

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSIONCOMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman  
Terrell McSweeney

In the Matter of

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

DOCKET NO. 9378

**JOINT EXPEDITED MOTION TO RESCHEDULE THE DATE FOR THE HEARING**

Pursuant to Rule 3.41(b) of the Commission Rules of Practice, Complaint Counsel and Respondent Otto Bock HealthCare North America, Inc. (“Otto Bock”) respectfully move the Federal Trade Commission for an order rescheduling the date for the commencement of the hearing in this case to July 10, 2018.<sup>1</sup> The hearing is currently scheduled to begin on June 1, 2018. This would be the second time that the hearing date in this case has been changed, which includes the change necessitated by the government shutdown in January 2018.

Under Rule 3.41(b), “The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence . . . .” The Commission has good cause to order a later hearing date in this case. The hearing is currently scheduled to begin two weeks after the hearing in *Tronox Limited*, No. 9377, set to begin on May 18, 2018. Realistically, the hearing in this case cannot begin on June 1, 2018 if *Tronox* goes to trial.

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<sup>1</sup> The July 4th holiday falls in the middle of the prior week.

It would be best for the Commission to reschedule the hearing to begin on a fixed date in early July. It will not be practical for the parties to plan to start trial whenever the *Tronox* trial happens to be completed. In addition to all of the last-minute pretrial work that counsel can complete only when the trial date is set, both parties must give advanced notice to trial witnesses – employees of Respondent, employees of third parties, and our expert witnesses – of the dates on which they will testify so that they can make the necessary adjustments to their schedules and travel plans. The absence of a fixed date for the hearing would leave counsel for both parties and third parties in limbo, which is particularly problematic during the summer vacation season. By scheduling the hearing to begin on July 10, 2018, the Commission can maximize the likelihood that the trial will begin on the designated date and thus minimize any disruption to the schedules of either third-party witnesses or the parties in this case.

Additionally, an order rescheduling the date for the commencement of the hearing in this case to July 10, 2018 may help maximize the efficient use of resources of Respondent Counsel, Complaint Counsel, and the Court. In particular, Respondent and Complaint Counsel have engaged in settlement discussions since the filing of the Complaint in this matter. Respondent has made a settlement proposal to Complaint Counsel, and has offered revisions to address certain concerns of Complaint Counsel, and Complaint Counsel made a counterproposal earlier this week, which has led to further ongoing discussions. Numerous critical and time-consuming deadlines for both the parties and third parties—including expert discovery, final exhibit and witness lists, party and third-party motions for *in camera* treatment, and pre-trial briefing—are scheduled to take place in the next few weeks.<sup>2</sup> Respondent Counsel has represented that

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<sup>2</sup> If the Commission grants this motion, Judge Chappell has stated that he will revise the scheduling order in this matter to push the remaining dates in the scheduling order back by approximately a month, while adjusting spacing of dates to match the original scheduling order.

Respondent would use the time provided by a rescheduling of the commencement of the hearing date to attempt to develop a revised settlement proposal, including consideration of Complaint Counsel's counterproposal and the concerns Complaint Counsel has noted regarding proposals. To the extent that Respondent uses the time provided by the rescheduling of the hearing date to develop a settlement based on Complaint Counsel's counterproposal, Complaint Counsel believes that rescheduling the hearing date could help facilitate the parties reaching a settlement.<sup>3</sup>

Complaint Counsel and Respondent participated in a settlement conference with Judge Chappell on April 20, 2018. Judge Chappell stated that he recommends rescheduling the date for the commencement of the hearing in this case to July 10, 2018.

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<sup>3</sup>



Given imminent expert discovery dates, including exchange of Complaint Counsel's expert reports on April 23, 2018, and Respondent Counsel's expert reports on May 8, 2018, Complaint Counsel and Respondent request expedited treatment of their Joint Motion.<sup>4</sup>

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<sup>4</sup> We are concurrently filing a motion to Judge Chappell seeking a short stay of expert discovery pending the Commission's decision on this motion. The parties have jointly requested to move the date for the exchange of Complaint Counsel's expert report from April 23 to April 27, and Respondent Counsel's expert report from May 8 to May 11.

**CONCLUSION**

For good cause shown and the reasons stated above, Complaint Counsel and Respondent respectfully move the Commission for an order rescheduling the date for the hearing in this matter for July 10, 2018.

Dated: April 26, 2018

Respectfully Submitted,

/s/ Daniel Zach

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Steven Lavender  
Lisa DeMarchi Sleigh  
Catherine Sanchez  
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**[PROPOSED] ORDER ON JOINT EXPEDITED MOTION TO RESCHEDULE  
HEARING**

On April 20, 2018, the parties filed a joint expedited motion to reschedule the evidentiary hearing. Accordingly,

**IT IS HEREBY ORDERED**, that the hearing in this proceeding is rescheduled to begin on July 10, 2018.

By the Commission.

\_\_\_\_\_  
Donald S. Clark  
Secretary

ISSUED:

**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 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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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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By: /s/ Daniel Zach

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**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 26, 2018

By: /s/ Daniel Zach