

ORIGINAL

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of	)	Docket No. 9327
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	)	
Polypore International, Inc. a corporation	)	PUBLIC DOCUMENT
	)	

**RESPONDENT’S MOTION FOR A COURT ORDER ALLOWING RESPONDENT TO REVIEW THE DECLARATION OF DOUGLAS GILLESPIE**

Pursuant to Rule 3.42 of the Federal Trade Commission Rules of Practice, Respondent Polypore International, Inc. (“Polypore”), by and through counsel, submits its Motion for a Court Order Allowing Respondent to Review the Declaration of Douglas Gillespie.

The Commission has an interest in protecting the integrity of its administrative litigation process. As set forth below, without intervention from this Court, Respondent’s ability to act in accordance with this Court’s October 2, 2009 Order (“Order”) will be significantly hindered and Respondent will suffer great prejudice as a result. Complaint Counsel’s refusal to allow Respondent to review the Declaration of Douglas Gillespie (“Declaration”), despite the Court’s Order, has made it impossible for Respondent and its counsel to fully comply with the Order. Quite simply, without the ability to review the Declaration, Respondent cannot fully describe and set forth the evidence it possesses which disputes the assertions of fact in the Declaration.

1. On September 25, 2009, Respondent filed its Second Motion to Reopen the Hearing Record (“Motion”) in order to permit the introduction of new and additional evidence at a half-day hearing before this Court.

2. On October 1, 2009, Complaint Counsel submitted its Response to Respondent’s Second Motion to Reopen the Hearing Record in opposition to Respondent’s Motion

(“Opposition”). As part of its Opposition, Complaint Counsel submitted the Declaration of Douglas Gillespie, Vice President for Global Procurement for Exide Technologies, Inc.

3. On October 2, 2009, Administrative Law Judge Chappell entered an Order Requiring Reply Brief.

4. Among other things, the Order requires Respondent’s reply brief to “respond to all pertinent facts and arguments asserted in the Opposition, and [to] **specifically address, without limitation, . . . whether Respondent possesses evidence disputing the assertions of fact in the Declaration of Douglas Gillespie**, submitted with the Opposition as Attachment A.” (*Order Requiring Reply Brief, emphasis added*).

5. Later that day, counsel for Respondent attempted to contact Complaint Counsel by telephone and by e-mail to seek permission to disclose the Declaration, which had been identified as “In Camera” and “Confidential Pursuant To Protective Order”, to Respondent so that Respondent could assess what evidence it possesses disputing the assertions of the Declaration, in accordance with the Order of this Court.

6. On October 5, 2009, Complaint Counsel responded to the inquiry of Respondent’s counsel and indicated its position that the Declaration could not be disclosed to Respondent despite the Order of this Court.

7. Respondent is greatly prejudiced by Complaint Counsel’s interference and refusal to comply with the Order of this Court. This Court’s Order unequivocally sets forth the topics Respondent’s reply brief shall address. One such topic includes the assertions of fact made in the Declaration.

8. In fact, Complaint Counsel's Opposition, in an attempt to directly refute several assertions made in Respondent's Motion, relied heavily on the Declaration of Douglas Gillespie.<sup>1</sup> (*Response to Respondent's Second Motion to Reopen the Hearing Record; pp. 1, 5, 6, Exhibit A*).

9. Complaint Counsel's actions reflect an inappropriate interference with an Order of this Court and have resulted in extreme prejudice to Respondent. Without the ability to review the Declaration, Respondent is prevented from specifically addressing all pertinent facts and arguments in the Opposition as required by this Court's Order.

WHEREFORE, Respondent respectfully prays that the Administrative Law Judge enter an Order permitting Respondent to review the Declaration of Douglas Gillespie so that Respondent can fully respond in accordance with this Court's Order, and that Respondent be granted leave to file an amended reply brief after it has had a reasonable amount of time to review the Declaration.

### CONCLUSION

For all the foregoing reasons, Respondent Polypore International, Inc. respectfully requests that its Motion for a Court Order Allowing Respondent to Review the Declaration of Douglas Gillespie be granted in all respects, that the Administrative Law Judge enter an Order instructing Complaint Counsel and/or Exide to permit Respondent to review the Declaration of Douglas Gillespie, and that the Administrative Law Judge enter such other relief as he deems appropriate.

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<sup>1</sup> Curiously, Respondent's Motion was Filed Under Seal and contains an abundance of *In Camera* Material pursuant to Rule 3.45 of the Federal Trade Commission Rules of Practice and Confidential Material pursuant to the Protective Order, all of which was redacted from the public filing of Respondent's Motion. Nevertheless, the Declaration of Douglas Gillespie attached to Complaint Counsel's Opposition specifically addresses several issues raised by Respondent which were supported almost exclusively by *In Camera* or Confidential Material.

Dated: October 7, 2009

Respectfully submitted,



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*Attorneys for Respondent*

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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 the instant Motion and have been unable to reach such an agreement. Parker Poe and Complaint Counsel discussed these issues in e-mail correspondence on October 2, 2009 and over the telephone on October 5, 2009. As a result of these communications, Polypore and Complaint Counsel are at an impasse with respect to the issue raised in Respondent’s Motion.

Dated: October 7, 2009



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**Docket No. 9327**

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**PROPOSED ORDER**

Upon consideration of Respondent's Motion for a Court Order Allowing Respondent to Review the Declaration of Douglas Gillespie, any opposition thereto, and the Court being fully informed,

IT IS HEREBY ORDERED, that Respondent's Motion is GRANTED.

Specifically, it is hereby ORDERED that Respondent shall be permitted to review the Declaration of Douglas Gillespie submitted with the Opposition as Attachment A, and it is further

ORDERED that Respondent be granted leave to file an amended reply brief after it has had a reasonable amount of time to review the Declaration of Douglas Gillespie.

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that on October 7, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing *Respondent's Motion for a Court Order Allowing Respondent to Review the Declaration of Douglas Gillespie*, 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)

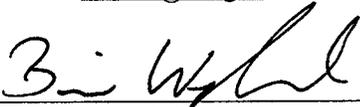
I hereby certify that on October 7, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing *Respondent's Motion for a Court Order Allowing Respondent to Review the Declaration of Douglas Gillespie* upon:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
[oalj@ftc.gov](mailto:oalj@ftc.gov)

I hereby certify that on October 7, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing *Respondent's Motion for a Court Order Allowing Respondent to Review the Declaration of Douglas Gillespie* upon:

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