

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.

Docket No. 9378

**RESPONDENT’S MOTION FOR LEAVE TO AMEND ITS EXHIBIT LIST AND TO
ADMIT INTO EVIDENCE CERTAIN ADDITIONAL EXHIBITS**

Pursuant to Rule 3.43(b) of the Federal Trade Commission Rules of Practice (“FTC Rules”), 16 C.F.R. § 3.43(b), and the January 18, 2018 Scheduling Order (“Scheduling Order”),¹ Respondent, Otto Bock HealthCare North America, Inc. (“Ottobock” or “Respondent”), respectfully requests leave to amend its Final Proposed Exhibit List and to admit [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]² [REDACTED]

[REDACTED]

I. INTRODUCTION

On May 29, 2018, Respondent submitted its Final Proposed Exhibit List. *See* Exh. D. On July 9, 2018, Respondent Counsel and Complaint Counsel submitted Joint Stipulations on

¹ As amended by Order dated April 26, 2018.

² [REDACTED] are attached to the Declaration of Scott Schneider (“Schneider Decl.”). All other exhibits are attached to the Declaration of Andrew John Rudowitz (“Rudowitz Decl.”).

Admissibility of Exhibits for the exhibits listed in their respective exhibit lists (JX-002). JX-002 was entered into evidence on July 18, 2018.

[REDACTED]

[REDACTED]

[REDACTED] See Exh. A, Exh. B. [REDACTED]

[REDACTED] See Exh. C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Schneider Decl., ¶ 7.

Respondent's Answer to the Complaint denied, among other allegations, that the Merger harms consumers or competition. Further, [REDACTED]

On August 20, 2018, Respondent counsel sought permission of Complaint Counsel to amend its Exhibit List to include [REDACTED], but Complaint Counsel refused. *See* Rudowitz Decl., ¶ 2.

II. ARGUMENT

The Court should grant Respondent leave to amend its exhibit list to [REDACTED] and admit them into evidence. [REDACTED]

[REDACTED]

The Scheduling Order allows for “[a]dditional exhibits [to] be added after the submission of the final lists only by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.” Jan. 18, 2018 Scheduling Order, ¶ 16.

A. Good Cause Exists to Amend Respondent’s Final Proposed Exhibit List.

Respondent admits that [REDACTED] were not included in its Final Proposed Exhibit List. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See Exh. D.

Further, Complaint Counsel will not be prejudiced [REDACTED] being added to Respondent’s exhibit list because [REDACTED]
[REDACTED] See Schneider Decl., ¶ 7. Accordingly, good cause exists to allow Respondent to amend its final exhibit list pursuant to the Scheduling Order.

B. The Court Should Admit [REDACTED] into Evidence Because [REDACTED] is Relevant, and Complaint Counsel will not be Prejudiced.

1. [REDACTED] are Relevant, Material and Reliable Evidence [REDACTED]

FTC Rule 3.43(b) provides that “[r]elevant, material, and reliable evidence shall be admitted.” 16 C.F.R. § 3.43(b). [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Accordingly, [REDACTED] is relevant, material and reliable evidence, and therefore should be admitted into evidence.

2. Complaint Counsel Will Not be Prejudiced by Admitting [REDACTED] into Evidence.

FTC Rule 3.43(b) also provides that “[e]vidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice” 16 C.F.R. § 3.43(b).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

(emphasis added).

Complaint Counsel has already taken ample discovery from [REDACTED]

[REDACTED] Indeed, Complaint Counsel (and their experts) have more than enough information to respond to evidence relating to [REDACTED]

[REDACTED] Moreover, Complaint Counsel has already elicited testimony during trial related to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In addition, one of the FTC's expert witnesses, Christine Hammer, has included in her expert reports, and has had the opportunity to testify at trial about, [REDACTED]

[REDACTED]³ [REDACTED]⁴ [REDACTED]⁵}

Accordingly, Complaint Counsel will suffer no prejudice by admitting [REDACTED] [REDACTED] into evidence.

III. CONCLUSION

For the foregoing reasons, Respondent Counsel respectfully requests that the Court grant its Motion for Leave to Amend Respondent's Exhibit List and to Admit into Evidence Certain Additional Exhibits.

³ See PX06004, Rebuttal Expert Report of Christine M. Hammer, at ¶ 61 [REDACTED]

⁴ See PX06004, Rebuttal Expert Report of Christine M. Hammer, at ¶ 61 [REDACTED]

⁵ See [REDACTED]

Respectfully submitted,

Date: September 5, 2018

/s/ Andrew J. Rudowitz

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UNITED STATES OF AMERICA
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Respondent.

Docket No. 9378

PROPOSED ORDER

Upon consideration of Respondent's Motion for Leave to Amend Respondent's Exhibit List and to Admit into Evidence Certain Additional Exhibits (the "Motion"), any opposition thereto, any hearing thereon, and the entire record in this proceeding,

IT IS HEREBY ORDERED, that the Motion is GRANTED.

IT IS FURTHER ORDERED, that good cause exists for Respondent to amend its Final Exhibit List [REDACTED]

[REDACTED]

[REDACTED]

IT IS FURTHER ORDERED, that JX-002 shall also be amended to include [REDACTED]

[REDACTED]

Date: _____

D. Michael Chappell
Chief Administrative Law Judge

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

DECLARATION OF SCOTT SCHNEIDER IN SUPPORT OF RESPONDENT'S
MOTION FOR LEAVE TO AMEND ITS EXHIBIT LIST AND TO ADMIT INTO
EVIDENCE CERTAIN ADDITIONAL EXHIBITS

I, Scott Schneider, pursuant to 28 U.S.C. § 1746, state and declare as follows:

1. I am the Vice President of Medical Affairs, Government Affairs, and Future Development for Otto Bock HealthCare North America, Inc. ("Ottobock" or "Respondent"). I am over the age of 18, am capable of making this Declaration, know all of the following facts of my own personal knowledge, and, if called and sworn as a witness, could and would testify competently thereto.

2. I submit this declaration in support of Respondent's Motion for Leave to Amend its Exhibit List and to Admit into Evidence Certain Additional Exhibits (the "Motion").

3. I am personally familiar with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Attached as **Exhibit A** is a true and correct copy of [REDACTED]

[REDACTED]

5. Attached as **Exhibit B** is a true and correct copy of [REDACTED]

[REDACTED]

6. Attached as **Exhibit C** is a true and correct copy of [REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

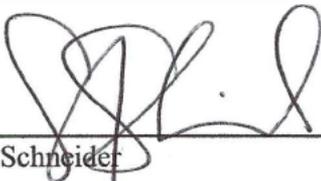
[REDACTED]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury, that the foregoing is true and correct.

PUBLIC

This 27th day of August, 2018.

SANTON, MN
City, State



Scott Schneider

EXHIBIT A

REDACTED IN ENTIRETY

EXHIBIT B

REDACTED IN ENTIRETY

EXHIBIT C

REDACTED IN ENTIRETY

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.

Docket No. 9378

DECLARATION OF ANDREW JOHN RUDOWITZ IN SUPPORT OF RESPONDENT'S
MOTION FOR LEAVE TO AMEND ITS EXHIBIT LIST AND TO ADMIT INTO
EVIDENCE CERTAIN ADDITIONAL EXHIBITS

I, Andrew John Rudowitz, pursuant to 28 U.S.C. § 1746, state and declare as follows:

1. I am an attorney at Duane Morris LLP representing Respondent, Otto Bock HealthCare North America, Inc. ("Ottobock"), in this matter. I am licensed to practice law in the Commonwealth of Pennsylvania. I am over the age of 18, am capable of making this Declaration, know all of the following facts of my own personal knowledge, and, if called and sworn as a witness, could and would testify competently thereto.

2. On August 20, 2018, Respondent Counsel sought permission of Complaint Counsel to amend its Exhibit List to include [REDACTED] at issue in the Motion, but Complaint Counsel refused.

3. Attached as **Exhibit D** is a true and correct copy of excerpts of [REDACTED]
[REDACTED]

4. Attached as **Exhibit E** is a true and correct copy of [REDACTED]
[REDACTED]
[REDACTED]

5. Attached as **Exhibit F** is a true and correct copy of [REDACTED]
[REDACTED]

6. Attached as **Exhibit G** is a true and correct copy of excerpts of [REDACTED]

[REDACTED]

[REDACTED]

7. Attached as **Exhibit H** is a true and correct copy of excerpts of [REDACTED]

[REDACTED]

8. Attached as **Exhibit I** is a true and correct copy of excerpts of [REDACTED]

[REDACTED]

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of September, 2018 in Philadelphia, Pennsylvania.

/s/ Andrew John Rudowitz
Andrew John Rudowitz

EXHIBIT D

REDACTED IN ENTIRETY

EXHIBIT E

REDACTED IN ENTIRETY

EXHIBIT F

REDACTED IN ENTIRETY

EXHIBIT G

REDACTED IN ENTIRETY

EXHIBIT H

REDACTED IN ENTIRETY

EXHIBIT I

REDACTED IN ENTIRETY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 5, 2018, I caused a true and correct copy of the foregoing Respondent's Motion for Leave to Amend Respondent's Exhibit List and to Admit into Evidence Certain Additional Exhibits to be served via the FTC E-Filing System and e-mail upon the following:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Rm. H-110
Washington, DC, 20580

Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, DC 20580

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Steven Lavender
William Cooke
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Sarah Wohl
Joseph Neely
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Betty McNeil
Stephen Rodger
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600 Pennsylvania Ave., NW
Washington, DC, 20580

/s/ Andrew J. Rudowitz
Andrew J. Rudowitz

Notice of Electronic Service

I hereby certify that on September 05, 2018, I filed an electronic copy of the foregoing Public - Respondent's Motion for Leave to Amend Respondent's Exhibit List and to Admit into Evidence Certain Additional Exhibits, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
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I hereby certify that on September 05, 2018, I served via E-Service an electronic copy of the foregoing Public - Respondent's Motion for Leave to Amend Respondent's Exhibit List and to Admit into Evidence Certain Additional Exhibits, upon:

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