

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 POLYPORE INTERNATIONAL, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS REQUESTED BY SUBPOENA *DUCES TECUM*

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 to Compel Production of Documents Requested by Subpoena *duces tecum* and in support states as follows:

Polypore's Motion to Compel Production of Documents ("Motion to Compel") has been rendered moot by ENTEK's substantial compliance with the subpoena *duces tecum* served on November 10, 2008 ("Subpoena")¹, as modified by a discovery agreement between ENTEK and Polypore dated December 22, 2008 ("Discovery Agreement"). As of today, ENTEK has produced to Polypore 15,514 pages of documents, responsive to all major categories of information requested in the Subpoena. ENTEK's productions, which in part reach back to 1995, provide detailed information about every material aspect of ENTEK's lead acid battery separator

¹ Polypore's subpoena *duces tecum* was actually served on ENTEK on November 6, 2008.

business in the U.S. and abroad, including products, prices, capacity, customers, markets, market shares, competition, competitors, and ENTEK's strategic plans going forward.

Substantively, the Motion to Compel is without merit. ENTEK informed counsel for Polypore of its intention to substantially complete the production by January 23, 2009 and began its rolling production on January 5, 2009, seven days before Polypore filed the Motion to Compel. At the time that Polypore filed the Motion to Compel, it knew that it was already in possession of ENTEK information covering more than 70% of ENTEK's business.

Lastly, ENTEK is not responsible for any time crunch that Polypore may presently find itself in. Polypore, not ENTEK, wasted at least 10 days in December by not responding to ENTEK's drafts of the Discovery Agreement in a timely manner until December 22, 2008. Similarly, to this day, Polypore has not responded to ENTEK's proposed dates for the deposition of Daniel Weerts.

ARGUMENT

I. The Motion to Compel Should be Denied as Moot Because ENTEK Has Substantially Complied with the Subpoena as Modified and Expects to Complete the Rolling Production of any Remaining Materials by January 29, 2009

Polypore's Motion to Compel Production of Documents should be denied as moot because ENTEK has substantially responded to the discovery requests contained in the Subpoena as modified and is currently completing a rolling production in a reasonable time and manner. *See, e.g., Brown v. Artus*, 2008 U.S. Dist. LEXIS 43297 (N.D.N.Y. 2008) (denying plaintiff's motion to compel as moot where defendants had substantially complied with the proffered discovery).

The purpose of producing ENTEK materials on a rolling basis is to provide Polypore (that is, the outside group identified in the Discovery Agreement) with documents as soon as possible once they are assembled and reviewed. To date, ENTEK has made 10

productions of 15,514 pages to Polypore. Specifically:

On January 5, 2009, ENTEK made the first production to Polypore, which consisted of an affidavit from Daniel Weerts describing ENTEK's operations, corporate strategy, its main products as well as other major product categories in the battery industry, and the geographic market for "SLI" (starting-lighting-ignition) battery separators.² Mr. Weerts' affidavit also includes a description of the end use applications for ENTEK's battery separators that Polypore alleges is necessary in order to rebut the FTC's allegation that battery separators manufactured for a particular application cannot be effectively used for other applications.³

On January 7, 2009, ENTEK made two productions to Polypore. The first consisted of 190 pages of documents and included ENTEK's United States contracts with Delphi Energy and Chassis Systems Division, Johnson Controls Battery Group, Inc., and the Ramcar Group.⁴ These contracts together represent over 70% of ENTEK's business, and provide the pricing information Polypore identifies in its Motion to Compel as necessary for its defense.⁵

The second January 7, 2009 production consisted of 246 pages of documents and included descriptions of ENTEK's battery separator products and applications, sales summaries providing monthly sales averages for each ENTEK customer from 2006-2008, spreadsheets listing capacity and production information for each of ENTEK's facilities, a flow diagram illustrating ENTEK's production process, a feasibility study for the production of industrial polyethylene separators at ENTEK's U.K. CMP facility, information about ENTEK's competitive proposals since January 1, 2006, and copies of discussions with customers regarding

² Exhibit 5, a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In the matter of Polypore International, Inc., Case No. 9327 (Document Submission" dated January 5, 2009, at 6:51 PM PDT.

³ Memorandum in Support of Respondent's Motion to Compel ENTEK International LLC to Produce Documents Requested by Subpoena *Duces Tecum* ("Mem. Supp. Mot. Compel") at 5.

⁴ Exhibit 6, a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 7, 2009, at 10:37 AM PDT.

⁵ Mem. Supp. Mot. Compel at 5.

the supply of battery separators.⁶ These documents provide information regarding markets, entry, capacity, testing and capital requirement barriers to entry that Polypore describes in its Motion to Compel.⁷

ENTEK made its fourth and fifth productions to Polypore on January 9, 2009, consisting of 652 pages of documents. These productions included detailed information about pricing negotiations, additional contracts, and communications with customers of ENTEK's U.K. facility.⁸

On January 12, 2009, ENTEK made a sixth production to Polypore, which included an agency agreement between ENTEK and Bernard Dumas, and a 1995 purchase agreement between ENTEK and Johnson Controls Battery Group, Inc. along with a 1997 amendment to that agreement.⁹

ENTEK produced over 5,000 pages of documents in a seventh production on January 15, 2009, which contained the files of Greg Humphrey, ENTEK's Account Manager for North and South American Sales.¹⁰ These documents included customer visit reports, communications with customers, market share analyses, and spreadsheets containing pricing information.

ENTEK's eighth production sent to Polypore on January 16, 2009, contained 5,117 pages of documents and included the files of Graeme Fraser-Bell responsive to Subpoena

⁶ Exhibit 7, a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 7, 2009, at 3:06 PM PDT.

⁷ Mem. Supp. Mot. Compel at 5, citing Subpoena Nos. 3-4, 28. 32.

⁸ Exhibit 8, a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 9, 2009, at 3:05 PM PDT. Exhibit 9, a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 9, 2009, at 3:09 PM PDT.

⁹ Exhibit 10, a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 12, 2009, at 3:01 PM PDT.

¹⁰ Exhibit 11, a true and correct copy of the cover letter sent on January 15, 2009 from Brett Collins to Eric D. Welsh with ENTEK's seventh document submission.

Request 36 that were originally produced to the Federal Trade Commission, as well as the files of Dan Weerts containing communications between ENTEK and certain battery manufacturers listed in Subpoena Request 5.¹¹

On January 17, 2009 ENTEK turned over 638 documents totaling 3,250 pages in its ninth submission, which included files from Greg Humphrey and Graeme Fraser-Bell containing hundreds of email communications with battery manufacturers reflecting price discussions, supply agreements, and product specifications.¹² This production also included the files of Dan Powell responsive to Subpoena Request 36 that were originally submitted to the Federal Trade Commission.

In its most recent submission to Polypore, sent on January 20, 2009, ENTEK produced 751 pages of documents in 363 files.¹³ The files submitted in this tenth production contain Graeme Fraser-Bell's communications with Johnson Controls, Inc. responsive, *inter alia*, to Subpoena Request 5, as well as Robert Keith's documents responsive to Subpoena Request 36 that were originally submitted to the Federal Trade Commission.

Taken together, these productions substantially comply with the Subpoena as modified and enable Polypore to adequately prepare its defense and move forward with the deposition of Daniel Weerts. ENTEK expects that any remaining documents will be produced by January 29, 2009.

II. Polypore, not ENTEK, is Responsible for any Alleged Delays in Preparing its Case for Trial

Polypore's contention that ENTEK has dragged its feet in producing documents

¹¹ Exhibit 12, a true and correct copy of the cover letter sent on January 16, 2009 from Brett Collins to Eric D. Welsh with ENTEK's eighth document submission.

¹² Exhibit 13, a true and correct copy of the cover letter sent on January 17, 2009 from Brett Collins to Eric D. Welsh with ENTEK's ninth document submission.

¹³ Exhibit 14, a true and correct copy of the cover letter sent on January 20, 2009 from Brett Collins to Eric D. Welsh with ENTEK's tenth document submission.

responsive to Polypore's Subpoena is manifestly without merit. At the outset, it is important to understand that ENTEK, as Polypore's sole competitor in several lines of business, had serious confidentiality concerns with turning over any of its competitively sensitive business records to Polypore. The nature and scope of these concerns are set forth in ENTEK's Motion for Protective Order which was filed with the Administrative Law Judge on November 6, 2008, prior to its receipt of Polypore's Subpoena.¹⁴ In order to resolve ENTEK's confidentiality concerns and to facilitate and expedite the discovery process, ENTEK and Polypore thereafter negotiated the Discovery Agreement, which modifies the Subpoena in several material ways as well as the October 23, 2008 Protective Order entered in this case ("Protective Order") as it pertains to ENTEK's documents.¹⁵ Specifically, the Discovery Agreement modifies not only the scope of ENTEK's discovery obligations, but also, more importantly, the disclosure group identified in the Protective Order, restricting access to ENTEK's documents to a more limited group.

Polypore's assertion that the Discovery Agreement was "reached in principal on December 11, 2008" is both misleading and revealing.¹⁶ The assertion is misleading, because Polypore, not ENTEK, waited until December 22, 2008 – the eve of the Christmas and New Year holidays – to finalize and execute the Discovery Agreement. The assertion is revealing, because if – from Polypore's point of view – all material issues had been resolved by December 11, 2008, then Polypore could have executed the agreement at that time. Had Polypore executed the agreement on December 11, ENTEK would have been able to begin its production at least 10 days earlier. In light of its significant confidentiality concerns and its need to limit the disclosure group, ENTEK could not begin producing documents until an enforceable agreement was reached that provided the necessary assurances and protections.¹⁷ Accordingly, the earliest

¹⁴ On November 18, 2008, the Administrative Law Judge ruled that ENTEK's motion was moot in light of a stipulation of the parties by which they agreed to attempt to resolve all outstanding discovery issues between them. The Discovery Agreement was the fruit of this prior stipulation.

¹⁵ Mem. Supp. Mot. Compel, Tab E.

¹⁶ Mem. Supp. Mot. Compel at 2.

¹⁷ ENTEK filed a Motion for Protective Order on November 6, 2008 seeking to prevent disclosure of documents originally produced to the FTC in compliance with the

ENTEK could have begun its production was sometime in early January 2009, which is exactly what happened in this case.¹⁸

Under these circumstances, Polypore could not have had any justified expectation that ENTEK would begin its document production prior to the winter holiday season. Had ENTEK first produced documents and then attempted to finalize the Discovery Agreement, it would have had no adequate protections in the event that negotiations had come to an impasse. At no point in time did ENTEK or counsel for ENTEK suggest that ENTEK would begin its document production efforts prior to finalizing the Discovery Agreement.

III. Polypore, not ENTEK, Delayed the Signing of the Discovery Agreement in December 2008 by at least 10 Days, and Continues to Drag out the Discovery Process

Any purported delay in finalizing the Discovery Agreement was the result of Polypore's dilatory conduct. Specifically, Polypore twice allowed five days to pass before providing comments and edits to the draft Discovery Agreement circulated by ENTEK. On December 10, 2008, Polypore, through counsel, sent ENTEK an email requesting ten revisions to the working draft of the Discovery Agreement.¹⁹ *One day later*, on December 11, 2008, ENTEK replied with an updated draft of the discovery agreement accepting virtually all of Polypore's ten proposed revisions.²⁰ Polypore thereafter allowed five days to elapse before responding to

Commission's Civil Investigative Demand. ENTEK withdrew the motion on November 17, 2008 pending the outcome of a discovery agreement between Polypore and ENTEK.

¹⁸ Declaration of Hanno Kaiser in Support of Third Party ENTEK International LLC's Opposition to Polypore International's Motion to Compel Production of Documents Requested by Subpoena *Duces Tecum* ("Kaiser Decl.") ¶6.

¹⁹ Exhibit 1, a true and correct copy of the Email chain between Eric D. Welsh and Hanno Kaiser; titled: "RE: ENTEK; discovery agreement" dated December 10, 2008, at 10:48 AM PDT.

²⁰ Exhibit 2, a true and correct copy of the Email chain between Eric D. Welsh and Hanno Kaiser; titled: "Re: DRAFT Discovery Agreement ENTEK/Polypore" dated December 16, 2008, at 3:01 PM PDT.

ENTEK's re-circulated draft on December 16, 2008.²¹ ENTEK again responded within a day, on December 17, 2008 accepting Polypore's proposed revisions and including them in a proposed final draft.²² Polypore thereafter allowed another five days to pass before responding to that draft, ultimately agreeing to the final form of the agreement on December 22, 2008.²³

In the same vein, Polypore, not ENTEK, continues to drag out the discovery process. In its Motion to Compel, Polypore argues that ENTEK's purported delay in producing documents has prevented it from preparing for the ENTEK depositions; however, Polypore has exhibited no urgency in actually scheduling the deposition of the agreed upon ENTEK witness, Mr. Daniel Weerts.²⁴ On January 14, 2009 ENTEK sent Polypore an email with proposed deposition dates for Daniel Weerts.²⁵ As of the date of the filing of this Opposition, seven days have passed since ENTEK sent that email, and Polypore has yet to respond.²⁶

IV. ENTEK Has Been Working Diligently to Substantially Comply With the Subpoena as Modified

Since the Discovery Agreement's execution, ENTEK has been working diligently to produce responsive documents to Polypore on a rolling basis and has produced more than 15,000 pages as of the date of this filing. In the thirty days that have passed since the Discovery Agreement was signed, ENTEK has made 10 productions to Polypore, submitting responsive documents as soon as they are available for production. The documents produced to Polypore in the earliest productions, many of which Polypore received before filing its Motion to Compel,

²¹ *Id.*

²² Exhibit 3, a true and correct copy of the Email chain between Eric D. Welsh and Hanno Kaiser; titled: "RE: ENTEK; discovery agreement" dated December 22, 2008, at 8:12 AM PDT.

²³ Discovery Agreement, Mem. Supp. Mot. Compel, Tab E.

²⁴ Mem. Supp. Mot. Compel at 4.

²⁵ Exhibit 4, a true and correct copy of an Email communication between Brett Collins and Eric D. Welsh; titled: "In re matter of Polypore International Inc. – Deposition dates for Daniel Weerts" dated January 14, 2009, at 1:55 PM PDT.

²⁶ Kaiser Decl. ¶16.

contain the most important information, covering more than 70% of ENTEK's revenues and providing Polypore with the information regarding pricing, end use, and manufacturing capacity necessary to its defenses as outlined in its Motion to Compel.²⁷

ENTEK is not a large company with massive resources. It is assembling, reviewing, and producing responsive files as expeditiously as it can. Dan Weerts and Dan Powell, ENTEK's Vice President of Sales and Marketing and Vice President of Finance, respectively, have spent a substantial amount of time and effort on compiling responses to Polypore's Subpoena.²⁸ Graeme Fraser-Bell, the Vice President of International Sales for ENTEK International Ltd., has also been significantly diverted from his normal business duties as he works to comply with the Subpoena.²⁹ Msrs. Weerts, Powell, Fraser-Bell, Kuntz and others within ENTEK have been working in good faith to respond to the Subpoena, and will continue working in good faith on this matter until production is completed. ENTEK presently expects to complete its production on January 29, 2009, an eminently reasonable timeline considering the scope of the production required under the Subpoena, as modified by the Discovery Agreement.

Polypore's contention that ENTEK refused to provide any commitment as to when ENTEK would complete its production (citing a January 7, 2009 e-mail from Eric D. Welsh, Esq.) is, again, misleading.³⁰ On January 6, 2009, Polypore demanded *for the first time* that ENTEK commit to a date certain by which its production would be completed. When ENTEK indicated that it needed additional time to determine a plausible completion date, Polypore demanded that production be completed by January 12 – a mere 6 days later. Given the expected volume of material covered by the Subpoena, even as modified, this date was completely unrealistic and ENTEK so informed Polypore immediately of this fact. Specifically,

²⁷ Mem. Supp. Mot. Compel at 5-6.

²⁸ Declaration of Joel Kuntz in Support of Third Party ENTEK International LLC's Opposition to Polypore International's Motion to Compel Production of Documents Requested by Subpoena *Duces Tecum* ("Kuntz Decl.") ¶¶2,3.

²⁹ Kuntz. Decl. ¶4.

³⁰ Mem. Supp. Mot. Compel at 3-4.

ENTEK responded to Polypore's concerns via Email on January 7, 2009, explaining, "we cannot commit to completing ENTEK's production by January 12 as you requested for the first time in yesterday's 'meet and confer' session. We will continue to produce documents as quickly as possible and commit to substantially completing ENTEK's production by January 23, 2009."³¹ Although it continues to produce additional documents and expects to do so until January 29, 2009, ENTEK submits that its production of more than 15,000 pages to date constitutes substantial completion of its production.

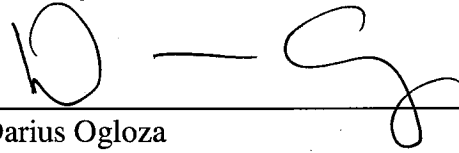
CONCLUSION


ENTEK has worked in good faith to complete production pursuant to the Subpoena as modified by the Discovery Agreement. The vast majority of documents responsive to the Subpoena have already been produced to Polypore, and ENTEK continues to work diligently to complete production as promptly as it reasonably can. For the reasons set forth above, the Administrative Law Judge should deny Respondent's Motion to Compel as moot. In the event that the Administrative Law Judge has additional questions not addressed in this memorandum, ENTEK respectfully requests a hearing.

³¹ Exhibit 6, a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 7, 2009, at 10:37 PDT.

Dated: January 21, 2009

Respectfully submitted,

By 
Darius Ogloza

By 
Hanno Kaiser*

LATHAM & WATKINS LLP
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San Francisco, California 94111-6538
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hanno.kaiser@lw.com
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* Admitted in New York only. Not admitted in
California.

Attorneys for ENTEK International LLC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Polypore International, Inc.
a corporation.

CASE NO. 9327

PUBLIC DOCUMENT

**DECLARATION OF JOEL KUNTZ IN SUPPORT OF THIRD PARTY ENTEK
INTERNATIONAL LLC'S OPPOSITION TO POLYPORE INTERNATIONAL, INC.'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS REQUESTED BY
SUBPOENA DUCES TECUM**

I, Joel Kuntz, under penalty of perjury, declare that the following is true and correct to the best of my knowledge:

1. I am Vice President and General Counsel for ENTEK International LLC ("ENTEK"). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.
2. Dan Weerts, the current Vice President of Sales & Marketing for ENTEK, has been pulled away from his regular professional duties in order to assemble and process documents responsive to the subpoena *duces tecum* issued to ENTEK International LLC by Polypore International, Inc. on November 6, 2008, and as modified by the agreement reached between the parties on December 22, 2008 ("Subpoena"). This has taken a substantial amount of time and effort. Mr. Weerts has spent over 100 hours dedicated to this task.
3. Dan Powell, the current Chief Financial Officer for ENTEK, has been

pulled away from his regular professional duties in order to assemble and process documents responsive to the Subpoena. This has taken a substantial amount of time and effort. Mr. Powell has spent over 50 hours dedicated to this task.

4. Graeme Fraser-Bell, the current Vice President of International Sales for ENTEK International Ltd, has been pulled away from his regular professional duties in order to assemble and process documents responsive to the Subpoena. This has taken a substantial amount of time and effort. Mr. Fraser-Bell has spent over 30 hours dedicated to this task.

5. Resources within ENTEK, including the technology department, have been dedicated to processing and producing the company's files that are responsive to the Subpoena.

6. ENTEK's normal business operations have been disrupted as a result of the divergence of human and technological resources to the expeditious production of documents in compliance with the Subpoena. This divergence has occurred while ENTEK is trying to close its books for 2008 and prepare budgets for 2009.

I declare, under the penalty of perjury under the laws of the United States that the foregoing is true and correct. Signed this 21st day of January 2009, in Lebanon, Oregon.

By 
Joel Kuntz
ENTEK International LLC
250 N. Hansard Avenue
Lebanon, Oregon 97355

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Polypore International, Inc.
a corporation.

CASE NO. 9327

PUBLIC DOCUMENT

**DECLARATION OF HANNO F. KAISER IN SUPPORT OF
THIRD PARTY ENTEK INTERNATIONAL LLC'S OPPOSITION TO POLYPORE
INTERNATIONAL, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS
REQUESTED BY SUBPOENA *DUCES TECUM***

I, Hanno F. Kaiser, under penalty of perjury, declare that the following is true and correct to the best of my knowledge:

1. I am an attorney duly licensed to practice before the courts of the State of New York. I am a partner with the law firm of Latham & Watkins LLP, legal counsel for ENTEK International LLC ("ENTEK"). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy the Email chain between Eric. D. Welsh and Hanno Kaiser; titled: "RE: ENTEK; discovery agreement" dated December 10, 2008, at 10:48 AM PDT.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Email chain between Eric D. Welsh and Hanno Kaiser, titled: "Re: DRAFT Discovery Agreement ENTEK/Polypore" dated December 16, 2008, at 3:01 PM PDT.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Email chain between Eric D. Welsh and Hanno Kaiser; titled: "RE: ENTEK; discovery agreement" dated December 22, 2008, at 8:12 AM PDT.

5. Attached hereto as Exhibit 4 is a true and correct copy of an Email communication between Brett Collins and Eric D. Welsh; titled: "In re matter of Polypore International Inc. – Deposition dates for Daniel Weerts" dated January 14, 2009, at 1:55 PM PDT.

6. Attached hereto as Exhibit 5 is a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In the matter of Polypore International, Inc., Case No. 9327 (Document Submission)" dated January 5, 2009, at 6:51 PM PDT. This Email communication contains the first of ten document submissions made by ENTEK to Polypore in its ongoing document production pursuant to the subpoena *duces tecum* served on November 6, 2008 ("Subpoena") and as amended by a letter agreement reached between the parties on December 22, 2008 ("Discovery Agreement").

7. Attached hereto as Exhibit 6 is a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 7, 2009, at 10:37 AM PDT.

8. Attached hereto as Exhibit 7 is a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 7, 2009, at 3:06 PM PDT.

9. Attached hereto as Exhibit 8 is a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 9, 2009, at 3:05 PM PDT.

10. Attached hereto as Exhibit 9 is a true and correct copy of an Email

communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 9, 2009, at 3:09 PM PDT.

11. Attached hereto as Exhibit 10 is a true and correct copy of an Email communication from Brett Collins to Eric D. Welsh; titled: "In re matter of Polypore International, Inc. – ENTEK Document Submission" dated January 12, 2009, at 3:01 PM PDT.

12. Attached hereto as Exhibit 11 is a true and correct copy of the cover letter sent on January 15, 2009 from Brett Collins to Eric D. Welsh with ENTEK's seventh document submission.


13. Attached hereto as Exhibit 12 is a true and correct copy of the cover letter sent on January 16, 2009 from Brett Collins to Eric D. Welsh with ENTEK's eighth document submission.

14. Attached hereto as Exhibit 13 is a true and correct copy of the cover letter sent on January 17, 2009 from Brett Collins to Eric D. Welsh with ENTEK's ninth document submission.

15. Attached hereto as Exhibit 14 is a true and correct copy of the cover letter sent on January 20, 2009 from Brett Collins to Eric D. Welsh with ENTEK's tenth document submission.

16. Neither I nor any of my partners or associates at Latham & Watkins LLP have received a response from Polypore's counsel regarding the proposed deposition dates for Daniel Weerts.

I declare, under the penalty of perjury under the laws of the United States that the foregoing is true and correct. Signed this 21st day of January 2009, in San Francisco, California.

By 

Hanno F. Kaiser
LATHAM & WATKINS LLP
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San Francisco, California 94111-6538
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Facsimile: +1.415.395.8095
hanno.kaiser@lw.com
* Admitted in New York only. Not admitted in California.

Attorney for ENTEK International LLC

TAB

2

Spielman, Katie (SF)

From: Welsh, Eric D. [ericwelsh@parkerpoe.com]
Sent: Wednesday, December 10, 2008 10:48 AM
To: Kaiser, Hanno (SF)
Cc: Ogloza, Darius (SF); Collins, Brett (SF)
Subject: RE: ENTEK; discovery agreement

Darius:

Thank you for your letter. I have talked with my client and we have the following in response.

First, as we discussed over the telephone, Hanno's proposal on confidentiality was to treat certain information as highly confidential, and it was that information that we agreed with you Mr. Shor would not see. There was no discussion of "Safe Locations." Now, the proposed agreement from you not only excludes Mr. Shor from all confidential documents, but it also includes the restriction of having the "Most Sensitive Information" reviewed at only "Safe Locations" during normal business hours. This is unreasonable, excessive and unnecessary. In order to move this along, we will agree to exclude Mr. Shor as to all of Entek's production, but I cannot agree to the Safe Location provision as it is far too restrictive on my ability to engage in discovery and prepare for trial and imposes undue expense to me and my economists. We have come quite far in our repeated concessions to address confidentiality concerns of your client. If this is not satisfactory, then please file your motion.

Second, as to the list of those individuals in the "Disclosure Group," it would need to include our industry expert once we have notified you per paragraph 6. The Group would also need to include Entek's witnesses, court reporters, the court, and the others referred to in paragraph 9 of the Protective Order (excluding Mr. Shor).

Third, we will agree to notify you of the industry expert, but absent your filing a motion, we would be permitted to show the documents to such person ten days after our notification to you.

Fourth, Entek Information must be able to be removed from Restricted Locations for depositions and hearings. I assume the FTC would want to receive a copy too, but your agreement excludes that ability.

Fifth, I would like the return of Entek information (paragraph 5) to parallel the language in the Protective Order.

Sixth, your letter does not mention our right to seek additional information should the written responses or sufficient to show productions not fully respond to the level of inquiry sought. As I said, you would reserve your right to object.

Seventh, your letter does not mention our right to have a witness tendered to respond to questions regarding such responses.

Eighth, please verify that the response to Request Nos. 3 and 4 will cover any such facility owned directly or indirectly by ENTEK.

Ninth, you have limited the custodian to Mr. Weerts. We understood that you were proposing three custodians to search. We were agreeable to that proposal but needed to know the identity of those custodians. I did not think this was unreasonable. You have now dropped the inquiry to a single person in this organization. We request you also search Mr.

Graham Fraser Bell's and Rob Keith's files.

Tenth, please include documents covering North America and the World in response to Request No. 6.

I think we have now narrowed all of the issues down. If there is anything left that we need to discuss, let me know today. Otherwise, please revise the letter accordingly and

send it to me for signature or file your motion with the ALJ.

Thank you for your attention to this matter.

Eric Welsh

-----Original Message-----

From: Hanno.Kaiser@lw.com [mailto:Hanno.Kaiser@lw.com]
Sent: Tuesday, December 09, 2008 7:32 PM
To: Welsh, Eric D.
Cc: DARIUS.OGLOZA@LW.com; Brett.Collins@lw.com
Subject: ENTEK; discovery agreement

Dear Eric:

As discussed, please find attached our proposed discovery agreement.
Please let us know if you have any questions.

Best,
Hanno

Hanno F. Kaiser | LATHAM & WATKINS LLP | 505 Montgomery Street, San
Francisco, CA 94111-6538 | P: 415.395.8856, F: 415.395.8095, E:
hanno.kaiser@lw.com | Admitted in NY. CA bar admission pending.

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Latham & Watkins LLP

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Spielman, Katie (SF)

From: Welsh, Eric D. [ericwelsh@parkerpoe.com]
Sent: Tuesday, December 16, 2008 3:01 PM
To: Kaiser, Hanno (SF)
Cc: Ogloza, Darius (SF); Collins, Brett (SF)
Subject: RE: DRAFT Discovery Agreement ENTEK/Polypore

Hanno

I think we are very close. Here are my additional thoughts.

Para 3 of your letter (Access to Entek Information) needs to include industry expert, upon approval.

Para 4 of your letter needs to include the use of the documents through appeal.

Para 5, I propose the following language: "Any industry expert shall not have been employed by Polypore and shall not be employed by Polypore or provide consulting services to Polypore (outside of the present matter) for a period of two years from the final resolution of this matter."

I did not see points 6 and 7 of your email actually in the letter. Let me know if I missed it. Otherwise, I would like to add it just so there is no misunderstanding down the road.

We will agree to substitute Mr. Humphrey for Mr. Keith for the custodian to be searched.

I appreciate your efforts and look forward to hearing back from you so that we can get this wrapped up.

Best regards,

Eric

Eric Welsh
Partner

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From: Hanno.Kaiser@lw.com [mailto:Hanno.Kaiser@lw.com]
Sent: Thursday, December 11, 2008 4:10 PM
To: Welsh, Eric D.
Cc: DARIUS.OGLOZA@LW.com; Brett.Collins@lw.com
Subject: DRAFT Discovery Agreement ENTEK/Polypore

Dear Eric:

Please find attached, as discussed, a further revised version of the Discovery Agreement. As you will see, we accepted virtually all of your proposed changes and requests. Specifically:

- [1] The Safe Location concept has been removed.
- [2] The Disclosure Group has been expanded per your request.
- [3] As to the industry expert, the new provision strikes a reasonable compromise. We have 10 days in which to file a motion; in return we get

information about the proposed expert and one short interview if required. The new provision also clarifies that the expert must be a Polypore outsider. That should not be controversial.

[4] Documents may now be removed from Safe Locations for the purposes you identified.

[5] The process of returning ENTEK documents now follows the concept in the PO.

[6] Polypore's reservation of rights in case of claims of insufficient compliance with the agreement have been clarified.

[7] Polypore has the right to call a witness; that, in my view, had already been part of the previous draft.

[8] Request Nos. 3 and 4 will cover facilities owned directly or indirectly by ENTEK; we added language to clarify that point.

[9] We're fine with adding Graham Fraser Bell per your request. In lieu of Rob Keith, however, we propose Greg Humphrey, North & South America Account Manager. Greg is a much better and more direct source for detailed information about actual or potential contracts, separator prices, Polypore and Microporous (i.e., the information requested in Spec. 5) than Rob Keith. Moreover, the vast majority of relevant information requested in Spec. 5 in Rob Keith' files would likely be duplicative with the much more detailed set contained in the files of Dan Weerts. As a result, the benefit to Polypore of including Rob Keith would be minimal, whereas the burden on ENTEK of having its CEO divert significant time and attention away from operations at a time of overall financial and economic crisis and at a critical time of the business year would be significant and harmful to the company. Including Rob Keith would thus be unduly burdensome.

[10] As discussed yesterday, we did not make any changes to Spec. 6.

Best,
Hanno

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