

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
Polypore International, Inc.)
a corporation)
)
)

Docket No. 9327

PUBLIC DOCUMENT

**MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION FOR LEAVE TO
TAKE THE DEPOSITION OF GRAEME FRASER-BELL IN THE UNITED KINGDOM
PURSUANT TO 16 C.F.R. § 3.36(b)**

Respondent Polypore International, Inc. ("Polypore") respectfully submits this memorandum in support of its Motion pursuant to Federal Trade Commission Rule of Practice 3.36, 16 C.F.R. § 3.36, for the issuance of a subpoena *ad testificandum* for the deposition of Graeme Fraser-Bell.

FACTUAL BACKGROUND

On November 6 2008, ENTEK International LLC ("ENTEK"), a global battery separator manufacturer and a competitor of Polypore, after cooperating extensively with the Federal Trade Commission ("FTC") during its investigation in this matter last summer and producing over 62,000 of its documents to the FTC (including customer contracts and feasibility studies to expand production) in response to a subpoena issued to it and responding to a Civil Investigative Demand, filed a motion with this Court to attempt to block Polypore's access to these materials.¹ See Third Party ENTEK International LLC's Memorandum in Support of Motion for Protective Order Pursuant to 15 U.S.C. §§ 46(f), 57b-2(d)(1)(c) and 57b-2(d)(2), and 16 C.R.R. § 4.10, p.

¹ According to ENTEK's website, ENTEK manufactures and sells battery separators itself and through its wholly owned company, ENTEK International Ltd. See Exhibit A hereto ("Initially, ENTEK shipped its separators to customers throughout the United States, Canada and Mexico. In 1989 it established a joint venture with Cookson Ltd. in Newcastle, called Cookson Entek Ltd. That structure changed when in 1996, ENTEK took complete control of the joint venture and became established worldwide, supplying cutting-edge technology products around the globe. In 1999, ENTEK purchased Cookson's equity and became sole owner of ENTEK International Ltd.")

1.² On November 6, 2008, Polypore served a subpoena *duces tecum* on ENTEK, seeking access to the information that ENTEK previously provided to the FTC and other information and evidence relevant to Polypore's defense in this case. A copy of the Subpoena *duces tecum* was attached as Exhibit B to Polypore's Motion to Compel, filed on January 13, 2009. Over the course of a month, Polypore negotiated in good faith with ENTEK to address and resolve ENTEK's concerns over Respondent's subpoena *duces tecum* including issues of confidentiality (*see e.g.* Exhibit C hereto) and in early December 2008 an agreement in principle was reached between ENTEK and Polypore over that subpoena, memorialized by letter dated December 22, 2008. *See* Exhibit D hereto. In those negotiations, ENTEK objected to reviewing files from large numbers of custodians concerning ENTEK's communications with its customers (Exh. A (Request no. 5)) but agreed to limit the review to three people. Graeme Fraser-Bell, who ENTEK represented was the Vice President of International Sales, was one of the three. *See Id.*

The agreement reached between ENTEK and Polypore with respect to the subpoena *duces tecum* has proved illusory. To date, ENTEK has produced very few documents to Polypore. Polypore's counsel is reviewing ENTEK's production, but that review is ongoing and not complete. ENTEK's production, produced only in the first week of January, consists almost entirely of its response to the CID which it sent to the FTC in July of last year. From simple screen shots produced by ENTEK, it is evident that ENTEK produced documents from Mr. Fraser-Bell to the FTC as part of the response to the CID. Now, after acknowledging the importance of Mr. Fraser-Bell's files to this matter, ENTEK attempts to distance itself from him, oddly arguing that discovery should not be had of him. From simple screen shots produced by ENTEK, it is evident that ENTEK produced documents from Mr. Fraser-Bell to the FTC as part of the response to the CID.

² ENTEK subsequently withdrew that motion.

Prior to the institution of this action against it, Polypore had reason to believe that ENTEK was expanding its capacity in the United Kingdom. Mr. Fraser-Bell, with his position as Vice President of International Sales, is a central actor, believed to have extensive knowledge of ENTEK's sale of battery separators to customers in this global market. Upon information and belief, Mr. Fraser-Bell is also knowledgeable of the other suppliers of battery separators located in Europe and Asia, again an important part of Respondent's defense in this matter, to wit that contrary to the FTC's charge, the market for battery separators is global, and not limited to North America.

On December 30, 2008, Polypore served a subpoena *ad testificandum* on Mr. Fraser-Bell, as an agent of ENTEK ("Fraser-Bell Subpoena"). A copy of the Fraser-Bell Subpoena is attached as Exhibit E. Counsel for ENTEK accepted service of the Fraser-Bell Subpoena on December 30, 2008. On January 9, 2009, ENTEK filed a motion to quash the Fraser-Bell Subpoena. As part of its motion, ENTEK submitted a declaration from Mr. Fraser-Bell. In that declaration, Mr. Fraser-Bell states that he is a British citizen, and serves as the Vice President of International Sales for ENTEK International Ltd., an affiliate of ENTEK. As the Vice President of International Sales, Mr. Fraser-Bell is "responsible for managing ENTEK International Ltd.'s relationship with non-North American customers" which "requires regular travel to customers throughout Europe and Asia." (*See Declaration of Graeme Fraser-Bell in Support of ENTEK International LL's Motion to Quash the Subpoena Ad Testificandum Issued to Graeme Fraser-Bell and Robert Keith Pursuant to 16 C.F.R. § 3.34(c)*).

ENTEK refuses to make Mr. Fraser-Bell available for a deposition, whether here or in the United Kingdom. Mr. Fraser-Bell is believed to possess important evidence in this matter as he is intimately involved in ENTEK's battery separator sales to customers located throughout the

world and is believed to be knowledgeable of other suppliers of battery separators in the Europe. This evidence cannot be obtained from sources other than Mr. Fraser-Bell.

ARGUMENT

Rule 3.36(b) of the Commission Rules of Practice requires the party seeking issuance of a subpoena to be served in a foreign country to make a specific showing regarding the requested subpoena. With respect to a subpoena to be served in a foreign country, the party must show:

- (1) the material sought is reasonable in scope;
- (2) the material sought is reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of the respondent;
- (3) the information or material sought cannot reasonably be obtained by other means; and
- (4) that the party seeking discovery has a good faith belief that the discovery requested would be permitted by treaty, law, custom, or practice in the country from which the discovery is sought and that any additional procedural requirements have been or will be met before the subpoena is served.

16 C.F.R. § 3.36(b). The subpoena *ad testificandum* sought by Respondent satisfies each of these requirements.

Polypore seeks the issuance of a subpoena to take a deposition of Mr. Fraser-Bell in London, England. The deposition would be no more than seven hours in duration pursuant to the Scheduling Order in this case. Mr. Fraser-Bell as Vice President of International Sales for ENTEK International Ltd. has intimate knowledge of the battery separator industry and is believed to have knowledge of ENTEK's business dealings with customers in the industry located in the United States and abroad, including on issues of pricing, capacity and competition.

The deposition of Mr. Fraser-Bell is reasonably relevant to the allegations of the Complaint and to the Respondent's defenses. The FTC's Rules allow Polypore to "obtain discovery to the extent that it may be reasonably expected to yield information relevant to the

allegations in the complaint, to the proposed relief, or to the defenses of [the] respondent." 16 C.F.R. § 3.31(c)(1) (*emphasis added*). Throughout these proceedings, Respondent has asserted, as one of its defenses, that the market for battery separators is global, not limited to North America as the FTC contends:

- Respondent admits that it develops, manufactures and markets battery separators in a global market. (Answer, ¶ 4)(*emphasis added*).
- Respondent has denied that the relevant geographic market in which to analyze the effects of this transaction is limited to North America. (Answer, ¶ 14).
- Respondent has repeatedly denied the characterization of "automotive, motive, UPS and all PE markets" as distinct and proper markets. (Answer, ¶ 42).
- Most importantly, as an affirmative defense, Respondent asserted that the relevant product and geographic market definitions alleged in the Complaint fail as a matter of law. (Answer, Third Affirmative Defense; *see also* Resp. Mot. to Dismiss, n. 55 ("Polypore disputes the designations of the markets as alleged by the FTC and will assert its defenses to the market claims as necessary at the hearing before the ALJ"))).

Under the FTC's discovery standard, Polypore is entitled to seek evidence which will support these defenses. 16 C.F.R. §3.31(c)(1). The testimony sought by Respondent from Mr. Fraser-Bell goes directly to certain elements of Complaint Counsel's case and Respondent's defense that the alleged relevant product and geographic market of Complaint Counsel fails as a matter of law. (*See Answer and Defenses of Respondent Polypore International, Inc.*).

The information sought through Mr. Fraser-Bell's deposition cannot be obtained by other means. Mr. Fraser-Bell, with his position as Vice President of International Sales, has relevant knowledge about customers and other suppliers in both Europe and Asia and any expansion effort by ENTEK in the United Kingdom to increase capacity for the sale of battery separators to customers located in the United States and elsewhere in the world. ENTEK in its motion to quash does not deny Mr. Fraeser-Bell's extensive knowledge of matters relevant to this action.

There is simply no other person at ENTEK that could substitute for the deposition testimony of Mr. Fraser-Bell.

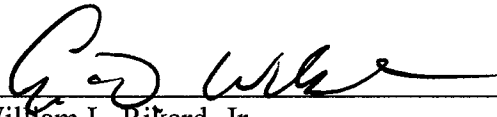
Finally, the Respondent has a good faith belief that the deposition of Mr. Fraser-Bell is permitted in the United Kingdom and that any additional procedural requirements have been or will be met before the subpoena is served. Both the United States and United Kingdom are signatories to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, which provides the opportunity to depose a witness overseas. 28 U.S.C.A. 1781 (1979). Alternatively, Respondent can hire a British solicitor to take the deposition of Mr. Fraser-Bell in the U.K. U.S. Department of State, http://travel.state.gov/law/info/judicial/judicial_671.html.

CONCLUSION

For the foregoing reasons, Respondent respectfully petitions this court for an order granting Respondent's Motion for leave to depose Mr. Fraser-Bell's in the United Kingdom should this court grant Third Party ENTEK International LLC's Motion to Quash the Fraser-Bell Subpoena.

Dated: January 14, 2009

Respectfully Submitted,



William L. Rikard, Jr.

Eric D. Welsh

PARKER POE ADAMS & BERNSTEIN, LLP

Three Wachovia Center

401 South Tryon Street, Suite 3000

Charlotte, NC 28202

Telephone: (704) 372-9000

Facsimile: (704) 335-9689

williamrikard@parkerpoe.com

ericwelsh@parkerpoe.com

John F. Graybeal

PARKER POE ADAMS & BERNSTEIN, LLP

150 Fayetteville Street

Raleigh, NC 27602

Telephone: (919) 835-4599

Facsimile: (919) 828-0564

johngraybeal@parkerpoe.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing *Memorandum In Support of Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36*, and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580
secretary@ftc.gov

I hereby certify that on January 14, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing *Memorandum In Support of Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36* upon:

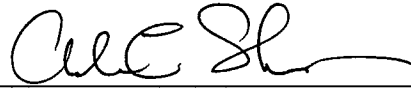
The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oadj@ftc.gov

I hereby certify that on January 14, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing *Memorandum In Support of Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36* upon:

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
rrobertson@ftc.gov

Steven Dahm, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
sdahm@ftc.gov

Darius Ogloza, Esq.
LATHAM & WATKINS, LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
DARIUS.OGLOZA@LW.com



Adam C. Shearer
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 335-9050
Facsimile: (704) 334-4706

EXHIBIT A

HISTORY

ENTEK began the research and development of Polyethylene Battery (PE) Separator production in 1984. Commercial production began in 1987 when the primary manufacturing plant opened in Lebanon, Oregon during 1987. Annual capacity is currently over 200 million m2 per year from production facilities in Lebanon, OR and Killingworth, Newcastle upon Tyne, UK. Our market share is estimated to be +40% of the global Starting, Lighting and Ignition, PE Separators market. To date, we have shipped over one billion square meters of the best battery separator material in the world.

HOME

PRODUCTS

Initially, ENTEK shipped its separators to customers throughout the United States, Canada and Mexico. In 1989 it established a joint venture with Cookson Ltd. in Newcastle, called Cookson Entek Ltd. That structure changed when in 1996, ENTEK took complete control of the joint venture and became established worldwide, supplying cutting-edge technology products around the globe. In 1999, ENTEK purchased Cookson's equity and became sole owner of ENTEK International Ltd.

RAW MATERIALS

TECHNOLOGY

ENTEK Manufacturing, Inc. (EMI) has always designed and built all of our manufacturing, processing, and tooling equipment in-house, ensuring exact attention to detail and quality. ENTEK has multiple manufacturing lines all of which are capable of producing the industry-standard RhinoHide® battery separators. All of our lines are based on continuous processing - from the raw materials to finished product winding. This manufacturing approach supports ENTEK's tireless attention to the tightest tolerances and process control. In 1997, ENTEK became the first battery separator manufacturer in the world to achieve QS-9000 certification as then required by the Big Three automakers.

PRESENTATIONS/ EXHIBITIONS/NEWS

ABOUT ENTEK

CONTACT US

In April 1998, ENTEK received its fifth consecutive "Worldwide Supplier of the Year" award from General Motors. In 1997, ENTEK was pleased to accept the Oregon Governor's Occupational Safety and Health Award. In 1996, ENTEK was awarded East Penn Manufacturing's Certified Supplier Award. In 1994, ENTEK's president, Jim Young, was named Manufacturing Entrepreneur of the Year in Oregon. ENTEK was the first-ever recipient of the International Battery Manufacturers Association (IBMA) Award for Quality in 1992.

At the turn of this century, we realized that our core competence is the extrusion and extraction of filled or unfilled micro-porous polymer membranes. In 2003, after some years of research and development, we began producing commercial quantities of battery separator material for Lithium Ion and Lithium Ion Polymer battery systems. There is a pretty good chance that lithium-ion battery in your cell phone has separator material in it from ENTEK. This is now a significant part of our business model and contributes to the health and diversity of the company.



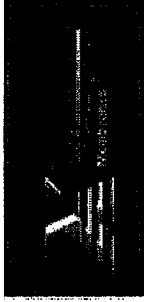
Currently we are actively pursuing 2 other avenues for product development:

- Electrode Films and Assemblies for Supercapacitors. Supercapacitors are expected to have a future in hybrid vehicles, as energy recuperation and restoration devices for regenerative braking or idle start-stop systems. Electric power-assisted steering systems are expected to use

supercapacitors in the future as well. Supercapacitors can be used to eliminate electric power grid micro-shorts. With its UHMWPE processing capability, ENTEK is already producing activated carbon films, and laminating these films to both sides of a current collector. Our product is unique in the world: strong, clean, and capable of mass production quantities and lowest possible costs.



- Breathable Membranes. For its first business venture outside the world of Energy Storage Devices, ENTEK is producing bi-axially oriented hydrophobic micro-porous films that are laminated to polyester and nylon for the world's waterproof / breathable specialty fabric and industrial textile market. With excellent breathability, proven in 6 different international breathability test standards (including JIS 1099 B2), our products can be used in active and extreme sportswear, professional uniforms and outdoor wear, as well as numerous other outdoor work, military, and recreational activities.



[Home / Products / Raw Materials / Technology / Presentations/Exhibitions](#)

[About ENTEK / Contact Us](#)

[Contact us at contact@entek-international.com](mailto:contact@entek-international.com)

© 2009 ENTEK International LLC

EXHIBIT B



SUBPOENA DUCES TECUM
 Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO ENTEK International LLC 250 N. Hansard Ave. Lebanon, OR 97355	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION Parker Poe Adams & Bernstein, LLP Three Wachovia Center 401 S. Tryon Street, Suite 3000 Charlotte, NC 28202	4. MATERIAL WILL BE PRODUCED TO Polypore International, Inc. 5. DATE AND TIME OF PRODUCTION OR INSPECTION November 24, 2008 9:30 a.m.
--	--

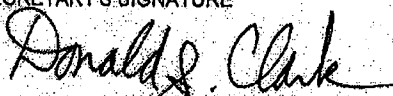
6. SUBJECT OF PROCEEDING

In the Matter of Polypore International, Inc., Docket No. 9327

7. MATERIAL TO BE PRODUCED

See Attached Requests, Instructions and Definitions.

8. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL REQUESTING SUBPOENA Eric D. Welsh (704) 335-9052
--	---

DATE ISSUED October 24, 2008	SECRETARY'S SIGNATURE 
-------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**SUBPOENA DUCES TECUM ISSUED TO ENTEK INTERNATIONAL LLC
ON BEHALF OF POLYPORE INTERNATIONAL, INC.
FTC DOCKET NO. 9327**

EXHIBIT A

I. REQUESTS

1. All documents describing any product in development by ENTEK to compete with Polypore lead acid battery separators.
2. All documents describing any product in development by any Third Party to compete with Polypore lead acid battery separators.
3. All documents listing or describing any manufacturing or production facility (including any expansion of the same or additions of separator lines) for lead acid battery separators in which ENTEK maintains any ownership interest including without limitation any such facility, whether currently operational or under construction or expansion, in the United States or the United Kingdom.
4. For any facility responsive to Request No. 3, all documents sufficient to reflect (a) the capital expenditure for the construction and start-up or expansion of such facility, (b) the date on which plans for such facility or expansion of such facility were approved, (c) the date on which construction began on such facility, (d) the date of commissioning or startup of such facility, (e) the production capacity of such facility, (f) the type of product(s) produced at such facility, (g) the anticipated end use(s) of the products manufactured at such facility, (h) the technology used at such facility to manufacture lead acid battery separators and (i) the cost of the lead acid battery separators manufactured and sold at such facility, including without limitation profit and loss statements and other documents reflecting the cost of manufacturing and selling such products, including shipping costs.
5. All documents relating to any communication between ENTEK and (a) Johnson Controls, Inc. ("JCI"), (b) Exide Technologies ("Exide"), (c) EnerSys, (d) East Penn Manufacturing Co., Inc. ("East Penn"), (e) Crown Battery Manufacturing Co. ("Crown"), (f) Trojan Battery Co. ("Trojan"), (g) US Battery Manufacturing Co. ("US Battery"), (h) C&D Technologies, Inc. ("C&D"), or (i) any other entity manufacturing batteries for sale in North America, concerning: (i) any actual or potential contract or agreement between such entity and ENTEK for the sale and purchase of lead acid battery separators, (ii) contemporaneous or future prices of lead acid battery separators, (iii) Polypore or (iv) Microporous.
6. All documents constituting or reflecting any actual or potential contract or agreement between ENTEK and (a) JCI, (b) Exide, (c) EnerSys, (d) East Penn, (e) Crown, (f) Trojan, (g) US Battery, (h) C&D, or (i) any other entity manufacturing lead acid batteries for sale in North America, for the sale by ENTEK to such entity of lead acid battery separators.
7. All documents relating to ENTEK's or any other manufacturer's share of any market for lead acid battery separators.

8. All documents discussing ENTEK's or any other manufacturer's share of any market for lead acid battery separators by product end use or other classification used by ENTEK to record market share for the sale of lead acid battery separators.
9. All documents relating to any actual or potential competitor of ENTEK for lead acid battery separators.
10. All documents relating to the geographic scope of competition for battery separators for lead acid batteries.
11. All documents relating to the scope of competition across products for battery separators for lead acid batteries.
12. All documents relating to the level or state of competition in the lead acid battery separator business prior to February 29, 2008.
13. All documents relating to the level or state of competition in the lead acid battery separator business after February 29, 2008.
14. All documents relating to ENTEK's pricing, including any database of pricing transactions, and pricing strategy for lead acid battery separators from January 1, 2003 to February 29, 2008.
15. All documents relating to ENTEK's pricing, including any database of pricing transactions, and pricing strategy for lead acid battery separators after February 29, 2008.
16. All documents sufficient to show or explain the factors used in ENTEK's making any adjustment to its price for lead acid battery separator under any contract with its customers.
17. All documents discussing, describing or referring to any product, either in commercial production or under development, that competes or is expected to compete with any lead acid battery separator manufactured by ENTEK.
18. For each Entek facility that has manufactured or is currently manufacturing lead acid battery separators, all documents discussing, describing or reflecting ENTEK's manufacture and/or sale of lead acid battery separators from such facility including documents reflecting the amount of product sold by dollar, units, square meters, and product type or brand, and the price of all such product sold.
19. For all products responsive to Request No. 17, all documents reflecting the actual or anticipated end use of the product sold by ENTEK and the destination of the shipment of such product.
20. All documents reflecting the identity and location of all customers purchasing lead acid battery separators from each of ENTEK's manufacturing facilities.

21. Documents sufficient to reflect the percentage of lead acid battery separators sold by ENTEK annually under contract with a duration in excess of one year as compared to total sales of lead acid battery separators by ENTEK during the same period of time.

22. Documents sufficient to reflect the prices of lead acid battery separators sold by ENTEK on a spot basis or under purchase orders or contracts of one year or less.

23. All documents relating to any patent either owned directly or indirectly by ENTEK, or for which ENTEK obtained either directly or indirectly a license, for technology or equipment used by ENTEK in the manufacture of lead acid battery separators.

24. All documents discussing or describing any technology used in the manufacture of battery separators for lead acid batteries.

25. All documents describing, discussing or reflecting products that currently compete or which could compete with lead acid battery separators including those products used for the following end uses or applications: golf car or cart; automotive; motorcycle; truck; train; fork lift; submarine; uninterrupted power supply for hospitals, telephone companies or other uses; and/or nuclear power plant.

26. All documents discussing or referring to any type of lead acid battery separator, including AGM separators, other than those used in flooded lead acid battery separators.

27. All documents describing, discussing or reflecting by brand name or manufacturer the products comprising lead acid battery separators including those products used for the following end uses or applications: golf car or cart; automotive; motorcycle; truck; train; fork lift; submarine; uninterrupted power supply for hospitals, telephone companies or other uses; and/or nuclear power plant.

28. All documents relating to any testing or qualification of any lead acid battery separator produced by ENTEK during the period of January 1, 2000 to the present.

29. All documents relating to any current producer (excluding ENTEK) or potential entrant into the production or manufacture of lead acid battery separators.

30. All documents relating to any potential entry of Microporous into the business of manufacturing lead acid battery separators for sale to manufacturers of lead acid batteries for automotive use.

31. All documents relating to any potential entry or reentry of ENTEK into the business of manufacturing lead acid separators for sale to manufacturers of (a) golf cart batteries; (b) batteries for industrial or motive use, including for use in fork lift batteries or (c) batteries for uninterrupted power supply.

32. All documents discussing, describing or reflecting any actual or potential barrier to entry for suppliers or manufacturers of lead acid battery separators in (a) North America and (b) the world.

33. All documents discussing or mentioning the actual or potential acquisition of Microporous by Polypore.

34. All documents discussing, mentioning or describing any effect, actual, potential or perceived, on ENTEK's business of an acquisition of Microporous by Polypore, and all documents relating to any plan or course of action considered or adopted by ENTEK in response to such actual or potential acquisition.

35. All documents reflecting any product or technology that is a substitute product or technology for lead acid battery separators for flooded lead acid batteries, including without limitation, those lead acid battery separators sold by ENTEK.

36. All documents, including affidavits and statements, which ENTEK provided to the FTC relating in any way to Polypore or Microporous.

37. A copy of any transcript of any testimony, deposition or investigational hearing conducted in the Polypore Matter.

38. All documents evidencing, relating or referring to communications between the FTC and ENTEK relating in any way to Polypore or Microporous.

39. All documents sufficient to show any contractual or commercial relationship between ENTEK and Bernard Dumas (or its affiliates), including without limitation, documents showing or reflecting: (a) the date any such contract or relationship began, (b) the commercial nature of the relationship or contract, (c) the products to which such relationship or contract applied, (d) the amount of product sold by either ENTEK or Bernard Dumas (of its affiliates) under such contract or relationship, (e) the amount of revenue obtained from such contract or relationship, and (f) the date such contract or relationship ended, expired or terminated, if applicable, for the period of January 1, 1999 to the present.

40. Any contract or other agreement between ENTEK and Bernard Dumas (or its affiliates) from January 1, 1999 to the present.

II. INSTRUCTIONS AND DEFINITIONS

1. "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, e-mail, envelope, telegram, meeting minute, memorandum, statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation in your possession, custody or control, including all drafts or all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono record, tape and other data compilations from which information can be obtained, translated, if necessary, by ENTEK International LLC through detection devices into reasonably usable form, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.
2. "You" "your" and "ENTEK" for purposes of this request, means ENTEK International LLC or any of its parents, divisions, subdivisions, subsidiaries, affiliates, members, officers, directors or managing agents, attorneys, employees, consultants, agents, as well as any predecessors in interest, and all other persons acting or purporting to act on its behalf.
3. "Polypore" for the purposes of this request, means the Polypore International, Inc. and any subsidiary or division thereof, including without limitation, Daramic, LLC, including their respective employees.

4. "Microporous" for the purposes of this request, means the Microporous Products, L.P., and any affiliate, subsidiary or division thereof, and their respective employees, officers, directors, partners, attorneys and agents.
5. "FTC" means the Federal Trade Commission, and any of its directors, commissioners, employees, consultants and agents.
6. "Polypore matter" means the investigation conducted by the FTC under Rule No. 081-0131 and this Administrative Proceeding, Docket No. 9327.
7. "Investigation" means any FTC investigation, whether formal or informal, public or non-public.
8. "Third Party" means any person; corporate entity; partnership; association; joint venture; state, federal or local governmental agency, authority or official; research or trade association; or any other entity other than ENTEK International LLC or any of its subsidiaries or affiliates.
9. "Complaint" means the Complaint issued by the Federal Trade Commission to Polypore International, Inc. in Docket No. 9327.
10. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying or stating.
11. Unless otherwise stated, the relevant time period for these requests is January 1, 2003 to the present.
12. The use of the singular shall be deemed to include the plural and vice versa.
13. The terms "and" and "or" shall be interpreted liberally as conjunctive, disjunctive, or both, depending on the context, so as to have their broadest meaning.
14. Whenever necessary to bring within the scope of a request all documents that might otherwise be construed to be outside its scope, the use of a verb in any tense shall be construed as the use of the verb in all other tenses.

15. The term "all" includes any and vice versa.

16. If you object to any part of a document request under the FTC Rules of Practice §3.37(b), set forth the basis for your objection and respond to all parts of the document request to which you do not object. No part of a document request shall be left unanswered merely because an objection is interposed to another part of a document request.

17. All documents that respond, in whole or in part, to any portion of any document request shall be produced in their entirety, including all attachments, enclosures, cover memoranda and post-it notes.

18. If a document database is provided, provide an explanation of the definitions used and the fields existing in such database.

19. If any privilege is claimed as a ground for not producing any document, provide for each such document withheld on the basis of privilege all information required by FTC Rules of Practice §3.38A.

20. In the event that any responsive document was, but is no longer in your possession, state what disposition was made of it, when, and the reason for such disposition. In the event that a responsive document has been destroyed or returned to a Third Party, state (i) the reason for such document's destruction or return, the date on which the document was destroyed or returned, and the Third Party to whom the document was returned or on whose behalf the document was destroyed; (ii) the name, title, and location thereof within ENTEK International LLC of the individual in whose possession, custody or control the document was when it was destroyed or returned; and (iii) the name, title, and location thereof within ENTEK International LLC of the individual who destroyed or returned the document.

21. These document requests are continuing in nature, up to and during the course of the adjudicative hearing. All documents sought by these requests that you obtain or locate after you

serve your responses must be immediately produced to counsel for Polypore by supplementary response.

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2008, I caused a copy of a *Subpoena Duces Tecum* directed to ENTEK International LLC to be served upon the following persons, at the addresses and through the means noted below:

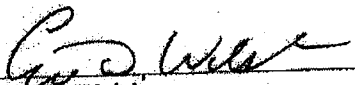
Via Certified Mail:

ENTEK International LLC
250 N. Hansard Ave
Lebanon, OR 97355

Via Electronic Mail:

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
rrobertson@ftc.gov

Steven Dahm, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
sdahm@ftc.gov


Eric D. Welsh
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 335-9052
Facsimile: (704) 334-4706

COPY

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

In the Matter of
Polypore International, Inc.
a corporation.

Docket No. 9327

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

For the purpose of protecting the interests of the Parties and Third Parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this Matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

DEFINITIONS

For purposes of this Protective Order, the following definitions apply:

1. "Confidential Material" shall mean all Discovery Material that is confidential or proprietary information produced in discovery. Such material is referred to in, and protected by, section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f); section 21 of the Federal Trade Commission Act, 15 U.S.C. § 57b-2, the FTC Rules of Practice, Sections 4.9, 4.10, 16 C.F.R. §§ 4.9, 4.10; and precedents thereunder. Confidential Material shall include non-public trade secret or other research, development, commercial or financial information, the disclosure of which would likely cause commercial harm to the Producing Party or to Respondent. The

following is a non-exhaustive list of examples of information that likely will qualify for treatment as Confidential Material: strategic plans (involving pricing, marketing, research and development, product road maps, corporate alliances, or mergers and acquisitions) that have not been fully implemented or revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); sales contracts; system maps; personnel files and evaluations; information subject to confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer, or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Material. Discovery Material will not be considered confidential if it is in the public domain.

2. "Document" means the complete original or a true, correct, and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored, or reproduced. "Document" includes, but is not limited to, any writing, letter, envelope, telegraph, e-mail, meeting minute, memorandum, statement, affidavit, declaration, transcript of oral testimony, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, drawing, chart, printout, microfilm index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, organizer, desk pad, telephone message slip, note of interview or communication, and any other data compilation from which information can be obtained, and includes all drafts and all copies of such Documents and every writing or record that contains any commentary, notes, or marking whatsoever not appearing on the original.

3. "Discovery Material" includes without limitation deposition testimony, exhibits, interrogatory responses, admissions, affidavits, declarations, Documents, tangible thing or

answers to questions produced pursuant to compulsory process or voluntarily in lieu thereof, and any other Documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter: Information taken from Discovery Material that reveals its substance shall also be considered Discovery Material.

4. "Commission" shall refer to the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

5. "Polypore" means Polypore International, Inc., and its predecessors, divisions, and subsidiaries, and all persons acting or purporting to act on its behalf.

6. "Respondent" means Polypore.

7. "Party" means the Commission or Polypore.

8. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Matter and its employees, directors, officers, attorneys and agents.

9. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Material to any of the Parties. With respect to Confidential Material of a Third Party that is in the possession, custody or control of the FTC, or has been produced by the FTC in this matter, the Producing Party shall mean the Third Party that originally provided such material to the FTC: The Producing Party shall mean the FTC for purposes of any Document or Discovery Material prepared by, or on behalf of, the FTC.

10. "Matter" means the above captioned matter pending before the Federal Trade Commission, and all subsequent administrative, appellate or other review proceedings related thereto.

TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Any Document or portion thereof submitted by Respondent or a Third Party during the Federal Trade Commission ("FTC") investigation preceding this Matter or during the course of proceedings in this Matter that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as Confidential Material for purposes of this Protective Order. For purposes of this Protective Order, the identity of a Third Party submitting such Confidential Material shall also be treated as Confidential Material where the submitter has requested in writing such confidential treatment.

2. The Parties and any Third Parties, in complying with informal discovery requests, disclosure requirements, discovery demands or formal process in this Matter may designate any responsive document or portion thereof Confidential Material, including documents obtained by them from Third Parties pursuant to discovery or as otherwise obtained.

3. The Parties, in conducting discovery from Third Parties, shall provide to each Third Party a copy of this Protective Order so as to inform each such Third Party of his, her or its rights herein.

4. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes Confidential Material as defined in Paragraph 1 of the Definitions of this Protective Order. All deposition transcripts

shall be treated as Confidential Material.

5. If any Party seeks to challenge the Producing Party's designation of material as Confidential Material, the challenging Party shall notify the Producing Party and all other Parties of the challenge. Such notice shall identify with specificity (*i.e.*, by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation by providing the challenging Party and all other Parties a written statement of the reasons for the designation within five (5) business days of receiving notice of the confidentiality challenge. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Materials, absent a written agreement with the Producing Party or order of the Commission providing otherwise.

6. If any conflict regarding a confidentiality designation arises and the Parties and Producing Party involved have failed to resolve the conflict via good-faith negotiations, a Party seeking to disclose Confidential Material or challenging a confidentiality designation may make written application to the hearing officer for relief. The application shall be served on the Producing Party and the other Parties to this Matter, and shall be accompanied by a certification that good-faith negotiations have failed to resolve the outstanding issues. The Producing Party and any other Party shall have five (5) business days after receiving a copy of the motion to respond to the application. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the hearing officer of the propriety of a requested disclosure or change in designation.

7. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as Confidential Material and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to Persons not otherwise entitled to access under the terms of this Protective Order. If Confidential Material is produced without the designation attached, the material shall be treated as Confidential from the time the Producing Party advises Complaint Counsel and Respondent's Counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties shall return promptly or destroy the unmarked materials.

8. Material produced in this Matter may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9327" or any other appropriate notice that considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9327" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. The foregoing designation of "CONFIDENTIAL-FTC Docket No. 9327" shall not be required for confidentiality to apply to documents and information previously produced voluntarily or pursuant to a Civil Investigative Demand or subpoena during the investigational phase preceding this Matter for which confidential treatment was requested. Masked or otherwise redacted copies of documents may be produced where the portions deleted

contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

9. Confidential Material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the commission as experts or consultants for this proceeding, (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter, (c) court reporters in this matter, (d) outside counsel of record for Respondent, its associated attorneys and other employees of its law firm(s), provided they are not employees of Respondent, (e) Michael Shor, Polypore Special Counsel, (f) anyone retained to assist outside counsel in the preparation of hearing of this proceeding including consultants, provided they are not affiliated in any way with Respondent and have signed Exhibit A hereto, (g) any witness or deponent who may have authored or received the information in question; (h) any individual who was in the direct chain of supervision of the author at the time the Discovery Material was created or received, except that this provision does not permit disclosure of Industrial Growth partner or Warburg Pincus International documents to Polypore or former Microporous personnel who would not otherwise have had access to the Discovery Material; (i) any employee or agent of the entity that created or received the Discovery Material; (j) anyone representing the author or recipient of the Discovery Material in this Matter; and (k) any other Person(s) authorized in writing by the Producing Party.

10. Disclosure of confidential material to any person described in Paragraph 9 of this Protective Order shall be only for the purposes of the preparation and hearing of this Matter, or any appeal therefrom, and for no other purpose whatsoever; provided, however, that the

Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential materials as provided by its Rules of Practice; Sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

11. In the event that any Confidential Material is contained in any pleading, motion exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed under seal. To the extent that such material was originally submitted by a Third Party, the Party including the Materials in its papers shall immediately notify the submitter of such inclusion. Confidential Material contained in the papers shall remain under seal until further order of the Administrative Law Judge; provided, however, that such papers may be furnished to persons or entities who may receive Confidential Material pursuant to Paragraphs 9 or 10. Upon or after filing any paper containing Confidential Material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection of any such material expires, a Party may file on the public record a duplicate copy which also contains the formerly protected material.

12. If counsel plans to introduce into evidence at the hearing any document or transcript containing Confidential Material produced by another Party or by a Third Party, they shall provide ten (10) days advance notice to the other Party or Third Party for purposes of allowing that Party or Third Party to seek an order that the document or transcript be granted in camera treatment. If that Party or Third Party wishes in camera treatment for the document or transcript, the Party or Third Party shall file an appropriate motion with the Administrative Law

Judge. Where in camera treatment is granted, a duplicate copy of such document or transcript with the Confidential Material deleted therefrom may be placed on the public record.

13. If any Party receives a discovery request in another proceeding that may require the disclosure of Confidential Material submitted by another Party or Third Party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of Confidential Material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. §4.11(e), to discovery requests in another proceeding that are directed to the Commission.

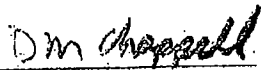
14. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 C.F.R. §4.12.

15. The inadvertent production or disclosure of any Discovery Material, which a Producing Party claims should not have been produced or disclosed because of a privilege, will not be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed. The inadvertent production of a privileged document shall not in itself be deemed a waiver of any privilege applicable to any other documents relating to the subject matter.

16. This Protective Order shall not apply to the disclosure by a Producing Party or its counsel of its own Confidential Material.

17. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: October 23, 2008

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

_____)
In the Matter of)

Polypore International, Inc.)
a corporation.)
_____)

Docket No. 9327

DECLARATION CONCERNING PROTECTIVE ORDER
GOVERNING DISCOVERY MATERIAL

I, _____, hereby declare and certify the following to be true:

1. [Statement of employment]

2. I have read the "Protective Order" governing Discovery Material ("Protective Order") issued by the Commission on October 23, 2008, in connection with the above-captioned Matter. I understand the restrictions on my access to and use of any Confidential Material (as that term is used in the Protective Order) in this Matter, and I agree to abide by the Protective Order.

3. I understand that the restrictions on my use of such Confidentiality Material include:

- a. that I will use such Confidential Material only for the purpose of preparing for this proceeding, and hearing(s) and any appeal of this proceeding and for no other purpose;
- b. that I will not disclose such Confidential Material to anyone, except as permitted by the Protective Order;
- c. that I will use, store and maintain the Confidential Material in such a way as to ensure its continued protected status; and
- d. that, upon the termination of my participation in this proceeding, I will promptly return all Confidential Materials and all notes, memoranda, or other papers containing Confidential Material, to Complaint Counsel or Respondent's Outside Counsel as appropriate.

4. I understand that if I am receiving Confidential Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential

Material also include the duty and obligation to:

- a. maintain such Confidential Material in separate locked room(s) or locked cabinet(s) when such Confidential Material is not being reviewed;
- b. return such Confidential Material to Complaint Counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention; or upon conclusion of this Matter; and
- c. use such Confidential Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

5. I am fully aware that, pursuant to Section 3.42(h) of the FTC Rules of Practice, 16 C.F.R. § 3.42(h), my failure to comply with the terms of the Protective Order may constitute contempt of the Commission and may subject me to sanctions.

Date: _____

Full Name [Typed or Printed]

Signature

EXHIBIT C

Darius C. Ogloza
Direct Dial: 415-395-8149
darius.ogloza@lw.com

505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Tel: +1.415.391.0600 Fax: +1.415.395.8095
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Abu Dhabi	Munich
Barcelona	New Jersey
Brussels	New York
Chicago	Northern Virginia
Doha	Orange County
Dubai	Paris
Frankfurt	Rome
Hamburg	San Diego
Hong Kong	San Francisco
London	Shanghai
Los Angeles	Silicon Valley
Madrid	Singapore
Milan	Tokyo
Moscow	Washington, D.C.

December 3, 2008

VIA EMAIL

Eric D. Welsh
Parker Poe Adams & Bernstein LLP
Three Wachovia Center, Suite 3000
401 South Tryon Street
Charlotte, NC 28202

File No. 030380-0007

Re: In the Matter of Polypore International, Inc., Case No. 9327

Dear Eric:

Pursuant to a stipulated order dated November 18, 2008 entered in the above action, counsel for ENTEK International LLC ("ENTEK") and Polypore International, Inc. ("Polypore") have engaged in two telephonic meet and confer conferences with the goal of resolving all, or as many as possible, of the document discovery requests that have been directed at ENTEK documents in connection with the above proceeding. This letter memorializes our understanding of the current status of the parties' areas of agreement and disagreement as to the document specifications that have to date been the subject of our discussions. We intend to address additional issues of agreement and continuing contention concerning the steps we believe must be followed in order to ensure that any confidential business information produced to Polypore will receive appropriate treatment.

In this regard, the parties have sought to balance the burden on ENTEK, a third-party to the above proceeding, and the special sensitivity of producing confidential business information to a direct competitor or sole competitor, as the case may be, against enabling Polypore to obtain materials essential for its defense in the above proceeding.

Counsel for ENTEK and Polypore have been able to move substantially towards a resolution of many of the objections to production advanced by ENTEK in connection with its previously-filed Motion for Protective Order, dated November 6, 2008 and in a letter dated November 18, 2008 to the Subpoena Duces Tecum served on ENTEK by Polypore on or about November 6, 2008.

The proposals below summarize (i) our understanding of the areas of agreement between the parties; and (ii) our position as regards issues of continuing contention regarding the document specifications put at issue by the parties.

LATHAM & WATKINS LLP

The high-level contested issues include the following:

(i) the *default* date cut off, which ENTEK proposes to set to January 1, 2006, the outside date of the Commission's request and the focus of the Commission's complaint dated September 20, 2008 ("Complaint");

(ii) the production of a limited set of customer pricing data on a "no names" basis, to protect against the potentially devastating consequences to ENTEK and competition in the industry from potential disclosure of ENTEK pricing information to Polypore.

As to the date cut off, the wholesale request of documents and information going back to January 2003 is extremely unlikely to produce any materials relevant to the allegations in the Complaint. Specifically, the Complaint is focused on the effects of the February 29, 2008 Microporous acquisition. Any "substantial lessening of competition," which is the core theory of harm put forward in Paragraphs 38 and 49 of the Complaint, covers the period from February 29, 2008 to the present. A closer look at the sub-parts of Paragraph 38 in particular (b) – (h) confirms that the Complaint is in this regard entirely forward looking as of February 28, 2008. Similarly, the monopolization claim in Paragraphs 39—46, 53 is focused entirely on the 2006—2007 period, with the sole exception of the alleged market division agreement with Hollingsworth & Vose, dating back to 2001 (see Paragraphs 40, 41, 47). As the complaint sets out two relevant time periods, February 29, 2008 – present and 2006—2007, a wholesale request for information going back to 1/1/2003 is unjustifiably burdensome in light of the significant costs to ENTEK and the lack of relevant information likely to be obtained as a result of a search past a general January 2006 cut off date.

As discussed, we are not categorically opposed to reaching back past January 2006 in certain justified instances, for example with respect to information relating to Hollingsworth & Vose, we merely object to a default cut off date that arbitrarily imposes significant costs on ENTEK for no discernable purpose. We therefore ask that Polypore indicate the specifications for which it believes a broader production is required and a brief explanation for why such a broader production is required.

That said, here are our proposals.

Proposals

Request Nos. 1 and 2: ENTEK will produce a written response listing all products in development by ENTEK or any Third Party to compete with Polypore lead acid battery separators dating back to on or after January 1, 2006 to the present.

Request No. 3 and 4: ENTEK will produce a written response listing manufacturing or production facilities for lead acid battery separators in which ENTEK maintains any ownership interest dating back to on or after January 1, 2006 to the present. The written response will include the following information dating back to on or after January 1, 2006 to the present: (a) the capital expenditure for the construction and start-up or expansion of such facility, (b) the date on which plans for such facility or expansion of such facility were approved, (c) the date on

LATHAM & WATKINS LLP

which construction began on such facility, (d) the date of commissioning or startup of such facility, (e) the production capacity of such facility, (f) the type of product(s) produced at such facility, (g) the anticipated end use(s) of the products manufactured at such facility, (h) the technology used at such facility to manufacture lead acid battery separators and (i) the cost of the lead acid battery separators manufactured and sold at such facility, including without limitation the cost of manufacturing and selling such products, including shipping costs.

Request No. 5: ENTEK will produce responsive documents, dated on or after January 1, 2006 to the present, from the files of no more than three (3) custodians and on the basis of a list of specific search terms to be agreed upon by the parties.

Request No. 6: ENTEK will produce copies of the supply agreements and proposals for supply agreements, excluding drafts, dated on or after January 1, 2006 to the present, between ENTEK and (a) JCI, (b) Exide, (c) EnerSys, (d) East Penn, (e) Crown, (f) Trojan, (g) US Battery, (h) C&D, or (i) any other entity manufacturing lead acid batteries for sale in North America, for the sale by ENTEK to such entity of lead acid battery separators.

Request Nos. 7-8, 10-13: ENTEK will produce documents sufficient to show the information sought by these requests dated on or after January 1, 2006 to the present.

Request Nos. 14-16: ENTEK will produce a written response reflecting the information sought on a customer-blind basis dating back to on or after January 1, 2006 to the present.

Request Nos. 9, 17, 25, 29: ENTEK will produce documents sufficient to show the information sought by these requests dated on or after January 1, 2006 to the present.

Request Nos. 18-23, 27: ENTEK will produce written responses reflecting information sought by these requests dating back to on or after January 1, 2006 to the present.

Request No. 24: Polypore has withdrawn this request.

Request Nos. 26, 35: ENTEK will produce documents sufficient to show the information sought by these requests dated on or after January 1, 2006 to the present.

Request No. 28: ENTEK will produce documents sufficient to show customer testing or qualification of any lead acid battery separator produced by ENTEK dated on or after January 1, 2003 to the present.

Request Nos. 30, 33, 34 and 36-38: ENTEK will produce documents in response to these requests dated on or after January 1, 2006 to the present.

Request Nos. 31 and 32: ENTEK will produce documents sufficient to show the information sought by these requests dated on or after January 1, 2006 to the present.

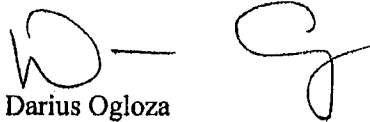
Request Nos. 39 and 40: ENTEK will produce documents in response to these requests.

LATHAM & WATKINS LLP

ENTEK will seek reimbursement for costs incurred in connection with the search for and production of the materials requested by Polypore.

As indicated above, ENTEK will propose procedures for the handling of its responses by Polypore and the group of individuals to whom ENTEK's documents may be disclosed in a separate letter which we will send to your attention shortly.

Best regards,

Handwritten signature of Darius Ogloza, consisting of a stylized 'D' followed by a horizontal line and a cursive 'g'.

Darius Ogloza
of LATHAM & WATKINS LLP

cc: Hanno F. Kaiser

Welsh, Eric D.

From: Welsh, Eric D.
Sent: Friday, December 05, 2008 6:21 PM
To: DARIUS.OGLOZA@LW.com; Hanno.Kaiser@lw.com; 'Brett.Collins@lw.com'
Subject: In re Polypore International, Inc, Docket No 9327

Darius

I just left you a brief message concerning the subpoena. I spoke with my client. We agree with Hanno's proposal. Mr. Shor will not have access to ENTEK's production and we will handle that in a letter between our firms. I wanted to get that to you quickly so you can talk with your client and draw our discussions to a conclusion. As I mentioned, if your client is not willing to provide documents and information for the time period of January 1, 2003 to the present, then please prepare the motion to the Administrative Law Judge. I think the clock should start on this issue today.

Also, as I mentioned, we need to know the identity of three custodians. I would appreciate it if you would provide those names to me as soon as possible. As I also mentioned, we are willing to proceed with the "sufficient to show" and "written response" noted in your December 3 letter provided that it is without prejudice to our right to request specific additional information from ENTEK should we view it necessary and provided that a witness would be made available to testify about the written responses. Finally, as we discussed, we need the identity of the customers but I understand that ENTEK's objection there is now moot with our agreement about Mr. Shor.

I look forward to hearing from you very soon with respect to ENTEK's compliance with the subpoena. Thank you again for your time and efforts. I thought the conversation was productive and, in light of what you said, this should expedite ENTEK's production.

Best regards,

Eric Welsh

Eric Welsh
Partner
Ext. 9052

1/14/2009

Welsh, Eric D.

From: Welsh, Eric D.
Sent: Wednesday, December 10, 2008 1:48 PM
To: 'Hanno.Kaiser@lw.com'
Cc: DARIUS.OGLOZA@LW.com; Brett.Collins@lw.com
Subject: RE: ENTEK; discovery agreement

Darius:

Thank you for your letter. I have talked with my client and we have the following in response.

First, as we discussed over the telephone, Hanno's proposal on confidentiality was to treat certain information as highly confidential, and it was that information that we agreed with you Mr. Shor would not see. There was no discussion of "Safe Locations." Now, the proposed agreement from you not only excludes Mr. Shor from all confidential documents, but it also includes the restriction of having the "Most Sensitive Information" reviewed at only "Safe Locations" during normal business hours. This is unreasonable, excessive and unnecessary. In order to move this along, we will agree to exclude Mr. Shor as to all of Entek's production, but I cannot agree to the Safe Location provision as it is far too restrictive on my ability to engage in discovery and prepare for trial and imposes undue expense to me and my economists. We have come quite far in our repeated concessions to address confidentiality concerns of your client. If this is not satisfactory, then please file your motion.

Second, as to the list of those individuals in the "Disclosure Group," it would need to include our industry expert once we have notified you per paragraph 6. The Group would also need to include Entek's witnesses, court reporters, the court, and the others referred to in paragraph 9 of the Protective Order (excluding Mr. Shor).

Third, we will agree to notify you of the industry expert, but absent your filing a motion, we would be permitted to show the documents to such person ten days after our notification to you.

Fourth, Entek Information must be able to be removed from Restricted Locations for depositions and hearings. I assume the FTC would want to receive a copy too, but your agreement excludes that ability.

Fifth, I would like the return of Entek information (paragraph 5) to parallel the language in the Protective Order.

Sixth, your letter does not mention our right to seek additional information should the written responses or sufficient to show productions not fully respond to the level of inquiry sought. As I said, you would reserve your right to object.

Seventh, your letter does not mention our right to have a witness tendered to respond to questions regarding such responses.

Eighth, please verify that the response to Request Nos. 3 and 4 will cover any such facility owned directly or indirectly by ENTEK.

Ninth, you have limited the custodian to Mr. Weerts. We understood that you were proposing three custodians to search. We were agreeable to that proposal but needed to know the identity of those custodians. I did not think this was unreasonable. You have now dropped the inquiry to a single person in this organization. We request you also search Mr. Graham Fraser Bell's and Rob Keith's files.

Tenth, please include documents covering North America and the World in response to Request No. 6.

I think we have now narrowed all of the issues down. If there is anything left that we need to discuss, let me know today. Otherwise, please revise the letter accordingly and send it to me for signature or file your motion with the ALJ.

Thank you for your attention to this matter.

Eric Welsh

Eric Welsh
Partner
Ext. 9052

From: Hanno.Kaiser@lw.com [mailto:Hanno.Kaiser@lw.com]
Sent: Tuesday, December 09, 2008 7:32 PM
To: Welsh, Eric D.
Cc: DARIUS.OGLOZA@LW.com; Brett.Collins@lw.com
Subject: ENTEK; discovery agreement

Dear Eric:

As discussed, please find attached our proposed discovery agreement. Please let us know if you have any questions.

Best,
Hanno

Hanno F. Kaiser | LATHAM & WATKINS LLP | 505 Montgomery Street, San Francisco, CA 94111-6538 | P: 415.395.8856, F: 415.395.8095, E: hanno.kaiser@lw.com | Admitted in NY. CA bar admission pending.

To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

For more information please go to <http://www.lw.com/docs/irs.pdf>

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Latham & Watkins LLP

