

ORIGINAL



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

PUBLIC DOCUMENT

**RESPONDENT'S MOTION TO SET HEARING LOCATION**

Pursuant to Rule 3.41 of the Commission's Rules of Practice, *16 C.F.R. § 3.41*, Respondent Polypore International, Inc. ("Polypore") respectfully moves for an order setting the location of the hearing in the above-captioned matter in Charlotte, North Carolina, as discussed at the October 22, 2008, scheduling conference.

In accordance with Commission Rule 3.22(f), *16 C.F.R. 3.22(f)*, Respondent's Counsel has discussed in good faith the issue raised by this motion with Complaint Counsel, but Counsel have been unable to resolve the issue. A signed statement documenting those discussions is submitted herewith.

In support of its motion, Polypore states as follows:

1. Polypore's corporate headquarters is located in Charlotte, North Carolina. Many of the witnesses Polypore intends to call reside in Charlotte and are extremely busy operating Polypore's business. The economic downturn is making operating the business more difficult and requires a greater attention of Polypore's personnel to the business, including those employees which will serve as witnesses for Polypore or be called by Complaint Counsel as witnesses. Furthermore, many of the witnesses Complaint Counsel intends to call also work and reside in Charlotte. None of the identified third party witnesses reside in or around Washington,

D.C. In contrast, the sole basis for a Washington, D.C. based hearing is the location of the Federal Trade Commission and the convenience of Complaint Counsel. Numerous factors set forth below manifest that the hearing should be held in Charlotte.

2. At the scheduling conference held on October 22, 2008, Administrative Law Judge Chappell, Complaint Counsel and Respondent's Counsel all recognized that convenience and economic efficiency dictated that the hearing would likely need to occur in North Carolina<sup>1</sup>, but that such a decision should be reserved for a future date<sup>2</sup>:

24       **JUDGE CHAPPELL:** Now, along those lines, when I  
25 see a case like this, I always throw it out to the  
1 parties. If everyone agrees that we'd be better off  
2 having this trial where the witnesses are -- and that's  
3 I guess North Carolina or whatever -- I throw that out,  
4 and if anybody wants to talk about that, come to some  
5 agreement, I've done this before, I've had a case in  
6 Fort Worth, Texas. I'll be able to find a courtroom.  
7       So I don't need a decision today, but if you  
8 want to think about it, let me know.

9       **MR. RIKARD:** That would be something that we  
10 would like to consider and we'll talk to Mr. Robertson  
11 about. There are certainly plenty of nice courtrooms  
12 with electronics and everything available in Charlotte,  
13 and that may be something that works well.  
14       Thank you for that comment, Your Honor.

15       **MR. ROBERTSON:** I like it down there, so if it  
16 works out, that would be fine.

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<sup>1</sup> The October 22, 2008, Scheduling Order ("Scheduling Order") in the form part of the order stated that the location of the hearing was Washington, D.C., or such "other location to be determined." (*October 22, 2008 Scheduling Order.*) The Order entered February 4, 2009 rescheduling the hearing only stated "Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580." (*February 4, 2009 Order Granting Respondent's Motion To Amend The Scheduling Order.*)

<sup>2</sup> Complaint Counsel now takes the position that it did not budget for a Charlotte based hearing, but Complaint Counsel's statement to Administrative Law Judge Chappell during the October 22, 2008 scheduling conference makes no such assertion. (*Transcript of October 22, 2008 Pre-Hearing Scheduling Conference, p. 7.*) In fact, this position was first asserted in an email dated March 10, 2009. Of course, Complaint Counsel has had the budget to fly its attorneys throughout the country to meet with multiple witnesses and attend depositions.

*(Transcript of October 22, 2008 Pre-Hearing Scheduling Conference, pp. 6-7).*

3. Charlotte, North Carolina, is the most convenient and cost-effective hearing location for the parties and other participants in the hearing. Washington, D.C. is not convenient to Respondent, its witnesses or its counsel and a hearing in Washington, D.C. will impose an unnecessary hardship and cost on Respondent.

4. A substantial number of the witnesses Polypore intends on calling to testify at the hearing work and reside in Charlotte and several reside in Johnson City, Tennessee, which is easily accessible from Charlotte. (Johnson City is an approximately three hour drive to/from Charlotte as opposed to a six hour and forty-five minute drive to/from Washington, D.C.) Additionally, Complaint Counsel's Revised Witness List identifies a minimum of eight Charlotte based current or former employees of Polypore as potential witnesses at the hearing of this matter<sup>3</sup>, and Complaint Counsel advised on March 10, 2009, that it intends to call all of these witnesses at the hearing, specifically including Polypore's President and Chief Executive Officer, Bob Toth; Daramic's Vice President of Sales and Marketing, Tucker Roe; and Daramic's Vice President and General Manager, Pierre Hauswald. (*January 6, 2009 Revised Witness List.*)

5. If the hearing is held in Washington, D.C., a large number of the Polypore officers and employees will be required to travel to Washington, D.C., potentially for extended periods of time. Such travel and testimony will result in several days of lost work for each Polypore employee called as a witness. The scheduling complications that inevitably occur at trial will impact the time away from work. This travel and lost work time imposes a hardship on both

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<sup>3</sup> Complaint Counsel's Revised Witness List also identifies at least two additional current or former employees of Polypore who either work or reside in Johnson City, Tennessee.

Polypore and the employees that will be called as witnesses and also puts an additional, and quite substantial, financial burden on Polypore which, in fairness, it ought not have to bear.

6. It is important to emphasize that Polypore will continue to operate and run its business operations during the course of the hearing. The Polypore officers and employees that Complaint Counsel has identified as intended witnesses are vital to Polypore's business. In these difficult economic times, it is essential that Polypore minimize lost work time so that its business is not unnecessarily harmed. By conducting the hearing in Charlotte, many witnesses will be close-by and prolonged and uncertain travel time will be avoided. Consequently, travel time and costs will be eliminated and the interruption to Polypore's business would be minimized, which would allow Polypore to continue close-to-normal business operations.

7. None of the third-party witnesses are located in either Charlotte, North Carolina or Washington, D.C., and therefore such third-party witnesses will have to travel regardless of whether the hearing is held in Charlotte or Washington, D.C. Charlotte, North Carolina, has extensive air transportation service to and from a multitude of locations, including Washington, D.C. U.S. Air's Charlotte hub provides regular daily service between Washington D.C. and Charlotte, and to and from Philadelphia, Pennsylvania, San Francisco, California, Atlanta, Georgia, Los Angeles, California, Boston, Massachusetts, and Milwaukee, Wisconsin, which easily accommodates any third party witnesses who might be called to testify. Additionally, the cost of accommodations in Charlotte typically is less than that found in Washington, D.C., further reducing the burden on third parties.

8. The undersigned firm, Parker Poe Adams & Bernstein LLP ("Parker Poe"), has its headquarters office in Charlotte, North Carolina. The Parker Poe trial team is from Parker Poe's North Carolina offices. Additionally, Respondent will be represented at the hearing by its

General Counsel, Phillip Bryson, Esq., and by Special Counsel, Michael L. Shor, Esq., both of whom reside in Charlotte and work at Polypore's Charlotte office. A Washington, D.C. based hearing would require Respondent to incur significant attorney-related travel and room and board expenses that could be avoided if the hearing takes place in Charlotte.

9. Complaint Counsel's trial team's travel expenses has the advantage of lower government rates.

10. Further in support of a hearing in Charlotte, is the proximity to the plant in Piney Flats, Tennessee. Respondent intends to move separately for an order allowing Judge Chappell to view Respondent's manufacturing facility in Piney Flats, Tennessee, and the operation of the facilities during the course of the hearing. As stated above, Piney Flats is only three hours from Charlotte and a van could easily be arranged to transport Judge Chappell, Counsel, and other pertinent observers to and from Piney Flats in one day. Respondent believes a view of Piney Flats and its operations is critical to its presentation of its case. Setting the hearing location in Charlotte would facilitate the viewing of Polypore's Piney Flats, Tennessee, facility. If the hearing is in Washington, D.C., such a site visit is much more difficult and expensive. (It will take two days and require additional airfare.)

11. After the hearing was rescheduled to begin on May 12, 2009, Complaint Counsel informed Respondent's Counsel that due to the college graduation of Mr. Robertson's daughter, Complaint Counsel will move for a short recess on May 20 and 21 (a Wednesday and Thursday) during the course of the hearing in order to allow Mr. Robertson to travel to and attend his daughter's graduation. Assuming that the hearing would be held in Charlotte, Respondent's Counsel told Complaint Counsel that it did not object to a recess in the hearing. Upon proper motion by Complaint Counsel, Respondent's Counsel will not object to a recess in the hearing

for this limited purpose. Allowing such a recess for this purpose is appropriate. Locating the hearing in Charlotte supports such a recess. Holding the hearing in Washington, D.C. does not because of the cost and inefficiency of such a recess. To wit, it would be unjust for Respondent's Counsel to have to incur hotel costs waiting in Washington, D.C. for the hearing to resume, or alternatively, to incur the costs associated with Respondent's Counsel and witnesses traveling home to Charlotte and then back to Washington D.C. once the hearing resumes. Having the hearing occur in Charlotte would avoid this costly scenario, and would also allow Mr. Robertson's anticipated motion.

12. In response to Complaint Counsel's request that a recess occur during the course of the hearing, there have been discussions between the undersigned Counsel and Complaint Counsel regarding a request to the Court that the hearing begin on either Friday, May 22, 2009 or Tuesday, May 26, 2009, in order to enable an efficient trying of this case without recess. On March 9, 2009, Respondent's Counsel received an email from Complaint Counsel asking about delaying the start date of the hearing to one of these dates. Respondent's Counsel then confirmed by telephone Respondent's agreement with a plan to seek a start of the hearing on May 26<sup>th</sup> to allow a straight through trial. The next day, however, the undersigned Counsel received another email from Complaint Counsel stating that Complaint Counsel "will keep with the judge's May 14<sup>th</sup> date" [sic] and that it could not agree to a hearing "anywhere but in Washington, D.C." Respondent believes, in the interest of economic efficiency for all parties, that it would be beneficial to begin the hearing on May 26, 2009, after Complaint Counsel's scheduling conflict, so that the hearing can proceed straight through without interruption.

13. Finally, Respondent's Counsel has located and reserved sufficient courtroom space to allow for the appropriate hearing of this matter in Charlotte, North Carolina. The

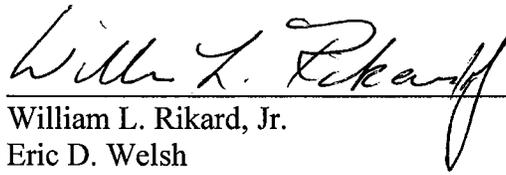
Honorable Robert P. Johnston, Senior Resident Superior Court Judge, has secured a Superior Court courtroom in the Mecklenburg County Courthouse which has been reserved from May 12, 2009 through May 29, 2009 (and which could be extended into June as necessary). The Mecklenburg County Courthouse, which opened in January 2007, is a \$148 million dollar facility with high-tech courtrooms and will provide excellent accommodation for this hearing. *See Exhibit A.*

### **CONCLUSION**

For the foregoing reasons, Respondent Polypore respectfully requests that an order be issued setting the location of the hearing in Charlotte, North Carolina.

Dated: March 13, 2009

Respectfully Submitted,



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William L. Rikard, Jr.

Eric D. Welsh

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BEFORE THE FEDERAL TRADE COMMISSION**

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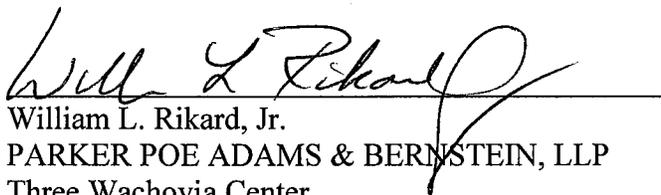
**STATEMENT PURSUANT TO SCHEDULING ORDER**

I, William L. Rikard, Jr., Esq., on behalf of Parker Poe Adams & Bernstein LLP (“Parker Poe”) as counsel for Polypore International, Inc. (“Polypore”), hereby represent that Parker Poe has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by its Motion To Set Hearing Location and have been unable to reach such an agreement.

Parker Poe and Complaint Counsel have discussed the issues raised by Respondent’s motion on several occasions over the past several months. In a March 10, 2009, email, J. Robert Robertson, Esq. advised that Complaint Counsel’s Counsel’s position was that the hearing of this matter must take place in Washington, D.C.

As a result of this email, Polypore and Complaint Counsel are at an impasse with respect to the issues raised in Respondent’s motion.

Dated: March 13, 2009

A handwritten signature in black ink, appearing to read "William L. Rikard, Jr.", is written over a horizontal line.

William L. Rikard, Jr.  
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**PROPOSED ORDER**

Upon consideration of Respondent's Motion To Set Hearing Location, any opposition thereto, and the Court being fully informed,

IT IS HEREBY ORDERED, that Respondent's Motion is GRANTED.

IT IS FURTHER ORDERED, that Commencement of Hearing shall occur in Charlotte, North Carolina, on May 12, 2009, or another date to be determined.

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Motion To Set Hearing Location***, 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 March 13, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Motion To Set Hearing Location*** upon:

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

I hereby certify that on March 13, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Motion To Set Hearing Location*** upon:

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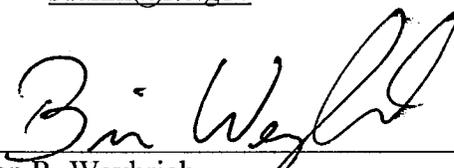
  
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EXHIBIT  
A

