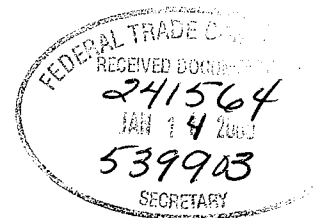


ORIGINAL



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

In the Matter of

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

CASE NO. 9327

PUBLIC DOCUMENT

**STIPULATION AND [PROPOSED] ORDER REGARDING DISCOVERY
RELATED TO JOHNSON CONTROLS, INC.**

WHEREAS, Respondent Polypore International, Inc. (“Respondent”) served a subpoena duces tecum on Johnson Controls, Inc. (“JCI”) on November 6, 2008 (the “Subpoena duces tecum”), a true and accurate copy of which is attached as Exhibit A; and

WHEREAS, JCI raised certain concerns over the Subpoena duces tecum with counsel for Respondent in November and December 2008; and

WHEREAS, counsel for Respondent and counsel for JCI had a series of discussions beginning on November 18, 2008 and continuing on November 24, December 3, 4 and 5, among other dates, and exchanged letters and email communications regarding the Subpoena duces tecum during this period; and

WHEREAS, counsel for Respondent and counsel for JCI twice submitted stipulations to this Court extending JCI’s time to move to quash the Subpoena duces tecum to permit counsel an opportunity to reach agreement on the subpoena and avert such motion practice; and

WHEREAS, through the discussions between counsel for Respondent and JCI, JCI’s concerns over the Subpoena duces tecum were resolved and an agreement was reached with respect to the Subpoena duces tecum on or about December 9, 2008 (although some issues continued to be discussed regarding search terms utilized by JCI); and

WHEREAS, counsel for JCI has represented to counsel for Respondent that JCI has been diligently obtaining the documents and information requested by the Subpoena duces tecum, as revised by the agreement between JCI and Respondent; and

WHEREAS, Respondent on or about December 31, 2008 served three subpoenas on JCI for deposition testimony in this matter, comprised of subpoenas for a deposition of a corporate representative on 16 topics (including JCI’s response to the Subpoena duces tecum), for a deposition of Mr. Rodger Hall and for a deposition of Mr. Flavio Almeida, and noticed such depositions to occur on January 12-13, 2009, (the “Deposition Subpoenas”), a true and accurate copy of which is attached as Exhibit B; and

WHEREAS, JCI began to produce documents to Respondent's counsel pursuant to the Subpoena duces tecum, as revised by agreement between JCI and Respondent, on January 5, 2009, but has not yet completed its production; and

WHEREAS, counsel for Respondent conferred with counsel for JCI about the Deposition Subpoenas and advised that to make the depositions as efficient as possible, JCI would need to complete its production of documents pursuant to the Subpoena duces tecum before the depositions of the JCI witnesses occurred; and

WHEREAS, counsel for JCI has represented that JCI could not complete its production in advance of the January 12-13, 2009 scheduled date for the JCI depositions and also had a conflict with moving forward with the deposition on that noticed date in any event; and

WHEREAS, counsel for JCI has requested that Respondent extend JCI's time to complete its production of documents pursuant to the Subpoena duces tecum and reschedule the JCI depositions to a later date; and


WHEREAS, counsel for Respondent believes that JCI's request will result in certain efficiencies including minimizing the number of trips to Milwaukee, Wisconsin for the JCI depositions;

IT IS HEREBY STIPULATED, by and between counsel for Respondent and counsel for JCI:

1. JCI shall substantially complete its production of documents pursuant to the Subpoena duces tecum, as revised by agreement between JCI and Respondent, and deliver such documents to Respondent by January 16, 2009; and

2. The depositions of the JCI Witnesses shall occur on January 27 and 28, 2009 in Milwaukee, Wisconsin.

Dated: January 13, 2009

By 

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) 335-9689
ericwelsh@parkerpoe.com

Attorneys for Respondent

Dated: January 13, 2009

By James T. McKeown / EOW by permission
James T. McKeown

Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202
414-297-5530
414-297-4900 (fax)
JMcKeown@foley.com

Attorney for Johnson Controls, Inc.

IT IS SO ORDERED.

D. Michael Chappell
Administrative Law Judge

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 ***Stipulation and [Proposed] Order Regarding Discovery Related to Johnson Controls, Inc.***, 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 14, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Stipulation and [Proposed] Order Regarding Discovery Related to Johnson Controls, Inc.*** 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 14, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Stipulation and [Proposed] Order Regarding Discovery Related to Johnson Controls, Inc.*** 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

James T. McKeown, Esq.
Foley & Lardner LLP
777 E. Wisconsin Avenue
Milwaukee, WI 53202-5267
jmckeown@foley.com



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

EXHIBIT A



SUBPOENA DUCES TECUM

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

<p>1. TO</p> <p>Johnson Controls, Inc. 5757 North Green Bay Avenue Milwaukee, Wisconsin 53201</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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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.

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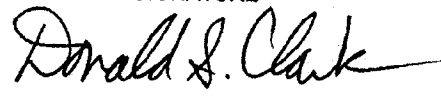
6. SUBJECT OF PROCEEDING

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

7. MATERIAL TO BE PRODUCED

See Attached Request, Instructions and Definitions

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL REQUESTING SUBPOENA</p> <p>Eric D. Welsh (704) 335-9052</p>
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<p>DATE ISSUED</p> <p>October 24, 2008</p>	<p>SECRETARY'S SIGNATURE</p> 
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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 JOHNSON CONTROLS, INC.
ON BEHALF OF POLYPORE INTERNATIONAL, INC.
FTC DOCKET NO. 9327**

EXHIBIT A

I. REQUESTS

1. All documents (including without limitation internal email or other written communication at JCI) relating to any communication between JCI and Polypore regarding (a) any actual or potential contract for lead acid battery separators, (b) any actual or proposed change in Polypore prices and/or (c) any actual or potential increase or decrease in the volume of lead acid battery separators purchased from Polypore.

2. All documents (including without limitation internal email or other written communication at JCI) relating to any communication between JCI and Microporous regarding (a) any actual or potential contract for lead acid battery separators, (b) actual or proposed pricing of lead acid battery separators by Microporous, (c) actual or proposed development and/or testing of lead acid battery separators or (d) Polypore.

3. All documents (including without limitation internal email or other written communication at JCI) relating to any communication between JCI and ENTEK regarding (a) any actual or potential contract for lead acid battery separators, (b) actual or proposed prices for lead acid battery separators by ENTEK, (c) actual or proposed development and/or testing of lead acid battery separators, (d) Microporous, (e) ENTEK or (f) Polypore.

4. All documents (including without limitation internal email or other written communication at JCI) relating to any communication between JCI and any Third Party other than Polypore, Microporous or ENTEK regarding (a) any actual or potential contract for lead acid battery separators, (b) actual or potential prices for lead acid battery separators, (c) actual or proposed development and/or testing of lead acid battery separators, (d) Microporous, (e) ENTEK or (f) Polypore.

5. All documents constituting or reflecting any actual or potential contract or agreement between JCI and Polypore for the manufacture and sale by Polypore to JCI of lead acid battery separators.

6. All documents reflecting any discussion or consideration internally at JCI about JCI producing or manufacturing lead acid battery separators (itself or in a joint venture with another person) whether in response to Polypore's actual or potential acquisition of Microporous, any actual or potential change in price of lead acid battery separators or otherwise.

7. All documents constituting or reflecting any actual or potential contract or agreement between JCI and ENTEK for the manufacture and sale by ENTEK to JCI of lead acid battery separators.

8. All documents constituting or reflecting any actual or potential contract or agreement between JCI and Microporous for the manufacture and sale by Microporous to JCI of lead acid battery separators.

9. All documents constituting or reflecting any actual or potential contract or agreement between JCI and any Third Party other than ENTEK, Polypore or Microporous for the manufacture and sale by any such Third Party to JCI of lead acid battery separators.

10. All documents or any database reflecting all lead acid battery separators purchased by JCI from any supplier, including but not limited to the specific product(s) purchased, the amount or volume of each such product(s) purchased, the price(s) of the product(s) purchased, the date(s) of purchase, the end use(s) of the product purchased and the JCI plant to which such product was shipped.

11. From January 1, 2000 to the present, all documents discussing, describing or reflecting any ownership interest of JCI in any joint venture, partnership or other entity that manufactures lead acid battery separators, including without limitation, documents reflecting JCI's ownership interest in or relationship to BFR.

12. From January 1, 2000 to the present, documents sufficient to reflect, for any joint venture, partnership or other relationship identified in response to Request No. 11 (including BFR), (a) the capital expenditure for the construction and start-up or expansion of any lead acid battery separator 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.

13. All documents discussing, describing or reflecting, by dollar amount, units, price, square meters and product type or brand, BFR's actual production of lead acid battery separators from January 1, 2000 to the present.

14. For all product responsive to Request No. 13, all documents reflecting the actual or anticipated end use of the product sold by BFR and the destination of the shipment of such product.

15. All documents discussing, describing or reflecting, by dollar amount, units, price, square meters and product type or brand, all battery separators purchased by JCI from BFR from January 1, 2000 to the present.

16. For all product responsive to Request No. 15, all documents reflecting the actual or anticipated end use of the product purchased by JCI from BFR and the destination of the shipment of such product.

17. All documents relating to any testing or qualification by JCI, BFR or any Third Party of lead acid battery separators produced by BFR for the period of January 1, 2000 to the present.

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

19. All documents discussing, describing or reflecting any actual or potential entrant in the manufacturing of lead acid battery separators.

20. All documents relating to any company or entity that entered or was viewed as a potential entrant into the production and sale of lead acid battery separators.

21. All documents relating to any consideration by JCI or any Third Party to sponsor, finance or support entry or expansion of a battery separator business in (a) North America or (b) the world.

22. All documents discussing, describing or reflecting any internal discussions, communications or consideration given by JCI to purchasing or acquiring a supplier of lead acid battery separators or building a plant to manufacture lead acid battery separators for use by JCI.

23. All documents relating to any actual or potential barrier to entry for suppliers or manufacturers of lead acid battery separators, including costs of entry or achieving minimum viable scale, in (a) North America and (b) the world.

24. All documents relating to any testing or qualification by JCI of lead acid battery separators manufactured by Polypore or Microporous.

25. All documents relating to any testing or qualification by JCI of lead acid battery separators produced by any entity other than Polypore or Microporous.

26. All documents (including internal email or memorandum) reflecting or discussing any manufacturer of lead acid battery separators or market conditions including capacity for 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; floor scrubber or sweeper; automotive; motorcycle; truck; train; fork lift; pallet truck; submarine; uninterrupted power supply for hospitals, telephone companies and other uses; motive; industrial; marine; stationary; and/or nuclear power plant.

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

29. All documents describing, discussing or reflecting products that are or might be competitive with lead acid battery separators including those products used for the following end uses or applications: golf car or cart; floor scrubber or sweeper; automotive; motorcycle; truck; train; fork lift; pallet truck; submarine; uninterrupted power supply for hospitals, telephone companies and other uses; motive; industrial; marine; stationary; and/or nuclear power plant.

30. Documents discussing or describing any technology used in the manufacture of battery separators for lead acid batteries.

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

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

33. All documents reflecting any product or technology that is a substitute for lead acid battery separators manufactured by Polypore or Microporous, including but not limited to, any substitute product or technology considered by JCI as an alternate technology for lead acid battery separators manufactured by Polypore or Microporous.

34. All documents referring to or discussing other sources of lead acid battery separators that JCI could or might be able to use to replace Polypore as a source of supply.

35. All documents referring to or discussing Polypore's past, present or future competitive position in the lead acid battery separator business.

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

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 JCI relating in any way to Polypore or Microporous.

39. All documents relating to any actual or perceived advantage to JCI of the location of its lead acid battery supplier.

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 Johnson Controls, Inc. 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 "JCI" for purposes of this request, means Johnson Controls, Inc. or any of its parents, divisions, subdivisions, subsidiaries, affiliates, officers, directors or managing agents, attorneys, employees, consultants and 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, and 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. "ENTEK" for the purposes of this request, means the ENTEK International LLC, and any affiliate, subsidiary or division thereof, and their respective employees, officers, directors, partners, attorneys and agents.
6. "BFR" means Baoding Fengfan Rising Battery Separator Co., Ltd., and any affiliate, subsidiary or division thereof, and their respective employees, officers, directors, partners, shareholders, attorneys and agents.
7. "FTC" means the Federal Trade Commission, and any of its directors, commissioners, employees, consultants and agents.
8. "Polypore matter" means the investigation conducted by the FTC under Rule No. 081-0131 and this Administrative Proceeding, Docket No. 9327.
9. "Investigation" means any FTC investigation, whether formal or informal, public or non-public.
10. "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 Johnson Controls, Inc. or any of its subsidiaries.
11. "Complaint" means the Complaint issued by the Federal Trade Commission to Polypore International, Inc. in Docket No. 9327.
12. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying or stating.
13. Unless otherwise stated, the relevant time period for these requests is January 1, 2003 to the present.

14. The use of the singular shall be deemed to include the plural and vice versa.
15. 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.
16. 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.
17. The term "all" includes any and vice versa.
18. If a document database is provided, provide an explanation of the definitions used and the fields existing in such database.
19. If you object to any part of a document request under the FTC Rules of Practice §3.37(b), set forth the basis for your objection and respond to all parts of the document request to which you do not object. No part of a document request shall be left unanswered merely because an objection is interposed to another part of a document request.
20. All documents that respond, in whole or in part, to any portion of any document request shall be produced in their entirety, including all attachments, enclosures, cover memoranda and post-it notes.
21. If any privilege is claimed as a ground for not producing any document, provide for each such document withheld on the basis of privilege all information required by FTC Rules of Practice §3.38A.
22. In the event that any responsive document was, but is no longer in your possession, state what disposition was made of it, when, and the reason for such disposition. In the event that a responsive document has been destroyed or returned to a Third Party, state (i) the reason for such document's destruction or return, the date on which the document was destroyed or returned, and the Third Party to whom the document was returned or on whose behalf the document was

destroyed; (ii) the name, title, and location thereof within Johnson Controls, Inc. of the individual in whose possession, custody or control the document was when it was destroyed or returned; and (iii) the name, title, and location thereof within Johnson Controls, Inc. of the individual who destroyed or returned the document.

23. These document requests are continuing in nature, up to and during the course of the adjudicative hearing. All documents sought by these requests that you obtain or locate after you serve your responses must be immediately produced to counsel for Polypore by supplementary response.

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2008, I caused a copy of a *Subpoena Duces Tecum* directed to *Johnson Controls, Inc.* to be served upon the following persons, at the addresses and through the means noted below:

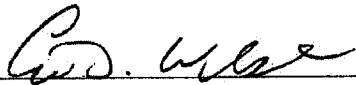
Via Certified Mail:

Johnson Controls, Inc.
5757 North Green Bay Avenue
Milwaukee, Wisconsin 53201

Via Electronic Mail:

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


Eric D. Welsh
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 335-9052
Facsimile: (704) 334-4706

following is a non-exhaustive list of examples of information that likely will qualify for treatment as Confidential Material: strategic plans (involving pricing, marketing, research and development, product road maps, corporate alliances, or mergers and acquisitions) that have not been fully implemented or revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); sales contracts; system maps; personnel files and evaluations; information subject to confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer, or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Material. Discovery Material will not be considered confidential if it is in the public domain.

2. "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. "Document" includes, but is not limited to, any writing, letter, envelope, telegraph, e-mail, meeting minute, memorandum, statement, affidavit, declaration, transcript of oral testimony, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, drawing, chart, printout, microfilm index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, organizer, desk pad, telephone message slip, note of interview or communication, and any other data compilation from which information can be obtained, and includes all drafts and all copies of such Documents and every writing or record that contains any commentary, notes, or marking whatsoever not appearing on the original.

3. "Discovery Material" includes without limitation deposition testimony, exhibits, interrogatory responses, admissions, affidavits, declarations, Documents, tangible thing or

answers to questions produced pursuant to compulsory process or voluntarily in lieu thereof, and any other Documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter. Information taken from Discovery Material that reveals its substance shall also be considered Discovery Material.

4. "Commission" shall refer to the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
5. "Polypore" means Polypore International, Inc., and its predecessors, divisions, and subsidiaries, and all persons acting or purporting to act on its behalf.
6. "Respondent" means Polypore.
7. "Party" means the Commission or Polypore.
8. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Matter and its employees, directors, officers, attorneys and agents.
9. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Material to any of the Parties. With respect to Confidential Material of a Third Party that is in the possession, custody or control of the FTC, or has been produced by the FTC in this matter, the Producing Party shall mean the Third Party that originally provided such material to the FTC. The Producing Party shall mean the FTC for purposes of any Document or Discovery Material prepared by, or on behalf of, the FTC.
10. "Matter" means the above captioned matter pending before the Federal Trade Commission, and all subsequent administrative, appellate or other review proceedings related thereto.

TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Any Document or portion thereof submitted by Respondent or a Third Party during the Federal Trade Commission ("FTC") investigation preceding this Matter or during the course of proceedings in this Matter that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as Confidential Material for purposes of this Protective Order. For purposes of this Protective Order, the identity of a Third Party submitting such Confidential Material shall also be treated as Confidential Material where the submitter has requested in writing such confidential treatment.
2. The Parties and any Third Parties, in complying with informal discovery requests, disclosure requirements, discovery demands or formal process in this Matter may designate any responsive document or portion thereof Confidential Material, including documents obtained by them from Third Parties pursuant to discovery or as otherwise obtained.
3. The Parties, in conducting discovery from Third Parties, shall provide to each Third Party a copy of this Protective Order so as to inform each such Third Party of his, her or its rights herein.
4. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes Confidential Material as defined in Paragraph 1 of the Definitions of this Protective Order. All deposition transcripts

shall be treated as Confidential Material.

5. If any Party seeks to challenge the Producing Party's designation of material as Confidential Material, the challenging Party shall notify the Producing Party and all other Parties of the challenge. Such notice shall identify with specificity (*i.e.*, by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation by providing the challenging Party and all other Parties a written statement of the reasons for the designation within five (5) business days of receiving notice of the confidentiality challenge. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Materials, absent a written agreement with the Producing Party or order of the Commission providing otherwise.

6. If any conflict regarding a confidentiality designation arises and the Parties and Producing Party involved have failed to resolve the conflict via good-faith negotiations, a Party seeking to disclose Confidential Material or challenging a confidentiality designation may make written application to the hearing officer for relief. The application shall be served on the Producing Party and the other Parties to this Matter, and shall be accompanied by a certification that good-faith negotiations have failed to resolve the outstanding issues. The Producing Party and any other Party shall have five (5) business days after receiving a copy of the motion to respond to the application. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the hearing officer of the propriety of a requested disclosure or change in designation.

