

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



_____)
In the Matter of)
)
Otto Bock HealthCare North America, Inc.,)
a corporation,)
)
Respondent.)
_____)

Docket No. 9378

**ORDER GRANTING JOINT MOTION TO MODIFY THE SCHEDULING
ORDER AND ISSUING FOURTH REVISED SCHEDULING ORDER**

On April 25, 2018, the parties filed a Joint Motion to Modify the Third Revised Scheduling Order (“Motion”). The Motion seeks to extend the remaining pre-hearing deadlines to reflect the revised hearing date of July 10, 2018.¹ Based on the new date for the hearing, the parties have demonstrated good cause for further revising the scheduling order. Accordingly, the parties Motion is GRANTED.²

The remaining pre-hearing deadlines are hereby revised as follows:

- May 8, 2018 - Deadline for Complaint Counsel to provide expert witness reports.

- May 18, 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.

¹ The April 24, 2018 Order Granting Joint Motion to Reschedule the Date for the Hearing reset the date for the hearing in this case from June 1, 2018 to July 10, 2018.

² Except for the date for the Final Pre-Hearing Conference, the deadlines set forth in the Fourth Revised Scheduling Order are the dates proposed by the parties.

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 23, 2018 - Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).

May 29, 2018 - Respondent's Counsel provides to Complaint 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), 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).³ See Additional Provision 7.

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

³ 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.

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.
- June 27, 2018 - Respondent's Counsel files pretrial brief supported by legal authority.
- July 9, 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 January 18, 2018 Scheduling Order remain in effect.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: April 26, 2018