

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



In the Matter of

Otto Bock HealthCare North
America, Inc.,
a corporation,

Respondent.

Docket No. 9378

JOINT MOTION TO MODIFY THE FIRST REVISED SCHEDULING ORDER

As Complaint Counsel and Respondent Counsel discussed with the Court on April 12, 2018, Complaint Counsel and Respondent respectfully move to amend the First Revised Scheduling Order to change the following dates:

- Deadline for Complaint Counsel to provide expert witness reports from April 16, 2018 to April 23, 2018;
- Deadline for Complaint Counsel to provide its final proposed witness and exhibit lists from April 20, 2018 to April 27, 2018;
- Deadline for Respondent to provide expert witness reports from May 1, 2018 to May 8, 2018;
- Deadline for Respondent to provide its final proposed witness and exhibit lists from May 1, 2018 to May 8, 2018;
- Deadline to provide notice of intention to offer confidential materials of parties and non-parties from May 1, 2018 to May 8, 2018;
- Deadline for Complaint Counsel to identify rebuttal experts and to provide rebuttal expert reports from May 10, 2018 to May 17, 2018; and
- Deadline for depositions of experts from May 18, 2018 to May 25, 2018.

A proposed Second Revised Scheduling Order containing these changes is attached to this Joint Motion.

Dated: April 13, 2018

Respectfully Submitted,

/s/ Daniel Zach

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FEDERAL TRADE COMMISSION
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Otto Bock HealthCare North America, Inc.,) DOCKET NO. 9378
)
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)
Respondent.)

[PROPOSED] SECOND REVISED SCHEDULING ORDER

In accordance with the joint motion filed by Complaint Counsel and Respondent on April 13, 2018, the remaining dates in the January 18th First Revised Scheduling Order are hereby revised as follows:

- | | |
|-------------------|---|
| February 7, 2018 | Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony. |
| February 9, 2018 | Complaint Counsel provides expert witness list. |
| February 13, 2018 | Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony. |
| February 19, 2018 | Respondent's Counsel provides expert witness list. |
| March 7, 2018 | Deadline for issuing document requests, interrogatories and subpoenas <i>duces tecum</i> , except for discovery for purposes of authenticity and admissibility of exhibits. |
| March 9, 2018 | Deadline for supplementing preliminary witness lists. |
| March 22, 2018 | Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits. |

- April 6, 2018 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.
- April 23, 2018 Deadline for Complaint Counsel to provide expert witness reports.
- April 27, 2018 Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- May 8, 2018 Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- May 8, 2018 Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- May 8, 2018 Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).¹ See Additional Provision 7.

¹ Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been

- May 17, 2018 Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
- May 14, 2018 Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
- May 14, 2018 Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 25, 2018 Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- May 21, 2018 Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. The Parties are directed to review the Commission's Rules on admissibility of evidence before filing objections to exhibits.
- May 22, 2018 Complaint Counsel files pretrial brief supported by legal authority.
- May 23, 2018 Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- May 23, 2018 Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 24, 2018 Exchange proposed stipulations of law, facts, and authenticity.
- May 28, 2018 Respondent's Counsel files pretrial brief supported by legal authority.
- May 30, 2018 Final prehearing conference to begin at 1:00 p.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

June 1, 2018

Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

All Additional Provisions to the January 18, 2018 Scheduling Order remain in effect.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2018, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
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Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

By: /s/ Daniel Zach

Daniel Zach
Complaint Counsel
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20024

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

April 13, 2018

By: /s/ Daniel Zach