

ORIGINAL



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

In the Matter of

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

CASE NO. 9327

PUBLIC DOCUMENT

**THIRD PARTY ENTEK INTERNATIONAL LLC'S OPPOSITION TO 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(b)**

ENTEK International LLC ("ENTEK"), a third party to this adjudicative proceeding brought by the Federal Trade Commission against Polypore International, Inc. ("Polypore"), submits this Opposition to Polypore's Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36(b) ("Motion for Leave") and in support states as follows:

ENTEK never claimed that Mr. Graeme Fraser-Bell has no knowledge relevant to this adjudicatory proceeding. This is emphatically not the point. The point is that taking his deposition would be duplicative and that the information Polypore seeks from Mr. Fraser-Bell's deposition (as identified in the Motion for Leave) is available to Polypore through more convenient, less disruptive, less burdensome and less expensive means. Those alternative means include ENTEK's document production and the deposition of Mr. Daniel Weerts, ENTEK's Vice President of Sales & Marketing, who has been designated by ENTEK to address all of the subjects identified in Polypore's concurrently-served corporate subpoena. Given the information

made available by ENTEK to Polypore, Polypore's interest in obtaining whatever minimal incremental information a deposition of Mr. Fraser-Bell may provide (if any), is outweighed by the certain and significant expense that ENTEK would have to incur.

Accordingly, Polypore's Motion for Leave should be denied.

ARGUMENT

Polypore's right to seek discovery is not unqualified. 16 C.F.R. § 3.31(c). The Administrative Law Judge may limit discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or if the burden and expense of the proposed discovery outweigh its likely benefit. 16 C.F.R. § 3.31(c).

In its Motion for Leave, Polypore states that it will seek testimony from Mr. Fraser-Bell on the following topics: (1) "ENTEK's battery separator sales to customers located throughout the world"¹; (2) "other suppliers of battery separators in the [*sic*] Europe"²; (3) "ENTEK's business dealings with customers in the industry located in the United States and abroad, including on issues of pricing, capacity and competition"³; (4) "the alleged relevant product and geographic market" for battery separators⁴; (5) "customers and other suppliers in both Europe and Asia"⁵; and (6) "any expansion effort by ENTEK in the United Kingdom to increase capacity for the sale of battery separators to customers located in the United States and elsewhere in the world"⁶ Polypore argues, "[t]here is simply no other person at ENTEK that could substitute for the deposition testimony of Mr. Fraser-Bell." This is false. As discussed in detail in ENTEK's Motion to Quash the Subpoenas *Ad Testificandum* Issued to Graeme Fraser-

¹ Memorandum in Support of 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(b) ("Mem. Supp. Mot. For Leave") at 3-4.

² *Id.* at 4.

³ *Id.*

⁴ *Id.* at 5.

⁵ *Id.*

⁶ *Id.*

Bell and Robert Keith Pursuant to 16 C.F.R. § 3.34(c), filed on January 9, 2009, Mr. Weerts is the ENTEK employee who is knowledgeable with respect to all of the topics identified by Polypore in its Motion for Leave, as well the additional subjects identified in Polypore's corporate deposition notice.

Mr. Weerts has worked at ENTEK or its predecessor since 1989, held his present position as ENTEK's Vice President of Sales & Marketing for over twelve years, and has been involved in the battery separator industry for over 30 years.⁷ As a co-owner of the company, he serves on ENTEK's management team and is intimately involved in ENTEK's strategic planning.⁸ Mr. Weerts has extensive experience not only in the sales and marketing side of the battery separator business, but also in the production and manufacturing side.⁹ In fact, his position at ENTEK and vast professional experience provide him with a unique understanding of the battery separator industry, detailed knowledge of the costs associated with manufacturing battery separators, as well as a comprehensive understanding of pricing and the supply and demand conditions in the industry. Significantly, Mr. Weerts not only oversees all of ENTEK's sales efforts, in the U.S. and internationally with respect to Johnson Controls Incorporated ("JCI") and its affiliates, he is also intimately familiar with the operations, cost structure, and expansion plans of ENTEK's U.K. facility. In terms of commercial relevance, Mr. Weerts is immediately responsible for more than 80% of ENTEK's world-wide revenue. As to the remaining 20%, any differences in the degree of knowledge between Mr. Fraser-Bell and Mr. Weerts are likely to be minimal and do not justify the cost and disruption that would result if ENTEK were ordered to produce Mr. Fraser-Bell for deposition in London, England.

Polypore's assertion that Mr. Fraser-Bell's deposition in London would take no more than seven hours fails to take into account the costs ENTEK would have to incur to either

⁷ See Declaration of Joel Kuntz in Support of ENTEK's Motion to Quash Subpoenas Ad Testificandum Pursuant to 16 C.F.R. § 3.34(c) ("Kuntz Decl. in Support of Mot. To Quash") ¶4.

⁸ Kuntz Decl. in Support of Mot. To Quash ¶4.

⁹ Kuntz Decl. in Support of Mot. To Quash ¶4.

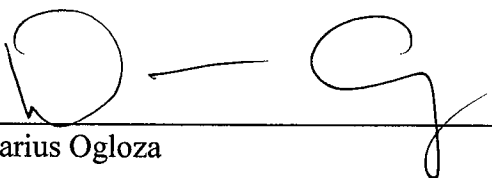
hire and educate U.K. counsel and/or have ENTEK's U.S. counsel travel from San Francisco to London, not to mention Mr. Fraser-Bell's travel from Liverpool to London. More importantly, the requested deposition would divert Mr. Fraser-Bell's attention away from his sales duties relating to the lithium ion battery business. During these difficult economic times, this presents a real hardship for the company.

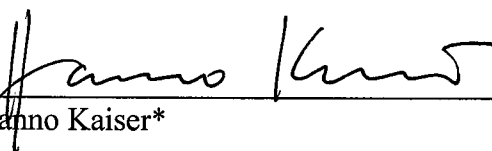
CONCLUSION

For the reasons set forth above, Polypore's Motion for Leave should be denied. In the event that the Administrative Law Judge has additional questions not addressed in this memorandum, ENTEK respectfully requests a hearing.

Dated: January 23, 2009

Respectfully submitted,

By 
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By 
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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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Polypore International, Inc.
a corporation.

CASE NO. 9327

PUBLIC DOCUMENT

CERTIFICATE OF SERVICE

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I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 505 Montgomery Street, Suite 2000, San Francisco, CA 94111-6538.

On **January 23, 2009**, I served the following documents described as:

**THIRD PARTY ENTEK INTERNATIONAL LLC'S OPPOSITION
TO 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(b)**

by serving a true copy of the above-described documents in the following manner:

BY ELECTRONIC MAIL

The above-described document was transmitted via electronic mail to the following party on **January 23, 2009**:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
secretary@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
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oalj@ftc.gov

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The party on whom this electronic mail has been served has agreed in writing to such form of service pursuant to agreement.

BY OVERNIGHT MAIL DELIVERY

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for overnight mail delivery by Express Mail or other express service carrier. Under that practice, documents are deposited with the Latham & Watkins 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 Express Mail or other express service carrier; such documents are delivered for overnight mail delivery by Express Mail 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 deposited in Latham & Watkins LLP' interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for overnight mail delivery by Express Mail or other express service carrier:

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

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

(Original + 12 copies)

(1 copy)

BY OVERNIGHT MAIL DELIVERY

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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 23, 2009**, at San Francisco, California.

/s/

Beth A. Davis

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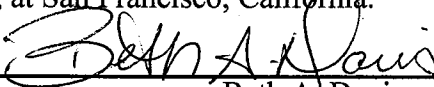
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(1 copy)

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 23, 2009**, at San Francisco, California.



Beth A. Davis