

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGE



ORIGINAL

In the Matter of )  
 ) PUBLIC  
 )  
Otto Bock Healthcare North ) Docket No. D09378  
America, Inc., )  
 )  
 )  
Respondents. )

NON-PARTY DAW INDUSTRIES, INC.'S UNOPPOSED MOTION

FOR AN EXTENSION OF TIME TO FILE MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.21 of the Federal Trade Commission's ("FTC") Rules of Practice ("Rules of Practice"), 16 CFR § 3.45(b), non-party DAW Industries, Inc. ("DAW") respectfully moves this Court for an eleven-day extension of the June 11, 2018 deadline, to June 22, 2018, to file a motion for *in camera* treatment. The FTC and Respondent Otto Bock Healthcare North America, Inc. ("Otto Bock") do not oppose DAW's motion.

The FTC and Otto Bock notified DAW that each intends to introduce at trial in this matter certain documents and testimony produced by DAW pursuant to an "Attorneys Eyes" only designation. *See* Letters dated May 25, 2018, and May 29, 2018, attached as Exhibits A and B, respectfully. DAW's principal was out of the country and unavailable when the letters were sent and did not make the determination to request *in camera* review until Friday, June 8. Additionally, DAW and/or its counsel has not yet received a copy of the transcripts of depositions of DAW witnesses.

DAW has not previously requested any extensions.

Pursuant to 16 C.F.R. section 3.45, a Motion for *In Camera* Treatment must include a copy of the documents for which *in camera* treatment is sought and an affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (Apr. 4, 2017); *In Re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). DAW cannot comply with these requirements in full by June 11, 2018, in part because it does not yet have the deposition transcripts.

DAW requests this extension so it can seek to protect all of its confidential materials.

For the reasons set forth above, DAW respectfully requests an extension to file a Motion for *In Camera* Treatment until June 22, 2018.

DATED: June 11, 2018

By: s/Jing Y. Li

TANYA M. SCHIERLING

tschierling@swsslaw.com

JING Y. LI

jli@swsslaw.com

Solomon Ward Seidenwurm & Smith, LLP

401 B Street, Suite 1200

San Diego, CA 92101

(t) 619-231-0303

(f) 619-231-4755

*Counsel for Non-Party DAW Industries, Inc.*

**STATEMENT REGARDING MEET AND CONFER**

The undersigned certifies that counsel for non-party DAW Industries, Inc. (“**DAW**”) notified counsel for the parties via phone calls and emails on June 11, 2018, that it would be filing a motion to extend the deadline for seeking *in camera* treatment of confidential documents. Counsel for the Federal Trade Commission, and Otto Bock Healthcare North America, Inc. indicated they would not object to DAW’s motion.

DATED: June 11, 2018

By: s/Jing Y. Li  
TANYA M. SCHIERLING  
tschierling@swsslaw.com  
JING Y. LI  
jli@swsslaw.com  
Solomon Ward Seidenwurm & Smith, LLP  
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(t) 619-231-0303  
(f) 619-231-4755

*Counsel for Non-Party DAW Industries, Inc.*

# EXHIBIT A



Bureau of Competition  
Mergers 1 Division

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

May 25, 2018

**VIA EMAIL**

DAW Industries  
c/o Jing Y. Li, Esq.  
Solomon Ward Seidenwurm & Smith LLP  
401 B Street, Suite 1200  
San Diego, California 92101

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

Dear Mr. Li,

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

# **EXHIBIT B**

NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
LOS ANGELES  
TAIWAN  
BOSTON  
HOUSTON  
AUSTIN  
HANOI  
HO CHI MINH CITY

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CHERRY HILL  
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

DAW Industries  
c/o Tanya Schierling  
Solomon Ward Seidenwurm & Smith LLP  
401 B Street, Suite 1200  
San Diego, CA 92101  
[tschierling@swsslaw.com](mailto:tschierling@swsslaw.com)

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

Dear Ms. Schierling,

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 Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a

DUANE MORRIS LLP

30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196

PHONE: +1 215 979 1000 FAX: +1 215 979 1020



May 29, 2018  
Page 2

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

1 TANYA M. SCHIERLING [SBN 206984]  
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2 JING Y. LI [SBN 279818]  
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(t) 619.231.0303  
5 (f) 619.231.4755  
6 Attorneys for Non-Party DAW Industries, Inc.

7  
8 **UNITED STATES OF AMERICA**  
9 **BEFORE THE FEDERAL TRADE COMMISSION**  
10 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

11 In the Matter of,  
12 Otto Bock HealthCare North America, Inc., a  
13 corporation

Case No. 9378

**PROOF OF SERVICE**

14 I, the undersigned, declare:

15 I am employed in the County of San Diego, State of California. I am over the age of 18  
16 years and not a party to this action. My business address is Solomon Ward Seidenwurm & Smith,  
LLP, 401 B Street, Suite 1200, San Diego, California 92101.

17 On June 12, 2018, I will serve a copy, including all exhibits, if any, of the following  
18 document(s):

19 **NON-PARTY DAW INDUSTRIES, INC.'S UNOPPOSED MOTION FOR AN**  
**EXTENSION OF TIME TO FILE MOTION FOR *IN CAMERA* TREATMENT;**  
20 **STATEMENT REGARDING MEET AND CONFER**

21 on the parties in this action listed in the attached Proof of Service List, which is incorporated  
herein by this reference, by the following means:

22  (BY MAIL) I caused each such envelope to be sealed and placed for collection  
23 and mailing from my business address. I am readily familiar with the practice of  
24 Solomon Ward Seidenwurm & Smith, LLP for collection and processing of  
25 correspondence for mailing, said practice being that in the ordinary course of  
26 business mail is deposited with the postage thereon fully prepaid in the United  
States Postal Service the same day as it is placed for collection. I am aware that  
upon motion of the party served, service is presumed invalid if the postal  
cancellation date or postage meter date on the envelope is more than one day after  
the date of deposit for mailing contained in this affidavit.

27  (BY PERSONAL SERVICE). I caused each such envelope to be sealed and given  
28 to a courier authorized by our attorney service (Nationwide Legal, Inc. (619-232-  
7500) to receive said documents for delivery on the same date

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(BY FEDERAL EXPRESS) I am readily familiar with the practice of Solomon Ward Seidenwurm & Smith, LLP for the collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

(BY FACSIMILE) This document was transmitted by facsimile transmission from (619) 231-4755 and the transmission was reported as complete and without error. I then caused the transmitting facsimile machine to properly issue a transmission report, a copy of which is attached to this affidavit.

**BY E-MAIL OR ELECTRONIC TRANSMISSION: Pursuant to agreement by all parties,** I served a copy of the document(s) from e-mail address cconroy@swsslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on June 12, 2018, at San Diego, California.

s/Cristina L. Conroy  
cconroy@swsslaw.com  
Legal Secretary to Tanya M. Schierling and  
Jing Y. Li

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**Attorney**

Notice of Electronic Service

I hereby certify that on June 12, 2018, I filed an electronic copy of the foregoing DAW Industries, Inc.'s Unopposed Motion for Extension of Time to File Motion for In Camera Treatment, 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 June 12, 2018, I served via E-Service an electronic copy of the foregoing DAW Industries, Inc.'s Unopposed Motion for Extension of Time to File Motion for In Camera Treatment, upon:

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Theresa A. Langschultz  
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Respondent

Jing Li  
Attorney



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGE



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In the Matter of )  
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Otto Bock Healthcare North ) Docket No. D09378  
America, Inc., )  
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Respondents. )  
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**DECLARATION OF WENDY A. YONES RE ATTEMPTED FILING**

I, Wendy A. Yones, declare:

1. I am a legal secretary at Solomon Ward Seidenwurm & Smith, LLP ("SWSS"), attorneys of record for Non-Party DAW Industries, Inc. ("DAW") in this matter. If called to testify as to the following facts, I could and would competently do so.

2. At the instruction of Tanya M. Schierling (Partner) and Jing Y. Ling (Associate) at SWSS, I attempted to log onto the Federal Trade Commission's ("FTC") website at [www.ftcefile.gov](http://www.ftcefile.gov), at approximately 8:00 p.m., to file SWSS's Notice of Appearance on behalf of DAW, and DAW's Unopposed Motion for Extension of Time. I attempted to log on three times, each time I was provided the following notice from the FTC E-Filing System:

[CONTINUED ON NEXT PAGE]

**ATTENTION:**

Due to technical error, the system is not responding. We apologize for any inconvenience this may cause. Please try again and if the problem persist [sic] contact the E-Filing Help Desk at 703-934-3515 for further assistance. The Help Desk is available 8:30 AM EST to 5:00 PM EST, Monday to Friday.

I declare under penalty of perjury under the laws of the state of California and the United States of America that the foregoing is true and correct. This Declaration is executed this 12th day of June 2018, at San Diego, California.

By: s/Wendy A. Yones

Legal Secretary To:

TANYA M. SCHIERLING

tschierling@swsslaw.com

JING Y. LI

jli@swsslaw.com

Solomon Ward Seidenwurm & Smith, LLP

401 B Street, Suite 1200

San Diego, CA 92101

(t) 619-231-0303

(f) 619-231-4755

*Counsel for Non-Party DAW Industries, Inc.*

1 TANYA M. SCHIERLING [SBN 206984]  
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2 JING Y. LI [SBN 279818]  
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3 SOLOMON WARD SEIDENWURM & SMITH, LLP  
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4 San Diego, California 92101  
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5 (f) 619.231.4755  
6 Attorneys for Non-Party DAW Industries, Inc.  
7

8 UNITED STATES OF AMERICA  
9 BEFORE THE FEDERAL TRADE COMMISSION  
10 OFFICE OF ADMINISTRATIVE LAW JUDGES

11 In the Matter of, Case No. 9378  
12 Otto Bock HealthCare North America, Inc., a PROOF OF SERVICE  
13 corporation

14 I, the undersigned, declare:

15 I am employed in the County of San Diego, State of California. I am over the age of 18  
16 years and not a party to this action. My business address is Solomon Ward Seidenwurm & Smith,  
LLP, 401 B Street, Suite 1200, San Diego, California 92101.

17 On June 12, 2018, I will serve a copy, including all exhibits, if any, of the following  
18 document(s):

19 **DECLARATION OF WENDY A. JONES**

20 on the parties in this action listed in the attached Proof of Service List, which is incorporated  
herein by this reference, by the following means:

21  (BY MAIL) I caused each such envelope to be sealed and placed for collection  
22 and mailing from my business address. I am readily familiar with the practice of  
23 Solomon Ward Seidenwurm & Smith, LLP for collection and processing of  
24 correspondence for mailing, said practice being that in the ordinary course of  
25 business mail is deposited with the postage thereon fully prepaid in the United  
States Postal Service the same day as it is placed for collection. I am aware that  
upon motion of the party served, service is presumed invalid if the postal  
cancellation date or postage meter date on the envelope is more than one day after  
the date of deposit for mailing contained in this affidavit.

26  (BY PERSONAL SERVICE). I caused each such envelope to be sealed and given  
27 to a courier authorized by our attorney service (Nationwide Legal, Inc. (619-232-  
7500) to receive said documents for delivery on the same date

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(BY FEDERAL EXPRESS) I am readily familiar with the practice of Solomon Ward Seidenwurm & Smith, LLP for the collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

(BY FACSIMILE) This document was transmitted by facsimile transmission from (619) 231-4755 and the transmission was reported as complete and without error. I then caused the transmitting facsimile machine to properly issue a transmission report, a copy of which is attached to this affidavit.

**BY E-MAIL OR ELECTRONIC TRANSMISSION: Pursuant to agreement by all parties,** I served a copy of the document(s) from e-mail address cconroy@swsslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on June 12, 2018, at San Diego, California.

s/Cristina L. Conroy  
ccconroy@swsslaw.com  
Legal Secretary to Tanya M. Schierling and  
Jing Y. Li

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(f) 215-689-4964  
(c) 314-378-4127

Attorneys for Otto Bock HealthCare North America, Inc.

Will Cooke  
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Federal Trade Commission, Bureau of  
Competition  
400 7<sup>th</sup> Street, SW  
Washington, DC 20024  
(t) 202-326-2331

Attorney

Notice of Electronic Service

I hereby certify that on June 12, 2018, I filed an electronic copy of the foregoing Declaration of Wendy A. Yones Re Attempted Filing, 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 June 12, 2018, I served via E-Service an electronic copy of the foregoing Declaration of Wendy A. Yones Re Attempted Filing, upon:

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

William Cooke  
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