

ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

Docket No. 9327

PUBLIC DOCUMENT

**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)**

Respondent Polypore International, Inc. ("Polypore") respectfully submits this memorandum in support of its Motion pursuant to Federal Trade Commission Rule of Practice 3.36, 16 C.F.R. § 3.36, for the issuance of a subpoena *ad testificandum* for the deposition of Graeme Fraser-Bell.

**FACTUAL BACKGROUND**

On November 6 2008, ENTEK International LLC ("ENTEK"), a global battery separator manufacturer and a competitor of Polypore, after cooperating extensively with the Federal Trade Commission ("FTC") during its investigation in this matter last summer and producing over 62,000 of its documents to the FTC (including customer contracts and feasibility studies to expand production) in response to a subpoena issued to it and responding to a Civil Investigative Demand, filed a motion with this Court to attempt to block Polypore's access to these materials.<sup>1</sup> See Third Party ENTEK International LLC's Memorandum in Support of Motion for Protective Order Pursuant to 15 U.S.C. §§ 46(f), 57b-2(d)(1)(c) and 57b-2(d)(2), and 16 C.R.R. § 4.10, p.

<sup>1</sup> According to ENTEK's website, ENTEK manufactures and sells battery separators itself and through its wholly owned company, ENTEK International Ltd. See Exhibit A hereto ("Initially, ENTEK shipped its separators to customers throughout the United States, Canada and Mexico. In 1989 it established a joint venture with Cookson Ltd. in Newcastle, called Cookson Entek Ltd. That structure changed when in 1996, ENTEK took complete control of the joint venture and became established worldwide, supplying cutting-edge technology products around the globe. In 1999, ENTEK purchased Cookson's equity and became sole owner of ENTEK International Ltd.")

1.<sup>2</sup> On November 6, 2008, Polypore served a subpoena *duces tecum* on ENTEK, seeking access to the information that ENTEK previously provided to the FTC and other information and evidence relevant to Polypore's defense in this case. A copy of the Subpoena *duces tecum* was attached as Exhibit B to Polypore's Motion to Compel, filed on January 13, 2009. Over the course of a month, Polypore negotiated in good faith with ENTEK to address and resolve ENTEK's concerns over Respondent's subpoena *duces tecum* including issues of confidentiality (*see e.g.* Exhibit C hereto) and in early December 2008 an agreement in principle was reached between ENTEK and Polypore over that subpoena, memorialized by letter dated December 22, 2008. *See* Exhibit D hereto. In those negotiations, ENTEK objected to reviewing files from large numbers of custodians concerning ENTEK's communications with its customers (Exh. A (Request no. 5)) but agreed to limit the review to three people. Graeme Fraser-Bell, who ENTEK represented was the Vice President of International Sales, was one of the three. *See Id.*

The agreement reached between ENTEK and Polypore with respect to the subpoena *duces tecum* has proved illusory. To date, ENTEK has produced very few documents to Polypore. Polypore's counsel is reviewing ENTEK's production, but that review is ongoing and not complete. ENTEK's production, produced only in the first week of January, consists almost entirely of its response to the CID which it sent to the FTC in July of last year. From simple screen shots produced by ENTEK, it is evident that ENTEK produced documents from Mr. Fraser-Bell to the FTC as part of the response to the CID. Now, after acknowledging the importance of Mr. Fraser-Bell's files to this matter, ENTEK attempts to distance itself from him, oddly arguing that discovery should not be had of him. From simple screen shots produced by ENTEK, it is evident that ENTEK produced documents from Mr. Fraser-Bell to the FTC as part of the response to the CID.

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<sup>2</sup> ENTEK subsequently withdrew that motion.

Prior to the institution of this action against it, Polypore had reason to believe that ENTEK was expanding its capacity in the United Kingdom. Mr. Fraser-Bell, with his position as Vice President of International Sales, is a central actor, believed to have extensive knowledge of ENTEK's sale of battery separators to customers in this global market. Upon information and belief, Mr. Fraser-Bell is also knowledgeable of the other suppliers of battery separators located in Europe and Asia, again an important part of Respondent's defense in this matter, to wit that contrary to the FTC's charge, the market for battery separators is global, and not limited to North America.

On December 30, 2008, Polypore served a subpoena *ad testificandum* on Mr. Fraser-Bell, as an agent of ENTEK ("Fraser-Bell Subpoena"). A copy of the Fraser-Bell Subpoena is attached as Exhibit E. Counsel for ENTEK accepted service of the Fraser-Bell Subpoena on December 30, 2008. On January 9, 2009, ENTEK filed a motion to quash the Fraser-Bell Subpoena. As part of its motion, ENTEK submitted a declaration from Mr. Fraser-Bell. In that declaration, Mr. Fraser-Bell states that he is a British citizen, and serves as the Vice President of International Sales for ENTEK International Ltd., an affiliate of ENTEK. As the Vice President of International Sales, Mr. Fraser-Bell is "responsible for managing ENTEK International Ltd.'s relationship with non-North American customers" which "requires regular travel to customers throughout Europe and Asia." (*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)*).

ENTEK refuses to make Mr. Fraser-Bell available for a deposition, whether here or in the United Kingdom. Mr. Fraser-Bell is believed to possess important evidence in this matter as 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 the Europe. This evidence cannot be obtained from sources other than Mr. Fraser-Bell.

### ARGUMENT

Rule 3.36(b) of the Commission Rules of Practice requires the party seeking issuance of a subpoena to be served in a foreign country to make a specific showing regarding the requested subpoena. With respect to a subpoena to be served in a foreign country, the party must show:

- (1) the material sought is reasonable in scope;
- (2) the material sought is reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of the respondent;
- (3) the information or material sought cannot reasonably be obtained by other means; and
- (4) that the party seeking discovery has a good faith belief that the discovery requested would be permitted by treaty, law, custom, or practice in the country from which the discovery is sought and that any additional procedural requirements have been or will be met before the subpoena is served.

16 C.F.R. § 3.36(b). The subpoena *ad testificandum* sought by Respondent satisfies each of these requirements.

Polypore seeks the issuance of a subpoena to take a deposition of Mr. Fraser-Bell in London, England. The deposition would be no more than seven hours in duration pursuant to the Scheduling Order in this case. Mr. Fraser-Bell as Vice President of International Sales for ENTEK International Ltd. has intimate knowledge of the battery separator industry and is believed to have knowledge of ENTEK's business dealings with customers in the industry located in the United States and abroad, including on issues of pricing, capacity and competition.

The deposition of Mr. Fraser-Bell is reasonably relevant to the allegations of the Complaint and to the Respondent's defenses. 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) (*emphasis added*). Throughout these proceedings, Respondent has asserted, as one of its defenses, that the market for battery separators is global, not limited to North America as the FTC contends:

- Respondent admits that it develops, manufactures and markets battery separators in a global market. (Answer, ¶ 4)(*emphasis added*).
- Respondent has denied that the relevant geographic market in which to analyze the effects of this transaction is limited to North America. (Answer, ¶ 14).
- Respondent has repeatedly denied the characterization of "automotive, motive, UPS and all PE markets" as distinct and proper markets. (Answer, ¶ 42).
- Most importantly, as an affirmative defense, Respondent asserted that the relevant product and geographic market definitions alleged in the Complaint fail as a matter of law. (Answer, Third Affirmative Defense; *see also* Resp. Mot. to Dismiss, n. 55 ("Polypore disputes the designations of the markets as alleged by the FTC and will assert its defenses to the market claims as necessary at the hearing before the ALJ"))).

Under the FTC's discovery standard, Polypore is entitled to seek evidence which will support these defenses. 16 C.F.R. §3.31(c)(1). The testimony sought by Respondent from Mr. Fraser-Bell goes directly to certain elements of Complaint Counsel's case and Respondent's defense that the alleged relevant product and geographic market of Complaint Counsel fails as a matter of law. (*See Answer and Defenses of Respondent Polypore International, Inc.*).

The information sought through Mr. Fraser-Bell's deposition cannot be obtained by other means. Mr. Fraser-Bell, with his position as Vice President of International Sales, has relevant knowledge about customers and other suppliers in both Europe and Asia and 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. ENTEK in its motion to quash does not deny Mr. Fraeser-Bell's extensive knowledge of matters relevant to this action.

There is simply no other person at ENTEK that could substitute for the deposition testimony of Mr. Fraser-Bell.

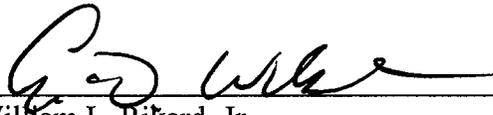
Finally, the Respondent has a good faith belief that the deposition of Mr. Fraser-Bell is permitted in the United Kingdom and that any additional procedural requirements have been or will be met before the subpoena is served. Both the United States and United Kingdom are signatories to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, which provides the opportunity to depose a witness overseas. 28 U.S.C.A. 1781 (1979). Alternatively, Respondent can hire a British solicitor to take the deposition of Mr. Fraser-Bell in the U.K. U.S. Department of State, [http://travel.state.gov/law/info/judicial/judicial\\_671.html](http://travel.state.gov/law/info/judicial/judicial_671.html).

#### **CONCLUSION**

For the foregoing reasons, Respondent respectfully petitions this court for an order granting Respondent's Motion for leave to depose Mr. Fraser-Bell's in the United Kingdom should this court grant Third Party ENTEK International LLC's Motion to Quash the Fraser-Bell Subpoena.

Dated: January 14, 2009

Respectfully Submitted,



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William L. Rikard, Jr.

Eric D. Welsh

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[johngraybeal@parkerpoe.com](mailto:johngraybeal@parkerpoe.com)

*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing *Memorandum In Support of Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36*, 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 January 14, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing *Memorandum In Support of Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36* 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 January 14, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing *Memorandum In Support of Motion for Leave to Take the Deposition of Graeme Fraser-Bell in the United Kingdom Pursuant to 16 C.F.R. § 3.36* upon:

J. Robert Robertson, Esq.  
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Telephone: (704) 335-9050  
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# **EXHIBIT A**

## HISTORY

ENTEK began the research and development of Polyethylene Battery (PE) Separator production in 1984. Commercial production began in 1987 when the primary manufacturing plant opened in Lebanon, Oregon during 1987. Annual capacity is currently over 200 million m2 per year from production facilities in Lebanon, OR and Killingworth, Newcastle upon Tyne, UK. Our market share is estimated to be +40% of the global Starting, Lighting and Ignition, PE Separators market. To date, we have shipped over one billion square meters of the best battery separator material in the world.

## HOME

## PRODUCTS

Initially, ENTEK shipped its separators to customers throughout the United States, Canada and Mexico. In 1989 it established a joint venture with Cookson Ltd. in Newcastle, called Cookson Entek Ltd. That structure changed when in 1996, ENTEK took complete control of the joint venture and became established worldwide, supplying cutting-edge technology products around the globe. In 1999, ENTEK purchased Cookson's equity and became sole owner of ENTEK International Ltd.

## RAW MATERIALS

## TECHNOLOGY

ENTEK Manufacturing, Inc. (EMI) has always designed and built all of our manufacturing, processing, and tooling equipment in-house, ensuring exact attention to detail and quality. ENTEK has multiple manufacturing lines all of which are capable of producing the industry-standard RhinoHide® battery separators. All of our lines are based on continuous processing - from the raw materials to finished product winding. This manufacturing approach supports ENTEK's tireless attention to the tightest tolerances and process control. In 1997, ENTEK became the first battery separator manufacturer in the world to achieve QS-9000 certification as then required by the Big Three automakers.

## PRESENTATIONS/ EXHIBITIONS/NEWS

## ABOUT ENTEK

## CONTACT US

In April 1998, ENTEK received its fifth consecutive "Worldwide Supplier of the Year" award from General Motors. In 1997, ENTEK was pleased to accept the Oregon Governor's Occupational Safety and Health Award. In 1996, ENTEK was awarded East Penn Manufacturing's Certified Supplier Award. In 1994, ENTEK's president, Jim Young, was named Manufacturing Entrepreneur of the Year in Oregon. ENTEK was the first-ever recipient of the International Battery Manufacturers Association (IBMA) Award for Quality in 1992.

At the turn of this century, we realized that our core competence is the extrusion and extraction of filled or unfilled micro-porous polymer membranes. In 2003, after some years of research and development, we began producing commercial quantities of battery separator material for Lithium Ion and Lithium Ion Polymer battery systems. There is a pretty good chance that lithium-ion battery in your cell phone has separator material in it from ENTEK. This is now a significant part of our business model and contributes to the health and diversity of the company.



Currently we are actively pursuing 2 other avenues for product development:

- Electrode Films and Assemblies for Supercapacitors. Supercapacitors are expected to have a future in hybrid vehicles, as energy recuperation and restoration devices for regenerative braking or idle start-stop systems. Electric power-assisted steering systems are expected to use

supercapacitors in the future as well. Supercapacitors can be used to eliminate electric power grid micro-shorts. With its UHMWPE processing capability, ENTEK is already producing activated carbon films, and laminating these films to both sides of a current collector. Our product is unique in the world: strong, clean, and capable of mass production quantities and lowest possible costs.



- Breathable Membranes. For its first business venture outside the world of Energy Storage Devices, ENTEK is producing bi-axially oriented hydrophobic micro-porous films that are laminated to polyester and nylon for the world's waterproof / breathable specialty fabric and industrial textile market. With excellent breathability, proven in 6 different international breathability test standards (including JIS 1099 B2), our products can be used in active and extreme sportswear, professional uniforms and outdoor wear, as well as numerous other outdoor work, military, and recreational activities.



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[Contact us at contact@entek-international.com](mailto:contact@entek-international.com)

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**EXHIBIT B**



**SUBPOENA DUCES TECUM**  
 Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO ENTEK International LLC 250 N. Hansard Ave. Lebanon, OR 97355	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION Parker Poe Adams & Bernstein, LLP Three Wachovia Center 401 S. Tryon Street, Suite 3000 Charlotte, NC 28202	4. MATERIAL WILL BE PRODUCED TO Polypore International, Inc.  5. DATE AND TIME OF PRODUCTION OR INSPECTION November 24, 2008 9:30 a.m.
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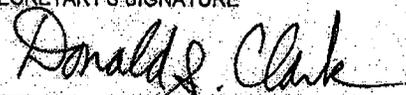
6. SUBJECT OF PROCEEDING

In the Matter of Polypore International, Inc., Docket No. 9327

7. MATERIAL TO BE PRODUCED

See Attached Requests, Instructions and Definitions.

8. ADMINISTRATIVE LAW JUDGE  The Honorable D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	9. COUNSEL REQUESTING SUBPOENA  Eric D. Welsh (704) 335-9052
--	---

DATE ISSUED  October 24, 2008	SECRETARY'S SIGNATURE 
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**GENERAL INSTRUCTIONS**

**APPEARANCE**

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

**MOTION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

**TRAVEL EXPENSES**

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**SUBPOENA DUCES TECUM ISSUED TO ENTEK INTERNATIONAL LLC  
ON BEHALF OF POLYPORE INTERNATIONAL, INC.  
FTC DOCKET NO. 9327**

**EXHIBIT A**

**I. REQUESTS**

1. All documents describing any product in development by ENTEK to compete with Polypore lead acid battery separators.
2. All documents describing any product in development by any Third Party to compete with Polypore lead acid battery separators.
3. All documents listing or describing any manufacturing or production facility (including any expansion of the same or additions of separator lines) for lead acid battery separators in which ENTEK maintains any ownership interest including without limitation any such facility, whether currently operational or under construction or expansion, in the United States or the United Kingdom.
4. For any facility responsive to Request No. 3, all documents sufficient to reflect (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 profit and loss statements and other documents reflecting the cost of manufacturing and selling such products, including shipping costs.
5. All documents relating to any communication between ENTEK and (a) Johnson Controls, Inc. ("JCI"), (b) Exide Technologies ("Exide"), (c) EnerSys, (d) East Penn Manufacturing Co., Inc. ("East Penn"), (e) Crown Battery Manufacturing Co. ("Crown"), (f) Trojan Battery Co. ("Trojan"), (g) US Battery Manufacturing Co. ("US Battery"), (h) C&D Technologies, Inc. ("C&D"), or (i) any other entity manufacturing batteries for sale in North America, concerning: (i) any actual or potential contract or agreement between such entity and ENTEK for the sale and purchase of lead acid battery separators, (ii) contemporaneous or future prices of lead acid battery separators, (iii) Polypore or (iv) Microporous.
6. All documents constituting or reflecting any actual or potential contract or agreement 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.
7. All documents relating to ENTEK's or any other manufacturer's share of any market for lead acid battery separators.

8. All documents discussing ENTEK's or any other manufacturer's share of any market for lead acid battery separators by product end use or other classification used by ENTEK to record market share for the sale of lead acid battery separators.
9. All documents relating to any actual or potential competitor of ENTEK for lead acid battery separators.
10. All documents relating to the geographic scope of competition for battery separators for lead acid batteries.
11. All documents relating to the scope of competition across products for battery separators for lead acid batteries.
12. All documents relating to the level or state of competition in the lead acid battery separator business prior to February 29, 2008.
13. All documents relating to the level or state of competition in the lead acid battery separator business after February 29, 2008.
14. All documents relating to ENTEK's pricing, including any database of pricing transactions, and pricing strategy for lead acid battery separators from January 1, 2003 to February 29, 2008.
15. All documents relating to ENTEK's pricing, including any database of pricing transactions, and pricing strategy for lead acid battery separators after February 29, 2008.
16. All documents sufficient to show or explain the factors used in ENTEK's making any adjustment to its price for lead acid battery separator under any contract with its customers.
17. All documents discussing, describing or referring to any product, either in commercial production or under development, that competes or is expected to compete with any lead acid battery separator manufactured by ENTEK.
18. For each Entek facility that has manufactured or is currently manufacturing lead acid battery separators, all documents discussing, describing or reflecting ENTEK's manufacture and/or sale of lead acid battery separators from such facility including documents reflecting the amount of product sold by dollar, units, square meters, and product type or brand, and the price of all such product sold.
19. For all products responsive to Request No. 17, all documents reflecting the actual or anticipated end use of the product sold by ENTEK and the destination of the shipment of such product.
20. All documents reflecting the identity and location of all customers purchasing lead acid battery separators from each of ENTEK's manufacturing facilities.

21. Documents sufficient to reflect the percentage of lead acid battery separators sold by ENTEK annually under contract with a duration in excess of one year as compared to total sales of lead acid battery separators by ENTEK during the same period of time.

22. Documents sufficient to reflect the prices of lead acid battery separators sold by ENTEK on a spot basis or under purchase orders or contracts of one year or less.

23. All documents relating to any patent either owned directly or indirectly by ENTEK, or for which ENTEK obtained either directly or indirectly a license, for technology or equipment used by ENTEK in the manufacture of lead acid battery separators.

24. All documents discussing or describing any technology used in the manufacture of battery separators for lead acid batteries.

25. All documents describing, discussing or reflecting products that currently compete or which could compete with lead acid battery separators including those products used for the following end uses or applications: golf car or cart; automotive; motorcycle; truck; train; fork lift; submarine; uninterrupted power supply for hospitals, telephone companies or other uses; and/or nuclear power plant.

26. All documents discussing or referring to any type of lead acid battery separator, including AGM separators, other than those used in flooded lead acid battery separators.

27. All documents describing, discussing or reflecting by brand name or manufacturer the products comprising lead acid battery separators including those products used for the following end uses or applications: golf car or cart; automotive; motorcycle; truck; train; fork lift; submarine; uninterrupted power supply for hospitals, telephone companies or other uses; and/or nuclear power plant.

28. All documents relating to any testing or qualification of any lead acid battery separator produced by ENTEK during the period of January 1, 2000 to the present.

29. All documents relating to any current producer (excluding ENTEK) or potential entrant into the production or manufacture of lead acid battery separators.

30. All documents relating to any potential entry of Microporous into the business of manufacturing lead acid battery separators for sale to manufacturers of lead acid batteries for automotive use.

31. All documents relating to any potential entry or reentry of ENTEK into the business of manufacturing lead acid separators for sale to manufacturers of (a) golf cart batteries; (b) batteries for industrial or motive use, including for use in fork lift batteries or (c) batteries for uninterrupted power supply.

32. All documents discussing, describing or reflecting any actual or potential barrier to entry for suppliers or manufacturers of lead acid battery separators in (a) North America and (b) the world.

33. All documents discussing or mentioning the actual or potential acquisition of Microporous by Polypore.

34. All documents discussing, mentioning or describing any effect, actual, potential or perceived, on ENTEK's business of an acquisition of Microporous by Polypore, and all documents relating to any plan or course of action considered or adopted by ENTEK in response to such actual or potential acquisition.

35. All documents reflecting any product or technology that is a substitute product or technology for lead acid battery separators for flooded lead acid batteries, including without limitation, those lead acid battery separators sold by ENTEK.

36. All documents, including affidavits and statements, which ENTEK provided to the FTC relating in any way to Polypore or Microporous.

37. A copy of any transcript of any testimony, deposition or investigational hearing conducted in the Polypore Matter.

38. All documents evidencing, relating or referring to communications between the FTC and ENTEK relating in any way to Polypore or Microporous.

39. All documents sufficient to show any contractual or commercial relationship between ENTEK and Bernard Dumas (or its affiliates), including without limitation, documents showing or reflecting: (a) the date any such contract or relationship began, (b) the commercial nature of the relationship or contract, (c) the products to which such relationship or contract applied, (d) the amount of product sold by either ENTEK or Bernard Dumas (of its affiliates) under such contract or relationship, (e) the amount of revenue obtained from such contract or relationship, and (f) the date such contract or relationship ended, expired or terminated, if applicable, for the period of January 1, 1999 to the present.

40. Any contract or other agreement between ENTEK and Bernard Dumas (or its affiliates) from January 1, 1999 to the present.

## II. INSTRUCTIONS AND DEFINITIONS

1. "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, e-mail, envelope, telegram, meeting minute, memorandum, statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation in your possession, custody or control, including all drafts or all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono record, tape and other data compilations from which information can be obtained, translated, if necessary, by ENTEK International LLC through detection devices into reasonably usable form, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.
2. "You" "your" and "ENTEK" for purposes of this request, means ENTEK International LLC or any of its parents, divisions, subdivisions, subsidiaries, affiliates, members, officers, directors or managing agents, attorneys, employees, consultants, agents, as well as any predecessors in interest, and all other persons acting or purporting to act on its behalf.
3. "Polypore" for the purposes of this request, means the Polypore International, Inc. and any subsidiary or division thereof, including without limitation, Daramic, LLC, including their respective employees.

4. "Microporous" for the purposes of this request, means the Microporous Products, L.P., and any affiliate, subsidiary or division thereof, and their respective employees, officers, directors, partners, attorneys and agents.
5. "FTC" means the Federal Trade Commission, and any of its directors, commissioners, employees, consultants and agents.
6. "Polypore matter" means the investigation conducted by the FTC under Rule No. 081-0131 and this Administrative Proceeding, Docket No. 9327.
7. "Investigation" means any FTC investigation, whether formal or informal, public or non-public.
8. "Third Party" means any person; corporate entity; partnership; association; joint venture; state, federal or local governmental agency, authority or official; research or trade association; or any other entity other than ENTEK International LLC or any of its subsidiaries or affiliates.
9. "Complaint" means the Complaint issued by the Federal Trade Commission to Polypore International, Inc. in Docket No. 9327.
10. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying or stating.
11. Unless otherwise stated, the relevant time period for these requests is January 1, 2003 to the present.
12. The use of the singular shall be deemed to include the plural and vice versa.
13. The terms "and" and "or" shall be interpreted liberally as conjunctive, disjunctive, or both, depending on the context, so as to have their broadest meaning.
14. Whenever necessary to bring within the scope of a request all documents that might otherwise be construed to be outside its scope, the use of a verb in any tense shall be construed as the use of the verb in all other tenses.

