ORIGINAL

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **Polypore International, Inc.** **a corporation.**	**CASE NO. 9327** **PUBLIC DOCUMENT**

THIRD PARTY ENTEK INTERNATIONAL LLC'S MEMORANDUM IN SUPPORT OF MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

On December 30, 2008, Polypore International, Inc. ("Polypore") served four subpoenas *ad testificandum* on ENTEK International LLC, a third party to this adjudicative proceeding, issued to the following individuals and entities: (1) ENTEK International LLC ("Corporate Subpoena"), (2) Daniel Weerts ("Weerts Subpoena"), (3) Graeme Fraser-Bell ("Fraser-Bell Subpoena"), and (4) Robert Keith ("Keith Subpoena").[1]

ENTEK takes no issue with the Corporate Subpoena and the deposition of Daniel Weerts, ENTEK's Vice President of Sales and Marketing, who is responsible for all of ENTEK's major customer relationships. However, ENTEK objects to and moves to quash the subpoenas *ad*

---

[1] Exhibit 1, true and correct copies of the four subpoenas *ad testificandum* issued to ENTEK, Daniel Weerts, Robert Keith and Graeme Fraser-Bell (collectively "Subpoenas"), sent via email on December 30, 2008 from Eric D. Welsh, of Parker Poe Adams & Bernstein LLP, legal counsel for Polypore, to Darius Ogloza of Latham & Watkins LLP, legal counsel for ENTEK.

testificandum directed at Graeme Fraser-Bell, ENTEK International Ltd.'s Vice President of International Sales who works and resides in the United Kingdom, and Robert Keith, ENTEK's President and Chief Executive Officer. In addition to procedural deficiencies, the incremental value to Polypore's discovery from those two depositions will almost certainly be *de minimis*, whereas the costs to ENTEK are significant both in terms of cash costs and opportunity costs from the disruption of its U.S. and international business.

In an effort to avoid duplication and minimize disruption, ENTEK offered to present Mr. Weerts for deposition in Portland, Oregon on a date convenient to Polypore, ENTEK and the FTC, in both his personal and corporate representative capacities.[2] ENTEK further informed Polypore that, as ENTEK's Vice President of Sales & Marketing, Mr. Weerts would be able to testify on all eighteen specifications covered by the Corporate Subpoena and that, accordingly, his testimony should be sufficient. ENTEK further offered discussions on making available additional witnesses if and to the extent Mr. Weerts' deposition testimony should turn out to be insufficient.[3]

Polypore rejected this offer and continues to demand depositions of Mr. Weerts, Mr. Fraser-Bell, and Mr. Keith irrespective of whether Mr. Weerts' testimony will address all relevant issues and with no regard to the fact that the depositions of Mr. Fraser-Bell and Mr. Keith will be duplicative, costly, and disruptive to ENTEK's business.[4]

Accordingly, because Polypore unreasonably rejected ENTEK's proposal, ENTEK has no alternative but to request an order from this tribunal quashing the Fraser-Bell and Keith Subpoenas.

ARGUMENT

Parties may obtain discovery to the extent that it may be reasonably expected to

---

2 Exhibit 2, a true and correct copy of the letter ENTEK sent to Polypore responding to the Subpoenas.

3 Declaration of Hanno F. Kaiser in Support of ENTEK's Motion to Quash Subpoenas Ad Testificandum Pursuant to 16 C.F.R. § 3.34(c) ("Kaiser Decl.") ¶9.

4 Kaiser Decl. ¶10.

yield information relevant to the allegations of the complaint. 16 C.F.R. § 3.31(c)(1). However, this right is not unqualified. The Administrative Law Judge may limit discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or if the burden and expense of the proposed discovery outweigh its likely benefit. 16 C.F.R. § 3.31(c). Against this standard, both the Keith and the Graeme-Bell subpoenas should be quashed.

I. The Keith Subpoena is Unreasonably Duplicative, Unduly Burdensome and the Discovery Sought is Available from Another Source that is More Convenient, Less Burdensome and Less Expensive

Polypore insists that ENTEK submit its President and CEO, Robert Keith,[5] for deposition despite ENTEK's repeated assurances that Mr. Keith has no unique factual knowledge that may be reasonably expected to yield information relevant to the allegations of the complaint or the specifications contained in the Corporate Subpoena. Mr. Weerts is in a significantly better position to address all the information sought.

Federal courts have routinely quashed subpoenas directed to high-ranking corporate officials where, as here, the individuals have no unique or special knowledge of the facts at issue in the action and/or the discovery sought is obtainable from a more convenient, less burdensome, or less expensive source. *See, e.g., Thomas v. IBM*, 48 F.3d 478, 484 (10th Cir. 1995) (issuance of protective order preventing deposition of IBM chairman was not abusive where plaintiff failed to give adequate notice and failed to demonstrate that discovery sought could not be gathered from some other IBM personnel, from whom deposition might have been less burdensome); *Dart Industries, Inc. v. Acor*, 2008 U.S. Dist. Lexis 37731, at *4 (M.D. Fla. 2008); *Reif v. CNA*, 248 F.R.D. 448, 451-452 (E.D. Penn. 2008); *Harris v. Computer Assocs. Int'l, Inc.*, 204 F.R.D 44, 46-47 (E.D.N.Y. 2001); *Baine v. General Motors Corp.*, 141 F.R.D.

---

[5] Declaration of Joel Kuntz in Support of ENTEK's Motion to Quash Subpoenas Ad Testificandum Pursuant to 16 C.F.R. § 3.34(c) ("Kuntz Decl.") ¶2.

332, 335-336 (M.D. Ala. 1991). "Depositions of high level corporate executives may be duplicative, cumulative and burdensome where the person sought to be deposed has no personal knowledge of the events in dispute." *Harris*, 204 F.R.D at 46. Federal courts have the power "to regulate harassing or burdensome depositions, and . . . unless a high level executive has unique personal knowledge about the controversy, the court should regulate the discovery process to avoid oppression, inconvenience, and burden to the corporation and to the executive. . . . Moreover, the oral deposition of a high level corporate executive should not be freely granted when the subject of the deposition will be only remotely relevant to the issues of the case." *Evans v. Allstate Ins. Co.*, 216 F.R.D. 515, 518-519 (N.D. Okla. 2003) (quoting *Folwell v. Hernandez*, 210 F.R.D 169, 173-74 (M.D.N.C. 2002)).

Here, Robert Keith is ENTEK's highest ranking officer and Polypore, despite ENTEK's repeated requests, has failed to identify any unique or special knowledge that he may have of any facts material to this adjudicative proceeding.[6] In all those matters, including prices, supply, demand, volume, cost, production, competition, competitors, entry, and ENTEK's strategy in the lead acid separator industry, Mr. Weerts has more detailed and more direct knowledge than Mr. Keith.

Mr. Weerts has worked at ENTEK or its predecessor since 1989, held his present position as ENTEK's Vice President of Sales & Marketing for over twelve years, and has been involved in the battery separator industry for over 30 years.[7] As a co-owner of the company, he serves on ENTEK's management team and is intimately involved in ENTEK's strategic planning.[8] Mr. Weerts has extensive experience not only in the sales and marketing side of the battery separator business, but also in the production and manufacturing side.[9] His position at

---

[6] The Keith Subpoena identifies no specific topics for which testimony is sought other than stating that the subject of the proceeding will be "In the Matter of Polypore International, Inc., Docket No. 9327." This is identical to what was included in both the Weerts and Fraser-Bell Subpoenas.

[7] Kuntz Decl. ¶4.

[8] Kuntz Decl. ¶4.

[9] Kuntz Decl. ¶4.

ENTEK and vast professional experience provide him with a unique understanding of the battery separator industry, detailed knowledge of the costs associated with manufacturing battery separators, as well as a keen understanding of pricing and the supply and demand conditions in the industry. Significantly, Mr. Weerts' responsibilities include ENTEK's U.S. and international relationships with its most significant customer Johnson Controls Battery Group Inc. and its affiliates.

Notably, Polypore did not select Mr. Keith as a document custodian. In an email dated December 11, 2008, counsel for ENTEK explained: "[T]he vast majority of relevant information requested in Spec. 5 in Rob Keith's files would likely be duplicative with the much more detailed set contained in the files of Dan Weerts. As a result, the benefit to Polypore of including Rob Keith would be minimal, whereas the burden on ENTEK of having its CEO divert significant time and attention away from operations at a time of overall financial and economic crisis and at a critical time of the business year would be significant and harmful to the company. Including Rob Keith would thus be unduly burdensome."[10] On December 16, 2008, counsel for Polypore agreed "to substitute Mr. Humphrey for Mr. Keith for the custodian to be searched."[11] That was the right decision. The same reasons, however, compel dropping Mr. Keith from the list of deponents with even greater force, because depositions are more, not less intrusive than document collections, which can at least in part be delegated. Moreover, without a documentary basis, one important reason for taking a deposition – asking the witness to explain his unique documents – is lacking or at least greatly diminished.

Compelling Mr. Keith to prepare and sit for a deposition would force the company's CEO away from his responsibilities for at least two days during a time of crisis in the U.S. automotive industry, which ENTEK serves almost exclusively. This would impose a significant hardship on ENTEK. The burden and expense of deposing Mr. Keith thus far

---

[10] Exhibit 3, a true and correct copy of the Email chain between Eric D. Welsh and Hanno Kaiser; titled: "Re: DRAFT Discovery Agreement ENTEK/Polypore" dated December 16, 2008, at 3:01 PM PDT.

[11] *Id.*

outweighs its likely benefit.

Because Mr. Keith has no unique knowledge and Polypore's legitimate interest in full and fair discovery is satisfied by deposing Mr. Weerts, who has more direct and more detailed knowledge of all matters material to this proceeding, the Keith Subpoena should be quashed.

II. The Fraser-Bell Subpoena is Invalid on the Basis of Defective Service and Defective Process

Polypore has failed to properly serve a valid subpoena *ad testificandum* on Mr. Fraser-Bell, who is a citizen and resident of the United Kingdom.[12] The Fraser-Bell Subpoena was issued pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1); however, nothing in that section "authorizes the issuance of . . . subpoenas to be served in a foreign country which may be authorized only in accordance with § 3.36." 16 C.F.R § 3.34(c). Rule 3.36 provides that an application for the issuance of a subpoena to be served in a foreign country (such as is necessary to hale Mr. Fraser-Bell before this tribunal) shall be made in the form of a written motion filed in accordance with the provisions of § 3.22(a). Such a motion must not only satisfy the same requirements for a subpoena issued under § 3.34, but must also show 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). Moreover, if an ALJ issues such an Order, the Order must be attached to the subpoena and served by the moving party. 16 C.F.R § 3.36(c). Polypore has failed to comply with any of these provisions with respect to its request to depose Mr. Fraser-Bell.

Polypore's subpoena is defective for the additional independent reason that it failed to properly serve process on Mr. Fraser-Bell. Polypore sent a copy of the subpoena to Mr.

---

[12] Declaration of Graeme Fraser-Bell in Support of ENTEK's Motion to Quash Subpoenas Ad Testificandum Pursuant to 16 C.F.R. § 3.34(c) ("Fraser-Bell Decl.") ¶¶2,3.

Fraser-Bell at ENTEK International LLC in Lebanon, Oregon via Certified Mail.[13] Mr. Fraser-Bell is not employed by ENTEK International LLC but, instead, by an ENTEK affiliate located in Newcastle-upon-Tyne, United Kingdom.[14] ENTEK International LLC in Oregon therefore did not and could not accept service on Mr. Fraser-Bell's behalf.

III. The Fraser-Bell Subpoena is Unreasonably Duplicative, Unduly Burdensome and the Discovery Sought is Available from Another Source that is More Convenient, Less Burdensome and Less Expensive; and the Burden and Expense of the Proposed Discovery Outweigh its Likely Benefit

The Fraser-Bell subpoena should be quashed because compliance with it would be unduly burdensome and/or the burden and expense of the proposed discovery outweigh its likely benefit. ENTEK already has offered to present for deposition Mr. Weerts, who is the person most knowledgeable about the specifications contained in the Corporate Subpoena. Mr. Fraser-Bell's knowledge is largely duplicative as to these categories. As a practical matter, Mr. Weerts not only oversees all of ENTEK's sales efforts, in the U.S. and internationally with respect to Johnson Controls and its affiliates, he is also intimately familiar with the operations, cost structure, and expansion plans of ENTEK's U.K. facility. In terms of commercial relevance, Mr. Weerts is immediately responsible for more than 80% of ENTEK's total revenue. As to the remaining 20%, any differences in the degree of knowledge between Mr. Fraser-Bell and Mr. Weerts are likely to be minimal and do not justify the cost and disruption created by deposing Mr. Fraser-Bell. In practical terms, ENTEK International Ltd. will lose at least four days of Mr. Fraser-Bell's time if he is forced to attend a deposition in Portland, Oregon, not to mention the hardship imposed on Mr. Fraser-Bell personally. Mr. Fraser-Bell lives in Liverpool in the United

---

[13] Legal counsel for Polypore also sent ENTEK's legal counsel a copy of the subpoena via electronic mail on December 30, 2008 without disclosing that it was sending a subpoena for the deposition of a foreign national. Kaiser Decl. ¶2.

[14] Fraser-Bell Decl. ¶¶1,4.

Kingdom, about 180 miles northwest of London. There are no direct flights from Liverpool to Portland. In order to get to Portland, Mr. Fraser-Bell would have to get to London first and then fly to Portland via Newark or, alternatively, fly from Liverpool to Isle of Man, from there to Manchester, from Manchester to Newark, and then from Newark to Portland. The flight time alone is 17-22 hours each way.[15] In addition, Mr. Fraser-Bell would have to prepare and then of course sit for the deposition, which would take another two days. During that time Mr. Fraser-Bell would be unable to tend to the responsibilities of his job and respond to his customer's needs in a timely fashion.[16]

The vast majority of information sought from Mr. Fraser-Bell is thus available from another source that is more convenient, less burdensome and less expensive, namely Mr. Weerts' deposition. As a result, deposing Mr. Fraser-Bell would be unduly burdensome. In addition, given Mr. Weerts' broad experience, which includes the international relationship with JCI, other international customers, and his detailed knowledge of the operations of ENTEK's U.K. facility, the potential for obtaining incremental information from Mr. Fraser-Bell that could be material to Polypore's defenses in this case must be balanced against the certainty of significant expense and burden to ENTEK and Mr. Fraser-Bell personally from having him travel to Portland. Such balancing compels the conclusion that the burden and expense of the proposed discovery outweigh its likely benefit.

For these reasons, the Fraser-Bell subpoena should be quashed.

---

[15] Based on a search on www.orbitz.com (last visited on January 8, 2009, 6:00 pm PST) from LPL to PDX, then sorted by "shortest flight." The flight time from LPL to PDX via Isle of Man, Manchester and Newark is 22 hours 27 minutes. The flight time back from PDX to NCL via Chicago, Manchester and Isle of Man is 24 hours 54 minutes. Even from London Heathrow (LHR), according to www.orbitz.com, there are no direct flights to Portland, and the shortest flight via Newark is still about 17 hours, not counting the time it would take Mr. Fraser-Bell to get from Liverpool to London.

[16] Fraser-Bell Decl. ¶9.

CONCLUSION

For the reasons set forth above, ENTEK respectfully moves to quash the subpoenas *ad testificandum* issued to Graeme Fraser-Bell and Robert Keith. In the event that this tribunal is unable to grant complete relief, ENTEK requests a hearing.

Dated: January 9, 2009

Respectfully submitted,

By /MJS
Darius Ogloza

By
Hanno Kaiser*

LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: +1.415.391.0600
Facsimile: +1.415.395.8095
hanno.kaiser@lw.com
darius.ogloza@lw.com
* Admitted in New York only. Not admitted in California.

Attorneys for ENTEK International LLC

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **Polypore International, Inc.** **a corporation.**	**CASE NO. 9327** **PUBLIC DOCUMENT**

DECLARATION OF HANNO F. KAISER IN SUPPORT OF ENTEK INTERNATIONAL LLC'S MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

I, Hanno F. Kaiser, under penalty of perjury, declare that the following is true and correct to the best of my knowledge:

1. I am an attorney duly licensed to practice before the courts of the State of New York. I am a partner with the law firm of Latham & Watkins LLP, legal counsel for ENTEK International LLC ("ENTEK"). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of the four subpoenas *ad testificandum* issued to ENTEK, Daniel Weerts, Robert Keith and Graeme Fraser-Bell (collectively "Subpoenas"), sent via email on December 30, 2008 from Eric D. Welsh, of Parker Poe Adams & Berstein LLP, legal counsel for Polypore International, Inc. ("Polypore"), to Darius Ogloza of Latham & Watkins LLP, legal counsel for ENTEK.

3. Attached hereto as Exhibit 2 is a true and correct copy of the letter sent on

January 5, 2009 from Darius Ogloza to Eric D. Welsh responding to the Subpoenas.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Email from Eric D. Welsh to Hanno Kaiser; titled: "Re: DRAFT Discovery Agreement ENTEK/Polypore" dated December 16, 2008, at 3:01 PM PDT.

5. On January 6, 2009, Darius Ogloza, Brett Collins and I met and conferred with Eric Welsh via telephone regarding ENTEK's objections to the Subpoenas.

6. During this telephone conversation, we informed Mr. Welsh that ENTEK was willing to make Daniel Weerts available for deposition in both his personal and corporate representative capacities.

7. We further explained that ENTEK objected to the subpoena issued to Graeme Fraser-Bell because it was not properly served on him given that Mr. Fraser-Bell is a resident of the United Kingdom and that his testimony would likely add little to that to be provided by Mr. Weerts. In addition, requiring Mr. Fraser-Bell to travel from the United Kingdom to Oregon would be unduly burdensome.

8. We further explained that ENTEK objected to the subpoena issued to Robert Keith, ENTEK's Chief Executive Officer, and that without a showing that he has unique or special knowledge of the facts at issue in this case, presenting him for deposition would be unduly burdensome and interfere with the daily operations of the company. Moreover, Mr. Keith's testimony would likely be duplicative of that to be provided by Mr. Weerts in all material respects. We explained that, for example, as to volume, pricing, capacity, and competition, Mr. Weerts is likely to have more detailed relevant knowledge than Mr. Keith.

9. We proposed that any conversation about Mr. Fraser-Bell's or Mr. Keith's depositions be deferred until after Mr. Weerts' deposition is concluded.

10. On January 7, 2009, we received an email from Eric Welsh informing us

that our proposal was "unacceptable" and that Polypore intended to seek the depositions of both Mr. Fraser-Bell and Mr. Keith.

I declare, under the penalty of perjury under the laws of the United States that the foregoing is true and correct. Signed this 9th day of January 2009, in San Francisco, California.

By _____

Hanno F. Kaiser
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: +1.415.395.8856
Facsimile: +1.415.395.8095
hanno.kaiser@lw.com
* Admitted in New York only. Not admitted in California.

Attorney for ENTEK International LLC

EXHIBIT 1

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (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 appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Miller Nash
111 S.W. Fifth Avenue
Portland, Oregon 97204

4. YOUR APPEARANCE WILL BE BEFORE

Counsel for Respondent and a person authorized by law to administer oaths.

5. DATE AND TIME OF HEARING OR DEPOSITION

1/19/09 at 9:00 AM

6. SUBJECT OF PROCEEDING

In the Matter of Polypore International, Inc., Docket No. 9327
Please designate and provide witnesses to testify on the subjects identified in the attached schedule.

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Eric D. Welsh
Three Wachovia Center
Suite 300
401 South Tryon Street
Charlotte, NC 28202-1935

DATE ISSUED

December 10, 2008

SECRETARY'S SIGNATURE

Richard C. Donohue, Acting Secretary

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 8, 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 8 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 8.

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

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ *in person.*

○ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

_____

_____

_____

_____

on the person named herein on:

_____
(Month, day, and year)

_____
(Name of person making service)

_____
(Official title)

SCHEDULE

1. Sales by ENTEK International LLC ("ENTEK") of lead acid battery separators during the period of January 1, 2003 to the present, including but not limited to, the specific products sold, the amount of volume of each product sold, the prices of the products sold, including shipment costs, if any, the dates of purchase or sale, the end uses or applications of the product sold, the ENTEK plant from which such product was sold and the final destination of the product.

2. The written responses provided by ENTEK in response to the subpoena issued to ENTEK in this matter and dated October 24, 2008.

3. Any actual or potential contract between ENTEK and Johnson Controls, Inc. ("JCI"), Exide Technologies ("Exide"), EnerSys, East Penn Manufacturing Co., Inc. ("East Penn"), Crown Battery Manufacturing Co. ("Crown"), Trojan Battery Co. ("Trojan"), US Battery Co. ("US Battery"), C&D Technologies, Inc. ("CD") or any other entity manufacturing batteries for sale in North America from January 1, 2003 to the present, including the related contractual negotiations.

4. Negotiations, discussions or communications between ENTEK and JCI, Exide, EnerSys, East Penn, Crown, Trojan, US Battery, C&D, or any other battery manufacturer regarding (a) any change in price of or cost surcharge for any battery separator manufactured or to be manufactured by Entek (b) Polypore International, Inc. (including without limitation Daramic, LLC) ("Polypore"), (c) Microporous Products, LP ("Microporous"), or (d) any other manufacturer of battery separators from January 1, 2003 to the present.

5. Factors related to any change in price or cost surcharge instituted by ENTEK from January 1, 2003 to the present.

6. Any consideration by ENTEK of manufacturing separators for industrial or deep cycle batteries, including any communication between Entek and any third party regarding the same from January 1, 2003 to the present.

7. The scope of competition for battery separators for lead acid batteries from January 1, 2003 to the present.

8. Actual or potential competitors of ENTEK for lead acid battery separators from January 1, 2003 to the present.

9. ENTEK's or other manufacturer's share of any market for lead acid battery separators, including manufacturers of absorptive glass mat ("AGM") from January 1, 2003 to the present.

10. For the period of January 1, 2003 to the present, ENTEK's expansion of any of its facilities for manufacturing lead acid battery separators, including capacity of such expanded facility, products to be made from such facility, the customers for such facility,

the cost of such expansion, and the time period covered by such expansion, including start date of expansion project, commissioning date and actual or anticipated date of product being manufactured and sold.

11. Testing or qualification by ENTEK or anyone on behalf of ENTEK of lead acid battery separators during the period of January 1, 2003 to the present.

12. ENTEK's consideration of or efforts in developing alternative technology or substitutes to lead acid battery separators manufactured by Polypore, including AGM separators during the period of January 1, 2003 to the present.

13. The actual or potential acquisition of Microporous by Polypore (the "acquisition").

14. The actual, potential or perceived effect on ENTEK's business of an acquisition of Microporous by Polypore.

15. Communications between ENTEK and the Federal Trade Commission regarding the acquisition or Polypore.

16. Any actual or potential barrier to entry for suppliers or manufacturers of lead acid battery separators, including without limitation cost of entry or achieving minimal viable scale in (a) North America and (b) the World for the period of January 1, 2003 to the present.

17. Any actual or potential ownership interest of ENTEK in any joint venture or other entity that manufacturers lead acid battery separators for the period of January 1, 2003 to the present.

18. Any actual or potential ownership interest of any person other than ENTEK in any joint venture or other entity that manufacturers lead acid battery separators including BFR for the period of January 1, 2003 to the present.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	**Docket No. 9327**
	)	
Polypore International, Inc., a corporation.	)	**PUBLIC DOCUMENT**
	)	

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, I caused to be served the foregoing Subpoena Ad Testificandum via Certified Mail Return Receipt Requested upon:

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

I hereby certify that on December 29, 2008, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing Subpoena Ad Testificandum upon:

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

I hereby certify that on December 29, 2008, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Subpoena Ad Testificandum*** 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

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

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Mr. Graeme Fraser-Bell
ENTEK International,LLCc
250 H. Hansard Ave.
Lebanon, OR 07355

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Miller Nash
111 S.W. Fifth Avenue
Portland, Oregon 97204

4. YOUR APPEARANCE WILL BE BEFORE

Counsel for Respondent and a person authorized by law to administer oaths.

5. DATE AND TIME OF HEARING OR DEPOSITION

1/19/09 at 2:00 PM

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Eric D. Welsh
Three Wachovia Center
Suite 300
401 South Tryon Street
Charlotte, NC 28202-1935

DATE ISSUED

December 10, 2008

SECRETARY'S SIGNATURE

Richard C. Donohue, Acting Secretary

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 8, 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 8 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 8.

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

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ *in person.*

○ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

---

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	**Docket No. 9327**
	)	
Polypore International, Inc., a corporation.	)	**PUBLIC DOCUMENT**
	)	

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, I caused to be served the foregoing Subpoena Ad Testificandum via Certified Mail Return Receipt Requested upon:

Mr. Graeme Fraser-Bell
ENTEK International LLC
250 N. Hansard Ave.
Lebanon, OR 97355

I hereby certify that on December 29, 2008, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing Subpoena Ad Testificandum upon:

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

I hereby certify that on December 29, 2008, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Subpoena Ad Testificandum*** 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

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

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Mr. Robert Keith
Chief Operating Officer
ENTEK International LLC
250 N. Hansard Ave.
Lebanon, OR 97355

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Miller Nash
111 S.W. Fifth Avenue
Portland, Oregon 97204

4. YOUR APPEARANCE WILL BE BEFORE

Counsel for Respondent and a person authorized by law to administer oaths.

5. DATE AND TIME OF HEARING OR DEPOSITION

1/20/09 at 9:00 AM

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Eric D. Welsh
Three Wachovia Center
Suite 300
401 South Tryon Street
Charlotte, NC 28202-1935

DATE ISSUED

December 10, 2008

SECRETARY'S SIGNATURE

Richard C. Donohue, Acting Secretary

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 8, 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 8 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 8.

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

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ *In person.*

○ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

---

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **Polypore International, Inc., a corporation.**	)	**Docket No. 9327** **PUBLIC DOCUMENT**

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, I caused to be served the foregoing Subpoena Ad Testificandum via Certified Mail Return Receipt Requested upon:

Mr. Robert Keith
Chief Operating Officer
ENTEK International LLC
250 N. Hansard Ave.
Lebanon, OR 97355

I hereby certify that on December 29, 2008, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing Subpoena Ad Testificandum upon:

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

I hereby certify that on December 29, 2008, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Subpoena Ad Testificandum*** 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

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

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

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

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Miller Nash
111 S.W. Fifth Avenue
Portland, Oregon 97204

4. YOUR APPEARANCE WILL BE BEFORE

Counsel for Respondent and a person authorized by law to administer oaths.

5. DATE AND TIME OF HEARING OR DEPOSITION

1/20/09 at 2:00 PM

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Eric D. Welsh
Three Wachovia Center
Suite 300
401 South Tryon Street
Charlotte, NC 28202-1935

DATE ISSUED

December 10, 2008

SECRETARY'S SIGNATURE

Richard C. Donohue, Acting Secretary

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 8, 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 8 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 8.

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

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ *in person.*

○ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

_____

_____

_____

_____

on the person named herein on:

_____
(Month, day, and year)

_____
(Name of person making service)

_____
(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	**Docket No. 9327**
	)	
Polypore International, Inc., a corporation.	)	**PUBLIC DOCUMENT**
	)	

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, I caused to be served the foregoing Subpoena Ad Testificandum via Certified Mail Return Receipt Requested upon:

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

I hereby certify that on December 29, 2008, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing Subpoena Ad Testificandum upon:

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

I hereby certify that on December 29, 2008, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Subpoena Ad Testificandum*** 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

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 2

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

File No. 030380-0007

January 5, 2009

VIA EMAIL

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

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

Dear Eric:

This letter sets forth ENTEK International LLC's ("ENTEK") technical and substantive objections to the four subpoenas *ad testificandum* ("Subpoenas") served on it by your client Polypore International, Inc. ("Polypore") on December 30, 2008 in connection with the above-referenced matter.

We propose holding a meet and confer session with you concerning ENTEK's objections on either Tuesday, January 6 or Wednesday, January 7. Given the January 9 deadline to file a motion to quash, if you are not available to meet on either of these days, we request an extension to file a motion to quash until a reasonable time after we are able to discuss ENTEK's objections.

I. Subpoena Issued to ENTEK International LLC ("Corporate Subpoena")

ENTEK will offer Dan Weerts as its corporate representative as to all specifications set forth in the Corporate Subpoena. Although a subpoena was issued to Mr. Weerts, as an individual, he will be presented for deposition on one occasion only, both in his personal and corporate representative capacities, at a date and time convenient to all parties (including the Federal Trade Commission). ENTEK shall seek to schedule Mr. Weerts' deposition sufficiently prior to the discovery cut-off to permit use of his testimony at trial by both parties. We are happy to negotiate a convenient date and will provide some proposed dates for this deposition at, or shortly after, the proposed meet and confer session.

General Objections and Reservations

1. ENTEK objects to the Corporate Subpoena because it is not narrowly tailored so as to avoid imposing undue burden or expense on ENTEK as required by the Federal Trade Commission Act ("FTC Act") and the Federal Rules of Civil Procedure.

2. ENTEK objects to the Corporate Subpoena because it seeks information that is beyond the scope of permissible discovery under the FTC Act and the Federal Rules of Civil Procedure.

3. ENTEK objects to the Corporate Subpoena because it seeks to impose obligations on ENTEK beyond those expressly set forth in the FTC Act and the Federal Rules of Civil Procedure.

4. ENTEK objects to the Corporate Subpoena as overbroad and unduly burdensome, in that it seeks testimony that is neither relevant to the subject matter of the action nor reasonably likely to lead to the discovery of admissible evidence.

5. ENTEK objects to the Corporate Subpoena to the extent it seeks information protected from discovery by the attorney-client privilege, the work product doctrine, the common interest doctrine or any other applicable discovery privilege or exemption.

6. ENTEK objects to the Corporate Subpoena to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

7. ENTEK objects to the Corporate Subpoena to the extent it calls for the disclosure of competitively sensitive information. ENTEK is, in the words of the Federal Trade Commission's Complaint, Polypore's "sole competitor." As such, disclosure of ENTEK's competitively sensitive information to Polypore is uniquely harmful, both to ENTEK's ability to compete and to the public interest in maintaining competition in the battery separator industry.

8. ENTEK objects to the Corporate Subpoena to the extent it seeks information not in ENTEK's possession, custody or control.

9. ENTEK objects to the Corporate Subpoena to the extent it seeks information already in Polypore's possession, custody or control.

10. ENTEK objects to the Corporate Subpoena to the extent it seeks information that may be obtained from another source that is more convenient, less burdensome and/or less expensive.

11. ENTEK objects to the Corporate Subpoena to the extent it seeks information that is readily available and accessible to the public or an industry participant such as Polypore.

12. ENTEK objects to the Corporate Subpoena because it uses terms that are overbroad, vague, ambiguous or otherwise inadequately defined, are meaningless and unintelligible and/or seeks information that goes beyond proper limitation as to subject matter or scope.

Objections to Specific Schedule Specifications ("Specifications")

Specification No. 1

Sales by ENTEK International LLC ("ENTEK") of lead acid battery separators during the period of January 1, 2003 to the present, including but not limited to, the specific products sold, the amount of volume of each product sold, the prices of the products sold, including shipment costs, if any, the dates of purchase or sale, the end uses or applications of the product sold, the ENTEK plant from which such product was sold and the final destination of the product.

Objections to Specification No. 1

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

Specification No. 2

The written responses provided by ENTEK in response to the subpoena issued to ENTEK in this matter and dated October 24, 2008.

Objections to Specification No. 2

ENTEK does not object to this Specification.

Specification No. 3

Any actual or potential contract between ENTEK and Johnson Controls, Inc. ("JCI"), Exide Technologies ("Exide"), EnerSys, East Penn Manufacturing Co., Inc. ("East Penn"), Crown Battery Manufacturing Co. ("Crown"), Trojan Battery Co. ("Trojan"), US Battery Co. ("US Battery"), C&D Technologies, Inc. ("CD") or any other entity manufacturing batteries for sale in North America from January 1, 2003 to the present, including the related contractual negotiations.

Objections to Specification No. 3

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification to the extent it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any

applicable court order. Any response provided by ENTEK to this Specification will be limited to any actual or potential contracts for the supply of lead acid battery separators.

Specification No. 4

Negotiations, discussions or communications between ENTEK and JCI, Exide, EnerSys, East Penn, Crown, Trojan, US Battery, C&D, or any other battery manufacturer regarding (a) any change in price of or cost surcharge for any battery separator manufactured or to be manufactured by ENTEK (b) Polypore International, Inc (including without limitation Daramic, LLC) ("Polypore"), (c) Microporous Products, LP ("Microporous"), or (d) any other manufacturer of battery separators from January 1,2003 to the present.

Objections to Specification No. 4

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification to the extent it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

Specification No. 5

Factors related to any change in price or cost surcharge instituted by ENTEK from January 1, 2003 to the present.

Objections to Specification No. 5

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

Specification No. 6

Any consideration by ENTEK of manufacturing separators for industrial or deep cycle batteries, including any communication between ENTEK and any third party regarding the same from January 1, 2003 to the present.

Objections to Specification No. 6

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive

information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

Specification No. 7

The scope of competition for battery separators for lead acid batteries from January 1, 2003 to the present.

Objections to Specification No. 7

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. The term "scope of competition" is vague and ambiguous. This Specification will yield little or no relevant information in addition to what is already available to Polypore, or which Polypore can acquire through other sources. ENTEK further objects to this Specification to the extent that it calls for legal conclusions relating to antitrust concepts of market definition and competition.

Specification No. 8

Actual or potential competitors of ENTEK for lead acid battery separators from January 1, 2003 to the present.

Objections to Specification No. 8

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order. This Specification will yield little or no relevant information in addition to what is already available to Polypore, or which Polypore can acquire through other sources. ENTEK further objects to this Specification to the extent that it calls for legal conclusions relating to antitrust concepts of competition.

Specification No. 9

ENTEK's or other manufacturer's share of any market for lead acid battery separators, including manufacturers of absorptive glass mat ("AGM") from January 1, 2003 to the present.

Objections to Specification No. 9

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. This Specification will yield little or no relevant information in addition to what is already available to Polypore, or which Polypore can acquire through other sources. ENTEK further objects to this Specification to the extent that it calls for legal conclusions relating to antitrust concepts of market definition.

Specification No. 10

For the period of January 1, 2003 to the present, ENTEK's expansions of any of its facilities for manufacturing lead acid battery separators, including capacity of such expanded facility, products to be made from such facility, the customers for such facility, the cost of such expansion, and the time period covered by such expansion, including start date of expansion project, commissioning date and actual or anticipated date of product being manufactures and sold.

Objections to Specification No. 10

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects on the basis that this Specification appears to seek documents that are neither relevant to the subject matter of the dispute nor reasonably likely to lead to the discovery of admissible evidence. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

Specification No. 11

Testing or qualification by ENTEK or anyone on behalf of ENTEK of lead acid battery separators during the period of January 1, 2003 to the present.

Objections to Specification No. 11

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

Specification No. 12

ENTEK's consideration of or efforts in developing alternative technology or substitutes to lead acid battery separators manufactured by Polypore, including AGM separators during the period of January 1, 2003 to the present.

Objections to Specification No. 12

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

Specification No. 13

The actual or potential acquisition of Microporous by Polypore (the "acquisition").

Objections to Specification No. 13

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK further objects on the basis that this Specification appears to seek information that is neither relevant to the subject matter of the dispute nor reasonably likely to lead to the discovery of admissible evidence.

Specification No. 14

The actual, potential or perceived effect on ENTEK's business of an acquisition of Microporous by Polypore.

Objections to Specification No. 14

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

Specification No. 15

Communications between ENTEK and the Federal Trade Commission regarding the acquisition or Polypore.

Objections to Specification No. 15

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK further objects on the basis that this Specification appears to seek information that is neither relevant to the subject matter of the dispute nor reasonably likely to lead to the discovery of admissible evidence.

Specification No. 16

Any actual or potential barrier to entry for suppliers or manufacturers of lead acid battery separators, including without limitation cost of entry or achieving minimal viable scale in (a) North America and (b) the World for the period of January 1, 2003 to the present.

Objections to Specification No. 16

ENTEK objects to this Specification as overbroad and unduly burdensome. This Specification will yield little or no relevant information in addition to what is already available to Polypore, or which Polypore can acquire through other sources. ENTEK further objects to this Specification to the extent that it calls for legal conclusions relating to antitrust concepts of competition and market definition.

Specification No. 17

Any actual or potential ownership interest of ENTEK in any joint venture or other entity that manufactures lead acid battery separators for the period of January 1, 2003 to the present.

Objections to Specification No. 17

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires disclosure of ENTEK's competitively sensitive information.

Specification No. 18

Any actual or potential ownership interest of any person other than ENTEK in any joint venture or other entity that manufacturers (sic) lead acid battery separators including BFR for the period of January 1, 2003 to the present.

Objections to Specification No. 18

ENTEK objects to this Specification as overbroad and unduly burdensome. ENTEK objects to this Specification as it requires production of ENTEK's competitively sensitive information. ENTEK further objects to this Specification to the extent it seeks information regarding trade secrets, proprietary commercial information or other sensitive or confidential information that is protected by constitutional, statutory or common law rights of privacy or confidentiality, or is subject to any confidentiality agreement or obligation or any applicable court order.

II. Subpoena Issued to Mr. Daniel Weerts

As discussed above, ENTEK will make Mr. Weerts available for deposition on one occasion only, both in his personal and corporate representative capacities, at a date and time convenient to Mr. Weerts and his counsel and to all parties in the instant proceeding.

III. Subpoena Issued to Mr. Graeme Fraser-Bell ("Fraser-Bell Subpoena")

ENTEK objects to the Fraser-Bell Subpoena on the basis of defective process and defective service. Mr. Fraser-Bell is not employed by ENTEK International LLC and is not a resident of the United States. Polypore has failed to comply with numerous FTC rules and procedures pertaining to service of process issued to individuals in foreign countries. *See, e.g.*, FTC Rule 3.36. ENTEK further objects to the Fraser-Bell Subpoena as unduly burdensome, in that it seeks testimony from an individual in a foreign country that is likely to be duplicative of the testimony of ENTEK's corporate representative, Mr. Daniel Weerts.

Accordingly, Mr. Fraser-Bell will *not* be presented for deposition in Portland, Oregon or elsewhere. If Polypore insists on taking his deposition elsewhere, ENTEK shall move to quash. We propose deferring any further discussion regarding Polypore's need for this testimony and the need for ENTEK to move to quash the Subpoena until after Mr. Weerts' deposition is concluded.

IV. Subpoena Issued to Mr. Robert Keith ("Keith Subpoena")

ENTEK objects to the Keith Subpoena as overbroad, unreasonably burdensome and duplicative. Mr. Keith, the current Chief Executive Officer of ENTEK, does not have any unique or special knowledge of the facts at issue in this adjudicative proceeding. The process of deposing Mr. Keith imposes a hardship on ENTEK and Mr. Keith by hindering his ability to carry out his corporate responsibilities. Moreover, the discovery sought by Polypore is "obtainable from some other source that is more convenient, less burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2); *Baine v. General Motors Corp.*, 141 F.R.D. 332, 334 (M.D. Ala. 1991). For example, the information sought is likely to be provided by ENTEK through document production, written responses to discovery, and Mr. Weerts' deposition. Given the availability of the information sought from other sources, the Keith Subpoena represents a harassing discovery effort. Accordingly, Mr. Keith will *not* be presented for deposition in Portland, Oregon or elsewhere. Unless Polypore withdraws this subpoena, ENTEK will move to quash the Keith Subpoena and seek a protective order prohibiting the deposition of Mr. Keith. We propose deferring any further discussion regarding Polypore's need for this testimony and the need for ENTEK to move to quash the Subpoena until after Mr. Weerts' deposition is concluded.

Best regards,

Darius Ogloza /B.C.

Darius Ogloza
of LATHAM & WATKINS LLP

cc: Hanno F. Kaiser

EXHIBIT 3

Collins, Brett (SF)

From: Welsh, Eric D. [ericwelsh@parkerpoe.com]
Sent: Tuesday, December 16, 2008 3:01 PM
To: Kaiser, Hanno (SF)
Cc: Ogloza, Darius (SF); Collins, Brett (SF)
Subject: RE: DRAFT Discovery Agreement ENTEK/Polypore

Hanno

I think we are very close. Here are my additional thoughts.

Para 3 of your letter (Access to Entek Information) needs to include industry expert, upon approval.

Para 4 of your letter needs to include the use of the documents through appeal.

Para 5, I propose the following language: "Any industry expert shall not have been employed by Polypore and shall not be employed by Polypore or provide consulting services to Polypore (outside of the present matter) for a period of two years from the final resolution of this matter."

I did not see points 6 and 7 of your email actually in the letter. Let me know if I missed it. Otherwise, I would like to add it just so there is no misunderstanding down the road.

We will agree to substitute Mr. Humphrey for Mr. Keith for the custodian to be searched.

I appreciate your efforts and look forward to hearing back from you so that we can get this wrapped up.

Best regards,

Eric

Eric Welsh
Partner

Three Wachovia Center | 401 South Tryon Street | Suite 3000 | Charlotte, NC 28202
Phone: 704.335.9052 | Fax: 704.335.9755 | http://www.parkerpoe.com

From: Hanno.Kaiser@lw.com [mailto:Hanno.Kaiser@lw.com]
Sent: Thursday, December 11, 2008 4:10 PM
To: Welsh, Eric D.
Cc: DARIUS.OGLOZA@LW.com; Brett.Collins@lw.com
Subject: DRAFT Discovery Agreement ENTEK/Polypore

Dear Eric:

Please find attached, as discussed, a further revised version of the Discovery Agreement. As you will see, we accepted virtually all of your proposed changes and requests. Specifically:

[1] The Safe Location concept has been removed.

[2] The Disclosure Group has been expanded per your request.

[3] As to the industry expert, the new provision strikes a reasonable compromise. We have 10 days in which to file a motion; in return we get

information about the proposed expert and one short interview if required. The new provision also clarifies that the expert must be a Polypore outsider. That should not be controversial.

[4] Documents may now be removed from Safe Locations for the purposes you identified.

[5] The process of returning ENTEK documents now follows the concept in the PO.

[6] Polypore's reservation of rights in case of claims of insufficient compliance with the agreement have been clarified.

[7] Polypore has the right to call a witness; that, in my view, had already been part of the previous draft.

[8] Request Nos. 3 and 4 will cover facilities owned directly or indirectly by ENTEK; we added language to clarify that point.

[9] We're fine with adding Graham Fraser Bell per your request. In lieu of Rob Keith, however, we propose Greg Humphrey, North & South America Account Manager. Greg is a much better and more direct source for detailed information about actual or potential contracts, separator prices, Polypore and Microporous (i.e., the information requested in Spec. 5) than Rob Keith. Moreover, the vast majority of relevant information requested in Spec. 5 in Rob Keith' files would likely be duplicative with the much more detailed set contained in the files of Dan Weerts. As a result, the benefit to Polypore of including Rob Keith would be minimal, whereas the burden on ENTEK of having its CEO divert significant time and attention away from operations at a time of overall financial and economic crisis and at a critical time of the business year would be significant and harmful to the company. Including Rob Keith would thus be unduly burdensome.

[10] As discussed yesterday, we did not make any changes to Spec. 6.

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.

(i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **Polypore International, Inc.** **a corporation.**	**CASE NO. 9327** **PUBLIC DOCUMENT**

DECLARATION OF JOEL KUNTZ IN SUPPORT OF ENTEK INTERNATIONAL LLC'S MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

I, Joel Kuntz, under penalty of perjury, declare that the following is true and correct to the best of my knowledge:

1. I am Vice President and General Counsel for ENTEK International LLC ("ENTEK"). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Robert Keith is currently the President and Chief Executive Officer of ENTEK. He is responsible for all aspects of the company's business, including day-to-day operations. Mr. Keith is also President of ENTEK Membranes LLC, which makes separators for lithium batteries. His current responsibilities require him to travel to England on a frequent basis to oversee the commissioning of two additional lines at the UK production facility. Should Mr. Keith be forced to prepare for and attend a deposition in this matter, his absence would be disruptive to this company's operations as well as those of ENTEK Membranes LLC.

3. I have reviewed the subpoena *ad testificandum* issued to ENTEK International LLC ("Corporate Subpoena") and the specifications contained therein. It is ENTEK's intention to designate Mr. Daniel Weerts, who is currently Vice President of Sales & Marketing for ENTEK, as its witness most knowledgeable as to all of the specifications contained in the Corporate Subpoena.

4. Mr. Weerts has worked at ENTEK or its predecessor since 1989 and has worked in the battery separator industry since 1976. He is a member of ENTEK's management team and is intimately involved in ENTEK's strategic planning. Mr. Weerts' background includes production and manufacturing as well as sales and marketing. The decision to designate Mr. Weerts is based on his broad set of responsibilities which include sales and marketing to all ENTEK customers in North America as well as global sales and marketing to ENTEK's largest customer, Johnson Controls Battery Group Inc. and its affiliates. Johnson Controls Battery Group Inc. and its affiliates account for approximately 70 percent of the world-wide sales of lead-acid battery separators by ENTEK and its affiliates.

5. In light of Mr. Weerts' vast knowledge about the company and its business, I have no reason to believe that Mr. Keith's testimony would yield any additional information relevant to the allegations at issue in this adjudicative proceeding that Mr. Weerts cannot provide.

I declare, under the penalty of perjury under the laws of the United States that the foregoing is true and correct. Signed this 9th day of January 2009, in San Francisco, California.

By _____
Joel Kuntz
ENTEK International LLC
250 N. Hansard Avenue
Lebanon, Oregon 97355

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **Polypore International, Inc.** **a corporation.**	**CASE NO. 9327** **PUBLIC DOCUMENT**

DECLARATION OF GRAEME FRASER-BELL IN SUPPORT OF ENTEK INTERNATIONAL LLC'S MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

I, Graeme Fraser-Bell, under penalty of perjury, declare that the following is true and correct to the best of my knowledge:

1. I am Vice President of International Sales for ENTEK International Ltd., an affiliate of ENTEK International LLC, which is a United States-based company. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. I am a British citizen.

3. I currently work and reside in Liverpool, United Kingdom.

4. I am employed by ENTEK International Ltd. and ENTEK Membranes LLC.

5. I am not employed by ENTEK International LLC.

6. In my position as Vice President for International Sales, I am primarily

responsible for managing ENTEK International Ltd's relationship with non-North American customers.

7. In my position as Vice President of Sales & Marketing for ENTEK Membranes LLC, a substantial amount of my time is dedicated to the lithium ion battery business, as opposed to the lead-acid battery business.

8. My job requires regular travel to visit customers throughout Europe and Asia; however, it does not require me to travel to the United States on a regular or frequent basis.

9. If forced to attend a deposition in the Portland, Oregon, I would miss a minimum of four days of work. Travel time would amount to at least two full days, the direct flight alone from London to Portland is over 19 hours. One day would be dedicated to preparing for the deposition and the next day would be spent attending the deposition. Upon my return to England, I would suffer jet lag as there is an eight hour difference between Newcastle-upon-Tyne and Portland. This would impose an undue burden on me and would be extremely disruptive to the business operations of ENTEK International Ltd. and ENTEK Membranes LLC because I would be unable to tend to the responsibilities of my job and respond to my customer's needs in a timely fashion.

I declare, under the penalty of perjury under the laws of the United Kingdom that the foregoing is true and correct. Signed this 8th day of January 2009, in Spain.

By _____

Graeme Fraser-Bell
ENTEK International Ltd
Camperdown Industrial Estate
Killingworth, Newcastle-upon-Tyne
NE12 5XG United Kingdom

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **Polypore International, Inc.** **a corporation.**	**CASE NO. 9327** **PUBLIC DOCUMENT**

PROPOSED ORDER

Upon consideration of ENTEK International LLC's Motion to Quash the Subpoenas *Ad Testificandum* issued to Graeme Fraser-Bell and Robert Keith Pursuant to 16 C.F.R. § 3.34(c), and Respondent Polypore International, Inc.'s opposition thereto, and the Court being fully informed, it is this ___ day of January, 2009, hereby

ORDERED, that the Motion is **GRANTED**; and it is further

ORDERED, that the subpoena *ad testificandum* issued to Graeme Fraser-Bell is hereby quashed; and it is further

ORDERED, that the subpoena *ad testificandum* issued to Robert Keith is hereby quashed.

The Honorable D. Michael Chappell
Chief Administrative Law Judge

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **Polypore International, Inc.** **a corporation.**	**CASE NO. 9327** **PUBLIC DOCUMENT**

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I am employed in the District of Columbia, D.C. I am over the age of 18 and not a party to the within cause. My business address is Latham & Watkins LLP, 555 Eleventh Street, N.W., Suite 1000, Washington, D.C. 20004-1304.

On **January ____, 2009**, I served the following documents described as:

- THIRD PARTY ENTEK INTERNATIONAL LLC'S MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

- THIRD PARTY ENTEK INTERNATIONAL LLC'S MEMORANDUM IN SUPPORT OF MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

- DECLARATION OF JOEL KUNTZ IN SUPPORT OF ENTEK INTERNATIONAL LLC'S MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

- DECLARATION OF GRAEME FRASER-BELL IN SUPPORT OF ENTEK INTERNATIONAL LLC'S MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

- DECLARATION OF HANNO F. KAISER IN SUPPORT OF ENTEK INTERNATIONAL LLC'S MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH PURSUANT TO 16 C.F.R § 3.34(c)

- PROPOSED ORDER

by serving a true copy of the above-described documents in the following manner:

BY HAND DELIVERY

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for hand delivery by a messenger courier service or a registered process server. Under that practice, documents are deposited to the Latham & Watkins LLP personnel responsible for dispatching a messenger courier service or registered process server for the delivery of documents by hand in accordance with the instructions provided to the messenger courier service or registered process server; such documents are delivered to a messenger courier service or registered process server on that same day in the ordinary course of business. I caused a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for hand delivery by a messenger courier service or a registered process server.

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

(Original + 12 copies)

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

(1 copy)

I declare that I am employed in the office of a member of the Bar of or permitted to practice before this court at whose direction the service was made.

Executed on **January** 9**, 2009**, at Washington, D.C.

Michael J. Songer

Michael Songer