

in its ability to compete in prosthetics and orthotics industry. For the reasons discussed in this motion, Proteor requests that this Court afford the Confidential Documents *in camera* treatment. In support of this motion, Proteor relies on the Declaration of Frédéric Desprez (“Desprez Declaration”) (attached as Exhibit C), which provides additional details on the Confidential Documents.

I. Confidential Documents.

Proteor seeks *in camera* treatment for the following Confidential Documents, copies of which are attached to this motion as Exhibit D:

<u>FTC</u>				
<u>Exhibit No.</u>	<u>Description</u>	<u>Date</u>	<u>BegBates</u>	<u>EndBates</u>
PX05161	Deposition (Brad Mattear)	04/06/2018	PX05161-001	PX05161-070

<u>Otto Bock</u>				
<u>Exhibit No.</u>	<u>Description</u>	<u>Date</u>	<u>Beg Bates</u>	<u>EndBates</u>
RX-0533	US Project/ Sept 2017	09/01/2017	0000168	0000175
RX-0678	Presentation	11/28/2017	0000316	0000332
RX-1029 ¹	Deposition (Brad Mattear)	04/06/2018	RX-1029-00001	RX-1029- 000070

¹ FTC Exhibit No. PX05161 and Otto Bock Exhibit No. RX-1029 are the same document – the Deposition of Brad Mattear (from Proteor, Inc.). The Deposition is attached only once to this motion.

II. 16 C.F.R. § 3.45(b) Standard.

An Administrative Law Judge may appropriately order that material offered into evidence be placed *in camera* when finding that its public disclosure “will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment...” 16 C.F.R. § 3.45(b). To show a clearly defined, serious injury, a movant “must make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). In considering both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol- Myers Co.*, 90 F.T.C. 455, 456-457 (1977)

III. The Confidential Documents are Secret and Material such that Disclosure Would Result in Serious Injury to Proteor.

As set forth in the Desprez Declaration, the Confidential Documents are both secret and material to Proteor’s business. In sum, the Confidential Documents contain information detailing Proteor’s (i) future strategic business plans in the United States including identifying projects and products currently being developed by Proteor; (ii) pricing information related to the sales of Proteor products to customers; and (iii) past, current, and anticipated future profits

(the “Proprietary Information”). Desprez Declaration at ¶ 5. Regarding secrecy, the Proprietary Information is not known outside of Proteor other than by those few businesses with whom Proteor is working to carry out clinical studies. Desprez Declaration at ¶ 6. Within Proteor, the Proprietary Information is known only by high ranking executives. Desprez Declaration at ¶ 7. Proteor has exerted significant effort to maintain the secrecy of the Proprietary Information by having the businesses carrying out clinical studies sign confidentiality agreements before Proteor discloses any Proprietary Information. Desprez Declaration at ¶ 8. Proteor also marked the Confidential Documents as “Confidential” when disclosing them to the FTC and Otto Bock pursuant to the Protective Order entered in this case dated December 20, 2017. Declaration at ¶ 9. Finally, Proteor is now filing this motion for *in camera* treatment for the Confidential Documents. Declaration at ¶ 10.

Regarding materiality, Proteor has [REDACTED]
[REDACTED] Declaration at ¶ 11. Such investment is significant for Proteor given Proteor’s share of the market in the United States. Declaration at ¶ 12. Public disclosure of the Proprietary Information would jeopardize Proteor’s significant investment in research and development of the [REDACTED]. In particular, public disclosure of the Proprietary Information may cause competitors to develop and release similar products before Proteor’s anticipated launch date resulting in lost market share and revenues. Declaration at ¶ 13. Competitors could not get a complete picture of Proteor’s strategic business plans without disclosure of the Proprietary Information. Declaration at ¶ 14.

Proteor's potential loss of a competitive business advantage "is a good example of a clearly defined, serious injury." See *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *7 (1999). Moreover, Proteor is a third-party subpoena respondent in this case. Such third-party status deserves "special solicitude" in requests for in camera treatment of competitively-sensitive, confidential business information. See *In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984) (Granting in camera treatment with respect to third-party subpoena respondents, "encourages cooperation with future adjudicative discovery requests."). For all of the foregoing reasons, in camera treatment of the Confidential Documents is warranted in this case.

IV. Duration of In Camera Treatment.

In determining the length of time for which *in camera* treatment is appropriate, the distinction between trade secrets and ordinary business records is important because ordinary business records are granted less protection than trade secrets. *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1189 (1961). Trade secrets are primarily limited to secret formulas, processes, and other secret technical information. *Id.* Ordinary business records, on the other hand, include names of customers, prices to certain customers, costs of doing business, profits, business plans, and marketing plans. See *Hood*, 1961 FTC LEXIS 368, at *13; *In re McWane, Inc.*, 2012 FTC LEXIS 143 (2012); *In re Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14 (1996). Where *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years. *McWane, Inc.*, 2012 FTC LEXIS 143; *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101 (2011).

As mentioned above, the Proprietary Information includes (i) future strategic business plans in the United States including identifying projects and products currently being developed by Proteor; (ii) pricing information related to the sales of Proteor products to customers; and (iii) current and anticipated future profits. This information is akin to that deemed “ordinary business records” by Courts. Thus, Proteor seeks *in camera* treatment for the Confidential Documents in their entirety for a period of five years.

V. Conclusion.

For the foregoing reasons, and those set forth in the Desprez Declaration, Proteor respectfully requests that this Court grant this motion for *in camera* treatment for the Confidential Documents in their entirety for a period of five years.

Dated: June 8, 2018

Respectfully submitted,

By: /s/ Nathaniel T. Cutler
Nathaniel T. Cutler
THORELLI & ASSOCIATES, P.C.
Three First National Plaza
70 West Madison St. Ste. 5750
Chicago, IL 60602
(312) 357-0300
Counsel for Proteor, Inc.

RULE 3.22(G) STATEMENT

The undersigned counsel for Proteor, Inc., certifies that he spoke with FTC counsel, William Cooke, on May 24, 2018 via telephone and spoke with Otto Bock counsel, Theresa A. Langschultz, of Duane Morris LLP, on June 5, 2018 via telephone and email. Both Mr. Cooke and Ms. Langschultz stated that they would not object to Proteor's motion.

Dated: June 15, 2018

By: /s/ Nathaniel T. Cutler
Nathaniel T. Cutler
THORELLI & ASSOCIATES, P.C.
Three First National Plaza
70 West Madison St. Ste. 5750
Chicago, IL 60602
(312) 357-0300
Counsel for Proteor, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Combined Motion for In Camera Treatment and Proposed Order were, on June 15th, 2018, served on the following parties via the FTC E-Filing System:

The Office of the Administrative Law Judge
D. Michael Chappell
Chief Administrative Law Judge Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Room H-106
Washington, D.C. 20580

The Office of the Secretary
Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Room H-172
Washington, D.C. 20580

Steve Lavender
William Cooke
Yan Gao
Lynda Lao
Stephen Mohr
Michael Moiseyev
James Weiss
Daniel Zach
Amy Posner
Meghan Iorianni
Jonathan Ripa
Lisa De Marchi Sleigh
Catherine Sanchez
Sarah Wohl
Joseph Neely
Dylan Brown
Betty McNeil
Stephen Rodger
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Room H-172
Washington, D.C. 20580

Wayne A. Mack
Edward G. Biester III
Sean P. McConnell
Sarah Kulik
William Shotzbarger
Sean Zabaneh
Christopher H. Casey
Simeon Poles
Andrew Rudowitz
J. Manly Parks
Kelly Eckel
Theresa A. Langschultz
Duane Morris, LLP
30 South 17th Street
Philadelphia, PA 19103

/s/ Nathaniel T. Cutler
Thorelli & Associates, P.C.

EXHIBIT A



Bureau of Competition
Mergers I Division

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

May 24, 2018

VIA EMAIL

Proteor, Inc.
c/o Nathaniel T. Cutler, Esq.
Thorelli & Associates
70 West Madison Street, Suite 5750
Chicago, Illinois 60602

RE: *In the Matter of Otto Bock HealthCare North America, Inc.*, Federal Trade Commission
Dkt. No. 9378

Dear Mr. Cutler,

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intend to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on July 10, 2018. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony which include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). You must also provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

Please be aware that under the current Scheduling Order dated April 26, 2018, the deadline for filing motions seeking *in camera* status is June 11, 2018.

If you have any questions, please feel free to contact me at (202) 326-2331.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Cooke', with a long horizontal flourish extending to the right.

William Cooke
Counsel Supporting the Complaint

Attachment A

Exhibit No.	Description	Date	BegBates	EndBates
PX03228	Nabtesco Document: Distributorship Agreement	3/24/2016	Nabtesco & Proteor0000180	Nabtesco & Proteor0000201
PX03229	Nabtesco Spreadsheet: Sales by Item Detail	01/01/2015 - 03/20/2018	Nabtesco & Proteor0000222	Nabtesco & Proteor0000222
PX03285	Nabtesco Document: Distributorship Agreement	3/24/2016	PX03285-001	PX03285-022
PX05161	Deposition Transcript of Brad Mattear (Proteor, Inc.)	4/6/2018	PX05161-001	PX05161-070

EXHIBIT B

NEW YORK
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WASHINGTON, DC
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LOS ANGELES
TAIWAN
BOSTON
HOUSTON
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HANOI
HO CHI MINH CITY

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LAKE TAHOE
MYANMAR
OMAN
A GCC REPRESENTATIVE OFFICE
OF DUANE MORRIS
ALLIANCES IN MEXICO
AND SRI LANKA

May 29, 2018

VIA EMAIL AND OVERNIGHT COURIER

Proteor, Inc.
(d/b/a Nabtesco and Proteor USA)
c/o Nathaniel T. Cutler
Thorelli & Associates
70 West Madison Street, Suite 5750
Chicago, Illinois 60602
Nathaniel@Thorelli.com

Re: In the Matter of Otto Bock HealthCare North America, Inc., Federal Trade Commission Dkt. No. 9378

Dear Mr. Cutler,

By this letter, we are providing formal notice, pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Respondent Counsel intend to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on July 10, 2018. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony which include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); and *In re Basic*

May 29, 2018
Page 2

Research, Inc., 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). You must also provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

Please be aware that under the current Scheduling Order dated April 26, 2018, the deadline for filing motions seeking *in camera* status is June 11, 2018.

If you have any questions, please feel free to contact me at 215-979-1812.

Very truly yours,

/s/ Sarah O'Laughlin Kulik

Sarah O'Laughlin Kulik

TAL
Enclosures

cc: Sean S. Zabaneh
Sean P. McConnell

Attachment A

Exhibit No.	Description	Date	BegBates	EndBates
RX-1029	Deposition Transcript of Brad Mattear (Proteor, Inc., dba Nabtesco & Proteor in USA)	4/6/2018	RX-1029-00001	RX-1029-00070
RX-0026 (Nabtesco & Proteor0000222)	MPK Sales 2015-2018 YTD Spreadsheet	01/01/2015	Nabtesco & Proteor0000222	Nabtesco & Proteor0000222
RX-0167 (Nabtesco & Proteor0000261)	Confidential - Distributorship Agreement by and between Nabtesco Corporation and Proteor Inc.	03/24/2016	Nabtesco & Proteor0000261	Nabtesco & Proteor0000282
RX-0345 (Nabtesco & Proteor0000105)	Nabtesco Proteor USA - Your Road Companion News - USA 2017	01/01/2017	Nabtesco & Proteor0000105	Nabtesco & Proteor0000112
RX-0346 (Nabtesco & Proteor0000156)	Nabtesco Proteor USA - Your Road Companion News - USA 2017	01/01/2017	Nabtesco & Proteor0000156	Nabtesco & Proteor0000157
RX-0436 (Nabtesco & Proteor0000083)	Nabtesco - Information as to Full Launch Model for NE-Z4(SH) ALLUX	06/01/2017	Nabtesco & Proteor0000083	Nabtesco & Proteor0000083
RX-0533 (Nabtesco & Proteor0000168)	US Project - Nabtesco & Proteor USA Sept 2017 - F. Desprez	09/01/2017	Nabtesco & Proteor0000168	Nabtesco & Proteor0000175
RX-0678 (Nabtesco & Proteor0000316)	Presentation - Nabtesco & Proteor US Project - F. Desprez	11/28/2017	Nabtesco & Proteor0000316	Nabtesco & Proteor0000332
RX-0894 (Nabtesco & Proteor0000084)	Nabtesco - Hanger Clinic - Allux - Four Bar MPK - Functional Knee Solutions - Hanger Education Fair – Presentation		Nabtesco & Proteor0000084	Nabtesco & Proteor0000102
RX-0895 (Nabtesco & Proteor0000120)	hyTrek Single Axis Hydraulic Knee Production Information		Nabtesco & Proteor0000120	Nabtesco & Proteor0000123
RX-0896 (Nabtesco & Proteor0000177)	Proteor - Current Business Structure; Proposed New Business Structure Plan (3Q 2018)		Nabtesco & Proteor0000177	Nabtesco & Proteor0000178
RX-0897 (Nabtesco & Proteor0000351)	Nabtesco Corporation - NK6 Symphony Specifications		Nabtesco & Proteor0000351	Nabtesco & Proteor0000352
RX-0898 (Nabtesco & Proteor0000353)	Nabtesco Proteor USA Manufacturer/Product Guide		Nabtesco & Proteor0000353	Nabtesco & Proteor0000358
RX-0899 (Nabtesco & Proteor0000407)	Information Chart: Product/Country/Prices for CPOs/LCode or Reimbursement Codes		Nabtesco & Proteor0000407	Nabtesco & Proteor0000408

EXHIBIT C

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

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

DECLARATION OF FRÉDÉRIC DESPREZ

I, Frédéric Desprez, pursuant to 28 U.S.C. § 1746, state as follows:

1. I am over eighteen years of age, make this Declaration on my personal knowledge and, if called as a witness, I would testify to the facts set forth herein.
2. I am the Commercial Director and Vice President of Operations for Proteor, Inc. (“Proteor”), non-party movant in the above-entitled action.
3. Proteor received two third-party subpoenas in the above entitled action – one from the FTC and one from Otto Bock.
4. Proteor provided certain documents to the FTC and Otto Bock in response to the two subpoenas, including four competitively-sensitive, confidential business documents (the “Confidential Documents”).
5. The Confidential Documents contain information detailing Proteor’s (i) future strategic business plans in the United States including identifying projects and products

currently being developed by Proteor; (ii) pricing information related to the sales of Proteor products to customers; and (iii) past, current, and anticipated future profits (the “Proprietary Information”).

6. The Proprietary Information is not known outside of Proteor other than by those few businesses with whom Proteor is working to carry out clinical studies.

7. Within Proteor, the Proprietary Information is known only by high ranking executives.

8. Proteor has exerted significant effort to maintain the secrecy of the Proprietary Information by having the businesses carrying out clinical studies sign confidentiality agreements before Proteor discloses any Proprietary Information.

9. Proteor also marked the Confidential Documents as “Confidential” when disclosing them to the FTC and Otto Bock pursuant to the Protective Order entered in this case dated December 20, 2017.

10. Finally, Proteor is now filing this motion for *in camera* treatment for the Confidential Documents.

11. [
]

12. Such investment is significant for Proteor given Proteor’s share of the market in the United States.

13. Public disclosure of the Proprietary Information may cause competitors to develop and release similar products before Proteor’s anticipated launch date resulting in lost market share

and revenues.

14. Competitors could not get a complete picture of Proteor's strategic business plans without disclosure of the Proprietary Information.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 8th day of June 2018, in France.

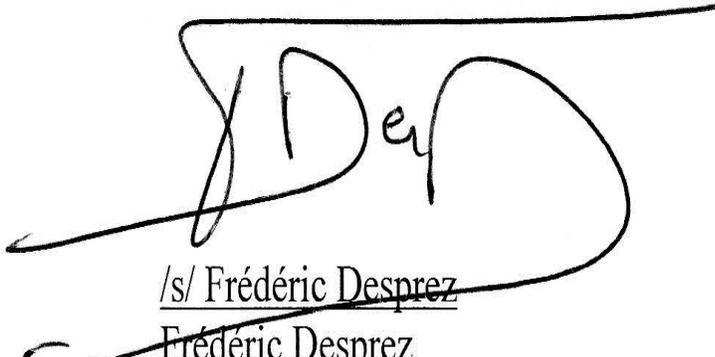
By:  /s/ Frédéric Desprez
Frédéric Desprez

EXHIBIT D
[ENTIRELY REDACTED]

**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 ORDER

Upon consideration of Non-Party Proteor, Inc.’s (“Proteor”) Combined Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided *in camera* treatment in their entirety for a period of five years from the date of this Order:

FTC

<u>Exhibit No.</u>	<u>Description</u>	<u>Date</u>	<u>BegBates</u>	<u>EndBates</u>
PX05161	Deposition (Brad Mattear)	04/06/2018	PX05161-001	PX05161-070

Otto Bock

<u>Exhibit No.</u>	<u>Description</u>	<u>Date</u>	<u>Beg Bates</u>	<u>EndBates</u>
RX-0533	US Project/ Sept 2017	09/01/2017	0000168	0000175

RX-0678	Presentation	11/28/2017	0000316	0000332
RX-1029	Deposition (Brad Mattear)	04/06/2018	RX-1029-00001	RX-1029- 000070

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: _____