

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

THIRD-PARTY HEAT TRANSFER RESEARCH, INC.'S
MOTION FOR *IN CAMERA* TREATMENT

Pursuant to 16 CFR 3.45(b), Heat Transfer Research, Inc. ("HTRI"), a third-party to the above-captioned action, hereby moves for *in camera* treatment of the following competitively-sensitive, confidential business documents (or, where specified, select identified portions of such documents) that it produced in response to a third-party subpoena in this matter:

Exhibit #	Beginning Bates #	Ending Bates #
RX 1599-001-006 (Paras: 2.A-B, 2.C.2., 2.C.6-7, 2.C.10, 4 (only last italicized Para.), and 5)	01152	01157
CX 0923-001-003 (Points under "Program Users Discussion" and under "Technical Reports Discussion")	01252	01254
CX 0924-001-005 (Paras: (5)(b), (5) g-m), 6 and 7)	01261	01265

CX 0900-001-002 (Paras: 1 and 3)	00016	00017
CX 0926-001-002	12599	12600
CX 0927-001-002	12689	12690
RX 1598-001-002	01797	01798
RX 1602-001-010/ CX 0908-001-010	09440	09449
RX 1611-001-020	10524	10543
RX 1612-001	11151	
RX 1632-001-087	00407	00492
RX 1649-001-010/ CX 0904-001-010	09400	09409
RX 1650-001-010/ CX 0905-001-010	09410	09419
RX 1651-001-011/ CX 0906-001-010	09420	09430
RX 1652-001-011/ CX 0907-001-010	09429	09439

Each of these documents, which are attached hereto as Exhibit A, were designated as Restricted Confidential Discovery Material under the September 16, 2003 Protective Order Governing Discovery Material at the time of their production.¹ Respondent Aspen Technology, Inc. and Complaint Counsel have now advised HTRI that they intend to introduce the documents that are the subject of this motion into evidence at the administrative trial. This motion is

¹ The documents attached as Exhibit A are the only portion of this motion that is being filed on a non-public basis. Where *in camera* treatment is sought for only a portion of a document, that portion is highlighted in the exhibit.

supported by the declaration of HTRI President and Chief Executive Officer Claudette D. Beyer, attached hereto as Exhibit B.

As described in more detail in the Beyer Declaration, these attached materials contain HTRI commercially proprietary and confidential information regarding HTRI's calculation logic and other product technical detail, future product development, marketing plans and customer (referred to by HTRI as "members") development efforts. All of this information is held in strict confidence by HTRI. If such information were publicly disclosed, HTRI would suffer serious competitive injury because its competitors could use this non-public information to their advantage and nullify the competitive advantages gained by HTRI in the manner in which it develops and produces its products and pursues, negotiates and retains its relationships with its customers.

HTRI submits that *in camera* treatment is warranted for this information because (1) HTRI will suffer serious competitive harm if the documents at issue are disclosed to the public; (2) the information contained in these documents is secret; and (3) the risk of harm is not outweighed by the importance of the information to the matter decided by the Commission. HTRI believes that, as discussed in the Beyer Declaration, *in camera* treatment for an indefinite period is warranted for designated portions of documents RX1599, CX0923, and CX0924 which contain HTRI's proprietary product formulation information and plans. *In camera* treatment for designated portions of the remaining identified documents, which reflect marketing planning and customer development efforts, is sought for five years.

For the foregoing reasons, HTRI requests that its motion be granted.

Respectfully submitted,

Diana L. Dietrich, Esq.
Baker Botts L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 639-7726 (phone)
(202) 639-7890 (facsimile)
diana.dietrich@bakerbotts.com

Counsel for HTRI

Dated: May 21, 2004

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
ASPEN TECHNOLOGY, INC.)	Docket No. 9310
)	
A corporation)	
_____)	

ORDER GRANTING HEAT TRANSFER RESEARCH, INC.’S
MOTION FOR *IN CAMERA* TREATMENT

After consideration of Third-Party Heat Transfer Research, Inc.’s Motion for *In Camera* Treatment, it is hereby ORDERED that Heat Transfer Research, Inc.’s motion is granted for the reasons set forth therein.

The following exhibits and corresponding Bates numbered pages shall receive *in camera* treatment indefinitely.

Exhibit #	Beginning Bates #	Ending Bates #
RX 1599-001-006 (Paras: 2.A-B, 2.C.2., 2.C.6-7, 2.C.10, 4 (only last italicized Para.), 5.3 and 5.4)	01152	01157
CX 0923-001-003 (Points under “Program Users Discussion” and under “Technical Reports Discussion”)	01252	01254
CX 0924-001-005 (Paras: (5)(b), (5) g)-m), 6 and 7)	01261	01265

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

Exhibit #	Beginning Bates #	Ending Bates #
CX 0900-001-002 (Paras: 1 and 3)	00016	00017
CX 0926-001-002	12599	12600
CX 0927-001-002	12689	12690
RX 1598-001-002	01797	01798
RX 1602-001-010/ CX 0908-001-010	09440	09449
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RX 1649-001-010/ CX 0904-001-010	09400	09409
RX 1650-001-010/ CX 0905-001-010	09410	09419
RX 1651-001-011/ CX 0906-001-010	09420	09430
RX 1652-001-011/ CX 0907-001-010	09429	09439

Date: _____

Administrative Law Judge

CERTIFICATE OF SERVICE

I, Diana L. Dietrich, certify that on May 21, 2004, I caused an original and two (2) copies (one hard copy and one electronic copy on diskette) of the *In Camera* version of the Motion of Third-Party Heat Transfer Research, Inc. For *In Camera* Treatment (including exhibits thereto and a proposed order) to be filed by hand and one electronic copy of the Public Version of the Motion to be filed with:

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

I also certify that on May 21, 2004, I caused two (2) copies of the Motion (including exhibits thereto and a 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, DC 20580

I also certify that on May 21, 2004, I caused one copy of the Motion (including exhibits thereto and a proposed order) to be served by hand delivery upon:

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

Peter Richman
Lead Staff Attorney
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-7172-A
Washington, DC 20001

Vadim Brusser
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-7172-A
Washington, DC 20001

Complaint Counsel

Tanya N. Dunne
Counsel for Aspen Technology
Cleary, Gottlieb, Steen & Hamilton
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Counsel for Aspen Technology, Inc.

Diana L. Dietrich
BAKER BOTTS LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 639-7726 (phone)
(202) 639-7890 (facsimile)
diana.dietrich@bakerbotts.com

COPY CERTIFICATION

I, Diana L. Dietrich, certify that the electronic version of the Motion of Third-Party Heat Transfer Research, Inc. for *In Camera* Treatment 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.

Diana L. Dietrich (DC Bar No.: 443683)
BAKER BOTTS LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 639-7726 (phone)
(202) 639-7890 (facsimile)
diana.dietrich@bakerbotts.com

Dated: May 21, 2004

Exhibit A

(Documents Not Included With Public Version)