UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL

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

Docket No. 9327

RESPONDENT'S SECOND MOTION TO REOPEN THE HEARING RECORD INTRODUCTION

Pursuant to 16 C.F.R. § 3.51(e), Respondent, Polypore International, Inc. ("Polypore") submits this motion to reopen the hearing record to permit the introduction of new and additional evidence at a half day hearing before this Court.

Waiting until after the record was closed, [

¹. In a market where Daramic is accused of being a monopolist, [

] – having already lost at the end of 2008 its second largest customer. Combined, Daramic's { 2 accounted for {60%} of its North American PE business. Moreover, if Daramic is able [

¹ The instant motion contains Confidential Material pursuant to the Protective Order Governing Discovery Material entered on October 23, 2008. Respondent has designated such Confidential Material with "[]" to protect Confidential Material from disclosure on the public record. In the event Respondent's instant motion is granted, Respondent and/or appropriate 3rd parties intend to move for in camera treatment of such confidential material and/or underlying evidence in support thereof.

² The instant motion contains *In Camera* Material pursuant to the orders of ALJ Chappell dated July 9, 2009, July 10, 2009, and August 11, 2009. Respondent has designated such *In Camera* Material with "{}" to indicate the *in camera* status of such evidence and to protect such *In Camera* Material from disclosure on the public record.

]. Both of these new

facts - [

].

Respondent respectfully submits that the Court should grant this motion and reopen the record to receive this significant new evidence.

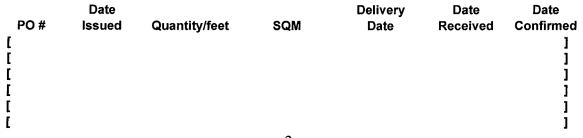
ARGUMENT

Under the Commission's Rules of Practice governing this adjudication, Rule 3.51(e)(1) states: "At any time prior to the filing of the initial decision, an Administrative Law Judge may reopen the proceeding for the reception of further evidence." 16 C.F.R. 3.51(e). As this Court has previously held, a good cause showing is not required for this Court to reopen the record. In the Matter of Polypore International, Inc., Docket No. 9327, Order, September 8, 2009. Nevertheless, as set forth herein, Respondent believes that good cause exists for the Court to grant this motion.

A. Good Cause Exists to Reopen the Record

Following the hearing in this matter, [

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PPAB 1610671v1

Total [

]'s post-hearing conduct is relevant for at least four reasons. First, [

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Second, [

] [

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]. If so, and in light of [

customer, Johnson Controls, Inc., and [

environment, [

]. Having lost its largest], and given the current economic

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⁴ The recession also continues to adversely impact Daramic's business. Demand for Daramic's products with North America customers has declined even more since the close of the hearing.

Third, evidence was presented to this Court regarding {

}. See Respondent Findings of

Fact 598, 963-972. The fact that [

J. Indeed, Anpei, at a booth at the 13th Asian Battery Conference in Macau China in September 2009, represented in a graphic that it sells its products, which includes PE separators, to North America. <u>See</u> picture taken at Anpei's booth attached hereto at Tab A. This Court is entitled to this evidence to determine the issues before it. Finally, [

], facts which starkly contradict

Complaint Counsel's oft-repeated assertions of market power.

B. There is No Prejudice if the Record is Reopened

While Complaint Counsel has argued in the past, and no doubt will do so again here, that reopening the record is prejudicial because briefing and post trial findings have been completed, Complaint Counsel's argument would fail. Whatever inconvenience is caused because the briefing and submission of findings has been completed cannot constitute prejudice since Rule 3.51 permits the opening of the record "any time prior to the filing of his initial decision," not any time "prior to completion of briefing" or "prior to completion of the findings of fact." As the Rule permits opening the record even after the briefing and finding are done, any inconvenience associated with such event cannot be "prejudice" as it is expressly permitted by the rule. This is especially true where, as here, the new and additional evidence sought to be

introduced arose <u>after</u> the hearing and briefing was complete. In any event, even if this were "prejudice," it is shared equally by both sides and can be addressed by permitting limited briefing and findings on the issues. Respondent submits that failure to consider this important new evidence would be far more prejudicial to Respondent and would deprive this Court of critical evidence relevant to its decision.

C. Respondent's Proffer

In support of its motion, Respondent submits the following proffer of evidence.

Through testimony of Respondent's witnesses and a witness for [], Daramic will show:

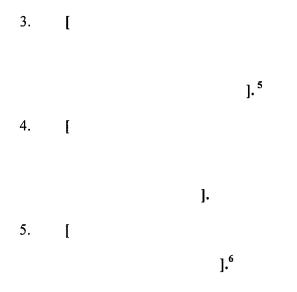
1. After the close of the record, [

2. [

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CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court grant its motion and reopen the record to permit evidence to be introduced regarding the foregoing subjects at a half-day day hearing on this matter.

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⁶ Respondent also submits that the foregoing proffered facts are strong evidence supporting that entry can occur in less than 2 years since, [

Moreover, Anpei has in September 2009 represented that it is a global company, available to meet the needs of customers around the world, and specifically, North America.

Dated: September 25, 2009

Respectfully Submitted,

W. aller

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Attorneys for Respondent

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, 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 Second Motion To Reopen The Hearing Record, and has been unable to reach such an agreement.

Dated: September 25, 2009

Respectfully Submitted,

Eric D. Welsh PARKER POE ADAMS & BERNSTEIN, LLP Three Wachovia Center 401 South Tryon Street, Suite 3000 Charlotte, NC 28202 Telephone: (704) 372-9000 Facsimile: (704) 335-9689 ericwelsh@parkerpoe.com

UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of

Docket No. 9327

Polypore International, Inc. a corporation

PUBLIC DOCUMENT

PROPOSED ORDER GRANTING RESPONDENT'S SECOND MOTION TO REOPEN THE HEARING RECORD

IT IS ORDERED THAT, upon due consideration, Respondent Polypore International, Inc.'s Second Motion to Reopen the Hearing Record is hereby GRANTED and a further hearing in this matter will had on ______ 2009 for purposes of receiving evidence concerning matters stated in Respondent's Second Motion to Reopen the Record.

D. Michael Chappell Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing **Respondent's Second 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 September 25, 2009, I caused to be served one copy via electronic mail delivery and two copies via Federal Express delivery of the foregoing *Respondent's Second 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 September 25, 2009, I caused to be served via U.S. Mail and electronic mail delivery a copy of the foregoing **Respondent's Second Motion to Reopen the Hearing Record** upon:

J. Robert Robertson, Esq. Federal Trade Commission 600 Pennsylvania Avenue, NW Washington, DC 20580 rrobertson@ftc.gov Steven Dahm, Esq. Federal Trade Commission 600 Pennsylvania Avenue, NW Washington, DC 20580 sdahm@ftc.gov

Brian R. Weyhrich Parker Poe Adams & Bernstein LLP Three Wachovia Center 401 South Tryon Street, Suite 3000 Charlotte, NC 28202 Telephone: (704) 372-9000 Facsimile: (704) 334-4706

