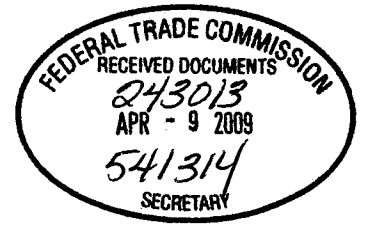


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

Docket No. 9327

PUBLIC DOCUMENT

**MEMORANDUM OF JOHNSON CONTROLS, INC. IN SUPPORT OF ITS
MOTION FOR *IN CAMERA* TREATMENT PURSUANT TO FTC RULE 3.45**

Non-party Johnson Controls, Inc. (“JCI”) submits this Memorandum in support of its motion for *in camera* treatment for a number of the JCI documents and excerpts of deposition transcripts designated by the parties as exhibits for the upcoming hearing. As explained more fully below, these documents are entitled to *in camera* treatment pursuant to FTC Rule 3.45 because they contain confidential business strategy and data so that public disclosure of this information would result in serious competitive injury to JCI and to its separator suppliers. JCI also requests that any hearing testimony concerning these documents and any designations of deposition testimony also be heard on an *in camera* basis.¹ The FTC staff has indicated that it does not oppose *in camera* treatment of these documents and counsel for Polypore has indicated that it takes no position on this motion.

BACKGROUND

JCI is one of the world’s leading manufacturers of batteries for use in automobiles, sometimes referred to as SLI (Starting, Lighting, Ignition) batteries. JCI also manufactures deep cycle or golf cart batteries for use on golf carts or other pieces of equipment.

¹ Based upon the Court’s April 8, 2009 Order Granting Joint Motion to Revise the Scheduling Order, JCI reserves the right to seek *in camera* treatment for any designated JCI witness deposition testimony if such deposition testimony is offered into evidence.

Battery separators are a necessary component both for automotive/SLI batteries and for golf cart/deep cycle batteries, but a different type of separator is used in each function so that, for example, an automotive separator cannot be used on a golf cart battery and vice versa. In 2008, JCI purchased separators for automotive/SLI batteries from Polypore (Daramic), Entek International (“Entek”) and BFR.

[

REDACTED

]

On March 27, JCI received notice from the FTC staff that the staff intended to introduce up to 29 JCI documents at the hearing in this matter. In addition, Polypore's counsel provided a list that contained over 200 possible excerpts of deposition testimony and more than 125 documents (some of which were combinations of more than one document from the production).²

In order to address JCI's need for *in camera* treatment without describing each individual document for which JCI is seeking *in camera* treatment, this Memorandum describes general categories of documents for which JCI seeks *in camera* treatment. More details on the specific documents are found in the supporting declaration of Mr. Flavio Almeida and accompanying exhibit filed in support of JCI's motion for *in camera* treatment. In addition, JCI is providing to the Administrative Law Judge and the parties a CD with copies of the documents for which it seeks *in camera* treatment.

² As noted above, JCI also believes that many of the deposition excerpts should be received only on an *in camera* basis, but we understand that consideration of that issue will occur after Polypore sends an updated notice as to the specific designations that it will use.

LEGAL STANDARD

Rule 3.45 provides that material shall be “placed *in camera* only after finding that its public disclosure would likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” 16 C.F.R. 3.45(b). A serious injury can be established by showing that the information at issue is “sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). The Commission considers the following factors when determining if the information at issue should be granted *in camera* treatment: (1) the extent to which the information is known outside the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” The Commission has held that “[t]he loss of business advantage is a good example of a ‘clearly defined, serious injury.’” *Hoechst Marion Roussel, Inc.* 2000 F.T.C. LEXIS at *6 (quoting *General Foods*, 95 F.T.C. at 355).

Where, as here, the request for *in camera* treatment is made by a nonparty, such request should be given “special solicitude.” See *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) (“[P]etitioner’s plea warrants special solicitude coming as it does from a third-party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors.”); *Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (requests for *in camera* treatment by third parties should be given special

solicitude because, as a matter of policy, such treatment encourages the third party to cooperate with future adjudicative discovery requests).

CATEGORIES OF DOCUMENTS

REDACTED

REDACTED

REDACTED

REDACTED

Finally, as a nonparty who has cooperated with the discovery requests made by Polypore in this matter, JCI's request for in camera treatment deserves "special solicitude" by this Court. *See Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500. As aforementioned, the disclosure of this highly confidential and proprietary information undoubtedly will cause serious competitive injury to JCI. Yet, the disclosure of this information will not materially promote the

resolution of this matter, nor will the public disclosure of this information materially assist the public's understanding of the issues in this matter.

IN CAMERA TREATMENT OF THIS INFORMATION SHOULD EXTEND FOR AT A MINIMUM A SEVEN (7) YEAR PERIOD.

It is well established that reasonable periods of *in camera* treatment encourage nonparties to cooperate with future discovery requests in adjudicative proceedings. *In the Matter of Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 5000 (1984). JCI's request that *in camera treatment* for this information be maintained indefinitely, or at a minimum for a period of seven (7) years, [

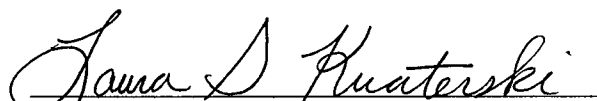
REDACTED

CONCLUSION

For the reasons set forth above, as further supported by the declaration submitted with this Memorandum, JCI respectfully requests that the documents be handled on an *in camera* basis and that any opinions, reports or decisions issued for public dissemination have the JCI confidential information redacted.

Dated: April 8, 2009

Respectfully submitted,



James T. McKeown
Laura S. Kwaterski
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FOLEY & LARDNER LLP
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Milwaukee, WI 53202
414-297-5530
414-297-4900 (fax)
jmckeown@foley.com

PUBLIC – EXHIBIT A

IN SUPPORT OF NON-PARTY JCI'S MOTION FOR IN CAMERA TREATMENT

FTC EXHIBIT LIST

Trial Exhibit No.	[Redacted]	[Redacted]	[Redacted]	[Redacted]
PX0672	[Redacted]	X	X	X
PX1501	[Redacted]	X		X
PX1502	[Redacted]	X		
PX1503	[Redacted]	X		
PX1505	[Redacted]	X		X
PX1506	[Redacted]	X		X
PX1507	[Redacted]	X		X
PX1508	[Redacted]	X		
PX1509	[Redacted]	X		
PX1513	[Redacted]	X		
PX1514	[Redacted]	X		
PX1515	[Redacted]	X		
PX1516	[Redacted]	X	X	
PX1517	[Redacted]	X	X	
PX1518	[Redacted]			
PX1520	[Redacted]	X		
PX1521	[Redacted]		X	

Trial Exhibit No.	[Redacted]	[Redacted]	[Redacted]	[Redacted]
PX1522	[Redacted]	X	X	
PX2111	[Redacted]	X		
PX2112	[Redacted]	X		
PX2113	[Redacted]	X		
PX2114	[Redacted]	X		
PX2116	[Redacted]	X		
PX2118	[Redacted]	X		X

PUBLIC – POLYPORE EXHIBIT LIST

Trial Ex. No.	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
RX00042	[Redacted]	[Redacted]	[Redacted]	X		
RX00045	[Redacted]	[Redacted]	[Redacted]	X		
RX01525	[Redacted]	[Redacted]	[Redacted]	X		
RX01526	[Redacted]	[Redacted]	[Redacted]	X		
RX01527	[Redacted]	[Redacted]	[Redacted]	X		
RX01555	[Redacted]	[Redacted]	[Redacted]	X		
RX01528	[Redacted]	[Redacted]	[Redacted]	X		
RX01554	[Redacted]	[Redacted]	[Redacted]		X	
RX01529	[Redacted]	[Redacted]	[Redacted]	X		
RX00251	[Redacted]	[Redacted]	[Redacted]	X		
RX00252	[Redacted]	[Redacted]	[Redacted]	X		
RX00253	[Redacted]	[Redacted]	[Redacted]		X	
RX01530	[Redacted]	[Redacted]	[Redacted]	X		
RX01531	[Redacted]	[Redacted]	[Redacted]	X		
RX01532	[Redacted]	[Redacted]	[Redacted]		X	
RX01506	[Redacted]	[Redacted]	[Redacted]	X		X
RX00254	[Redacted]	[Redacted]	[Redacted]	X		
RX01533	[Redacted]	[Redacted]	[Redacted]	X		
RX01534	[Redacted]	[Redacted]	[Redacted]	X		
RX00255	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00075	[Redacted]	[Redacted]	[Redacted]	X		X
RX01507	[Redacted]	[Redacted]	[Redacted]	X		X
RX00073	[Redacted]	[Redacted]	[Redacted]	X		X
RX00256	[Redacted]	[Redacted]	[Redacted]	X		X
RX01535	[Redacted]	[Redacted]	[Redacted]	X		
RX01508	[Redacted]	[Redacted]	[Redacted]	X		

Trial Ex. No.	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
RX00070	[Redacted]	[Redacted]	[Redacted]	X		
RX01571	[Redacted]	[Redacted]	[Redacted]	X		
RX00043	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00046	[Redacted]	[Redacted]	[Redacted]	X		
RX01536	[Redacted]	[Redacted]	[Redacted]	X		
RX01537	[Redacted]	[Redacted]	[Redacted]	X		
RX01538	[Redacted]	[Redacted]	[Redacted]	X		
RX00039	[Redacted]	[Redacted]	[Redacted]	X		
RX01539	[Redacted]	[Redacted]	[Redacted]		X	X
RX01540	[Redacted]	[Redacted]	[Redacted]	X	X	
RX01541	[Redacted]	[Redacted]	[Redacted]	X	X	X
RX00037	[Redacted]	[Redacted]	[Redacted]	X	X	X
RX01542	[Redacted]	[Redacted]	[Redacted]	X		
RX01543	[Redacted]	[Redacted]	[Redacted]	X		X
RX00038	[Redacted]	[Redacted]	[Redacted]	X	X	
RX01544	[Redacted]	[Redacted]	[Redacted]	X	X	
RX01020	[Redacted]	[Redacted]	[Redacted]	X		
RX01509	[Redacted]	[Redacted]	[Redacted]	X	X	
RX01545	[Redacted]	[Redacted]	[Redacted]	X	X	
RX01556	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00257	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00183	[Redacted]	[Redacted]	[Redacted]	X		
RX00040	[Redacted]	[Redacted]	[Redacted]	X		
RX00178	[Redacted]	[Redacted]	[Redacted]	X		X
RX00066	[Redacted]	[Redacted]	[Redacted]	X		
RX00180	[Redacted]	[Redacted]	[Redacted]	X		

Trial Ex. No.	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
RX00074	[Redacted]	[Redacted]	[Redacted]	X		
RX00133	[Redacted]	[Redacted]	[Redacted]	X		
RX00069	[Redacted]	[Redacted]	[Redacted]		X	
RX00035	[Redacted]	[Redacted]	[Redacted]	X		
RX00177	[Redacted]	[Redacted]	[Redacted]	X		
RX00050	[Redacted]	[Redacted]	[Redacted]		X	
RX00036	[Redacted]	[Redacted]	[Redacted]	X		
RX00064	[Redacted]	[Redacted]	[Redacted]	X		
RX00053	[Redacted]	[Redacted]	[Redacted]	X		
RX00072	[Redacted]	[Redacted]	[Redacted]	X		
RX00385	[Redacted]	[Redacted]	[Redacted]	X		
RX00044	[Redacted]	[Redacted]	[Redacted]	X		
RX00058	[Redacted]	[Redacted]	[Redacted]	X		
RX00057	[Redacted]	[Redacted]	[Redacted]	X		
RX00029	[Redacted]	[Redacted]	[Redacted]	X		
RX00386	[Redacted]	[Redacted]	[Redacted]	X		
RX00052	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00028	[Redacted]	[Redacted]	[Redacted]	X		
RX00387	[Redacted]	[Redacted]	[Redacted]	X		
RX00030	[Redacted]	[Redacted]	[Redacted]		X	
RX00388	[Redacted]	[Redacted]	[Redacted]		X	
RX00024	[Redacted]	[Redacted]	[Redacted]	X		
RX00054	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00185	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00390	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00060	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00023	[Redacted]	[Redacted]	[Redacted]		X	
RX00059	[Redacted]	[Redacted]	[Redacted]		X	
RX00063	[Redacted]	[Redacted]	[Redacted]	X		

Trial Ex. No.	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
RX00061	[Redacted]	[Redacted]	[Redacted]		X	
RX00027	[Redacted]	[Redacted]	[Redacted]		X	
RX00391	[Redacted]	[Redacted]	[Redacted]		X	
RX00065	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00025	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00062	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00048	[Redacted]	[Redacted]	[Redacted]		X	
RX00032	[Redacted]	[Redacted]	[Redacted]	X	X	
RX00067	[Redacted]	[Redacted]	[Redacted]			
RX00076	[Redacted]	[Redacted]	[Redacted]	X		
RX00176	[Redacted]	[Redacted]	[Redacted]	X		
RX00392	[Redacted]	[Redacted]	[Redacted]	X		
RX00179	[Redacted]	[Redacted]	[Redacted]	X		
RX01602	[Redacted]	[Redacted]	[Redacted]	X		

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

In the Matter of)
)
)

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

Docket No. 9327

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2009, I caused to be served via Overnight Courier a true copy of the foregoing Memorandum in Support of Non-Party Johnson Controls, Inc.'s Motion for In Camera Treatment (Public) in the following manner:


I am familiar with the office practice of Foley & Lardner LLP for collecting and processing documents for overnight mail delivery by overnight courier or other express service carrier. Under that practice, documents are deposited with the Foley & Lardner LLP personnel responsible for depositing documents in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained for receipt of overnight mail by overnight courier or other express service carrier; such documents are delivered for overnight mail delivery by overnight courier or other express service carrier on that same day in the ordinary course of business, with delivery fees thereon fully prepaid and/or provided for. I caused to be deposited in Foley & Lardner LLP's interoffice mail sealed envelopes or packages containing the above-described documents and addressed as set forth below in accordance with the office practices of Foley & Lardner LLP for collecting and processing documents for overnight mail delivery by overnight courier or other express service carrier:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580-0002
(1 copy)

Steven A. Dahm
Federal Trade Commission
601 New Jersey Avenue, NW
Washington, D.C. 20001-2018
(1 copy)

Eric D. Welsh
William L. Rikard, Jr.
Parker Poe Adams & Bernstein LLP
401 South Tryon Street
Charlotte NC 28202
(1 copy)

J. Robert Robertson
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580-0002
(1 copy)



Laura S. Kwaterski

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



In the Matter of)
)

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

Docket No. 9327

PUBLIC DOCUMENT

DECLARATION OF FLAVIO ALMEIDA

Flavio Almeida hereby declares as follows:

1. I am currently employed by Johnson Controls, Inc. ("JCI") as the Director of Procurement, Americas in JCI's Power Solutions Group. I make this Declaration in connection with Non-Party Johnson Controls, Inc.'s Motion for *In Camera* Treatment of Certain Hearing Exhibits Designated by Complaint Counsel and Polypore International, Inc. I make this Declaration based upon my own personal knowledge, my conversations with other JCI executives, and my review of the issues pertinent to this request for *in camera* treatment. To the extent that I was not previously familiar with a document, I reviewed the confidentiality issues and need for *in camera* treatment with other high-ranking employees in the Purchasing Department and Legal Department for the Power Solutions Group.

2. JCI produced various documents pursuant to a subpoena duces tecum issued at the request of Polypore International, Inc. ("Polypore") in this matter. Polypore's subpoena sought documents related to JCI's strategic plans, our costs and pricing, our research and development efforts, our supply contracts and other information that JCI considers confidential. Almost all of the documents JCI produced in this matter were designated either "Confidential" or "Highly Confidential" pursuant to the Protective Order entered in the above-

captioned matter on October 23, 2008 and the stipulated amendment to the Protective Order entered on January 15, 2009.

3. JCI is one of the world's leading manufacturers of batteries for use in automobiles, sometimes referred to as SLI (Starting, Lighting, Ignition) batteries. JCI also manufactures deep cycle or golf cart batteries for use on golf carts or other pieces of equipment. Battery separators are a necessary component both for automotive/SLI batteries and for golf cart/deep cycle batteries, but a different type of separator is used in each function so that, for example, an automotive separator cannot be used on a golf cart battery and vice versa.

REDACTED

6. I am familiar with the type of information contained in the documents for which JCI seeks *in camera* treatment. I am also generally familiar with the confidentiality protection afforded this type of information by JCI. Based upon my review of these documents, my knowledge of JCI's business, my discussions with other JCI executives, and my familiarity with the confidentiality protection that JCI affords information of this type, it is my belief that the public disclosure of many of the documents identified by the FTC and Polypore or the information contained in them would cause serious competitive injury to JCI.

FTC EXHIBIT LIST

7. On March 27, 2009, JCI received notice from Complaint Counsel that the FTC intends to introduce 29 documents produced by JCI in this matter at the hearing beginning May 12, 2009.

REDACTED

REDACTED

REDACTED

13. Only a small number of relatively high level executives at JCI are privy to the information in these strategy documents. This information constitutes a highly confidential executive level strategy, and I would not discuss it outside this limited group within JCI. The vast majority of these documents are conspicuously labeled as “Confidential and Proprietary Information.” JCI has taken and continues to take precautions to safeguard the highly confidential nature of its

REDACTED

These documents were produced as “Highly Confidential Material” pursuant to the Protective Order in this matter because these documents contain trade secrets of a technical and economic nature. In fact, JCI insisted that the Protective Order be amended so that Michael Schor, an attorney for Polypore on the JCI contract negotiations, could not review these documents.

REDACTED

REDACTED

16. Only a small number of high level executives at JCI are privy to this information. JCI has taken and continues to take precautions to safeguard the [

REDACTED

REDACTED

19. Only a small number of high level executives at JCI are privy to this information. JCI has taken and continues to take precautions to safeguard the highly confidential nature of this information.

REDACTED

POLYPORE EXHIBIT LIST

20. On March 31, 2009, JCI received notice from counsel for Polypore that it intends to introduce over 125 documents produced by JCI in this matter at the hearing beginning May 12, 2009.

REDACTED

REDACTED

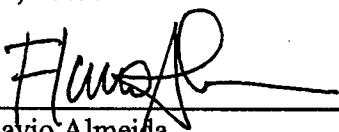
REDACTED

24. Only a small number of high level executives at JCI are privy to this information. JCI has taken and continues to take precautions to safeguard

REDACTED

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed this 8 day of April, 2009.



Flavio Almeida

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

In the Matter of)
)
)

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

Docket No. 9327

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2009, I caused to be served via Overnight Courier a true copy of the foregoing Proposed Order Granting Motion for In Camera Treatment Pursuant to FTC Rule 3.45 in the following manner:


I am familiar with the office practice of Foley & Lardner LLP for collecting and processing documents for overnight mail delivery by overnight courier or other express service carrier. Under that practice, documents are deposited with the Foley & Lardner LLP personnel responsible for depositing documents in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained for receipt of overnight mail by overnight courier or other express service carrier; such documents are delivered for overnight mail delivery by overnight courier or other express service carrier on that same day in the ordinary course of business, with delivery fees thereon fully prepaid and/or provided for. I caused to be deposited in Foley & Lardner LLP's interoffice mail sealed envelopes or packages containing the above-described documents and addressed as set forth below in accordance with the office practices of Foley & Lardner LLP for collecting and processing documents for overnight mail delivery by overnight courier or other express service carrier:

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(1 copy)



Laura S. Kwaterski