

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

FIRST REVISED SCHEDULING ORDER

In accordance with the January 19, 2018 Commission Order and due to the partial shutdown of the federal government, the remaining dates in the December 20, 2017 Scheduling Order are hereby revised as follows:

- February 7, 2018 - Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- February 9, 2018 - Complaint Counsel provides expert witness list.
- February 13, 2018 - Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- February 19, 2018 - Respondent's Counsel provides expert witness list.
- March 7, 2018 - Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
- March 9, 2018 - Deadline for supplementing preliminary witness lists.
- March 22, 2018 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.

- April 6, 2018 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- April 16, 2018 - Deadline for Complaint Counsel to provide expert witness reports.
- April 20, 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.
- 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 1, 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 1, 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 1, 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).¹ See Additional Provision 7.

¹ 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

- May 10, 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 rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
- May 14, 2018 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
- May 14, 2018 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 18, 2018 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- May 21, 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.
- May 22, 2018 - Complaint Counsel files pretrial brief supported by legal authority.
- May 23, 2018 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- May 23, 2018 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 24, 2018 - Exchange proposed stipulations of law, facts, and authenticity.
- May 28, 2018 - Respondent's Counsel files pretrial brief supported by legal authority.
- May 30, 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.

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.

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.

June 1, 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: January 24, 2018

Notice of Electronic Service

I hereby certify that on January 24, 2018, I filed an electronic copy of the foregoing First Revised Scheduling Order, with:

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

Donald Clark
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I hereby certify that on January 24, 2018, I served via E-Service an electronic copy of the foregoing First Revised Scheduling Order, upon:

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