

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

In the Matter of)
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Otto Bock HealthCare North America, Inc.,)

Docket No. 9378

a corporation,)
)
)

Respondent.)
_____)

**ORDER EXTENDING TIME FOR FILING INITIAL
DECISION PURSUANT TO COMMISSION RULE 3.51**

Federal Trade Commission (“FTC”) Rule of Practice 3.51(a) provides that “[t]he Administrative Law Judge shall file an initial decision within 70 days after the filing of the last filed initial or reply proposed findings of fact, conclusions of law and order” 16 C.F.R. § 3.51(a). The last reply proposed findings and conclusions and briefs were filed on December 13, 2018. Seventy days from the last filed reply proposed findings and conclusions and briefs would have been February 21, 2019. Due to the partial shutdown of the federal government, and pursuant to an order of the Commission, the case was stayed and the deadline for the filing of the Initial Decision was thereby extended. *See* Order Regarding Scheduling, December 28, 2018 (staying case, including Initial Decision deadline, for “the duration of the shutdown and for an additional five business days thereafter”). Absent an order pursuant to Rule 3.51, the Initial Decision is to be filed on or before March 28, 2019. FTC Rule 3.51(a) also provides that “[t]he Administrative Law Judge may extend [the time period for filing an Initial Decision] by up to 30 days for good cause.” 16 C.F.R. § 3.51(a).


The Commission’s Complaint challenges an acquisition, consummated on September 22, 2017, of FIH Group Holdings, LLC (“Freedom”) by Respondent Otto Bock HealthCare North America, Inc. (“Respondent” or “Ottobock”) (the “Acquisition”). In summary, the Complaint alleges that the Acquisition has lessened, and may substantially lessen, competition in the market for the manufacture and sale of microprocessor prosthetic knees (“MPKs”) to prosthetic clinics in the United States, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45. Complaint ¶¶ 57-58, 63-67.

Respondent denies that the Acquisition has harmed or is likely to harm competition and further asserts a number of affirmative defenses, including, among others, that efficiencies or other procompetitive benefits outweigh any alleged procompetitive effects; that Freedom was a failing firm at the time of the Acquisition; and that a planned divestiture by Ottobock of the microprocessor controlled knee business of Freedom will address any anticompetitive effects in the alleged relevant market. Amended Answer at ¶¶ 57-58, 63-67 and pp. 29-31.

The record from this multi-week trial is extensive, involving numerous expert witnesses and complex issues. Over 3,130 exhibits were admitted into evidence. Sixty-nine witnesses testified, either live or by deposition, including four expert witnesses, and there are 6,895 pages of trial transcript. The parties submitted a total of 5,186 proposed findings of fact. The parties' proposed findings of fact, conclusions of law, replies to proposed findings of fact and conclusions of law, post-trial briefs, and reply briefs total 4,414 pages.¹ Moreover, since the conclusion of the trial in this matter, the Administrative Law Judge has presided over another multi-week trial.

For all the foregoing reasons, good cause exists to extend the deadline for filing the *in camera* version of the Initial Decision in this matter by up to 30 days, to April 25, 2019.²

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 18, 2019

¹ This is extraordinarily high. By comparison, in the last merger case, the parties submitted a total of 1,754 proposed findings of fact and 2,036 pages of proposed findings of fact and conclusions of law, replies to proposed findings of fact and conclusions of law, post-trial briefs, and reply briefs.

² Pursuant to Commission Rule 3.45(f), the public version of the Initial Decision shall be filed within five business days of the filing of the *in camera* version of the Initial Decision.