Additional Provisions" of the February 20, 2002 Scheduling Order remain in effect. Under the Commission's Rules of Practice, the Administrative Law Judge may grant a motion to extend any deadline or time specified in the prehearing scheduling order "only upon a showing of good cause." 16 C.F.R. § 3.21(c)(2).

Pursuant [*3] to the Third Revised Scheduling Order, entered on September 10, 2002, Complaint Counsel provided its final proposed witness list by September 16, 2002. Complaint Counsel's final proposed witness list included three additional witnesses who were not designated on Complaint Counsel's preliminary or revised witness lists. Complaint Counsel was required to provide its preliminary witness list on April 23, 2002 and its revised witness list on May 28, 2002.

Complaint Counsel informed Respondents of its intent to add one of these three additional witnesses on September 5, 2002, and of its intent to add the other two witnesses on September 13, 2002. Discovery closed in this case on September 6, 2002.

Complaint Counsel did not file a motion to add witnesses, demonstrating good cause, as required by the Scheduling Order. Rather, in response to Respondents' motion to strike, Complaint Counsel argues that it has good cause for adding these witnesses. Specifically, Complaint Counsel asserts that the following circumstances, taken together, demonstrate good cause:

. Complaint Counsel became aware of the important potential information from these individuals only recently through discovery and [*4] identified these individuals to Respondents as soon as Complaint Counsel reached an opinion that it would likely include these witnesses in its final witness list.

. Complaint Counsel could not have known the importance of the first witness until August 27, 2002, because Respondents delayed production of certain e-mail files, responsive to Complaint Counsel's Second Request for Production of Documents, served on June 7, 2002, until August 27, 2002. Complaint Counsel promptly reviewed the August 27, 2002 document production and discovered two e-mail communications, dated July 17, 2002, from the first proposed witness to CB&I. These e-mail communications alerted Complaint Counsel that the first witness is knowledgeable concerning current competitive conditions in the LNG tank market.

. Complaint Counsel could not have known the importance of the second witness until recently. The second witness is a consultant who is advising a U.S. firm on the purchase of a LNG tank for construction in the United States. Complaint Counsel became aware of him at the end of July 2002, based on a telephone conversation with a third party. Complaint Counsel first interviewed the second witness on July [*5] 26, 2002. Through a declaration, this witness states that in April 2002, he requested bids for the project. Complaint Counsel states that the subsequent responses to these bids could not have been known to Complaint Counsel when Complaint Counsel submitted its Preliminary Witness List (April 22, 2002) or its Revised Witness List (May 28, 2002).

. Complaint Counsel did not know about the third witness until Complaint Counsel had a conversation in early September 2002 with a third-party witness who informed Complaint Counsel that during a 1998 bid contest for a LNG tank peak-shaving plant, two foreign LNG tank constructors submitted bids that were higher than the bids submitted by CB&I and PDM. The third witness works for a company that received bids from CB&I and PDM.

IV.

Good cause is demonstrated if a party seeking to extend a deadline demonstrates that a deadline cannot reasonably be met despite the diligence of the party seeking the extension. Bradford v. Dana Corp., 249 F.3d 807, 809 (8th Cir. 2001); Sosa v. Airprint Systems, Inc., 133 F.3d 1417, 1418 (11th Cir. 1998); Fed. R. Civ. P. 16 Advisory Committee Notes (1983 amendment). For each of these three witnesses, Complaint [*6] Counsel's only argument is that it didn't know about this person or his importance until recently.

Since the original Scheduling Order was entered on February 20, 2002, the scheduling order has been revised three times. In the February 20, 2002 Scheduling Order, Complaint Counsel was required to provide its preliminary witness list on April 23, 2002, and its revised witness list on May 25, 2002. Discovery was scheduled to close on June 7, 2002. In the First Revised Scheduling Order, entered May 6, 2002 upon a motion filed jointly by both parties, the dates for preliminary and revised witness lists remained substantially the same, but the close of discovery was extended by one month. The First Revised Scheduling Order required Complaint Counsel to provide its preliminary witness list on April 23, 2002 and its revised witness list on May 28, 2002. Discovery was scheduled to close on July 8, 2002. In the Second Revised Scheduling Order, entered on June 18, 2002 upon Respondents' motion, which was opposed by Complaint Counsel, the dates for preliminary and revised witness lists remained the same, but the close of discovery was extended by two additional months, to September 6, 2002. The [*7] Third Revised Scheduling Order, entered on September 10, 2002, did not change dates for witness lists or the close of discovery.

The parties, in moving for the first revision of the scheduling order, requested an extension for the close of discovery,

but did not seek extensions of time for providing preliminary and revised witness lists. Complaint Counsel, in opposing Respondents' motion for the second revision, did not argue that discovery should not be extended because Complaint Counsel had already served its revised witness list. Thus, although the close of discovery was extended, the deadlines for providing preliminary and revised witness lists remained unchanged.

According to Respondents, Complaint Counsel has been investigating this matter for nearly two years. The Complaint was filed nearly one year ago. Discovery should have been pursued expeditiously soon thereafter, as the parties were forewarned. Chicago Bridge & Iron Co., Docket 9300 (January 4, 2002) ("In the event the parties are not able to settle this matter, the discovery and trial schedule issued will meet the October 28, 2002 deadline."). Simply claiming that the importance of these individuals was learned late [*8] in the discovery process does not satisfy the "good cause" standard since diligence is required in pursuing discovery. However, if Complaint Counsel's delay in learning about the information that may be provided by these individuals is attributable to Respondents, Complaint Counsel may have demonstrated good cause.

As to the first witness, Complaint Counsel asserts that it was delayed in learning of the information he may provide due to Respondents' delayed response to Complaint Counsel's Second Request for Production of Documents. Based on that representation, Complaint Counsel has demonstrated that Complaint Counsel's delay in learning about the information that the first witness may provide is attributable to Respondents. Accordingly, Complaint Counsel has demonstrated diligence sufficient to show good cause for including the first witness on Complaint Counsel's final witness list.

As to the second and third witnesses, Complaint Counsel makes no claim that its delay in learning of these individuals is attributable in any way to Respondents. Complaint Counsel has not demonstrated sufficient diligence to show good cause for including the second and third witnesses on Complaint Counsel's [*9] final witness list.

V.

For the reasons set forth above, Respondents' motion is GRANTED in part and DENIED in part. Complaint Counsel has demonstrated good cause for adding the first witness described in Respondents' motion, the author of the e-mail communications that were produced by Respondents on August 27, 2002, to Complaint Counsel's final witness list. The deposition of this witness may be taken beyond the discovery deadline.

This Order does not constitute a ruling on the admissibility of exhibits referred to in Respondents' motion or Complaint Counsel's opposition.

ORDERED:

D. Michael Chappell

Administrative Law Judge

Date: October 23, 2002

UNITED STATES OF AMERICA
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In the Matter of	)	
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ATTACHMENT B

AspenTech to Fight Federal Trade Commission Challenge

CAMBRIDGE, MA -- August 7, 2003 -- Aspen Technology, Inc. (Nasdaq: AZPN), a provider of enterprise software solutions to the process industries for improved margins and operational performance, has learned that the Federal Trade Commission (FTC) has filed an administrative complaint challenging its acquisition of Hyprotech Ltd., which was consummated in May, 2002. At the time of the acquisition, Hyprotech was a unit of AEA Technology and supplied simulation software solutions to the upstream oil and gas, and the refining industries, while AspenTech supplied modeling software for chemical manufacturers. The acquisition did not require pre-merger review by the FTC under the Hart-Scott-Rodino Act.

Fifteen months ago, the FTC launched an investigation into the acquisition, with which AspenTech has cooperated fully. AspenTech has vigorously defended its position and continues to maintain that its acquisition did not lessen competition.

"We do not agree with the FTC's assertions but, on the contrary, are confident that the acquisition has brought significant benefits to our customers and is not anticompetitive," said David McQuillin, president and chief executive officer of AspenTech. "Over the past year we have worked closely with our customers to develop new innovations that would have been impossible prior to the merger. We will continue to bring these new innovations to market and fulfill our customers' expectations promised by the merger. We believe a vigorous defense against the allegations of the complaint is in the best interests of our customers and our shareholders and that is what we intend to do."

The commencement of the proceedings formalizes the Commission's decision that there are sufficient reasons to warrant a trial before an administrative law judge who will hear arguments from both sides. It does not constitute a ruling that AspenTech's acquisition of Hyprotech was unlawful. The final outcome of the administrative and judicial process is unlikely to be known for several years.

AspenTech expects that its customers and partners will not be affected by the administrative challenge, with Engineering product development plans, customer support and strategy unchanged. Customers will continue to benefit from the increased innovation, new products and features they have come to expect from AspenTech. As a result of this new development AspenTech expects to record a $6 million legal accrual in the fourth quarter of fiscal 2003 to cover the estimated cost of all remaining legal expenses in connection with this matter.

As it relates to the proposed $100 million financing with Advent International, which shareholders will vote upon on August 13, 2003, AspenTech believes the FTC challenge should make the transaction even more attractive to shareholders. The Series D proceeds will increase cash available to fund top and bottom line growth, while enabling the company to simultaneously mount a vigorous defense during the extended period while the challenge is pending. Until a resolution is in hand, alternative sources of financing may be unavailable on attractive terms, because it is impossible to predict the outcome and timing of the FTC process.

The company will also be issuing its fourth quarter and fiscal year 2003 earnings release this afternoon after the market close. The management team will be holding a conference call and webcast to discuss its financial results, business outlook, and related corporate and financial matters as well as the issuance of a complaint by the FTC at 4:45 p.m. eastern time today, Thursday, August 7, 2003. Interested parties may listen to a live webcast of the call by logging on to AspenTech's website: http://www.aspentech.com and clicking on the "Webcast" link under the Investor Relations section of the site. A replay of the call will be archived on AspenTech's website for the next twelve months and will also be available for forty-eight hours via telephone, beginning at 8:00 a.m. eastern time on August 11, 2003, by dialing 719-457-0820 and entering in confirmation code: 346887.

About AspenTech
Aspen Technology, Inc. provides industry-leading software and implementation services that enable process companies to increase efficiency and profitability. AspenTech's engineering product line is used to design and improve plants and processes, maximizing returns throughout an asset's operating life. Its manufacturing/supply chain product line allows companies to increase margins in their plants and supply chains, by managing customer demand, optimizing production, and streamlining the delivery of finished products. These two offerings are combined to create solutions for enterprise operations management (EOM), integrated enterprise-wide systems that provide process manufacturers with the capability to dramatically improve their operating performance.

The fourth and six paragraphs of this press release contains forward-looking statements for purposes of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. For this purpose, any statement using the term "will," "should," "could," "anticipates," "believes" or a comparable term is a forward-looking statement. Actual results may vary significantly from AspenTech's expectations based on a number of risks and uncertainties, including: AspenTech's lengthy sales cycle which makes it difficult to predict quarterly operating results; the FTC's complaint against AspenTech's acquisition of Hyprotech; fluctuations in AspenTech's quarterly operating results; AspenTech's dependence on customers in the cyclical chemicals, petrochemicals and petroleum industries; AspenTech's ability to raise additional capital as required; AspenTech's ability to integrate the operations of acquired companies; intense competition; AspenTech's need to develop and market products successfully; reliance on relationships with strategic partners; and other risk factors described from time to time in AspenTech's periodic reports and registration statements filed with the Securities

and Exchange Commission. AspenTech cannot guarantee any future results, levels of activity, performance, or achievements. Moreover, neither AspenTech nor anyone else assumes responsibility for the accuracy and completeness of any forward-looking statements. AspenTech undertakes no obligation to update any of the forward-looking statements after the date of this press release.

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

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

[REDACTED - SUBJECT TO PROTECTIVE ORDER]

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

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

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT ASPEN TECHNOLOGY, INC.'S MOTION TO AMEND THE SCHEDULING ORDER

ATTACHMENT D

[REDACTED - SUBJECT TO PROTECTIVE ORDER]

UNITED STATES OF AMERICA
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ATTACHMENT E

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE QUARTER ENDED DECEMBER 31, 2003

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 000-24786

Aspen Technology, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**04-2739697**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

Ten Canal Park, Cambridge, Massachusetts 02141
(Address of principal executive office and zip code)

(617) 949-1000
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days: Yes ☒ No ☐

Indicate by checkmark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☒ No ☐

As of February 11, 2004, there were 41,035,630 shares of the registrant's common stock (par value $0.10 per share) outstanding.

(d) Q4 FY01

In the third quarter of fiscal 2001, the revenues realized by the Company were below the Company's expectations as customers delayed spending in the widespread slowdown in information technology spending and the deferral of late-quarter purchasing decisions. At that time, the Company also reduced its revenue expectations for the fourth quarter of fiscal year 2001 and for the fiscal year 2002. Based on the reduced revenue expectations, Company management evaluated the business plan and made significant changes, resulting in a restructuring plan for the Company's operations. This restructuring plan included a reduction in headcount, a substantial decrease in discretionary spending and a sharpening of the Company's e-business focus to emphasize its marketplace solutions. The restructuring plan resulted in a pretax charge totaling $7.0 million. As of December 31, 2003, there was $0.5 million remaining in accrued expenses and other liabilities relating to the restructuring. During the six months ended December 31, 2003, the following activity was recorded (in thousands):

	Closure/ Consolidation of Facilities
Accrued expenses, June 30, 2003	$ 740
Payments	(100)
Accrued expenses, September 30, 2003	640
Payments	(122)
Accrued expenses, December 31, 2003	$ 518

The Company expects that the remaining obligations will be paid by March 2008. Payments are expected to remain relatively consistent over this term.

(e) Q4 FY99

In the fourth quarter of fiscal 1999, the Company undertook certain actions to restructure its business. The restructuring resulted from a lower than expected level of license revenues which adversely affected fiscal year 1999 operating results. The license revenue shortfall resulted primarily from delayed decision making driven by economic difficulties among customers in certain of the Company's core vertical markets. The restructuring plan resulted in a pre-tax restructuring charge totaling $17.9 million. As of December 31, 2003, there was $0.5 million remaining in the accrued expenses and other liabilities relating to the restructuring. During the six months ended December 31, 2003, the following activity was recorded (in thousands):

	Closure/ Consolidation of Facilities
Accrued expenses, June 30, 2003	$ 522
Sublease receipts, net of lease payments	50
Accrued expenses, September 30, 2003	572
Sublease receipts, net of lease payments	(25)
Accrued expenses, December 31, 2003	$ 547

The Company expects that the remaining obligations will be paid by December 2004.

8. Commitments and Contingencies

(a) FTC complaint

On August 7, 2003, the Federal Trade Commission (FTC) announced that it had authorized its staff to file a civil administrative complaint alleging that the Company's acquisition of Hyprotech in May 2002 was anticompetitive and seeking to declare the acquisition in violation of Section 5 of the FTC Act and Section 7 of the Clayton Act. An administrative law judge will adjudicate the complaint in a trial-type proceeding scheduled for April 2004. While the proceeding may be delayed, it is expected to begin no later than May 2004. After the presentation of all of the evidence, the administrative law judge will issue a written opinion.

Any decision of the administrative law judge may be appealed to the Commissioners of the FTC by either the FTC staff or the Company. If a majority of the FTC Commissioners were to determine that the Company violated applicable law, the Company would have the right to appeal to a U.S. Court of Appeals. The FTC staff and the Company would have the right to petition the U.S. Supreme Court for review of any Court of Appeals decision.

If the FTC were to prevail in these proceedings, it could seek to impose a wide variety of remedies, any of which would have a

material adverse effect on the Company's ability to continue to operate under its current business plans and on its results of operations. These potential remedies include the divestiture of Hyprotech, as well as mandatory licensing of Hyprotech software products and other engineering software products to one or more of the Company's competitors. As of February 17, 2004, the Company had accrued $15 million to cover the cost of (1) professional service fees associated with the Company's cooperation in the FTC's investigation since its commencement on June 7, 2002, and (2) estimated future professional services fees relating to the initial proceeding and the Company's preparation in advance of such proceeding.

We understand that the FTC has typically prevailed in merger challenges, and that there is a substantial probability that the FTC will prevail in its challenge to our acquisition of Hyprotech. Because of the length of the appeals process, the outcome of this matter may not be determined for several years. The likely outcome of this matter is not estimable at this time.

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

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

ORDER DENYING RESPONDENT'S MOTION
TO AMEND THE SCHEDULING ORDER

On March, 4, 2004, Respondent filed a Motion to Amend the Scheduling Order. Respondent has failed to show good cause for an extension. Respondent's Motion to Amend the Scheduling Order is denied.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I, Vadim M. Brusser, hereby certify that I caused a copy of the attached public version Complaint Counsel's Response to Respondent's Motion To Amend Scheduling Order to be delivered this day:

Two copies by hand delivery:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Room H-112
600 Pennsylvania Ave., N.W.
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By electronic mail and by hand delivery:

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Dated: March 8, 2004