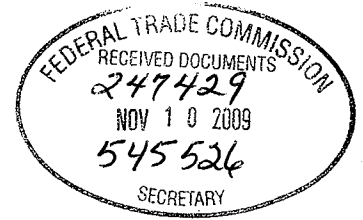


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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
)

POLYPORE INTERNATIONAL, INC.,)
Respondent.)
)
)

Docket No. 9327

**ORDER ON NON-PARTY EXIDE TECHNOLOGIES'
MOTION FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the October 15, 2009 Order Granting Respondent's Second Motion to Reopen the Hearing Record and Setting Hearing Schedule, as revised by the October 23, 2009 Order Granting Motion to Revise Hearing Schedule, non-party Exide Technologies ("Exide") submitted a motion for *in camera* treatment on November 3, 2009 ("motion"). Exide's motion seeks *in camera* treatment for certain highly confidential materials that Complaint Counsel or Respondent may seek to introduce at the November 12, 2009 hearing in this matter. Exide supports its motion with a Declaration from Douglas Gillespie, Vice President for Global Procurement for Exide. ("Gillespie Declaration").

Respondent submitted a response on November 6, 2009.

As set forth below, Exide's motion is GRANTED.

II.

The legal standards that apply to motions for *in camera* treatment, including the instant motion, are set forth in the May 6, 2009 Order on Non-Parties' Motions for *In Camera* Treatment and the May 13, 2009 Order on Respondent's Second Motion for *In Camera* Treatment.

A.

Exide's motion seeks *in camera* treatment for the following: (1) certain proposed trial exhibits containing highly confidential information, contained in Exhibit A to the Gillespie Declaration; (2) an earlier Declaration of Douglas Gillespie submitted on September 30, 2009; and (3) excerpts from Gillespie's deposition testimony. Gillespie declares that Complaint Counsel has notified Exide that Complaint Counsel may introduce as exhibits each of these

categories of documents.¹

The Gillespie Declaration describes the information for which *in camera* treatment is sought and declares that it is highly confidential and that public disclosure of this material likely would cause serious competitive and commercial harm to Exide. Gillespie further declares that the information is distributed within the company only to those who have a specific need for it and that these individuals are typically bound by confidentiality obligations that would prohibit them from disclosing the information if they left the company.

Gillespie's Declaration supports Exide's claims that the documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. That showing was balanced against the importance of the information in explaining the rationale of decisions at the Commission.

Exide requests *in camera* treatment for the proposed trial exhibits for a period of three years. While *in camera* treatment will be granted for three years, the expiration date of *in camera* treatment will be altered for administrative convenience. Previously issued orders which granted *in camera* treatment for periods of three years set an expiration date of June 1, 2012. So that all *in camera* treatment orders will expire at the same time, the expiration dates of the *in camera* treatment granted in this order will also expire on June 1, 2012.

With respect to the documents for which Exide seeks *in camera* treatment, Exide's motion is GRANTED.

In camera treatment for a period of three years, expiring on June 1, 2012, will be extended to the documents for which Exide has requested *in camera* treatment, in accordance with Section III of this Order.

B.

Respondent agrees that the specified documents identified in Exide's motion warrant *in*

¹ On October 9, 2009, Exide filed a motion for *in camera* treatment for the September 30, 2009 Declaration of Douglas Gillespie. The Commission's Rules of Practice allow parties and non-parties to seek *in camera* treatment for material *offered into evidence*. 16 C.F.R. § 3.45(b) (emphasis added). At the time Exide filed its October 9, 2009 motion, there was no indication that either party intended to offer the September 30, 2009 Gillespie Declaration into evidence. Thus, that motion was premature and not ruled on. It is now moot, since this Order addresses the September 30, 2009 Gillespie Declaration.

camera treatment. However, Respondent requests, with respect to the proposed trial exhibits identified on Exhibit A to Exide's motion, which are emails and correspondence to or from Respondent, some of which are also subject to Respondent's motion for *in camera* treatment, that any order directing *in camera* treatment for such exhibits permit Respondent to review these exhibits and permit Respondent to observe testimony in the courtroom related to these exhibits.


The Gillespie Declaration describes the documents contained in Exhibit A as highly confidential email and other correspondence between Exide and Daramic. Respondent states that Respondent has included its own Polypore-produced versions of several of these exhibits and that it possesses all thirteen exhibits identified on Exhibit A. Because employees of Respondent, as either the recipient or author of the documents in Exhibit A, have previously seen the documents, as to Daramic, these documents are not sufficiently secret. Accordingly, this *in camera* order does not prevent employees of Respondent from reviewing the thirteen exhibits identified as Exhibit A to Exide's motion or preclude employees of Respondent from observing testimony in the courtroom related to such exhibits.

The Gillespie Declaration describes the Declaration of Douglas Gillespie of September 30, 2009 and the excerpts from Gillespie's deposition testimony as containing details that have not previously been disclosed to Daramic. Accordingly, this information shall not be disclosed to employees of Respondent.

III.

At the conclusion of the hearing scheduled for November 12, 2009, Respondent shall prepare a proposed order, with a signature line for the Administrative Law Judge, that lists, by exhibit number, the documents which have been admitted and have been granted *in camera* treatment by this order and that sets forth the expiration date of *in camera* treatment for each exhibit.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: November 10, 2009