



**Katie C. Miller**  
*Associate*  
Telephone: 704.335.6640  
Direct Fax: 704.335.4492  
katiemiller@parkerpoe.com

Charleston, SC  
Charlotte, NC  
Columbia, SC  
Myrtle Beach, SC  
Raleigh, NC  
Spartanburg, SC

March 11, 2010

**VIA FEDERAL EXPRESS 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 thirteen (13) copies of Respondent's Motion for Extension of Time to File Appeal Brief in the above matter. Please return one stamped copy to us in the enclosed addressed, prepaid Federal Express envelope.

Upon your receipt of this letter and enclosures, I would greatly appreciate it if you would call me at 704-335-6640 to confirm that you have received them.

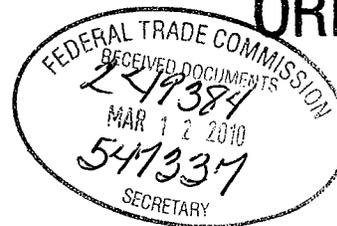
If you have any questions, please feel free to call me. Thank you for your attention to this matter.

Sincerely,

Katie C. Miller

KCM:psa

Enclosures



**ORIGINAL**

PPAB 1665612v1

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
Pamela Jones Harbour  
William E. Kovacic  
J. Thomas Rosch

ORIGINAL



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

PUBLIC DOCUMENT

**RESPONDENT'S MOTION FOR EXTENSION OF TIME  
TO FILE APPEAL BRIEF**

Pursuant to Rule 4.3(b) of the Rules of the Federal Trade Commission, 16 C.F.R. § 4.3(b), Respondent Polypore International, Inc. ("Polypore") respectfully requests that the Commission grant Respondent an additional twenty-one (21) days in which to file its initial appeal brief. Respondent respectfully submits that an extension of time is appropriate due to the complexity of this matter. In support of its request for an extension of time, Respondent states the following:

**PROCEDURAL HISTORY**

1. The Complaint in this matter was issued on September 9, 2008 alleging claims of illegal acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18 and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, unfair method of competition under Section 5 of the FTC Act and monopolization under Section 5 of the FTC Act. Following initial motion

practice with respect to the sufficiency of the allegations of the Complaint, Respondent answered the Complaint and the parties engaged in discovery.

2. The hearing in this matter began on May 12, 2009 and concluded on June 12, 2009 before the Honorable D. Michael Chappell, Administrative Law Judge. The hearing addressed multiple claims by the FTC, including the FTC's claim that the merger violated Section 7 of the Clayton Act, its claim of monopolization or attempted monopolization, and its claim that Respondent engaged in conduct that unreasonably restrained trade. Each of the FTC's claims involved complex analysis and required substantial testimony and documentary evidence. For example, with respect to the FTC's Clayton Act claim, while Complaint Counsel attempted to divide the PE separator market into four distinct product markets, Respondent introduced substantial evidence that there is only one relevant product market. Complaint Counsel also contended that there was a North American separator market, but Respondent submitted substantial evidence that the relevant product market is worldwide. Complaint Counsel further contended that if they prevailed, the relief should include a divestiture of a former Microporous plant located in Austria, even though it was outside Complaint Counsel's alleged geographic market and had no bearing on competition in the United States. Respondent introduced substantial evidence to rebut each facet of Complaint Counsel's case and proposed remedy.

3. Following the hearing, the parties filed 3,078 proposed findings of fact and conclusions of law. An initial decision of the Court was originally due September 21, 2009 but was extended by subsequent orders.

4. The record was reopened upon the motion of Respondent on October 15, 2009 to receive evidence regarding Exide's conduct, and a hearing was held on November 12, 2009.

Following the hearing, the parties submitted an additional 278 proposed findings of fact and conclusions of law.

5. Upon the Order of Judge Chappell issued on January 7, 2010, the date for filing the initial decision was again extended until February 22, 2010. In support of his Order extending the time to file an Initial Decision, Judge Chappell noted that there were over 2,100 exhibits, 35 witnesses, and 5,590 pages of trial transcript in the hearing, and an additional 48 exhibits, 3 witnesses, and 305 pages of trial transcript in the supplemental hearing.

6. On February 22, 2010, Judge Chappell issued an Initial Decision and Order, totaling 376 pages, which found that the merger violated Section 7 of the Clayton Act and that the Respondent engaged in conduct that unreasonably restrained trade in violation of Section 5 of the FTC Act. Judge Chappell ordered the total divestiture of all assets acquired by Respondent, including the Austrian facility.

7. On March 10, 2010, Respondent filed a notice of appeal.

8. Respondent has asked Complaint Counsel to join in this motion. Respondent proposed that Complaint Counsel should likewise be given an additional twenty-one (21) days in which to file their answering appeal brief. Complaint Counsel has refused to join in this motion for mutual extensions or to consent to Respondent's request for an extension.

#### **REQUEST FOR EXTENSION OF TIME**

9. Respondent is charged with filing the initial brief in the appellate process; currently this brief is due April 9, 2010. *See* Rule 3.52(b). Respondent respectfully submits that a twenty-one (21) day extension of time for filing an appeal brief is appropriate due to the

complexity of this matter, the length of trial, the size of the corresponding record, and the length of the initial decision.

10. The appeal to the Commission involves analysis of complex legal and factual issues in an Initial Decision in excess of 375 pages in length. For example, in his Initial Decision, Judge Chappell found four (4) relevant product markets with respect to Complaint Counsel's Section 7 claim. Further, Judge Chappell found Section 7 violations in each of the four (4) product markets. Therefore, Respondent will be appealing findings related to four (4) distinct markets on the Section 7 claims. In addition, the appeal will include issues such as Respondent's rebuttal of Complaint Counsel's Section 7 case and extensive analysis regarding the remedy imposed in the Initial Decision, including the divestiture of the Austrian facility, which Respondent believes to be in error and far beyond the remedy necessary to restore competition in the markets delineated by Judge Chappell should liability be found. Furthermore, Respondent is appealing several specific findings contained in Judge Chappell's analysis of Complaint Counsel's monopolization claim, as well as certain procedural and evidentiary rulings.

11. In addition to the complexity of the issues, an extension of time is justified due to the length of the trial and the size of the record. As observed by Judge Chappell himself, this trial took over a month, involved 35 live witnesses, over 2,100 exhibits, and approximately 6,000 pages of trial transcript. Further the parties submitted over 3,000 proposed findings of fact and reply findings of fact. Judge Chappell's Initial Decision is 347 pages and contains nearly 1,300 findings of fact. Through his Initial Decision, Judge Chappell has created a new record which must be compared against the findings of fact submitted by Complaint Counsel and Respondent

– a comparison of nearly 350 pages against nearly 6,000. In order for Respondent to properly prepare its appeal in this matter, additional time is necessary to analyze the Initial Decision and this voluminous record.

12. As demonstrated by these figures, the record in the present case is similar in both complexity and length to the record in In the Matter of Rambus, Inc., where the Commission allowed both Respondent and Complaint Counsel an extension of twenty-one (21) days to file their respective appeal briefs. In the Matter of Rambus, Inc., Docket No. 9302, Order Granting Extensions of Time to File Appellate Briefs and Increases In Word Count Limits (Mar. 18, 2004). In allowing the extension in Rambus, the Commission considered “the extremely lengthy and detailed” record, the complexity of the facts and issues, and the length of the Initial Decision. The Commission noted that the record in Rambus included the live testimony of 44 witnesses, more than 1,900 pages of exhibits, and more than 3,000 pages of proposed findings of fact and reply findings of fact. The Commission also observed the complexity of the underlying factual issues and length of the Initial Decision, which totaled 334 pages and included more than 1,650 findings of fact. Like Rambus, the present case involves an extremely lengthy and detailed record. It is appropriate to allow the requested extension pursuant to the rationale set forth in Rambus.

13. No party with an interest in this proceeding will be prejudiced in any way by granting the requested relief.

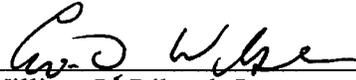
14. Due to the limited time frame within which Respondent’s appeal brief must be filed, Respondent respectfully requests expedited consideration of this motion, pursuant to FTC Rule of Practice 3.22(d).

## **CONCLUSION**

For the foregoing reasons, Respondent respectfully requests that it be granted an extension of twenty-one (21) days in which to file its initial appeal brief, and that such extension stay the effective date of the Initial Decision until Respondent perfects its appeal by timely filing an appeal brief in accordance with the extension.

Dated: March 12, 2010

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) 334-4706

[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 March 12, 2010, I caused to be filed via hand delivery and electronic mail delivery an original and twelve (12) copies of the foregoing ***Respondent's Motion for Extension of Time to File Appeal Brief***, 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

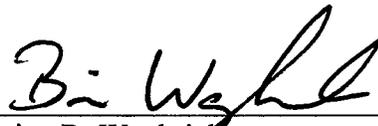
I hereby certify that on March 12, 2010, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Motion for Extension of Time to File Appeal Brief*** upon:

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 March 12, 2010, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Motion for Extension of Time to File Appeal Brief*** 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



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Brian R. Weyhrich  
Parker Poe Adams & Bernstein LLP  
Three Wachovia Center  
401 South Tryon Street, Suite 3000  
Charlotte, NC 28202  
Telephone: (704) 372-9000  
Facsimile: (704) 334-4706