

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman  
Noah Joshua Phillips  
Rohit Chopra  
Rebecca Kelly Slaughter  
Christine S. Wilson



In the Matter of

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

Docket No. 9378

**RESPONDENT'S MOTION FOR EXTENSION OF TIME  
AND INCREASE IN WORD LIMITS**

**[EXPEDITED CONSIDERATION REQUESTED]**

1. Respondent Ottobock HealthCare North America, Inc. ("Respondent" or "Ottobock") respectfully requests that the Commission grant Respondent an additional twenty-one (21) days in which to file its opening Appeal Brief and an additional seven (7) days to file its Reply Brief, and also an increase in the respective word limits for Respondent's Appeal Brief and Reply Brief. Respondent respectfully submits that these requests are appropriate due to the unique complexity and extensiveness of the legal and factual issues in this case and also the unusually large size of the hearing record evidence. Due to the limited time frame within which Respondent's opening Appeal Brief must be filed, Respondent respectfully requests expedited consideration of this motion pursuant to Rules 3.22(d) & (f). In support of the request, Respondent states the following:

**Procedural History**

2. The complaint in this matter was issued on December 20, 2017. The hearing of this matter began on July 10, 2018 and continued for more than three months until its conclusion

on October 4, 2018. The time for issuing the Initial Decision was extended from February 21, 2019 to March 28, 2019 based on the government shutdown and, after the end of the shutdown, separately to April 29, 2019 for good cause as explained by Judge Chappell.

3. In a March 18, 2019 Order, Judge Chappell stated that good cause was shown to extend the deadline for filing the Initial Decision because “[t]he record from this multi-week trial is extensive, involving numerous expert witnesses and complex issues.” Judge Chappell noted that the length and complexity of the parties’ proposed findings of fact, conclusions of law, replies to proposed findings of fact and conclusions of law, post-hearing briefs, and reply briefs are “extraordinarily high.” Judge Chappell also noted that the record included nearly 7,000 pages of hearing transcript, and that the hearing involved the testimony of sixty-nine witnesses, either live or by deposition.

4. On April 29, 2019, Judge Chappell issued an *in camera* version of the Initial Decision that found that Ottobock’s acquisition of FIH Group Holdings, LLC (“Freedom”) violated Section 7 of the Clayton Act and Section 5 of the FTC Act. Judge Chappell ordered the divestiture of Freedom assets acquired by Respondent. The *in camera* version of the Initial Decision was served on Respondent on May 3, 2019. The public version of the Initial Decision was issued on May 7, 2019.

5. On May 8, 2019, Respondent filed a notice of appeal.

6. Respondent’s opening Appeal Brief is currently due to be filed on or before May 29, 2019.

7. Respondent has asked Complaint Counsel whether it will consent to any of the relief requested in this motion, but Complaint Counsel declined to do so.

**Request for Extension of Time**

8. Pursuant to Rule 3.52(b), Respondent is currently required to file its opening Appeal Brief within 30 days of the issuance of the Initial Decision, *i.e.*, on or before May 29, 2019. Respondent respectfully submits that a twenty-one (21) day extension of time for filing its opening Appeal Brief is appropriate due to the complexity of this matter, the length of the hearing, the size of the corresponding record, and the length of the Initial Decision, such that Respondent's opening Appeal Brief would be due on or before June 19, 2019. Respondent also requests that the deadline for filing its Reply Brief be extended by an additional seven (7) days, such that Respondent's Reply Brief would be due fourteen (14) days after service of any Answering Brief.

9. As demonstrated throughout the post-hearing briefs, reply briefs, proposed findings of fact, and conclusions of law, this case involves numerous complex defenses and issues, including, but not limited to, product market definition, the lack of harm to competition in any alleged relevant market (including, for example, that the merging parties are not close competitors, that expansion by four existing competitors is timely, likely, and sufficient, that powerful buyers and a unique insurance reimbursement system constrain the ability of manufacturers to raise prices, that efficiencies rebut any perceived harm to competition), the failing and flailing firm defenses, and a partial divestiture defense to liability and as an appropriate remedy.

10. In addition to the complex issues and defenses, an extension of time is justified due to the length of the hearing and the size of the hearing record. As acknowledged by Judge Chappell, the hearing lasted more than three months and involved a record consisting of sixty-

nine witnesses, over 3,100 admitted exhibits, and nearly 7,000 pages of hearing transcript. Further, the parties submitted over 4,400 pages of proposed findings of fact, conclusions of law, replies to proposed findings of fact and conclusions of law, post-hearing briefs, and reply briefs, which Judge Chappell noted was “extraordinarily high.” In addition, Judge Chappell’s Initial Decision is 252 pages and contains more than 1,000 findings of fact and conclusions of law. In order for Respondent to properly and fairly prepare its appeal in this matter, additional time is necessary to analyze this voluminous record and the Initial Decision.

11. Notably, the size of the record in this case is significantly greater than the records of other FTC administrative proceedings in which extensions of time to file an Appeal Brief have been granted. For example, with *In the Matter of Rambus, Inc.*, the Commission granted extra time to file an opening Appeal Brief after considering “the extremely lengthy and detailed” record, the complexity of the facts and issues, and the length of the Initial Decision. Docket No. 9302, Order Granting Extensions of Time to File Appellate Briefs and Increases in Word Count Limits (Mar. 18, 2004). There, the Commission noted that the record in *Rambus* included the live testimony of 44 witnesses, more than 1,900 admitted exhibits, and more than 3,000 pages of proposed findings of fact and reply findings of fact. The record in this case is thus significantly larger than that in *Rambus*.

12. By way of further example, the record here is substantially larger than that of *In the Matter of Tronox/Cristal USA*, which is the last horizontal merger case decided by Judge Chappell. According to Judge Chappell, the record there was “extensive,” including 4,019 pages of hearing transcript, compared to nearly 7,000 pages of hearing transcript in this case. *In the Matter of Tronox/Cristal USA*, Docket No. 9377, Order Extending Time for Filing Initial Decision Pursuant to Commission Rule 3.51 (Nov. 9, 2018). Judge Chappell also noted that the

parties' proposed findings of fact, conclusions of law, replies to proposed findings of fact and conclusions of law, post-hearing briefs, and reply briefs totaled 2,036 pages, compared to 4,400 pages in this case. The record in this case is thus significantly larger than the record in *Tronox*.

13. On December 19, 2017, Ottobock and the Federal Trade Commission executed a Hold Separate Agreement, wherein Ottobock agreed to hold Freedom separate and maintain its business and assets. Ottobock and Freedom have fully complied with the HSA, and it remains in effect. Therefore, no party with an interest in this proceeding will be prejudiced in any way by granting the requested relief.

14. Due to the limited time frame within which Respondent's appeal brief must be filed, Respondent respectfully requests expedited consideration of this motion pursuant to Rules 3.22(d) & (f).

#### **Request for Increase in Word Limits**

15. As demonstrated above, the sheer volume of the record in this matter, the technical complexity of much of the evidence in the record, and the number of issues involved, undue prejudice would result if Respondent is not granted an increase in the presumptive word limits established for appeal briefs. Furthermore, increase in the word limits would better permit the parties to guide the Commission in its *de novo* consideration of the factual and legal issues at issue in the appeal. See Rule § 3.54(a); *In the Matter of the Coca-Cola Bottling Co. of the Sw.*, 118 F.T.C. 452, 534 (1994).

16. As with the request for extension of time, the size of the record in this case is significantly greater than the size of the records of other FTC administrative proceedings in which extensions of word count limitations for appeal briefs have been granted. For example, with *In the Matter of Rambus, Inc.*, the Commission granted the parties' motion for an increase

in word limits and permitted opening, answering, and reply briefs to each contain no more than 32,750 words. Docket No. 9302, Order Granting Extensions of Time to File Appellate Briefs and Increases in Word Count Limits (Mar. 18, 2004) (granting extension of word count to give parties “adequate time and space to prepare their respective appellate briefs”). Because the record in this case is significantly larger than that in *Rambus*, an increase in the word limit is appropriate.

17. Respondent, therefore, respectfully requests that the word limits be amended such that Respondent’s opening Appeal Brief shall contain no more than 32,570 words, and its reply brief shall contain no more than 21,000 words.

18. No party with an interest in this proceeding will be prejudiced in any way by granting the requested relief.

19. Due to the limited time frame within which Respondent’s appeal brief must be filed, Respondent respectfully requests expedited consideration of this motion pursuant to Rules 3.22(d) & (f).

**Conclusion**

For the reasons stated above, Respondent respectfully requests that it be granted extensions of time to file its respective appeal briefs, and an increase in the respective word limits for its appeal briefs.

Respectfully submitted,

Date: May 8, 2019

/s/ Sean P. McConnell

Wayne A. Mack

Edward G. Biester III

Sean S. Zabaneh

Sean P. McConnell

Sarah Kulik

William Shotzbarger

Andrew J. Rudowitz

**DUANE MORRIS LLP**

30 S. 17th Street

Philadelphia, PA 19103

Telephone: (215) 979-1000

Fax: (215) 979-1020

WAMack@duanemorris.com

EGBiester@duanemorris.com

SSZabaneh@duanemorris.com

SPMcConnell@duanemorris.com

SCKulik@duanemorris.com

WShotzbarger@duanemorris.com

AJRudowitz@duanemorris.com

*Counsel for Respondent Otto Bock HealthCare  
North America, Inc.*

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:     **Joseph J. Simons, Chairman**  
                          **Noah Joshua Phillips**  
                          **Rohit Chopra**  
                          **Rebecca Kelly Slaughter**  
                          **Christine S. Wilson**

**In the Matter of**

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

**Docket No. 9378**

**[PROPOSED] ORDER**

On May 8, 2019, Respondent Ottobock HealthCare North America, Inc. filed a Motion for Extension of Time and Increase in Word Limits. The Commission has determined to grant the motion.

IT IS ORDERED that, pursuant to Rule of Practice § 3.22, the appellate briefing deadlines set forth in Rule of Practice § 3.52 are extended as follows:

- Respondent’s Appeal Brief: extend by an additional 21 days to June 19, 2019;
- Respondent’s Reply Brief: extend by an additional 7 days such that the Reply Brief is due 14 days after service of any Answering Brief.

IT IS FURTHER ORDERED that the word limits set forth in Rule of Practice § 3.52(k) are increased as follows:

- Respondent’s Appeal Brief: 32,750 words
- Respondent’s Reply Brief: 21,000 words

By the Commission.

April J. Tabor, Esq.  
Acting Secretary of the Commission

ISSUED:     May \_\_, 2019

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 8, 2019, I caused a true and correct copy of the foregoing Respondent's Motion for Extension of Time and Increase in Word Limits and the Proposed Order thereto to be served via the FTC E-Filing System and e-mail upon the following:

April J. Tabor, Esq.  
Acting Secretary  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Washington, DC 20580

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

Meghan Iorianni  
Jonathan Ripa  
Steven Lavender  
William Cooke  
Yan Gao  
Lynda Lao  
Stephen Mohr  
Michael Moiseyev  
James Weiss

Daniel Zach  
Lisa De Marchi Sleigh  
Catherine Sanchez  
Sarah Wohl  
Joseph Neely  
Dylan Brown  
Betty McNeil  
Stephen Rodger  
Jordan Andrew

Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC, 20580

*/s/ Sean P. McConnell*  
\_\_\_\_\_  
Sean P. McConnell

Notice of Electronic Service

**I hereby certify that on May 08, 2019, I filed an electronic copy of the foregoing Public - Respondent's Motion for Extension of Time and Increase in Word Limits, with:**

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

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on May 08, 2019, I served via E-Service an electronic copy of the foregoing Public - Respondent's Motion for Extension of Time and Increase in Word Limits, upon:**

Steven Lavender  
Attorney  
Federal Trade Commission  
slavender@ftc.gov  
Complaint

William Cooke  
Attorney  
Federal Trade Commission  
wcooke@ftc.gov  
Complaint

Yan Gao  
Attorney  
Federal Trade Commission  
ygao@ftc.gov  
Complaint

Lynda Lao  
Attorney  
Federal Trade Commission  
llao1@ftc.gov  
Complaint

Stephen Mohr  
Attorney  
Federal Trade Commission  
smohr@ftc.gov  
Complaint

Michael Moiseyev  
Attorney  
Federal Trade Commission  
mmoiseyev@ftc.gov  
Complaint

James Weiss  
Attorney  
Federal Trade Commission  
jweiss@ftc.gov

Complaint

Daniel Zach  
Attorney  
Federal Trade Commission  
dzach@ftc.gov  
Complaint

Amy Posner  
Attorney  
Federal Trade Commission  
aposner@ftc.gov  
Complaint

Meghan Iorianni  
Attorney  
Federal Trade Commission  
miorianni@ftc.gov  
Complaint

Jonathan Ripa  
Attorney  
Federal Trade Commission  
jripa@ftc.gov  
Complaint

Wayne A. Mack  
Duane Morris LLP  
wamack@duanemorris.com  
Respondent

Edward G. Biester III  
Duane Morris LLP  
egbiester@duanemorris.com  
Respondent

Sean P. McConnell  
Duane Morris LLP  
spmccconnell@duanemorris.com  
Respondent

Sarah Kulik  
Duane Morris LLP  
skulik@duanemorris.com  
Respondent

William Shotzbarger  
Duane Morris LLP  
wshotzbarger@duanemorris.com  
Respondent

Lisa De Marchi Sleigh  
Attorney  
Federal Trade Commission  
ldemarchisleigh@ftc.gov  
Complaint

Catherine Sanchez  
Attorney

Federal Trade Commission  
csanchez@ftc.gov  
Complaint

Sarah Wohl  
Attorney  
Federal Trade Commission  
swohl@ftc.gov  
Complaint

Joseph Neely  
Attorney  
Federal Trade Commission  
jneely@ftc.gov  
Complaint

Sean Zabaneh  
Duane Morris LLP  
SSZabaneh@duanemorris.com  
Respondent

Dylan Brown  
Attorney  
Federal Trade Commission  
dbrown4@ftc.gov  
Complaint

Betty McNeil  
Attorney  
Federal Trade Commission  
bmcneil@ftc.gov  
Complaint

Stephen Rodger  
Attorney  
Federal Trade Commission  
srodger@ftc.gov  
Complaint

Christopher H. Casey  
Partner  
Duane Morris LLP  
chcasey@duanemorris.com  
Respondent

Simeon Poles  
Duane Morris LLP  
sspoles@duanemorris.com  
Respondent

Andrew Rudowitz  
Duane Morris LLP  
ajrudowitz@duanemorris.com  
Respondent

J. Manly Parks  
Attorney  
Duane Morris LLP  
JMParks@duanemorris.com

Respondent

Jordan Andrew  
Attorney  
Federal Trade Commission  
jandrew@ftc.gov  
Complaint

Kelly Eckel  
Duane Morris LLP  
KDEckel@duanemorris.com  
Respondent

Theresa A. Langschultz  
Duane Morris LLP  
TLangschultz@duanemorris.com  
Respondent

Sean McConnell  
Attorney