

ORIGINAL

246962
OCT 21 2009
545060

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Polypore International, Inc.
a corporation.

Docket No. 9327

PUBLIC

COMPLAINT COUNSEL'S MOTION
TO COMPEL PRODUCTION OF DISCOVERY RESPONSES

By this motion, and pursuant to 16 C.F.R. § 3.38(a), Complaint Counsel respectfully moves the Court to compel Respondent to produce all documents identified in Complaint Counsel's Third Request for Production of Documents, Third Set of Interrogatories, and First Set of Requests for Admission. Respondent has advised Complaint Counsel that they will oppose this motion.

Respondent has sought to reopen the hearing to present evidence of events to which Complaint Counsel is not a party and to which Respondent has significant control. While the parties agree that the Hearing will take only half a day, Respondent now proposes that Complaint Counsel respond to this evidence without an adequate opportunity to seek discovery of Respondent's new evidence.

Pursuant to the Court's October 15, 2009 Order Granting Respondent's Second Motion to Reopen the Hearing Record and Setting Hearing Schedule ("Second Hearing Schedule Order"), the parties are to exchange exhibit lists on October 28, 2009. In order to obtain documents and information for trial exhibits, Complaint Counsel immediately began drafting discovery requests tailored to the four proffers outlined by the court. The document request (Attachment A) and interrogatories (Attachment B) were issued on October 16, 2009, the day after the order had been issued. The Request for Admissions (Attachment C) was issued on October 19, 2009. Since

depositions must be concluded by October 27, 2009 and because the requests are limited to documents only since the previous close of discovery, Complaint Counsel requested that the documents and responses be provided by Friday, October 23, 2009.

The discovery requests are necessary and relevant to evaluate and rebut the four proffers made by Respondent to the Court. For example, Daramic asserts that it has evidence that it can only retain Exide's business by { [REDACTED] }. Complaint Counsel needs documents and information about the ongoing negotiations between Respondent and Exide in order to rebut this assertion (Document Requests 14, 16, 18, 21, 22, and 25). Daramic also infers that Exide's purchasing behavior demonstrates that there is a new entrant or entry is imminent. Complaint Counsel needs documents and information from Daramic, including its internal assessments and plans to respond in order to rebut this assertion (Document Requests 15, 16, 20, 22, and 25). Finally, Daramic asserts that it will have to { [REDACTED] } because of Exide's purchases. Complaint Counsel needs documents and information related to Daramic's plant costs, financial statements, alternatives, board discussions, and plans/contingency plans in order to rebut this assertion (Document Requests 17, 19, 20, and 22 - 25). Without this information Respondent has an unfair advantage at the hearing.

On October 19, 2009, Respondent informed Complaint Counsel that it believed that it has no obligation under the Second Hearing Schedule Order to produce documents and that it was reviewing whether or not it would produce the requested documents. In a subsequent conversation, Complaint Counsel asked if Respondent was taking the same position with respect to the Interrogatories and Requests for Admission. Respondent asserted that it would inform Complaint Counsel by noon on October 20. On October 20, 2009, at 11:30 am Respondent

informed Complaint Counsel that it had no intention of responding to Complaint Counsel's Third Set of Document Requests, Third Set of Interrogatories and First Set of Requests for Admission. Because of the extremely limited time for Complaint Counsel to obtain discovery related to Respondent's new facts, Complaint Counsel cannot wait until Friday, October 23 to find out whether Respondent has changed its mind.

The Second Hearing Schedule Order clearly contemplates that Complaint Counsel will conduct discovery. The order explicitly provides for an exchange of exhibit lists, something that would be impossible if Complaint Counsel cannot obtain exhibits. *See* Second Hearing Schedule Order at 8. Moreover, the Order explicitly provides that it gives "Complaint Counsel with pre-hearing procedures to ensure that Complaint Counsel is capable of effective rebuttal." Naturally Respondent will have the opportunity to pick and choose the documents in its possession that it will present at the hearing. If Respondent is not compelled to respond to Complaint Counsel's discovery requests, Complaint Counsel will have no opportunity to review documents or obtain information that might contradict or clarify the evidence presented by Respondent. Most importantly, it will be extremely difficult, if not impossible, to effectively depose and later cross examine Respondent's witnesses without an opportunity to use their documents for impeachment.

The information sought by Complaint Counsel's Requests is critical to the pending hearing. In particular, Complaint Counsel needs the data to confirm or contradict the proffered facts claimed by Respondent, which lies at the core of this hearing. Without the prompt submission of the documents and information Complaint Counsel is irretrievably prejudiced by the inability to effectively cross-examine Respondent's witnesses, which must be done by next

Tuesday. Because of this fast-approaching deadline, it is evident that Complaint Counsel will not be able to take adequate depositions in preparation for the hearing. In addition, without documents and information about Respondent's new facts, Complaint Counsel will be unable to effectively cross-examine Respondent's witnesses. Any delay in receiving the requested documents and information will tilt the playing field heavily in favor of Respondent.

The discovery requests are not burdensome. There are only 12 document requests that are limited to documents produced since the previous close of discovery in March. There are only 14 interrogatories and only 19 Requests for Admission. These discovery requests are tailored to get documents and information responsive to the four proffers made by Respondent to the Court and to the legal arguments made by Respondent in its Second Motion to Reopen the Hearing and its subsequent Reply to Complaint Counsel's response.

CONCLUSION

Pursuant to 16 C.F.R. § 3.38 Complaint Counsel respectfully moves the Court for an order compelling Respondent to produce all documents identified in Complaint Counsel's Third Request for Production of Documents and compelling responses to Complaint Counsel's Third Set of Interrogatories and First Set of Requests for Admission by the close of business on Friday,

October 23, 2009.

Dated: OCTOBER 21, 2009

Respectfully submitted,



Steven A. Dahm
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave. N.W.
Washington, DC 20580
Telephone: (202) 326-2192
Facsimile: (202) 326-2071

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

In the Matter of

Polypore International, Inc.
a corporation.

)
)
) **Docket No. 9327**

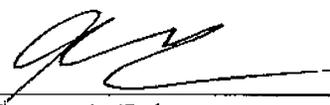
)
) **PUBLIC DOCUMENT**
)

STATEMENT PURSUANT TO SCHEDULING ORDER

I, Steven A. Dahm, Esq., on behalf of Complaint Counsel, hereby represent that Complaint Counsel has conferred with Respondent 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. Complaint Counsel and Respondent discussed these issues in three telephone conversations on October 19, 2009 and again over the telephone on October 20, 2009. As a result of these communications, Complaint Counsel and Respondent are at an impasse with respect to the issue raised in Complaint Counsel's Motion.

Dated: October 20, 2009

Respectfully submitted,



Steven A. Dahm
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave. N.W.
Washington, DC 20580
Telephone: (202) 326-2192
Facsimile: (202) 326-2071

ATTACHMENT A

TO

**COMPLAINT COUNSEL'S MOTION TO COMPEL
PRODUCTION OF DISCOVERY RESPONSES**

OCTOBER 20, 2009

POLYPORE, D. 9327

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

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

**COMPLAINT COUNSEL'S THIRD SET OF DOCUMENT REQUESTS TO
RESPONDENT POLYPORE INTERNATIONAL, INC.**

Pursuant to Rules 3.31 and 3.37 of the Rules of Procedure of the Federal Trade Commission ("FTC Rules of Practice"), Respondent, Polypore International, Inc., is hereby requested to produce the following documents for inspection and copying at 601 New Jersey Avenue NW, Washington, DC 20580, on Friday, October 23, 2009. Objections to any request must be made at that time.

DEFINITIONS

- A. "Polypore," "the company," "you," "your," and like terms mean Respondent, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. "Subsidiary," "affiliate," and "joint venture" refer for this purpose to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person. Unless otherwise specified, "Daramic" means Daramic, LLC and shall be synonymous with "Polypore."
- B. "Microporous" means Microporous Products L.P., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. "Subsidiary,"

"affiliate," and "joint venture" refer for this purpose to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.

- C. "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 including but not limited to Tracy Tang, Amer-Sil B.A., Battery Council International, Bulldog Battery, Inc., C&D Technologies, Inc., EnerSys, East Penn, ENTEK International LLC, Exide Technologies, Inc., Freudenberg Nonwovens, Hollingsworth & Vose Company, IGP Industries, LLC, James Kung, Johnson Controls, Inc., Nippon Sheet Glass Co, Ltd., PricewaterhouseCoopers, LLP.
- D. "Document," subject to definition C below, shall have the broadest meaning that would be applicable under the Federal Rules of Civil Procedure, and includes without limitation and shall include, without limitation: writings, work papers, drawings, graphs, charts, photographs, photo records, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form; any information or material of any kind or nature existing on any media, including digital, analog, electronic, mechanical, optical, video or tape recording; it also means information or files contained or retained on any electronic device, including handheld, laptop, desktop and home computer systems, floppy disks, CD-ROMs, Zip disks/drives, USB and/or any other computerized storage devices, whether or not those files have previously been converted to hard-copy format or not, and the original and all drafts, outlines, proposals, and copies of any such matter (whether or not actually used) of all kinds and descriptions, however, produced or reproduced, whether sent or received or

neither, regardless of whether designated "confidential," "privileged," or otherwise to which you have access or knowledge including, without limitation, all of the following: hard-copy documents, voice mail messages, back-up voice mails, e-mail messages and files, back-up e-mail files, deleted e-mails, data files, program files, computer data bases, back-up and archival tapes, system history files, cache files, cookies, legacy data sets from previous computer environments, correspondence, papers, books, computer discs, electronically stored data in any form, accounts, photographs, agreements, contracts, memoranda, advertising materials, letters, telegrams, objects, reports, records, transcripts, studies, notes, notations, working papers, intra-office communications, charts, minutes, index sheets, computer software and printouts, checks, check stubs, delivery tickets, bills of lading, invoices, recordings of telephone or other conversations, communications, occurrences, interviews and conferences, sound or video recording, and any other material upon which Unless otherwise specified, "document" excludes (1) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature, (2) architectural plans and engineering blueprints; and (3) documents solely relating to tax, human resources, workplace safety, or pension plan issues. information can be stored and retrieved, including all written, recorded, electronically stored, transcribed, punched, taped, filmed and graphic matter.

- E. "And" and "or" have both conjunctive and disjunctive meanings.
- F. "Complaint" means the Complaint issued by the Federal Trade Commission to Polypore International, Inc. in Docket No. 9327.
- G. "Investigation" means any FTC investigation, whether formal or informal, public or nonpublic involving Polypore or Microporous.

- (H. "Polypore matter" means the investigation conducted by the FTC under Rule No. 0810131 and this Administrative Proceeding, Docket No. 9327.
- I. "Separators" means lead acid battery separators made with polyethylene or polyethylene and rubber.

INSTRUCTIONS

- A. Produce all documents requested in native format, including all metadata and all data supporting Excel worksheets, in which the file exists within the company. Each page of a document shall be accompanied by a single-page TIFF image with a corresponding file containing the extracted text from the document, accompanied by a Opticon load file. Metadata (including the entire root directory for each document) and custodian information shall be provided in a delimited ASCII format. If hardcopy documents are provided electronically as TIFF images, they should be accompanied by OCR
- B. If any privilege is claimed as a ground for withholding any document responsive to these requests, provide a log of information necessary for the Commission and the Administrative Law Judge to assess the claim of privilege, in accordance with Rule 3.31(c)(2) of the FTC Rules of Practice, including without limitation (1) all specific grounds for the claim of privilege; (2) the date, nature, subject, creator(s), and all recipient(s) of the withheld document; and (3) each document request to which the withheld document is responsive.
- C. Unless otherwise specified, provide documents generated from March 13, 2009 to the present.

- D. If any documents requested herein have been lost, discarded, or destroyed, the documents so lost, discarded, or destroyed, shall be identified as completely as possible, including, without limitation, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal, and the person disposing of the document.
- E. The use of the singular form of any word includes the plural and vice versa; and the use of any tense of any verb should be considered to include also within its meaning all other terms of the verb so used.
- F. If you have any questions, please contact Steven A. Dahm at (202) 326-2192.

DOCUMENT REQUESTS

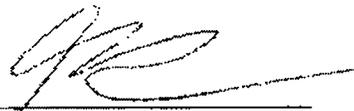
Produce the following:

- 14. All documents related to negotiations with Exide for supply of separators;
- 15. All documents related to purchase orders for, or the purchase of, an excess supply of separators by Exide;
- 16. All documents related to Exide's intent to buy separators from Daramic or any other supplier in the future;
- 17. All documents related to Daramic's proposals, plans, or consideration to [REDACTED]
[REDACTED]
- 18. All documents related to any proposed, planned, or considered change in pricing to Exide;
- 19. All documents related to Daramic's costs, including, but not limited to, raw material costs to produce separators;

20. All documents related to additional costs incurred or that will be incurred to supply [REDACTED] to Exide;
21. All documents related to Exide's alleged purchasing power or lack thereof;
22. All documents related to, identified in, or relied upon in preparation of responses to Complaint Counsel's third set of interrogatories in this matter, including all subparts;
23. All board minutes, presentations, memoranda, agendas, and personal notes of each participating director for all meetings of the Polypore board of directors;
24. All financial statements of Daramic, including, but not limited to, profit and loss statements, by manufacturing facility, customer, or product;
25. The latest version of the AFS database, including all data contained therein.

Dated: October 16, 2009

Respectfully submitted,



Steven A. Dahm
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave. N.W.
Washington, DC 20580
Telephone: (202) 326-2192
Facsimile: (202) 326-2071

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2009, I served *via* electronic mail delivery and first class mail two copies of the foregoing Complaint Counsel's Third Set of Document Requests to Respondent Polypore International, Inc. to:

William L. Rikard, Jr., Esq.
Eric D. Welsh, Esq.
Parker, Poe, Adams & Bernstein, LLP
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202
williamrikard@parkerpoe.com
ericwelsh@parkerpoe.com



Steven A. Dahm
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave. N.W.
Washington, DC 20580
Telephone: (202) 326-2192
Facsimile: (202) 326-2071

ATTACHMENT B

TO

**COMPLAINT COUNSEL'S MOTION TO COMPEL
PRODUCTION OF DISCOVERY RESPONSES**

OCTOBER 20, 2009

POLYPORE, D. 9327

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

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

**COMPLAINT COUNSEL'S THIRD SET OF INTERROGATORIES TO
RESPONDENT POLYPORE INTERNATIONAL, INC.**

Pursuant to the Federal Trade Commission Rules 3.31 and 3.35, Respondent Polypore International, Inc. is hereby requested to answer the following interrogatories. The requested answers must be submitted to 601 New Jersey Avenue NW, Washington, DC 20580, within five (5) days. Objections, if any, must be made within five (5) days after service of these interrogatories.

DEFINITIONS

- A. "Polypore," "the company," "you," or "yours" means Polypore International, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.
- B. "Daramic," means Polypore International, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing prior to the purchase of Microporous Holdings Corporation on February 29, 2008. The terms "subsidiary," "affiliate,"

and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.

C. "Microporous" means Microporous Products L.P., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.

D. "The transaction" means Polypore's purchase of 100% of the stock of Microporous Holdings Corporation on February 29, 2008.

E. "Relevant product" or "relevant end use" as used herein means battery separators used for 1) deep-cycle, 2) uninterruptible power supply ("UPS"), 3) automotive, or 4) motive applications.

F. "Relevant area" means and information shall be provided separately for: (a) North America, (b) Asia, (c) Europe (d) the world.

G. "Person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

H. "Sunk costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

I. "Sales" means net sales, i.e., total sales after deducting discounts, returns, allowances and excise taxes. "Sales" includes sales of the relevant product whether manufactured by the company itself or purchased from sources outside the company and resold by the company in the same manufactured form as purchased.

- J. "And" and "or" have both conjunctive and disjunctive meanings.
- K. "Describe," "state," and "identify" mean to indicate fully and unambiguously each relevant fact of which you have knowledge.
- L. "Documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody or control of the company.
- M. "Computer files" includes information stored in, or accessible through, computer or other information retrieval systems, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises.
- N. "Plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- O. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- P. "Data" means numeric information or information expressed numerically.
- Q. "PE" means polyethylene.
- R. "UPS" means uninterruptible power supply.
- S. "FTC," and "Commission" mean the Federal Trade Commission.

T. "State the factual basis" and/or "state all facts" means to state all facts known to Polypore from whatever source that supports the contention asserted by Polypore in the Respondent's Second Motion to Reopen the Hearing Record and to the extent the facts were learned from a Third Party, to identify the Third Party from whom such information was obtained and to the extent the facts were learned from documents, to identify the document from which the facts were obtained.

INSTRUCTIONS

A. These Interrogatories call for all information (including any information contained in or on any document or writing) that is known or available to you, including all information in the possession of, or available to, your attorneys, agents, or representatives, or any other person acting on your behalf or under your direction or control.

B. Each Interrogatory, including subparts, is to be answered by you separately, completely and fully, under oath. If you object to any part of an Interrogatory, set forth the basis for your objection and respond to all parts of the Interrogatory to which you do not object. Any ground not stated in an objection within the time provided by the Federal Trade Commission's Rules of Practice, or any extensions thereof, shall be waived. All objections must be made with particularity and must set forth all the information upon which you intend to rely in response to any motion to compel.

C. All objections must state with particularity whether, and in what manner, the objection is being relied upon as a basis for limiting the response. If you are withholding responsive information pursuant to any general objection, you should so expressly indicate. If, in responding to any Interrogatory, you claim any ambiguity in interpreting either the Interrogatory

or a definition or instruction applicable thereto, you shall set forth as part of your response the language deemed to be ambiguous and the interpretation used in responding to the Interrogatory, and shall respond to the Interrogatory as you interpret it.

D. If you cannot answer all or part of any Interrogatory after exercising due diligence to secure the full information to do so, so state and answer to the fullest extent possible, specifying your inability to answer the remainder; stating whatever information or knowledge you have concerning the unanswered portion; and detailing what you did in attempting to secure the unknown information.

E. If any privilege is claimed as a ground for not responding to an Interrogatory, provide a privilege log describing the basis for the claim of privilege and all information necessary for the Court to assess the claim of privilege, in accordance with Rule 3.31(c)(2) of the FTC Rules of Practice. The privilege log shall include the following: (i) specific grounds for the claim of privilege; (ii) the date of the privileged communication; (iii) the persons involved in the privileged communication; (iv) a description of the subject matter of the privileged communication in sufficient detail to assess the claim of privilege; and (v) the Interrogatory to which the privileged information is responsive.

F. Whenever necessary to bring within the scope of an Interrogatory a response that might otherwise be construed to be outside its scope, the following constructions should be applied:

1. Construing the terms "and" and "or" in the disjunctive or conjunctive, as necessary, to make the Interrogatory more inclusive;
2. Construing the singular form of any word to include the plural and the plural form to include the singular;

3. Construing the past tense of the verb to include the present tense and the present tense to include the past tense;
 4. Construing the masculine form to include the feminine form;
 5. Construing the term "Date" to mean the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters; and
 6. Construing negative terms to include the positive and vice versa.
- G. Provide data, where requested, in electronic spreadsheet format, formatted in Excel (.xls).
- H. All sales data should be provided in monthly increments.
- I. For all responses provide file layouts and data dictionaries, including, but not limited to, definitions of all fields as well as explanations for any codes or abbreviations within data sets, and definitions for all product specification codes.
- J. If you have any questions, please contact Stephen Antonio at 202-326-2536.

INTERROGATORIES

42. For each relevant product, state all facts forming the basis of your contention that "Exide decided to move { [REDACTED] } its PE separator purchases for { [REDACTED] } to another supplier."
43. Identify all efforts by Exide since June 12, 2009 to request excess orders of flooded lead-acid battery separators from Daramic. For each such request, identify with specificity the orders associated with each relevant product.
44. State all facts forming the basis of your contention that "Exide's placed orders { [REDACTED] } of PE separators, amounts to approximately { [REDACTED] } worth of PE

separator[s].”

45. State all facts forming the basis of your contention that “Douglas Gillespie of Exide has admitted to Respondent that Exide's recent purchase orders equate to { [REDACTED] } worth of PE separator purchases from Daramic.”
46. With respect to proffer #2, state all facts forming the basis of the proposed offered testimony that “[w]ith Exide's purchase orders for more than { [REDACTED] } of PE separators from Daramic, Exide does not intend to and will not purchase any additional PE separators from Daramic in either { [REDACTED] }.”
47. State all facts regarding conversations, meetings, or emails between Daramic and Exide from June 12, 2009 to the present related to any requested excess orders of flooded lead-acid battery separators and identify: a) who was present; b) each topic of discussion; c) all exchanges of information.
48. With respect to proffer #3, state all facts forming the basis of the proposed offered testimony that “[i]n light of Exide's apparent decision not to purchase PE separators from Daramic in { [REDACTED] }, Daramic will likely have to { [REDACTED] } { [REDACTED] }.”
49. Identify by name each individual that was involved in discussions, planning, and/or conducted analysis regarding Daramic's closure of either the Corydon plant or the Owensboro plant. For each named person, provide title and type of work or matters discussed that he or she engaged in.
50. State all cost savings expected to be achieved by closing Corydon or Owensboro.
51. What is the current capacity utilization rate, net income, and EBITDA year to date for the

Corydon plant and the Owensboro plant. What percentage of the capacity utilization rate does Exide's purchases account for at this plant.

52. With respect to proffer #4, state all facts forming the basis of the proposed offered testimony that "[i]f Daramic is able to retain any small amount of business from Exide in {█}, or thereafter, which appears unlikely, Daramic will only be able to obtain such sales through a {█}."
53. State all facts regarding conversations, meetings, or emails between Daramic and Exide from June 12, 2009 to the present, related to any negotiations relating to Daramic supplying Exide with flooded lead-acid battery separators in 2010 and beyond and identify: a) who was present; b) each topic of discussion; c) all exchanges of information.
54. Identify each and every increase in prices by Polypore to customers in North America in any relevant product since June 12, 2009. For each such request to increase price state:
 - a. the relevant product;
 - b. the customer;
 - c. the current price;
 - d. the proposed change in price;
 - e. the reason for the price change; and
 - f. the amount of change in price achieved if any.
55. State all facts forming the basis of your contention in paragraph 14 of the October 6, 2009 affidavit of Harry D. Seibert and identify all documents supporting the contention that
█

Dated: October 16, 2009

Respectfully submitted,



Steven A. Dahm
Complaint Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave, NW (H-374)
Washington, DC 20580
Telephone: (202) 326-2008
Facsimile: (202) 326-2214
rrobertson@ftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2009, I served *via* electronic mail delivery and first class mail two copies of the foregoing Complaint Counsel's Third Set of Interrogatories to Respondent

Polypore International, Inc. to:

William L. Rikard, Jr., Esq.
Eric D. Welsh, Esq.
Parker, Poe, Adams & Bernstein, LLP
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202
williamrikard@parkerpoe.com
ericwelsh@parkerpoe.com



Steven A. Dahm
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave. N.W.
Washington, DC 20580
Telephone: (202) 326-2192
Facsimile: (202) 326-2071

ATTACHMENT C

TO

**COMPLAINT COUNSEL'S MOTION TO COMPEL
PRODUCTION OF DISCOVERY RESPONSES**

OCTOBER 20, 2009

POLYPORE, D. 9327

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

In the Matter of

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

)
) Docket No. 9327
)
)

**COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS TO
RESPONDENT POLYPORE INTERNATIONAL, INC.**

Pursuant to Rules 3.32 of the Rules of Procedure of the Federal Trade Commission ("FTC Rules of Practice"), Respondent, Polypore International, Inc., is hereby requested to respond to the following request on Friday, October 23, 2009. Objections to any request must be made at that time.

DEFINITIONS

- A. "Polypore," "the company," "you," "your," and like terms mean Respondent, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. "Subsidiary," "affiliate," and "joint venture" refer for this purpose to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person. Unless otherwise specified, "Daramic" means Daramic, LLC and shall be synonymous with "Polypore."
- B. "Microporous" means Microporous Products L.P., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. "Subsidiary," "affiliate," and "joint venture" refer for this purpose to any person in which there is

partial (25 percent or more) or total ownership or control between the company and any other person.

- C. Document," subject to definition C below, shall have the broadest meaning that would be applicable under the Federal Rules of Civil Procedure, and includes without limitation and shall include, without limitation: writings, work papers, drawings, graphs, charts, photographs, photo records, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form; any information or material of any kind or nature existing on any media, including digital, analog, electronic, mechanical, optical, video or tape recording; -a also means information or files contained or retained on any electronic device, including handheld, laptop, desktop and home computer systems, floppy disks, CD-ROMs, Zip disks/drives, USB and/or any other computerized storage devices, whether or not those files have previously been converted to hard-copy format or not, and the original and all drafts, outlines, proposals, and copies of any such matter (whether or not actually used) of all kinds and descriptions, however, produced or reproduced, whether sent or received or neither, regardless of whether designated "confidential," "privileged," or otherwise to which you have access or knowledge including, without limitation, all of the following: hard-copy documents, voice mail messages, back-up voice mails, e-mail messages and files, back-up e-mail files, deleted e-mails, data files, program files, computer data bases, back-up and archival tapes, system history files, cache files, cookies, legacy data sets from previous computer environments, correspondence, papers, books, computer discs, electronically stored data in any form, accounts, photographs, agreements, contracts, memoranda, advertising materials, letters, telegrams, objects, reports, records, transcripts,

studies, notes, notations, working papers, intra-office communications, charts, minutes, index sheets, computer software and printouts, checks, check stubs, delivery tickets, bills of lading, invoices, recordings of telephone or other conversations, communications, occurrences, interviews and conferences, sound or video recording, and any other material upon which Unless otherwise specified, "document" excludes (1) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature, (2) architectural plans and engineering blueprints; and (3) documents solely relating to tax, human resources, workplace safety, or pension plan issues. information can be stored and retrieved, including all written, recorded, electronically stored, transcribed, punched, taped, filmed and graphic matter.

- D. "And" and "or" have both conjunctive and disjunctive meanings.
- E. "Complaint" means the Complaint issued by the Federal Trade Commission to Polypore International, Inc. in Docket No. 9327.
- F. "Investigation" means any FTC investigation, whether formal or informal, public or nonpublic involving Polypore or Microporous.
- G. "Polypore matter" means the investigation conducted by the FTC under Rule No. 0810131 and this Administrative Proceeding, Docket No. 9327.
- H. "Separators" means lead acid battery separators made with polyethylene or polyethylene and rubber.
- I. If you have any questions, please contact Steven A. Dahm at (202) 326-2192.

REQUESTS FOR ADMISSION

1. Admit that Respondent has no evidence that Exide actually intends to seek SLI separator supply from any supplier other than Daramic or Entek.;
2. Admit that Respondent has no evidence that any PE separator supplier other than Entek and Daramic has made an actual sale in North America;
3. Admit that Respondent has no plans to file any claim for damages for breach of contract by Exide before January 1, 2010;
4. Admit that Respondent has not passed through to Exide cost decreases, productivity improvements or efficiency improvements during the time period from January 1, 2000 to the present;
5. Admit that during the time period from April 1, 2009 to the present, Respondent has communicated to Exide that it could expect [REDACTED]
[REDACTED];
6. Admit that during the time period from April 1, 2009 to the present, Respondent has communicated to Exide that it could expect [REDACTED]
[REDACTED];
7. Admit that during the time period from April 1, 2009 to the present, Respondent has communicated to Exide that it could [REDACTED]
[REDACTED]
8. Admit that Respondent structured its response to Exide's RFP in [REDACTED]
[REDACTED]
[REDACTED]

9. Admit that since the record closed Respondent's Daramic division's sales of separators [REDACTED] have been above the average variable cost to produce such separators;
10. Admit that [REDACTED] by Daramic, would still be above Daramic's average variable cost to produce such separators;
11. Admit that Daramic's supply of all separators ordered [REDACTED] since the record closed in this proceeding are above Daramic's average variable cost;
12. Admit that Daramic does not know the future demand for separators in North America;
13. Admit that Daramic does not know when the recession will end;
14. Admit that the recession will end;
15. Admit that Daramic does not know whether the North American supply of separators will exceed the North American demand for separators in the future;
16. Admit that Daramic [REDACTED] [REDACTED] because it wants to eliminate the excess supply of separators in North America;
17. Admit that the excess supply of separators in North America will cause North American separator prices to fall;
18. Admit that a closed separator facility can be restarted;
19. Admit that the machinery to produce separators from a closed facility can be relocated to another facility for the manufacture of separators.

Dated: October 16, 2009

Respectfully submitted,



Steven A. Dahm
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave. N.W.
Washington, DC 20580
Telephone: (202) 326-2192
Facsimile: (202) 326-2071

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2009, I served *via* electronic mail delivery and first class mail two copies of the foregoing Complaint Counsel's Request for Admissions to Respondent Polypore International, Inc. to:

William L. Rikard, Jr., Esq.
Eric D. Welsh, Esq.
Parker, Poe, Adams & Bernstein, LLP
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202
williamrikard@parkerpoe.com
ericwelsh@parkerpoe.com



Linda D. Cunningham
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave. N.W.
Washington, DC 20580
Telephone: (202) 326-2638
Facsimile: (202) 326-2071
lcunningham@ftc.gov

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

In the Matter of

Polypore International, Inc.
a corporation.

)
)
) **Docket No. 9327**
)
)
)

PROPOSED ORDER

Upon consideration of Complaint Counsel's Motion to Compel Production of Discovery Responses, any opposition thereto, and the Court being fully informed,

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

IT IS FURTHER ORDERED, that Respondent shall immediately take all necessary steps toward producing the requested documents and information by 5:00 pm on Friday, October 23, 2009.

D. Michael Chappell
Administrative Law Judge

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2009, I filed via hand and electronic mail delivery an original and two copies of the foregoing public version of Complaint Counsel's Motion To Compel Production of Discovery Responses with:

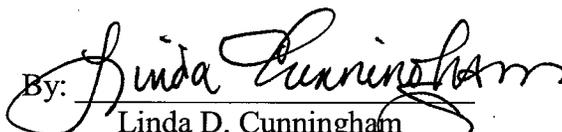
Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, DC 20580

I hereby certify that on October 21, 2009, I filed via hand and electronic mail delivery two copies of the foregoing to public version of Complaint Counsel's Motion To Compel Production of Discovery Responses with:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oyalj@ftc.gov

I hereby certify that on October 21, 2008, I filed via electronic and first class mail delivery a copy of the foregoing to public version of Complaint Counsel's Motion To Compel Production of Discovery Responses with:

William L. Rikard, Jr., Esq.
Eric D. Welsh, Esq.
Parker, Poe, Adams & Bernstein, LLP
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202
williamrikard@parkerpoe.com
ericwelsh@parkerpoe.com

By: 

Linda D. Cunningham
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-2638
lcunningham@ftc.gov