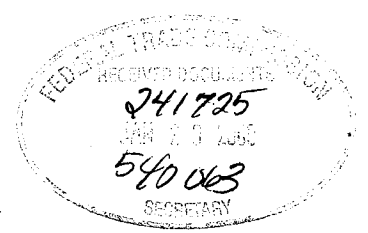


ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

Docket No. 9327

PUBLIC DOCUMENT

**RESPONDENT'S RESPONSE TO ENERSYS' MOTION TO  
EXTEND TIME TO PRODUCE DOCUMENTS**

Respondent Polypore International, Inc. ("Polypore") submits its memorandum in response to EnerSys' ("EnerSys") Motion to Extend Time To Produce Documents. Respondent states as follows:

1. On November 7, 2008, EnerSys was served by Respondent with a subpoena *duces tecum* (the "Subpoena").
2. On December 16, 2008, EnerSys moved for an award of attorneys' fees and to limit the Subpoena.
3. EnerSys' Motion for Award of Attorneys' Fees and Costs and to Limit Subpoena Served on Non-Party was contrary to an abundance of existing Federal Trade Commission ("Commission" of "FTC") authority on the issues raised therein and was without basis.
4. On December 24, 2008, Respondent filed a Memorandum in Opposition to EnerSys' Motion for Award of Attorneys' Fees and Costs and to Limit Subpoena Served on Non-Party illustrating the deficiencies in EnerSys' argument to limit the Subpoena and recover its costs.

5. By Order dated January 15, 2009 (“January 15<sup>th</sup> Order”), this Court denied EnerSys’ motion for an award of attorneys’ fees and to limit the Subpoena and ordered EnerSys to produce all responsive documents within ten calendar days. The Court found that EnerSys was not entitled to its costs or fees, and that Respondent’s Subpoena sought relevant information and was not overly broad or unduly burdensome.

6. Importantly, in the interim between December 16, 2008 when EnerSys moved for an award of attorneys’ fees and to limit the Subpoena and the January 15<sup>th</sup> Order, EnerSys did not take any steps to review, or ready for production, the documents sought by Respondent’s Subpoena. (*EnerSys’ Motion to Extend Time to Produce Documents*, ¶ 12).

7. Instead, on January 20, 2009, EnerSys filed a Motion to Extend Time to Produce Documents in which it sought to extend, by ten days (through February 4, 2009), the deadline by which it must produce documents pursuant to Respondent’s Subpoena.

8. Respondent cannot afford any further delay from EnerSys, as important deadlines are approaching.

9. The current discovery deadline, including fact-witness depositions, is February 13, 2009.

10. The deadline for Respondent’s counsel to produce its expert reports is currently February 20, 2009.

11. The extension sought by EnerSys would be unfair and prejudicial to Respondent absent the Court granting Respondent’s Motion to Amend the Scheduling Order which was filed on January 16, 2009.

12. The information Respondent seeks from EnerSys is needed not only for the deposition examinations of EnerSys' witnesses by Respondent's counsel, but is also needed so that Respondent's economist can formulate his opinions and create an expert report.

13. In fairness to Respondent and Respondent's economist, Respondent must be provided with EnerSys' documents in a timely manner. It would be manifestly unjust and prejudicial to Respondent for Respondent's economist to have to prepare his report in piecemeal fashion – without access to documents or deposition testimony from EnerSys – or to submit his report only to be forced to later supplement the report after EnerSys has produced documents and/or made its witnesses available for deposition. Respondent's economist should be permitted to formulate his opinions based upon a complete production from third parties, not from piecemeal productions provided after the deadline for submitting expert reports.

14. In light of the approaching discovery deadlines, it would also be unfair and prejudicial to Respondent if it could not proceed timely with its discovery. Pursuant to Joint Motion of Respondent and EnerSys for Leave of Court to Conduct Depositions of EnerSys and EnerSys Employees After the Discovery Deadline, depositions of EnerSys' witnesses must be completed within 14 days of the receipt by Respondent's counsel of the completed document production by EnerSys.

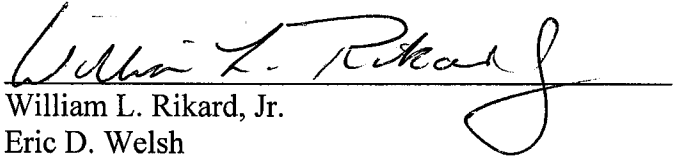
15. The extension EnerSys seeks would not require EnerSys' document production to be complete until the first week of February and would therefore further delay the depositions of EnerSys' witnesses. Such a delay will severally hinder Respondent's ability to comply with its deadlines (including the February 20, 2009 expert report deadline), will have a detrimental effect on the ability of Respondent's economist to conduct his work in an efficient and proper manner,

and will adversely effect Respondent's preparation of its defense for the trial scheduled for April 14, 2009.

WHEREFORE, Respondent respectfully requests that the Court deny EnerSys' Motion to Extend Time To Produce Documents.

Dated: January 23, 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](mailto:williamrikard@parkerpoe.com)

[ericwelsh@parkerpoe.com](mailto: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](mailto:johngraybeal@parkerpoe.com)

*Attorneys for Respondent*

## CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing this ***Respondent's Response to EnerSys' Motion to Extend Time To Produce Documents***, 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](mailto:secretary@ftc.gov)

I hereby certify that on January 22, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Response to EnerSys' Motion to Extend Time To Produce Documents*** upon:

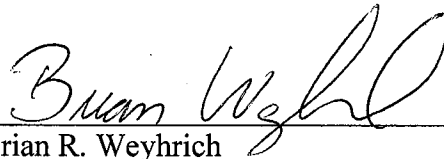
The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[oalj@ftc.gov](mailto:oalj@ftc.gov)

I hereby certify that on January 22, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Response to EnerSys' Motion to Extend Time To Produce Documents*** upon:

J. Robert Robertson, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[rrobertson@ftc.gov](mailto:rrobertson@ftc.gov)

Steven Dahm, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[sdahm@ftc.gov](mailto:sdahm@ftc.gov)

Neil C. Schur, Esq.  
Stevens & Lee, P.C.  
1818 Market Street, 29th Floor  
Philadelphia, PA 19103  
[NCSC@stevenslee.com](mailto:NCSC@stevenslee.com)



---

Brian R. Weyhrich  
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

# PARKER POE

PARKER POE ADAMS & BERNSTEIN LLP

Attorneys and Counselors at Law

**William L. Rikard, Jr.**

*Partner*

Telephone: 704.335.9011

Direct Fax: 704.335.9689

williamrikard@parkerpoe.com

January 23, 2009

Three Wachovia Center  
401 South Tryon Street  
Suite 3000  
Charlotte, NC 28202-1942  
Telephone 704.372.9000  
Fax 704.334.4706  
www.parkerpoe.com

## VIA PERSONAL DELIVERY AND ELECTRONIC MAIL

Donald S. Clark, Esq.

Secretary

Office of the Secretary of the Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Room H-135

Washington, DC 20580



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

Dear Secretary Clark:

On behalf of Respondent Polypore International, Inc., I enclose for filing a paper original and two (2) copies of the following documents:

- Respondent's Response to EnerSys' Motion to Extend Time To Produce Documents

Respectfully submitted,

A handwritten signature in cursive script that reads "William Rikard".

William L. Rikard, Jr.

WLR:psa  
Enclosures

cc: J. Robert Robertson, Esq. (w/encl)  
Steven Dahm, Esq. (w/encl)  
Eric D. Welsh, Esq. (w/o encl)  
John F. Graybeal, Esq. (w/o encl.)  
Deborah L. Edney, Esq. (w/o encl)  
Adam Shearer, Esq. (w/o encl)

CHARLESTON, SC  
COLUMBIA, SC  
MYRTLE BEACH, SC  
RALEIGH, NC  
SPARTANBURG, SC