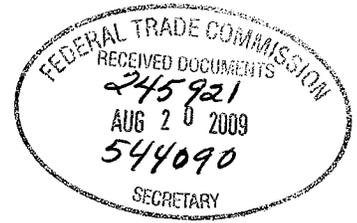


**ORIGINAL**

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



|                                     |   |                        |
|-------------------------------------|---|------------------------|
| <b>In the Matter of</b>             | ) | <b>Docket No. 9327</b> |
|                                     | ) |                        |
|                                     | ) |                        |
|                                     | ) |                        |
| <b>Polypore International, Inc.</b> | ) |                        |
| <b>a corporation</b>                | ) | <b>PUBLIC DOCUMENT</b> |

**RESPONDENT’S MOTION TO REOPEN THE HEARING RECORD**

**INTRODUCTION**

Pursuant to 16 C.F.R. § 3.51(e), “(a)t any time prior to the filing of his initial decision, an Administrative Law Judge may reopen the proceeding for the reception of further evidence.” 16 C.F.R. § 3.51(e). On the sixth day of trial, Complaint Counsel moved to offer PX3016 into evidence. (Toth, Tr. 1647, 1652). At that time, due to the fact that Complaint Counsel had not listed PX3016 as an exhibit on its exhibit list for Mr. Toth, Respondent’s Counsel objected to the admissibility of PX3016. The Court deferred ruling until Complaint Counsel told Respondent’s Counsel the basis for its admissibility and Respondent had an opportunity to review the exhibit. (Toth, Tr. 1647, 1653). In the press of trial, neither Complaint Counsel nor Respondent remembered to bring the document’s admission back to the Court’s attention. Upon the conclusion of the hearing, and at the time the record was closed by Order dated June 22, 2009, Respondent’s objection and the admissibility of PX3016 remained pending. Respondent does not object to admission of PX3016 as evidence. As rulings on all objections must appear on the record pursuant to 16 C.F.R. 3.43(e), Respondent respectfully requests that the Court reopen the hearing record so as to rule on the admissibility of PX3016.

## ARGUMENT

On May 19, 2009, during the redirect examination of Robert Toth (“Toth”), Complaint Counsel attempted to introduce and admit PX3016 into evidence. (Toth, Tr. 1647). Respondent’s Counsel objected to the admissibility of PX3016 on the basis that the document had only been presented to Respondent’s Counsel earlier that same day<sup>1</sup>. (Toth, Tr. 1647). In response, Complaint Counsel asked the Court to defer ruling on the admissibility of PX3016 until Respondent’s Counsel had an opportunity to review the exhibit. (Toth, Tr. 1647). During the re-cross examination of Toth by Respondent’s Counsel, Toth offered testimony about PX3016. (Toth, Tr. 1648-51). Complaint Counsel objected to aspects of Toth’s testimony about PX3016. (Toth, Tr. 1652). In response to Complaint Counsel’s objection, the Court stated, “you made a formal offer of this exhibit in evidence. Do you want me to strike all testimony regarding this document or do you want to allow [Toth] to look at it and talk about it? Pick one.” (Toth, Tr. 1652). Complaint Counsel withdrew their objection and Toth continued to testify about PX3016. (Toth, Tr. 1652-1653). As Toth continued to testify, the Court interjected and asked Respondent’s Counsel the following:

The Court: Mr. Rikard, are you going to continue to object to the admission of this document?

A: Until I have an opportunity to review it, yes, Your Honor.

The Court: I would like for Mr. Robertson to inform you what his basis of admissibility is, and you two discuss whether you are going to object or not.

A: All right, I appreciate that. Thank you, Your Honor.

The Court: I didn't mean right now. I mean after we're done.

A: Right.

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<sup>1</sup> Pursuant to an agreement between Complaint Counsel and Respondent’s Counsel, all exhibits had to be provided to the opposing side 24 hours in advance of their use at trial.

(Toth, Tr. 1653-54).

This discussion occurred near the conclusion of Mr. Toth's testimony at the end of the day. Another witness was called to the stand beginning the next morning and the matter of the admissibility of PX3016 did not come up again and was overlooked through the conclusion of the hearing. Complaint Counsel never withdrew their motion to admit PX3016 into evidence. In the busy course of trial, Respondent's Counsel did not realize the admissibility of PX3016 remained unsettled or that Complaint Counsel had failed to include PX3016 on its Exhibit Index. Because both Complaint Counsel and Respondent used PX3016 in the examination of Mr. Toth, Respondent cited to PX3016 in several Proposed Findings of Fact. When Complaint Counsel objected to those Proposed Findings of Fact on the basis that PX3016 had not been admitted into evidence, Respondent realized that the admissibility of PX3016 had not been finalized.

Respondent has no objection to PX3016 and withdraws its objection based on Complaint Counsel's failure to give timely notice of its use. Further, given the extensive testimony of Mr. Toth about the contents of PX3016 in response to questions from both Complaint Counsel and Respondent's Counsel and the fact that Complaint Counsel offered PX3016 into evidence. Respondent submits that the interests of fairness and justice are such that PX3016 be admitted as part of the record.

### **CONCLUSION**

Because this question regarding PX3016's status remains pending, Respondent respectfully requests that the Court reopen the record under 16 C.F.R. § 3.51(e) and that PX3016 be fully admitted into evidence.

Dated: August 19, 2009

Respectfully Submitted,



William L. Rikard, Jr.

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*Attorneys for Respondent*

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

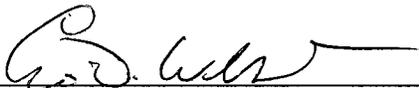
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**STATEMENT PURSUANT TO SCHEDULING ORDER**

I, Eric D. Welsh, Esq., on behalf of Parker Poe Adams & Bernstein LLP (“Parker Poe”) as counsel for Polypore International, Inc. (“Polypore”), hereby represent that Parker Poe has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by Respondent’s Motion To Reopen The Hearing Record, and has been unable to reach such an agreement.

Dated: August 19, 2009

Respectfully Submitted,

  
\_\_\_\_\_  
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**UNITED STATES OF AMERICA  
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**PROPOSED ORDER GRANTING RESPONDENT'S MOTION  
TO REOPEN THE HEARING RECORD**

IT IS ORDERED THAT, upon due consideration, Respondent Polypore International, Inc.'s Motion to Reopen the Hearing Record is hereby GRANTED and PX3016 is hereby admitted into evidence and made a part of the hearing record.

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on August 20, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Motion to Reopen the Hearing Record***, 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 August 20, 2009, I caused to be served one copy via electronic mail delivery and two copies via hand delivery of the foregoing ***Respondent's Motion to Reopen the Hearing Record*** 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 August 20, 2009, I caused to be served via hand delivery and electronic mail delivery a copy of the foregoing ***Respondent's Motion to Reopen the Hearing Record*** upon:

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