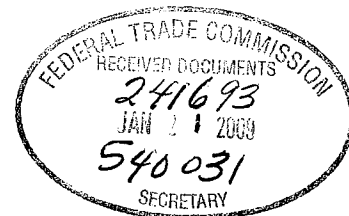


ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

Docket No. 9327

PUBLIC DOCUMENT<sup>1</sup>

**RESPONDENT’S MEMORANDUM IN OPPOSITION TO ENTEK INTERNATIONAL LLC’S MOTION TO QUASH THE SUBPOENAS AD TESTIFICANDUM ISSUED TO GRAEME FRASER-BELL AND ROBERT KEITH**

Respondent Polypore International, Inc. (“Polypore”) respectfully submits this Memorandum in Opposition to ENTEK International LLC’s (“ENTEK”) Motion to Quash the Subpoenas *Ad Testificandum* Issued to Graeme Fraser-Bell (“Fraser-Bell”) and Robert Keith (“Keith”).

**PRELIMINARY STATEMENT**

ENTEK is a direct competitor of Polypore. ENTEK is a leading producer of polyethylene (“PE”) battery separators for starting, lighting and ignition (SLI) lead-acid batteries. **[Redacted – Subject to Protective Order]**<sup>2</sup>

On November 10, 2008, Respondent served a subpoena *duces tecum* on ENTEK seeking access to **[Redacted – Subject to Protective Order]** and other information and evidence relevant to Respondent’s defense in this case. ENTEK initially raised some objection to the subpoena *duces tecum*, but through negotiation, such concerns were ultimately resolved and a discovery agreement was reached in principal on December 11, 2008 which allowed ENTEK to

<sup>1</sup> Respondent’s Memorandum in Opposition to ENTEK International LLC’s Motion to Quash the Subpoenas Ad Testificandum Issued to Graeme Fraser-Bell and Robert Keith refers to and contains information identified as “Confidential Material” under the terms of the Protective Order entered in this matter. Such “Confidential Material ” has been **[bolded and bracketed]** in the complete version of Respondent’s Memorandum and has been redacted and labeled “**[Redacted – Subject to Protective Order]**” in the public version of Respondent’s Memorandum.

<sup>2</sup> **[Redacted – Subject to Protective Order]**

begin the production of documents.<sup>3</sup> ENTEK's first production of documents pursuant to Respondent's subpoena *duces tecum* occurred on January 5, 2009.

On or about December 30, 2008, Respondent served four subpoenas *ad testificandum* on ENTEK and noticed the depositions of the following individuals and entities: (a) Mr. Robert Keith, (b) Mr. Daniel Weerts, (c) Mr. Graeme Fraser-Bell, and (d) a corporate subpoena directed to ENTEK International, LLC. The depositions of Mr. Fraser-Bell and ENTEK International, Inc. were noticed for January 19, 2009, while the depositions of Mr. Keith and Mr. Weerts were noticed for January 20, 2009.

On January 9, 2009, however, ENTEK filed the instant motion in which it seeks to quash the subpoenas *ad testificandum* directed to Keith, ENTEK's President and Chief Executive Officer, and Fraser-Bell, ENTEK's International Ltd.'s Vice President of International Sales. Respondent's subpoenas *ad testificandum* directed at Keith and Fraser-Bell are calculated to yield relevant information vital to Respondent's defense in the pending FTC proceeding. Respondent asserts that ENTEK's grounds for its motion are without merit and asks the Administrative Law Judge to deny ENTEK's motion and enforce the subpoenas *ad testificandum*.

### ARGUMENT

ENTEK's motion to quash is unwarranted. The FTC's Rules allow Polypore to "obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations in the complaint, to the proposed relief, or to the defenses of [the] respondent." 16 C.F.R. § 3.31(c)(1). Moreover, "any party may take a deposition . . . provided that such deposition is reasonably expected to yield information within the scope of discovery under §

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<sup>3</sup> Despite the agreement reached regarding Respondent's subpoena *duces tecum*, ENTEK has been dilatory in producing documents to Respondent, necessitating the filing of a motion to compel, which is currently pending.

3.31(c)(1).” 16 C.F.R. § 3.33(a). Discovery should be limited only if the burden outweighs the benefit. 16 C.F.R. § 3.31(c)(1). In fact, “public interest requires that once a complaint issues . . . Commission counsel (and respondent’s counsel when they put on their defense) be given the opportunity to develop those facts which are essential” to support or undermine the allegations in the pleadings. *In re Gen. Foods.*, No. 9085 C, 1978 FTC LEXIS 412 at \*6 (April 18, 1978).

It its memorandum in support of its motion to quash, ENTEK wrongly asserts that the alleged burdens associated with the depositions of Fraser-Bell and Keith should preclude the depositions taking place. The fact that Keith and Fraser-Bell may be busy corporate executives, however, does not prevent them from being deposed. *See Arkwright Mutual Ins. Co. v. National Union Fire Ins. Co.*, 1993 WL 34678 at 2 (S.D.N.Y. 1993)(allowing the deposition of the president of AIG to proceed); *CBS, Inc. v. Ahern*, 102 F.R.D. 820, 822 (S.D.N.Y. 1984)(“the fact that the witness has a busy schedule is simply not a basis for foreclosing otherwise proper discovery.”) As discussed herein, the benefits of deposing Keith and Fraser-Bell outweigh the alleged minimal burdens that purportedly would be caused by such depositions.

As ENTEK’s document productions to **[Redacted – Subject to Protective Order]** Respondent demonstrate, Keith and Fraser-Bell are both material fact witnesses with respect to Respondent’s defenses in this proceeding.

In particular, the documents that ENTEK and third-party Johnson Controls, Inc. (“JCI”) have produced to Respondent to date, reveal that Keith has knowledge of several issues relevant and necessary to Respondent’s defense of the Commission’s allegations in this proceeding. For example, it is clear from ENTEK’s limited production of documents thus far that **[Redacted – Subject to Protective Order]**(Tab A). It is also evident that **[Redacted – Subject to Protective Order]**(Tab B).

Additionally, **[Redacted – Subject to Protective Order]**(Tab C), **[Redacted – Subject to Protective Order]**(Tab D).

Moreover, as ENTEK's President and CEO, Keith is believed to have knowledge of ENTEK's strategic plans, including but not limited to: **[Redacted – Subject to Protective Order]** (Tab E). Such information is important to Respondent's defense in this proceeding and, as a result, Respondent is entitled to depose Keith in order to obtain this information. (*See* January 7, 2009 e-mail of Eric D. Welsh, Esq.)(Tab F).

ENTEK also refuses to make Fraser-Bell available for a deposition, whether here or in the United Kingdom. There is no dispute, however, that Fraser-Bell has information relevant and necessary to Respondent's defense of the Commission's allegations in this proceeding. For example, prior to the institution of this proceeding, **[Redacted – Subject to Protective Order]**.

Additionally, it is believed Fraser-Bell possesses important evidence in this matter because he is intimately involved in ENTEK's battery separator sales to customers located throughout the world and is believed to be knowledgeable of other suppliers of battery separators in Europe. To wit, ENTEK International LLC and its European subsidiary ENTEK International Ltd. produce and sell battery separators around the globe. As the Vice President of International Sales, Fraser-Bell is "responsible for managing ENTEK International Ltd.'s relationship with non-North American customers" which "requires regular travel to visit customers throughout Europe and Asia." (*See* Declaration of Graeme Fraser-Bell in Support of ENTEK International LLC's Motion to Quash the Subpoena *Ad Testificandum* Issued to Graeme Fraser-Bell and Robert Keith Pursuant to 16 C.F.R. § 3.34(c)). Importantly, ENTEK, in its motion to quash, does not deny that Fraser-Bell has extensive knowledge of matters relevant to this action. Nor do they deny that he has, and does, travel to the United States for business meetings at ENTEK.

In fact, **[Redacted – Subject to Protective Order]** (Tab G). This evidence cannot be obtained from sources other than Fraser-Bell.

Despite Respondent's clear need to depose Fraser-Bell, and the fact the ENTEK's counsel accepted service of the subpoena *ad testificandum* directed to Fraser-Bell (*see December 30, 2008 e-mail of Darius Ogloza, Esq.*)(Tab H), ENTEK attempts to argue that the subpoena *ad testificandum* directed to Fraser-Bell is invalid based on allegedly defective service and process.<sup>4</sup> ENTEK's argument is without basis.

First, Fraser-Bell is clearly within the possession, custody and control of ENTEK. Fraser-Bell's declaration in support of ENTEK's motion to quash states that he is a British citizen, and serves as the Vice President of International Sales for ENTEK International Ltd., a wholly-owned company of ENTEK International LLC, a corporation with its principle place of business in Lebanon, Oregon. (*See Declaration of Graeme Fraser-Bell in Support of ENTEK International LL's Motion to Quash the Subpoena Ad Testificandum Issued to Graeme Fraser-Bell and Robert Keith Pursuant to 16 C.F.R. § 3.34(c)*).

Second, **[Redacted – Subject to Protective Order]** (Tab G). Accordingly, ENTEK has control over Fraser-Bell and his documents.

Third, and perhaps most importantly, ENTEK represented the Fraser-Bell's position was with ENTEK International LLC and not its European subsidiary ENTEK International Ltd. (*See January 7, 2009 e-mail of Eric D. Welsh, Esq.*)(Tab F). In **[Redacted – Subject to Protective Order]** and in the negotiations with Respondent over the subpoena *duces tecum*, ENTEK has blurred any distinction between ENTEK and its European operations; treating them as being the

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<sup>4</sup> To ensure the timely deposition of Graeme Fraser-Bell, Respondent sought leave from this Court to take the deposition of Fraser-Bell in the United Kingdom pursuant to FTC Rule 16 C.F.R. § 3.36(b). *See Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36*. Should ENTEK's motion to quash be denied, as it should be, Respondent's subpoena *ad testificandum* should be enforced which would obviate the need for Respondent's Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36.

same. For example, **[Redacted – Subject to Protective Order]**(Tab I). During the course of Respondent’s negotiations with ENTEK regarding Respondent’s subpoena *duces tecum*, ENTEK objected to reviewing email files from large numbers of custodians but agreed to limit the review to three people. Fraser-Bell, who ENTEK represented was ENTEK’s Vice President of International Sales, was one of the three proffered custodians. (*See December 22, 2008 Letter Agreement, Section II – Request No. 5 (“ENTEK shall produce copies of responsive documents from the files of Dan Weerts, Vice President of Sales & Marketing, Graeme Fraser-Bell, Vice President International Sales, and Greg Humphrey, North & South America Account Manager”)*)(*emphasis added*)(Tab J). Now, after negotiating with Respondent **[Redacted – Subject to Protective Order]** and then acknowledging the importance of Fraser-Bell’s files to this matter, ENTEK attempts to distance itself from him, oddly arguing that discovery should not be had of him because his knowledge is alleged to be “minimal.”

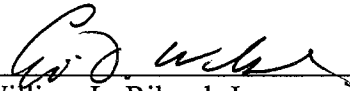
In sum, Respondent has a legitimate and substantial need for deposing Graeme Fraser-Bell and Robert Keith. Given the short time remaining before the scheduled discovery cut-off deadline in this proceeding, Respondent should be allowed to proceed with the depositions of Graeme Fraser-Bell and Robert Keith as soon as possible in order to obtain the information necessary for its defense in this proceeding.

### CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court deny in whole ENTEK’s Motion to Quash the Subpoenas Ad Testificandum Issues to Graeme Fraser-Bell and Robert Keith.

Dated: January 21, 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

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John F. Graybeal

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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 21, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Memorandum in Opposition to ENTEK International LLC's Motion to Quash the Subpoenas Ad Testificandum Issued to Graeme Fraser-Bell and Robert Keith***, and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

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

I hereby certify that on January 21, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Memorandum in Opposition to ENTEK International LLC's Motion to Quash the Subpoenas Ad Testificandum Issued to Graeme Fraser-Bell and Robert Keith*** 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 January 21, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Memorandum in Opposition to ENTEK International LLC's Motion to Quash the Subpoenas Ad Testificandum Issued to Graeme Fraser-Bell and Robert Keith*** upon:

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

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

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



*Adam Shearer*

---

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

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**TAB A**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of** )

**Docket No. 9327**

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

**FILED UNDER SEAL**

**CONFIDENTIAL INFORMATION PURSUANT TO THE  
CONFIDENTIALITY ORDER**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of )

Docket No. 9327

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)  
Polypore International, Inc. )  
a corporation )  
)

**TAB B**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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

**Docket No. 9327**

**FILED UNDER SEAL**

**CONFIDENTIAL INFORMATION PURSUANT TO THE  
CONFIDENTIALITY ORDER**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**TAB C**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**FILED UNDER SEAL**

**CONFIDENTIAL INFORMATION PURSUANT TO THE  
CONFIDENTIALITY ORDER**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**TAB D**



**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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

**Docket No. 9327**

**FILED UNDER SEAL**

**CONFIDENTIAL INFORMATION PURSUANT TO THE  
CONFIDENTIALITY ORDER**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**TAB E**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**FILED UNDER SEAL**

**CONFIDENTIAL INFORMATION PURSUANT TO THE  
CONFIDENTIALITY ORDER**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**TAB F**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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

**Docket No. 9327**

**FILED UNDER SEAL**

**CONFIDENTIAL INFORMATION PURSUANT TO THE  
CONFIDENTIALITY ORDER**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**TAB G**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**FILED UNDER SEAL**

**CONFIDENTIAL INFORMATION PURSUANT TO THE  
CONFIDENTIALITY ORDER**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**TAB H**



**From:** DARIUS.OGLOZA@LW.com [mailto:DARIUS.OGLOZA@LW.com]  
**Sent:** Tuesday, December 30, 2008 1:35 PM  
**To:** Welsh, Eric D.  
**Cc:** Hanno.Kaiser@lw.com; Brett.Collins@lw.com  
**Subject:** RE: In re Polypore International, Inc., Docket No. 9327

Eric:

This confirms that we are authorized to accept service of your deposition subpoena. If you have available dates/locations for the deposition in mind, we would appreciate hearing from you as this will help get the ball rolling.

---

**From:** Welsh, Eric D. [mailto:ericwelsh@parkerpoe.com]  
**Sent:** Tuesday, December 30, 2008 8:16 AM  
**To:** Ogloza, Darius (SF)  
**Subject:** In re Polypore International, Inc., Docket No. 9327

In connection with the above referenced matter, I wanted to let you know that I am sending out some deposition subpoenas for depositions of representatives of your client, Entek. As we have discussed before, we have certain deadlines in this matter that must be met and accordingly, I am serving the subpoenas now. I will certainly work with you to the extent possible on the date for the examinations. Please let me know if you would like me to send a copy to you and whether you would accept service on behalf of your client. Thank you.

Also, with respect to the documents to be produced pursuant to the subpoena duces tecum, we obviously will need to receive the documents in advance of these depositions so that we can be efficient in the examinations. If documents are to be produced in electronic format, I ask that you please contact my paralegal, Timora Wilkerson, at 704-335-9521 to coordinate on formatting, which I understand would need to be in tiff form. Thank you for your attention to this matter.

Best regards,

Eric Welsh

---

**Eric Welsh**  
Partner

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Polypore International, Inc.  
a corporation**

**Docket No. 9327**

**TAB I**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Docket No. 9327**

**Polypore International, Inc.  
a corporation**

**FILED UNDER SEAL**

**CONFIDENTIAL INFORMATION PURSUANT TO THE  
CONFIDENTIALITY ORDER**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**Docket No. 9327**

**Polypore International, Inc.  
a corporation**

**TAB J**

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

605 Montgomery Street, Suite 2000  
San Francisco, California 94111-6538  
Tel: +1.415.391.0800 Fax: +1.415.396.8095  
www.lw.com

## LATHAM & WATKINS LLP

December 22, 2008

### VIA EMAIL

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

#### FIRM / AFFILIATE OFFICES

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

File No. 030380-0007

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

Dear Eric:

This letter, if countersigned by you, modifies the subpoena *duces tecum* served on ENTEK International LLC ("ENTEK") by Polypore International, Inc. ("Polypore") on November 6, 2008 ("Subpoena") and constitutes an agreement ("Agreement") between Polypore and ENTEK (jointly, the "parties"), resolving all discovery issues and disputes raised in connection with the Subpoena. The Agreement affords additional protection to documents and other information to be produced by ENTEK in response to the Subpoena ("ENTEK Information"), and at the same time ensures that a group of outside counsel and advisors to Polypore, defined below, will obtain access to ENTEK Information that Polypore requires for its defense in a timely manner. The Agreement shall not limit Polypore's right to interview or seek relevant deposition testimony from ENTEK personnel, or additional ENTEK Information if Polypore believes that the ENTEK Information produced fails to respond to the level of inquiry described in this letter. Correspondingly, ENTEK reserves its right to object to such requests.

### I. General Agreements

(1) Date cutoff: The default date cut off for the Subpoena is January 1, 2003.

(2) Disclosure Group and Michael L. Shor: Disclosure of ENTEK Information is limited to the following individuals: (a) outside antitrust litigation counsel, i.e., Parker Poe Adams & Bernstein LLP ("Parker Poe") attorneys staffed on the matter; (b) outside antitrust economists (e.g., CRAI, CompassLexecon, LECG, Brattle Group) retained by Polypore as consultants or testifying experts for purposes of this litigation ("Economic Experts"); (c) Approved Industry Experts as defined in paragraph (5) below; (d) Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and antitrust economists retained by the Commission as experts or consultants for this proceeding; (e) judges and other court personnel of any court having jurisdiction over any

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appellate proceedings involving this matter; (f) court reporters in this matter; (g) any ENTEK witness or deponent who may have authored or received the ENTEK Information; and (h) any other person(s) to whom ENTEK agrees to in writing. Each individual member of the Disclosure Group identified in (2)(a)(b)(c) and (h) shall sign and return a copy of this letter to Brett Collins, Esq., LATHAM & WATKINS LLP, 505 Montgomery Street, San Francisco, CA 94111 ([brett.collins@lw.com](mailto:brett.collins@lw.com)) prior to accessing any ENTEK Information. For purposes of clarification, Michael L. Shor is not a member of the Disclosure Group, and no ENTEK Information may be shared, disclosed, or made available in any way, directly or indirectly, to him.

(3) Access to ENTEK Information: In order to prevent disclosure of ENTEK Information to Polypore beyond the Disclosure Group, as defined in (2) above, all ENTEK Information shall only be maintained in and accessed from the offices of Parker Poe, those of the Economic Experts and/or those of the Approved Industry Experts (together, the "Restricted Locations"). In the event that ENTEK Information is imported into a document review system, such ENTEK Information shall be accessed only from terminals located in a Restricted Location. Access to any document review system shall be password protected. The distribution of passwords shall be limited to members of the Disclosure Group. No ENTEK Information may be removed from the Restricted Locations except as necessary to transfer ENTEK Information from one Restricted Location to another (e.g., from Parker Poe to the Economic Experts). ENTEK Information that will be used as exhibits at depositions, hearings or trial may be removed from the Restricted Locations for that purpose only and, after use, must be returned to a Restricted Location. For purposes of clarification, Polypore may provide the Commission with a copy of ENTEK Information produced in response to the Subpoena as required by the Scheduling Order, dated October 22, 2008.

(4) Return of ENTEK Information: Upon the completion of the present proceedings and any related appeal, the Disclosure Group shall return all ENTEK Information obtained in this action to ENTEK and no copies may be maintained.

(5) Industry experts: Should Polypore retain industry experts – as opposed to Economic Experts – in connection with this proceeding and wish to disclose ENTEK information to such experts, Polypore shall notify ENTEK of its intent and identify the industry expert(s) to whom it wishes to disclose such information along with sufficient information about the proposed expert(s) to permit ENTEK to ascertain whether the proposed expert is acceptable (including, but not limited to, a curriculum vitae). Moreover, and to the same end, Polypore shall at ENTEK's request make any proposed industry expert(s) available for one telephone interview not to exceed one (1) hour. 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 (2) years after the final resolution of this proceeding. For purposes of clarification, the industry expert must under no circumstances disclose ENTEK Information to anyone outside of the Disclosure Group. ENTEK shall have the opportunity to file a motion for protective order with the Administrative Law Judge, seeking to stop disclosure of ENTEK Information to the noticed industry expert(s) within (10) business days of receipt of the notice. In the event that ENTEK does not seek a protective order, the noticed expert(s) shall be considered approved after expiration of the ten (10) business day period or written approval notice from ENTEK, whichever is earlier ("Approved Industry Experts").

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(6) No waiver of privilege: For purposes of clarification, the parties do not interpret this Agreement as requiring ENTEK to waive its right to withhold from production any 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.

(7) Remedies: The parties acknowledge and agree that breach of the General Agreements may cause irreparable injury to ENTEK for which monetary damages are not a sufficient remedy. Accordingly, ENTEK may seek injunctive relief and any other available equitable remedies to enforce these provisions without posting a bond if otherwise required by law. For purposes of clarification, this provision in no way limits ENTEK's rights to seek monetary, including punitive damages for breach of this agreement and/or improper disclosure of ENTEK Information from Polypore, Parker Poe, the Economic Experts, and other natural persons or entities as the case may be. Moreover, this Agreement shall in no way limit ENTEK's rights under the Protective Order dated October 23, 2008.

## II. Agreements With Respect to Specific Requests

Request Nos. 1 and 2: ENTEK shall produce a written response listing all products in development by ENTEK or any Third Party to compete with Polypore lead acid battery separators.

Request No. 3 and 4: ENTEK shall produce a written response listing manufacturing or production facilities for lead acid battery separators in which ENTEK maintains any direct or indirect ownership interest. The written response shall include the following information: (a) the capital expenditure for the construction and start-up or expansion of such facility, (b) the date on which plans for such facility or expansion of such facility were approved, (c) the date on which construction began on such facility, (d) the date of commissioning or startup of such facility, (e) the production capacity of such facility, (f) the type of product(s) produced at such facility, (g) the anticipated end use(s) of the products manufactured at such facility, (h) the technology used at such facility to manufacture lead acid battery separators and (i) the cost of the lead acid battery separators manufactured and sold at such facility, including without limitation the cost of manufacturing and selling such products, including shipping costs.

Request No. 5: ENTEK shall produce copies of responsive documents from the files of Dan Weerts, Vice President of Sales & Marketing, Graeme Fraser-Bell, Vice President International Sales, and Greg Humphrey, North & South America Account Manager, on the basis of a list of specific search terms to be agreed upon by the parties.

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

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Request Nos. 7-8, 10-13: ENTEK shall produce documents sufficient to show the information sought by these requests.

Request Nos. 14-16: ENTEK shall produce a written response reflecting the information sought.

Request Nos. 9, 17, 25, 29: ENTEK shall produce documents sufficient to show the information sought by these requests.

Request Nos. 18-23, 27: ENTEK shall produce written responses reflecting information sought by these requests.

Request No. 24: Polypore has withdrawn this request.

Request Nos. 26, 35: ENTEK shall produce documents sufficient to show the information sought by these requests.

Request No. 28: ENTEK shall produce documents sufficient to show customer testing or qualification of any lead acid battery separator produced by ENTEK.

Request Nos. 30, 33, 34 and 36-38: ENTEK shall produce documents in response to these requests.

Request Nos. 31 and 32: ENTEK shall produce documents sufficient to show the information sought by these requests.

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

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

Best regards,

  
Darius Ogloza  
of LATHAM & WATKINS LLP  
Counsel for ENTEK International LLC

  
Eric D. Welsh  
of PARKER POE ADAMS & BERNSTEIN LLP  
Counsel for Polypore International, Inc.

cc: Hanno F. Kaiser



**Disclosure Group Signatures**

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