

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
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THYSSENKRUPP ACCESS CORP.)	CPSC DOCKET NO.: 21-1
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)	
Respondent.)	
)	

**JOINT MOTION TO AMEND DISCOVERY
SCHEDULE AND FOR PROTECTIVE ORDER**

Pursuant to 16 C.F.R. §§ 1025.23, 1025.31(d) and 1025.31(i), Complaint Counsel (“Complaint Counsel”) and Respondent thyssenkrupp Access Corp., now known as TK Access Solutions Corp. (“Respondent”) (collectively, the “Parties”), hereby jointly move the Presiding Officer for a Protective Order to allow for the production of confidential documents and information and to enter an Order ratifying the Parties’ agreement regarding the Parties’ responses to certain pending discovery.

On July 7, 2021, Complaint Counsel filed and served the Complaint in this matter. [Dkt. 1]. Respondent timely filed and served its Answer to the Complaint on July 27, 2021. [Dkt. 2]. The Parties subsequently filed and served discovery requests upon each other (the “Pending Discovery”). [Dkt. 8–10, 14–15]. Respondent’s responses to the Pending Discovery would have been due on August 30, 2021, and Complaint Counsel’s responses are due on September 7, 2021, under the Commission’s Rules of Practice for Adjudicative Proceedings, 16 C.F.R. Part 1025; however, a Presiding Officer has not been assigned to this matter.

The Parties agree that due to the nature of the materials that will be produced in discovery in this matter, an appropriate Protective Order is necessary to allow the Parties to respond to the Pending Discovery and obtain other relevant and essential discovery. The Protective Order specifies the conditions under which confidential documents and information in possession of the Parties shall be exchanged, used, or protected, including in response to discovery requests. Thus, pursuant to 16 C.F.R. § 1025.31(d), the Parties ask that the Presiding Officer enter the attached proposed joint Protective Order.

In addition, given the need for a Protective Order to facilitate the Parties' responses to the Pending Discovery, and because to date a Presiding Officer has not been assigned to this matter, the Parties have agreed as follows:

1. The Parties agree that notwithstanding 16 C.F.R. § 1025.31(h), discovery responses shall be served upon the Parties only, and will not be filed with the Secretary or served on the Presiding Officer, unless a dispute arises requiring that a response (or a portion thereof) be filed with the Secretary or served on the Presiding Officer; and
2. The Parties agree that objections and responses to the Pending Discovery shall be deferred until 30 days after the entry of an appropriate Protective Order. The Parties also agree that any objections to the Pending Discovery shall be preserved until such time that the responses to the Discovery are served.

Accordingly, the Parties request that the Presiding Officer issue a just and appropriate Order ratifying the agreement of the Parties, as set forth above, pursuant to 16 C.F.R. § 1025.31(i).

Thus, the Parties respectfully request that the Presiding Officer grant the relief requested in this motion.

Dated: September 1, 2021



Mary B. Murphy, Director
Gregory M. Reyes, Trial Attorney
Michael J. Rogal, Trial Attorney
Frederick C. Millett, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Complaint Counsel for
U.S. Consumer Product Safety Commission

Dated: September 1, 2021



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Attorneys for Respondent thyssenkrupp
Access Corp., now known as TK Access
Solutions Corp.

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**ORDER ON JOINT MOTION TO AMEND
DISCOVERY SCHEDULE AND FOR PROTECTIVE ORDER**

This matter, having come before the Presiding Officer on the Joint Motion to Amend Discovery Schedule and for Protective Order (“Joint Motion”) dated September 1, 2021, and for good cause having been found to grant the Joint Motion, it is on this _____ day of _____, 2021,

ORDERED that the Joint Motion is GRANTED.

IT IS HEREBY ORDERED THAT:

1. Discovery responses shall be served upon the Parties only, and will not be filed with the Secretary or served on the Presiding Officer, unless a dispute arises requiring that a response (or a portion thereof) be filed with the Secretary or served on the Presiding Officer; and
2. Objections and responses to the discovery the Parties have served upon each other (Dkt. 8–10, 14–15) (“Pending Discovery”) shall be deferred until 30 days after the entry of the attached Protective Order. Any objections to the Pending Discovery shall be preserved until such time that the responses to such discovery are served.

IT IS FURTHER ORDERED THAT the attached Protective Order is GRANTED.

Presiding Officer

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PROTECTIVE ORDER

Pursuant to 16 C.F.R. § 1025.31(d), Complaint Counsel (“Complaint Counsel”) and Respondent thyssenkrupp Access Corp., now known as TK Access Solutions Corp. (“Respondent”) (collectively, the “Parties” or, where appropriate, a “Party”), have requested that the Court enter a Protective Order. Accordingly, it is ORDERED that Complaint Counsel and Respondent are hereby bound to the following Protective Order to control disclosure of protected documents to be exchanged in this proceeding:

1. Confidential Information. As used in this Order, Confidential Information means information designated “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” or the previously produced materials described in Paragraph 3 and so designated, by the producing Party that falls within one or more of the following categories: (a) information prohibited from disclosure or subject to confidentiality by any statute or regulation, (b) information that reveals trade secrets, (c) research, technical, financial, or commercial information that the Party has maintained as confidential, (d) medical information concerning any individual, (e) personally identifiable information (including without limitation names of persons who are not public figures, home addresses, personal telephone and cell numbers, personal email addresses, current

employers (for any former employees of a Party), social security numbers, and any other information protected by applicable law), and (f) income tax returns and other non-public financial information.

2. Scope. Materials designated as confidential in accordance with paragraph 3 below (“Documents”) including, but not limited to, materials produced in the course of discovery, shall be subject to this Order concerning Confidential Information. Documents include electronic images, duplicates, extracts, summaries, notes, or descriptions that are derived from Confidential Information or contain Confidential Information or disclose the substance of Confidential Information. The Court, as referred to herein, is the Presiding Officer for purposes of this Order.

3. Designation as Protected Material. A Party may designate a Document as Confidential Information under this Order by placing the words “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” on the Document and all copies in a manner that will not interfere with the legibility of the Document. Such designation shall be made by the producing Party prior to or at the time the Documents are produced or disclosed. A Party may designate any materials produced prior to the issuance of this Order as Confidential Information within 30 days after issuance of this Order. Such previously produced materials being designated as Confidential Information must be specifically identified by the designating Party.

4. Depositions. This Order protects deposition testimony taken in this proceeding only if designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” on the record at the time the testimony is taken. Deposition testimony so designated shall be treated as Confidential Information. After delivery of the transcript by the court reporter, any Party may dispute the continued classification of the transcript or the specific portions of the transcript that are

designated Confidential Information pursuant to the procedure identified in paragraph 8 of this Order.

5. Protection of Confidential Information.

(a) General Protections. Confidential Information shall not be used or disclosed by the Parties, counsel for the Parties or any other persons identified in subparagraph (b) for any purpose other than in this proceeding or any appeals thereof.

(b) Limited Disclosures. The Parties and counsel for the Parties shall not disclose or permit the disclosure of any Confidential Information to any third person or entity except to the following:

(1) Counsel. Counsel for the Parties and employees of counsel who are reasonably involved in assisting counsel in representing the Parties to this proceeding.

(2) Parties. Individual Parties and employees of a Party, but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of the litigation.

(3) The Court and its personnel. The Presiding Officer and staff of the Office of the Secretary responsible for this proceeding.

(4) The Commissioners and their staffs. The Commissioners of the CPSC and their staffs, to the extent necessary to perform their functions under the Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. Part 1025, or the Consumer Product Safety Act, 15 U.S.C. § 2051, *et seq.*, as it relates to this matter.

(5) Court reporters. Court reporters engaged for depositions or hearings.

(6) Contractors. Those persons specifically engaged for the limited purpose of making copies of Documents, organizing or processing Documents, or for providing discovery support.

(7) Consultants and Experts. Consultants, investigators, or experts employed or retained by the Parties or counsel for the Parties to assist in the preparation and trial of this proceeding, but only after such persons have completed the certification contained in Attachment A.

(8) Witnesses at depositions. During their depositions, witnesses in this action to whom disclosure is reasonably necessary, but only after such persons have completed the certification contained in Attachment A. Witnesses shall not retain any Documents or copies of Documents containing Confidential Information, except that witnesses may receive a copy of all pages of deposition testimony and exhibits marked at their depositions as containing Confidential Information in connection with review of the transcripts, subject to the terms of this Order.

(9) Others by Consent or Order. Any other person by consent of the producing Party or by order of the Court.

(c) Required disclosures. Notwithstanding the limitations set forth above, Complaint Counsel may disclose Confidential Information as required by the CPSA, 15 U.S.C. § 2051, *et seq.*, and applicable regulations, or as otherwise required by law. Such disclosures will be made pursuant to applicable law, including, but not limited to, 15 U.S.C. § 2055.

6. Inadvertent Failure to Designate. An inadvertent failure to designate a Document as Confidential Information or a failure to serve a timely Notice of Designation does not, standing alone, waive the right to so designate the Document. If a Party designates a Document as

Confidential Information after it was initially produced, or serves a Notice of Designation after the time set forth in this Order, the receiving Party, on notification of the designation, must make a reasonable effort to assure that the document is treated in accordance with the provisions of this Order.

7. Productions Under This Order Shall Not Waive Privilege or Protection. If information subject to a claim of attorney-client privilege, work product protection, or any other privilege or protection is inadvertently or otherwise produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or protection for such information or its subject matter as provided under applicable law, including Federal Rule of Evidence 502. If a producing Party has, inadvertently or otherwise, produced information subject to a claim of protection or privilege, and if the producing Party makes a written request for the return of such information, the information for which a claim of inadvertent production is made (including any analyses, memoranda, or notes which were internally generated based upon such information), as well as all copies, shall be either destroyed or returned immediately to the producing Party, even if the receiving Party disputes the claim of privilege. If the receiving Party disputes the producing Party's assertion of privilege, the producing Party must submit the potentially privileged information to the Court for review in camera.

8. Challenges to Confidential Information Designation.

(a) General Provisions. A Party may request that the Party designating material as Confidential Information promptly confirm in writing whether all or part of any material previously designated as Confidential Information should remain so designated. Within (7) calendar days of receipt of such a request, unless a longer period is agreed to by the Parties or granted by the Presiding Officer, the party designating material as Confidential Information shall

indicate in writing which portions of such material previously designated as Confidential Information should remain so designated. If, following such a request, a Party wishes to challenge the continued designation of material as Confidential Information, that Party must notify the Party designating the material as Confidential Information of the objection.

Additionally, the parties shall make a good-faith effort to meet and confer within seven (7) calendar days of such notification. If the Parties do not resolve an objection, the Court shall have jurisdiction to decide the dispute under the terms of this Order and other applicable law. In any dispute over whether material constitutes Confidential Information, the party designating the material as Confidential Information shall have the burden of demonstrating that the material meets the definition of such information set forth in Section I, supra.

(b) Failure to Initially Object. A failure initially to object to a designation as (for non-producing Parties), or the disclosure of (for producing parties), Confidential Information shall not preclude a Party from later raising objections for good cause. The Parties shall promptly meet and confer in such instances and, if unable to reach agreement, the Court shall have jurisdiction to decide the dispute. Until the Court rules on the challenge, all Parties shall continue to treat the material as Confidential Information.

9. Using Protected Material in Pre-Hearing or Pre-Trial Briefs, Motions, and Post-Hearing or Post-Trial Briefs. If any Confidential Information is contained in any pleading, motion, exhibit or other paper filed prior to or after the hearing or trial in this matter, the Secretary and the Court shall be so informed and such papers shall be filed in camera.

10. Using Protected Material at the Hearing or Trial. Nothing in this Order shall prevent a Party from using any Documents at any hearing or trial in this matter. A Party that intends to present, or that anticipates that another Party may present, Confidential Information at a hearing

or trial in this matter shall bring that issue to the Court's and the Parties' attention without first disclosing the Confidential Information. The Court may thereafter make such orders as are necessary to govern the use of such Documents at a hearing or trial in this matter.

11. Third Party Subpoenas. Any Party seeking the production of material via subpoenas to third parties shall:

(a) provide the non-requesting Party with a copy of the application for the issuance of a subpoena concurrently with the requesting Party's submission of that application to the Presiding Officer; and

(b) provide the non-requesting Party with a copy of the material produced promptly after receipt of such material. The non-requesting Party shall have thirty (30) days thereafter in which to designate such material produced by a third party as confidential pursuant to this Order, only to the extent that such material is the Confidential Information of the non-requesting Party.

12. Confidential Information Subpoenaed or Ordered Produced in Other Litigation. If a Party other than the designating Party is served with a subpoena or order issued in other litigation that would compel disclosure of any Document designated in this action as Confidential Information, the Party must notify the designating Party, in writing, immediately and in no event more than three business days after receiving the subpoena or order, in order to permit the designating Party to contest such subpoena or order. Such notification must include a copy of the subpoena or court order.

13. Inadvertent Disclosure. Any Party that becomes aware of any unauthorized disclosure of Confidential Information shall promptly give notice to the Party that produced the document of such circumstances. Upon receipt of such notice, the Party that produced the document may

seek such relief as is appropriate. In any event, the Party that made the unauthorized disclosure shall immediately use its best efforts to retrieve such information and prevent further disclosure.

14. Conclusion of Litigation.

(a) Effect of Order. Unless otherwise agreed or ordered, this Order shall terminate after dismissal of the matter or at the conclusion of the litigation. Subsequent disclosure of information and materials subject to this Order will be governed in accordance with section 6 of the CPSA, 15 U.S.C. § 2055, and in accordance with the requirements of the FOIA, 5 U.S.C. § 552, *et seq.*

(b) Obligations of Parties and Counsel at Conclusion of Litigation. After dismissal or at the conclusion of the litigation, Respondent shall destroy all Confidential Information and documents marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” under this Order, produced by any other Party, unless the Document has been offered into evidence or filed without restriction as to disclosure. After dismissal or at the conclusion of the litigation, Complaint Counsel shall destroy all Confidential Information and documents marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” under this Order, produced by any other Party, in accordance with federal law and federal record retention requirements, unless the Document has been offered into evidence or filed without restriction as to disclosure.

(c) Obligations of Consultants, Experts, Witnesses, or Other Persons at Conclusion of Litigation. At the time that any person identified in paragraph 5(b)(6)–(9) concludes participation in this proceeding, such person shall return to counsel or destroy all Documents containing Confidential Information that are in the possession of such person, and shall certify such destruction in writing. Within sixty days after dismissal or at the conclusion of the litigation each Party shall certify in writing to all other Parties that it has notified all such persons employed or

contracted or by that Party, or witnesses put forth by that Party, of the requirements of this subparagraph.

(d) Retention of Work Product and One Set of Filed Documents. Notwithstanding the above requirements to destroy Documents, counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential Information, and (2) one complete set of all Documents filed with the Court. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information.

15. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the Parties, and persons made subject to this Order by its terms. The Parties, their counsel, and any other persons subject to the terms of this Order shall be subject to the jurisdiction of this Court and the U.S. Consumer Product Safety Commission for enforcement of the terms of this Order.

SO ORDERED:

Presiding Officer

Dated: _____

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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 Respondent.)

ATTACHMENT A

**ACKNOWLEDGMENT OF
CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

The undersigned hereby acknowledges that he/she has read the Protective Order in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the U.S. Consumer Product Safety Commission and the Presiding Officer in matters relating to the Protective Order and understands that the terms of the Order obligate him or her to use materials designated as Confidential Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or entity except as provided by law. The undersigned acknowledges that violation of the Order may result in penalties as provided by statute or regulation.

[next page]

Name: _____

Job Title: _____

Employer: _____

Address: _____

Date: _____

Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2021, I served the foregoing Joint Motion to Amend Discovery Schedule and for Protective Order upon all parties and participants of record in these proceedings as follows:

An original and three copies by U.S. mail, postage prepaid, and one copy by email, to the Secretary:

Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Email: AMills@cpsc.gov

One copy by U.S. mail, postage prepaid, to the Presiding Officer:

Presiding Officer
c/o Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Email: AMills@cpsc.gov

By email to Counsel for Respondent:

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