

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



ORIGINAL

In the Matter of

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

Respondent.**

Docket No. 9378

PUBLIC

JOINT MOTION TO MODIFY THE THIRD REVISED SCHEDULING ORDER

On April 23, 2018, the Federal Trade Commission granted the Parties’ Joint Motion to reschedule the date for the commencement of the hearing in this case from June 1, 2018 to July 10, 2018. Pursuant to the Commission’s Order, which noted that “pre-hearing deadlines shall be appropriately extended by the Administrative Law Judge,” Complaint Counsel and Respondent Otto Bock HealthCare North America, Inc. (“Otto Bock”) respectfully move to amend the Third Revised Scheduling Order to adjust the schedule as follows:

Event	Joint Proposed Deadline
Deadline for Complaint Counsel to provide expert witness reports.	May 8, 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 18, 2018

Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).	May 23, 2018
Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit list, 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 29, 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).	May 29, 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.	June 1, 2018
Deadline for filing motions <i>in limine</i> to preclude admission of evidence.	June 11, 2018
Deadline for filing motions for <i>in camera</i> treatment of proposed trial exhibits.	June 11, 2018
Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.	June 13, 2018
Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.	June 19, 2018
Complaint Counsel files pretrial brief supported by legal authority.	June 20, 2018
Deadline for filing responses to motions <i>in limine</i> to preclude admission of evidence.	June 21, 2018
Deadline for filing responses to motions for <i>in camera</i> treatment of proposed trial exhibits.	June 21, 2018
Exchange proposed stipulations of law, facts, and authenticity.	June 22, 2018

Respondent's Counsel files pretrial brief supported by legal authority.	June 27, 2018
Final prehearing conference to begin at 1:00 p.m.	June 29, 2018
Commencement of Hearing, to begin at 10:00 a.m.	July 10, 2018

These dates attempt as best as possible to mirror the schedule set forth in the First Revised Scheduling Order, adjusted appropriately for a hearing beginning July 10, 2018. A proposed Fourth Revised Scheduling Order containing these changes is attached to this Joint Motion.

Dated: April 25, 2018

Respectfully submitted,

/s/ Daniel Zach (with consent)
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 Stephen Mohr
 Steven Lavender
 Lisa DeMarchi Sleigh
 Catherine Sanchez
 Amy Posner
 Lynda Lao
 Jordan Andrew
 Jonathan Ripa
 Stephen Rodger
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*Counsel for Respondent Otto Bock
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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
)	
Otto Bock HealthCare North America, Inc.,)	Docket No. 9378
)	
a corporation,)	
)	
)	
Respondent.)	

[PROPOSED] FOURTH REVISED SCHEDULING ORDER

In accordance with the April 23, 2018 Order of the Commission Granting Joint Motion to Reschedule the Date for the Hearing to July 10, 2018 and the April 23, 2018 Order granting the Joint Motion to Modify the Second Revised Scheduling Order, the remaining dates in the April 23, 2018 Third Revised Scheduling Order are hereby further revised as follows:

- | | | |
|-------------|---|---|
| May 8, 2018 | - | Deadline for Complaint Counsel to provide expert witness reports. |
|-------------|---|---|
- | | | |
|--------------|---|--|
| May 18, 2018 | - | <p>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.</p> <p>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.</p> |
|--------------|---|--|
- | | | |
|--------------|---|---|
| May 29, 2018 | - | <p>Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit list, 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.</p> <p>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.</p> |
|--------------|---|---|

- May 29, 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.
- May 23, 2018 - Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- June 1, 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).
- June 11, 2018 - Deadline for filing motions *in limine* to preclude admission of evidence. See Additional Provision 9.
- June 11, 2018 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- June 13, 2018 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- June 19, 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.
- June 20, 2018 - Complaint Counsel files pretrial brief supported by legal authority.
- June 21, 2018 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- June 21, 2018 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- June 22, 2018 - Exchange proposed stipulations of law, facts, and authenticity.

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 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.

- June 27, 2018 - Respondent's Counsel files pretrial brief supported by legal authority.
- June 29, 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.

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.

- July 10, 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 April 23, 2018 Third Revised Scheduling Order remain in effect.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 25, 2018, I caused a true and correct copy of the foregoing Joint Motion to Modify the Third Revised Scheduling Order to be served via the FTC E-Filing System and e-mail upon the following:

D. Michael Chappell
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/s/ Sean P. McConnell
Sean P. McConnell

Notice of Electronic Service

I hereby certify that on April 25, 2018, I filed an electronic copy of the foregoing Joint Motion to Modify Third Revised Scheduling Order (Public), with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
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Donald Clark
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I hereby certify that on April 25, 2018, I served via E-Service an electronic copy of the foregoing Joint Motion to Modify Third Revised Scheduling Order (Public), upon:

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