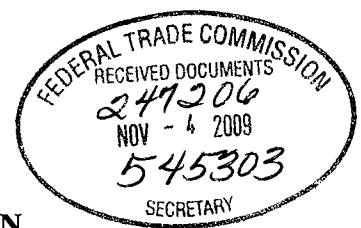


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
)
Polypore International, Inc.)
a corporation)

Docket No. 9327

PUBLIC DOCUMENT¹

**RESPONDENT'S FIFTH MOTION FOR *IN CAMERA* TREATMENT
OF CERTAIN TRIAL EXHIBITS**

On October 15, 2009, the Honorable D. Michael Chappell entered an Order Granting Respondent's Second Motion to Reopen the Hearing Record and Setting Hearing Schedule ("Order"). Pursuant to the Order, the hearing record was reopened for the reception of evidence limited to four factual propositions as set forth in the Order.

In Respondent's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits ("Fifth Motion"), and pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), and the Order, Respondent Polypore International, Inc. ("Polypore"), by and through counsel, seeks *in camera* treatment for certain proposed trial exhibits containing confidential information. These proposed trial exhibits are highly sensitive and proprietary in nature. Public disclosure of the information contained in such exhibits would divulge Polypore's most sensitive and confidential information to competitors and/or customers, and would cause irreparable harm and serious injury to Polypore. Accordingly, Polypore respectfully requests an order requiring that these materials be used at the hearing only *in camera* and that they be maintained under seal.

¹ This Motion refers to and contains information subject to Respondent's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits pursuant to Rule 3.45(b) of the FTC's Rules of Practice. Such information has been redacted and labeled "{ }" in the public version of this Motion.

The specific pages and documents which have been identified by Polypore, after a thorough review of the proposed exhibit lists submitted by Complaint Counsel and Polypore in relation to the hearing for the reopened Record, fall within the Commission's strict standards for *in camera* treatment as set forth in Judge Chappell's April 27, 2009 Order on Respondent's Motion for *In Camera* Treatment and the opinions of this Commission.² Each exhibit identified by Polypore contains sensitive information that is "sufficiently secret and sufficiently material to [Polypore's] business that disclosure would result in serious competitive injury" and, even when balanced against the "importance of the information in explaining the rationale of Commission decisions" warrants *in camera* treatment. *General Foods Corp.*, 95 FTC 352 (1980). The exhibits at issue in this Fifth Motion are listed in the index attached hereto as Exhibit A. For ease of reference, Polypore has grouped the exhibits identified in Exhibit A into the following categories:

1. Category 1 – Business Plans & Strategies
2. Category 2 – Contract Negotiations & Customer Contracts
3. Category 3 – Customer-Specific Documents
4. Category 4 – Costing Data
5. Category 5 – Sales & Financial Information

The grounds for this Fifth Motion are set forth herein, and this Fifth Motion is fully supported by the sworn Fifth Declaration of Michael Shor ("Shor Decl.") attached hereto as Exhibit B and which individually analyzes each proposed trial exhibit listed on Exhibit A. The documents themselves are being provided in electronic form as Exhibit C to Polypore's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits.

² See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).

Introduction

As Respondent will demonstrate herein and in the supporting Fifth Declaration of Michael Shor, the public disclosure of the exhibits identified in Exhibit A hereto, will likely result in a clearly defined, serious injury to Respondent, thus justifying *in camera* treatment under the standard articulated by the Commission in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).

The exhibits identified in Exhibit A contain confidential information that is paramount to Polypore's business, competitiveness, and profitability. Indeed, revealing such information would, among other things: (1) allow Polypore's competitors to gain a commercial advantage through knowledge of Polypore's pricing strategies, production capacities, and contract negotiations; and (2) give Polypore's customers a tactical advantage in current and future negotiations with Polypore. At the very least, disclosure of the information Polypore seeks to protect would deprive Polypore of its current bargaining position with customers; at worst, competitors would be allowed unfettered access to Respondent's confidential and sensitive documents which will inevitably create a less competitive marketplace and harm competition. Continued confidentiality of these documents is key to maintaining Polypore's ability to develop, market, and sell its products in this competitive market dominated by powerful buyers.

Argument

Pursuant to Commission Rule 3.45(b), the Administrative Law Judge may order material, or portions thereof, offered into evidence . . . to be placed *in camera* on a finding that their public disclosure will likely result "in a clearly defined, serious injury to the . . . corporation requesting

in camera treatment.” 16 C.F.R. § 3.45(b)(emphasis added). Establishing that a “serious injury” would ensue with disclosure requires a demonstration that serious and irreparable harm will result from the Court’s publication of the confidential documents. Meeting such a standard requires Respondent to make a clear showing that the information concerned is “sufficiently secret and sufficiently material to [Respondent’s] business that disclosure would result in serious competitive injury.” See *Bristol-Myers Co.*, 90 FTC 455 (1977); *General Foods Corp.*, 95 FTC 352 (1980).

In *Bristol-Myers*, 90 FTC 455 (1977), the Commission outlined six factors to be weighed when determining materiality and secrecy: (1) the extent to which the information is known outside of the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Additionally, the Commission has expounded on the definition of “serious injury,” stating “[t]he likely loss of business advantages is a good example of a clearly defined, serious injury.” *Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 138 (Sept. 19, 2000).

As set forth below and in the Fifth Declaration of Michael Shor, the proposed trial exhibits listed in Exhibit A, and grouped by the previously identified five categories, contain information sufficiently secret, and sufficiently material to Polypore’s business, that disclosure would constitute a serious competitive injury under the *Bristol-Myers* factors and prevailing Commission law.

I. IN CAMERA TREATMENT IS WARRANTED FOR THE FOLLOWING PROPOSED TRIAL EXHIBITS

A. Category One – Business Plans & Strategies

Because of the competitive sensitivity of Polypore's strategic planning, Polypore asks this Court to grant *in camera* treatment for the Category 1 documents. (*Shor Decl.*, ¶ 11). Each of these documents contains information about Polypore's current and future business. Access to this information would enable Polypore's competitors to understand Polypore's strategies, strengths and weaknesses in the market, its future plans {
}. (*Shor Decl.*, ¶ 11). Their publication would put Polypore at a competitive disadvantage and cause injury to Polypore. (*Shor Decl.*, ¶¶ 6, 9, 11, 17, 18).

Polypore keeps this information strictly confidential, and it is not available from any other source outside the company. (*Shor Decl.*, ¶¶ 7, 11, 16). Circulation of these documents within Polypore is very limited. (*Shor Decl.*, ¶¶ 7, 11, 16). Much time and money is devoted to compiling this information. Given the importance of this information to Polypore's current operations and competitive positions, Polypore requests that these documents be afforded *in camera* protection for a period of three (3) years from the date of this motion.

B. Category Two – Contract Negotiations & Customer Contracts

The contracts between Polypore and its customers are often the result of intense negotiations in which internal costing, production capacity and pricing are key components. These negotiations are conducted in secret, often over a period of several months. The documents in Category 2 contain {
}. (*Shor Decl.*, ¶ 6, 9, 12, 17, 18). Disclosing this information could cause serious injury to Polypore both

immediately and in future negotiations. (*Shor Decl.*, ¶¶ 12). Indeed, it is possible that {

}

Similarly, {

}

Additionally, Polypore’s competitors would have the potential to gain access to this information, which they could use in their own negotiations. (*Shor Decl.*, ¶¶ 12).

Because of the sensitivity of pricing and other relevant terms contained in supply agreements, only the parties involved (i.e., Polypore and that particular customer) are privy to the information. (*Shor Decl.*, ¶¶ 7, 12, 16). Polypore does not disclose this information to other customers. *Id.* Moreover, the general public would not be able to obtain this information elsewhere. *Id.* Even access to such information within Polypore is limited. *Id.* Therefore, Polypore requests that these documents be afforded *in camera* protection for a period of five (5) years from the date of this motion.

Additionally, Respondent’s Counsel has determined that several exhibits identified by Complaint Counsel on its Proposed Exhibit List, which were produced by Exide Technologies (“Exide”) directly to Complaint Counsel, are duplicates of exhibits produced by Respondent and included on Respondent’s Proposed Exhibit List (“Exide Duplicates”). The Exide Duplicates are set forth below:

Respondent’s Proposed Exhibit	Duplicate Exide-Produced Exhibit Included on Complaint Counsel’s Proposed Exhibit List
RX01679	PX5033
RX01683	PX5025
RX01685	PX5026
RX01693	PX5035

RX01705	PX5036
RX01713	PX5007
RX01714	PX5028
RX01718	PX5027
RX01720	PX2050

The Exide Duplicates are exhibits containing {

} The Exide Duplicates

contain competitively sensitive business information {

} Should Polypore's

competitors and/or customers gain access to this information, they could use it to their advantage in their own negotiations. Polypore anticipates that Exide will include the Exide Duplicates in its own motion for *in camera* treatment, and such exhibits have not been reviewed by Michael Shor or individually analyzed and summarized in the supporting declaration of Michael Shor attached hereto as Exhibit B. However, to the extent that Exide does not move for *in camera* treatment on all of the Exide Duplicates, Polypore respectfully requests that any such duplicate exhibit which was produced by Exide and included on Complaint Counsel's Proposed Exhibit List, be granted *in camera* treatment for the reasons stated herein and for the individual reasons set forth in the supporting declaration of Michael Shor, which individually analyzes Respondent's version of each of the Exide Duplicate exhibits.³ Polypore requests that the Exide Duplicates be afforded *in camera* protection for a period of five (5) years from the date of this motion.

³ Additionally, Complaint Counsel's Proposed Exhibit List includes five (5) exhibits, which were produced by Exide, but are not included on Respondent's Proposed Exhibit List. These exhibits - PX5001, PX5003, PX5017, PX5020, and PX5021 - are also exhibits containing {

C. Category Three – Customer-Specific Documents

Given Polypore's presence in a market dominated by large, sophisticated customers, it is not surprising that Polypore possesses a large number of customer-specific documents. The documents in Category 3 contain, among other things, customer contract terms, customer requests, customer proposals, and other customer analysis. (*Shor Decl.*, ¶ 13). Part of Polypore's success is attributable to its decades of work aimed at building solid customer and strategic relationships. (*Shor Decl.*, ¶ 13). Many of the documents in Category 3 were created in order to service customers and are highly confidential to Polypore's ongoing business. (*Shor Decl.*, ¶ 13). If competitors were privy to the inner workings of these long-established relationships, it would give them an unfair advantage in trying to attract new (i.e., Polypore's) customers. (*Shor Decl.*, ¶ 13). To reveal the strengths and weaknesses of Polypore's relationship with specific customers to all of Polypore's competitors would allow Polypore's competitors to know exactly where to attack Polypore – a most unfair advantage. (*Shor Decl.*, ¶ 6, 9, 13, 17, 18).

Polypore keeps customer-specific information strictly confidential, and it is not available from any other source outside the company. Circulation of these documents within Polypore is very limited. (*Shor Decl.*, ¶¶ 7, 13, 16).

The protection of these documents is essential to Polypore's success. Because of the fundamental importance of such documents to the competitiveness of Polypore, Polypore requests that these documents be granted *in camera* treatment for a period of three (3) years from the date of this motion.

}, and

therefore warrant *in camera* treatment. Pursuant to Commission Rule 3.45(b) and the Protective Order Governing Discovery Material entered in this proceeding on October 23, 2008, however, Exide has the burden of seeking *in camera* treatment of the documents it produced directly to Complaint Counsel and which are included on Complaint Counsel's Proposed Exhibit List. Polypore anticipates that Exide will include PX5001, PX5003, PX5017, PX5020, and PX5021 in its own motion for *in camera* treatment. To the extent that Exide does not include PX5001, PX5003, PX5017, PX5020, or PX5021 in its own motion for *in camera* treatment, Respondent respectfully requests that the Administrative Law Judge make a provisional grant of *in camera* status to PX5001, PX5003, PX5017, PX5020, or PX5021 pursuant to Commission Rule 3.45(g) in order to allow Respondent to move for *in camera* treatment of such exhibits.

D. Category Four – Costing Data

This category of documents pertains specifically to the cost structure of Polypore's products, which is a critical aspect of Polypore's business. The documents in Category 4 are highly valued and protected. (*Shor Decl.*, ¶ 14). Disclosure of such documents would expose Polypore's costs and margins, which competitors have no way of independently knowing. (*Shor Decl.*, ¶14). The information contained in these documents is invaluable to a competitor and would provide a roadmap as to the needs and buying patterns of customers. (*Shor Decl.*, ¶ 6, 9, 14, 17, 18).

The cost-structure documents, which are kept strictly confidential by Polypore, represent considerable work product and it would be unfair for it to be released to those who could use it to their advantage against Polypore. (*Shor Decl.*, ¶¶ 7, 14, 16). For these reasons, Polypore requests that these documents be granted *in camera* treatment for a period of three (3) years from the date of this motion.

E. Category Five – Sales and Financial Information

This category of documents pertains specifically to sales data and analyses which have been accumulated over time through substantial efforts by Polypore, and to financial information about Polypore's assets and liabilities, both of which are critical aspects of Polypore's business. (*Shor Decl.*, ¶ 15). The documents in Category 5 are highly valued and protected. (*Shor Decl.*, ¶ 15). Disclosure of such documents would expose Polypore's sales policies and strategies and/or enable competitors to construct an accurate financial model of Polypore's business. (*Shor Decl.*, ¶ 15). The publication of these documents would put Polypore at a competitive disadvantage and cause injury to Polypore. (*Shor Decl.*, ¶¶ 6, 9, 15, 17, 18). Many of these documents reflect sales strategies, discounts, income/expense data, financial review, budgets and forecasts. (*Shor Decl.*, ¶ 15).

These documents, which are kept strictly confidential by Polypore, represent considerable work product and it would be unfair for it to be released to those who could use it to their advantage against Polypore. (*Shor Decl.*, ¶¶ 7, 15, 18). For these reasons, Polypore requests that these documents be granted *in camera* treatment for a period of five (5) years from the date of this motion.

II. *IN CAMERA* TREATMENT IS ALSO WARRANTED FOR POSSIBLE TRIAL TESTIMONY BY POLYPORE'S WITNESSES

Both Respondent and Complaint Counsel have designated Polypore employees as potential trial witnesses. Polypore's employees will likely be questioned about the topics covered by this motion. Testimony on all of these topics could result in the disclosure of the same information contained in the documents described above and in the supporting declaration of Michael Shor. Thus, Polypore also requests that any trial testimony, either upon direct examination or cross examination by either party on any of these topics, be subject to *in camera* treatment for a period of three (3) to five (5) years from the date of this motion.

Conclusion

Polypore has for several decades driven itself to set the standard and meet the competition in the battery separator market. In doing so, Polypore has amassed many competitively sensitive and confidential documents, which, if disclosed, would result in a "clearly defined, serious injury." Polypore has taken care to maintain the confidential nature of these documents. Polypore has also spent significant time and resources developing its product line and developing relationships with its customers. This effort would be sacrificed should Polypore's confidential and proprietary information be disclosed during the course of this hearing. For the foregoing reasons and those articulated in the Fifth Declaration of Michael

Shor, Polypore respectfully requests that this Court grant *in camera* protection to all the proposed trial exhibits identified on Exhibit A and any trial testimony related to the topics covered by the proposed trial exhibits in Exhibit A.

Dated: November 4, 2009

Respectfully submitted,

E. Welsh / BRW

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Eric D. Welsh

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Attorneys for Respondent

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

In the Matter of)

Docket No. 9327

Polypore International, Inc.)
a corporation)

PUBLIC DOCUMENT

PROPOSED ORDER

Upon consideration of Respondent's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits, any opposition thereto, any hearing thereon, and the entire record in this proceeding,

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

IT IS FURTHER ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, *16 C.F.R. § 3.45(b)*, the proposed trial exhibits identified in the index attached as Exhibit A to the Motion, and any related trial testimony, shall be subject to the requested *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding.

D. Michael Chappell
Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Fifth Motion for In Camera Treatment of Certain Trial Exhibits [Public]***, 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

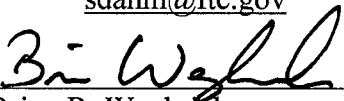
I hereby certify that on November 4, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Fifth Motion for In Camera Treatment of Certain Trial Exhibits [Public]*** upon:

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 November 4, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Fifth Motion for In Camera Treatment of Certain Trial Exhibits [Public]*** upon:

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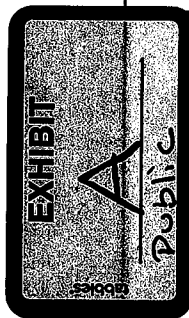
EXHIBIT A

PUBLIC

ATTACHMENT TO RESPONDENT'S FIFTH MOTION FOR
IN CAMERA TREATMENT OF CERTAIN TRIAL EXHIBITS

POLYPORE INTERNATIONAL, INC.
A CORPORATION

DOCKET NO. 9327



Resp. Ex. No.	CC Ex. No.	Exhibit Description	Date	Begin Doc. No.	End Doc. No.	Pages Requiring In Camera Protection	Time Period of In Camera Protection From Date of Motion	Category
	PX5075			PX5075-001	PX5075-005	All	3 years	1
	PX5076			PX5076-001	PX5076-020	All	3 years	1
RX01665				RX01665-001	RX01665-010	All	5 years	2
RX01666	PX5042			RX01666-001	RX01666-003	All	5 years	2
RX01667	PX5043			RX01667-001	RX01667-002	All	5 years	2
RX01668	PX5044			RX01668-001	RX01668-002	All	5 years	2
RX01669	PX5045			RX01669-001	RX01669-003	All	5 years	2
RX01670	PX5046			RX01670-001	RX01670-001	All	5 years	2
RX01671				RX01671-001	RX01671-001	All	5 years	2
RX01672				RX01672-001	RX01672-001	All	5 years	2
RX01673				RX01673-001	RX01673-001	All	5 years	2
RX01674	PX5047			RX01674-001	RX01674-002	All	5 years	2
RX01675				RX01675-001	RX01675-028	All	5 years	2
RX01676	PX5048, PX9003			RX01676-001	RX01676-021	All	5 years	2
RX01677				RX01677-001	RX01677-096	All	5 years	2
RX01678	PX5049			RX01678-001	RX01678-001	All	5 years	2
RX01679	PX5033 (EXIDE)			RX01679-001	RX01679-003	All	5 years	2
RX01680	PX5050			RX01680-001	RX01680-002	All	5 years	2
RX01681	PX5051			RX01681-001	RX01681-003	All	5 years	2
RX01682				RX01682-001	RX01682-001	All	5 years	2
RX01683	PX5025 (EXIDE)			RX01683-001	RX01683-001	All	5 years	2
RX01685	PX5026 (EXIDE)			RX01685-001	RX01685-001	All	5 years	2
RX01686				RX01686-001	RX01686-001	All	5 years	2
RX01687				RX01687-001	RX01687-012	All	5 years	2
RX01688	PX9002			RX01688-001	RX01688-004	All	5 years	2
RX01690	PX9001			RX01690-001	RX01690-126	All	5 years	2
RX01692				RX01692-001	RX01692-005	All	3 years	1
RX01693	PX5035 (EXIDE)			RX01693-001	RX01693-002	All	5 years	2

RX01694					RX01694-001	RX01694-006	All	3 years	1
RX01696					RX01696-001	RX01696-001	All	3 years	1
RX01697					RX01697-001	RX01697-001	All	3 years	3
RX01698					RX01698-001	RX01698-001	All	3 years	3
RX01699					RX01699-001	RX01699-001	All	3 years	3
RX01701					RX01701-001	RX01701-001	All	5 years	5
RX01702					RX01702-001	RX01702-001	All	5 years	5
RX01703					RX01703-001	RX01703-001	All	5 years	2
RX01704					RX01704-001	RX01704-001	All	5 years	2
RX01705	PX5036 (EXIDE)				RX01705-001	RX01705-001	All	5 years	2
RX01706					RX01706-001	RX01706-001	All	3 years	4
RX01707					RX01707-001	RX01707-017	All	3 years	1
RX01708					RX01708-001	RX01708-002	All	5 years	5
RX01709					RX01709-001	RX01709-005	All	3 years	3
RX01710					RX01710-001	RX01710-007	All	3 years	3
RX01711					RX01711-001	RX01711-006	All	3 years	3
RX01712					RX01712-001	RX01712-002	All	5 years	2
RX01713	PX5007 (EXIDE)				RX01713-001	RX01713-010	All	5 years	2
RX01714	PX5028 (EXIDE)				RX01714-001	RX01714-008	All	5 years	2
RX01715					RX01715-001	RX01715-001	All	3 years	3
RX01717					RX01717-001	RX01717-001	All	5 years	2
RX01718	PX5027 (EXIDE)				RX01718-001	RX01718-006	All	5 years	2
RX01719					RX01719-001	RX01719-002	All	5 years	2
RX01720	PX2050 (EXIDE)				RX01720-001	RX01720-092	All	5 years	2
RX01721					RX01721-001	RX01721-020	All	5 years	2
RX01723					RX01723-001	RX01723-002	All	3 years	3
RX01724					RX01724-001	RX01724-001	All	3 years	3

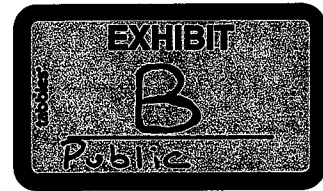
EXHIBIT B

PUBLIC

ATTACHMENT TO RESPONDENT'S FIFTH MOTION FOR
IN CAMERA TREATMENT OF CERTAIN TRIAL EXHIBITS

POLYPORE INTERNATIONAL, INC.
A CORPORATION

DOCKET NO. 9327



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
)
Polypore International, Inc.)
a corporation)
)

Docket No. 9327

PUBLIC DOCUMENT¹

FIFTH DECLARATION OF MICHAEL L. SHOR

I, Michael Shor, being duly sworn and based upon my personal knowledge, declare and state as follows:

1. I am Special Counsel of Respondent Polypore International, Inc. (“Polypore”).
2. I am familiar with the documents of Polypore and the level of confidentiality associated with the subject matter therein.
3. I submit this declaration in support of Polypore’s Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits, requesting *in camera* treatment of certain documents, identified by Complaint Counsel and/or Polypore as potential trial exhibits at the hearing for the reopened Record in this matter.
4. A small number of agents acting at my direction assisted me in multiple reviews of each of the proposed trial exhibits appearing on Exhibit A of Polypore’s Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits. These comprehensive reviews were conducted for the purpose of determining which proposed trial exhibits contain

¹ This Declaration refers to and contains information subject to Respondent’s Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits pursuant to Rule 3.45(b) of the FTC’s Rules of Practice. Such information has been redacted and labeled “{ }” in the public version of this Declaration.

confidential information, the public disclosure of which would cause a clearly defined, serious injury to Polypore. I conducted a final careful review of each and every proposed trial exhibit produced by Polypore in order to ensure that Polypore sought *in camera* treatment only for exhibits that met the Commission's strict standards for *in camera* treatment. Proposed trial exhibits satisfying the Commission's strict standards are identified in Exhibit A of Polypore's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits and are individually described herein.

5. I am personally informed of the content of the individual documents and groups of documents that were reviewed, and the specific basis upon which Polypore is moving for *in camera* treatment of such documents.
6. Each of the proposed trial exhibits identified in Exhibit A of Polypore's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits, and individually described herein, contains sensitive and confidential material and/or information that would result in competitive injury to Polypore should it be made public.
7. Each document identified by Polypore as requiring *in camera* treatment has been maintained internally by Polypore in a confidential manner, only being shared with those individuals requiring the knowledge contained within the documents.
8. Exhibit A to Polypore's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits is an index which lists each document for which Polypore seeks *in camera* treatment. This index contains the exhibit designation (*i.e.*, "RX" or "PX"), the exhibit number, a description of the exhibit, the date of the exhibit, the individual pages (if applicable)

requiring *in camera* treatment, the categorical reason for seeking *in camera* treatment, and the length of time for which *in camera* treatment is sought.

9. The proposed trial exhibits identified in Polypore's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits contain highly sensitive information including, but not limited to, trade secrets, financial information, and various types of commercial data. The public disclosure of any of this critically sensitive information would be highly detrimental to Polypore as it would provide both Polypore's customers and its competitors with a road-map of Polypore's technology, strategies, pricing and customer relationships and result in a clearly defined, serious injury to Polypore. Each proposed trial exhibit is individually reviewed in turn below, and for convenience's sake, organized by the following categories:

- (a) Category 1 – Business Plans & Strategies
- (b) Category 2 – Contract Negotiations & Customer Contracts
- (c) Category 3 – Customer-Specific Documents
- (d) Category 4 – Costing Data
- (e) Category 5 – Sales & Financial Information

10. Also for convenience sake, the subject documents are also summarized in the index attached as Exhibit A to Respondent's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits.

CATEGORY ONE – BUSINESS PLANS & STRATEGIES

11. As explained in Polypore's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits (*see* Section I. A.), documents containing information relevant to Polypore's

strategic corporate planning represent Polypore's corporate vision for the foreseeable future concerning { }.

Polypore executives, senior managers and consultants often generate corporate strategy documents such as Board Reports, PowerPoint presentations, spreadsheets, quarterly financial reports, and other similar plans and strategies. These documents are the foundation of Polypore's corporate strategy and Polypore treats these documents as highly confidential. The strategic information contained in these documents is not available outside of Polypore. Within Polypore, circulation of these documents is limited to executives and senior managers. Public dissemination of these documents would enable Polypore's competitors to either develop counter strategies or mimic Polypore's successful business methods. Disclosure would cause serious and irreparable harm to Polypore resulting in a serious loss of business advantage. Unless otherwise stated below, Polypore believes documents in this category should be granted *in camera* treatment for a period of three (3) years from the date of Respondent's Fifth Motion.

(a) {

(b)

(c)

(d)

(e)

(f)

}

CATEGORY TWO – CONTRACT NEGOTIATIONS & CUSTOMER CONTRACTS

12. As explained in Polypore’s Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits (*see* Section I. B.), contract negotiation documents contain information related to

{

}. Disclosure of the negotiations between Polypore and its

customers would cause serious and irreparable harm to Polypore in its relationships with its customers and future negotiations. Additionally, should Polypore's competitors gain access to this information, they could use it to their advantage in their own customer negotiations. Thus, disclosure of this information would result in a serious loss of business advantage by Polypore. Polypore treats these documents as highly confidential.

Because of the sensitivity of {

}, only the parties involved (*i.e.* Polypore and that particular customer) are privy to the information. Polypore does not disclose this information to other customers. Moreover, the general public would not be able to obtain this information elsewhere. Even access to such information within Polypore is limited. Unless otherwise stated below, Polypore believes documents in this category should be granted *in camera* treatment for a period of five (5) years from the date of Respondent's Fifth Motion.

(a) {

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m)

(n)

(o)

(p)

(q)

(r)

(s)

(t)

(u)

(v)

(w)

(x)

(y)

(z)

(aa)

(bb)

(cc)

(dd)

(ee)

(ff)

(gg)

(hh)

(ii)

(jj)

}

CATEGORY THREE – CUSTOMER-SPECIFIC DOCUMENTS

13. As explained in Polypore’s Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits (*see* Section I. C.), documents related to Polypore’s customer base, including data regarding { } of specific customers are critical to Polypore’s profitability and competitiveness. These documents are customer-specific and essential to Polypore’s maintaining its hard-earned position in the battery separator market. Publication of these documents would allow Polypore’s competition free access to Polypore’s confidential relationships, which were created through many years of effort. The amount of effort and cost that is invested to analyze and formulate relationships with customers is lengthy and expensive. Disclosure would cause serious and irreparable harm to Polypore resulting in a serious loss of business advantage. Polypore treats these documents as highly confidential. Because of the sensitivity this information, only the parties involved (*i.e.* Polypore and that particular customer) are privy to the information. Polypore does not disclose this information to other customers. Unless otherwise stated