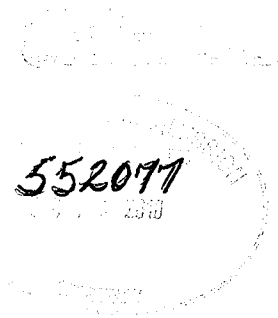


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

Docket No. 9327  
  
PUBLIC



**RESPONDENT'S MOTION FOR *IN CAMERA* TREATMENT  
OF MATERIAL PREVIOUSLY AFFORDED SUCH TREATMENT**

Respondent files this Motion for *In Camera* Treatment of Material Previously Afforded Such Treatment pursuant to Rule 3.45(b) of the Federal Trade Commission ("FTC") Rules of Practice, 16 C.F.R. § 3.45(b). Respondent respectfully requests that the Commission enter an order directing *in camera* treatment of certain confidential and highly sensitive material contained in the Commission's Opinion and Order and a Concurring Opinion (collectively, the "Commission's Opinion"), which the Commission intends to place on the public record.

**I.  
INTRODUCTION**

On November 5, 2010, the Commission's Opinion in this proceeding was issued and later served upon Respondent on November 29, 2010. The Commission's Opinion included material which had previously been afforded *in camera* treatment by the Administrative Law Judge pursuant to Rule 3.45(b) of the FTC Rules of Practice<sup>1</sup> and/or which had been elicited during *in camera* sessions of the hearing in this adjudicative proceeding.

---

<sup>1</sup> See Order on Respondent's Motions for *In Camera* Treatment, dated August 11, 2009; Order on Respondent's Fifth Motion for *In Camera* Treatment and Exide's Motion for *In Camera* Treatment, dated November 19, 2009; and Order on Non-Parties' Motions for *In Camera* Treatment, dated July 10, 2009.

On November 23, 2010, the Commission issued a Notice of Intent to Disclose *In Camera* Information (the “Notice of Intent”). The Commission’s Notice of Intent, which was also served upon Respondent on November 29, 2010, advised Respondent of the Commission’s intention to place on the public record certain information contained in the Commission’s Opinion which had previously been afforded *in camera* treatment. Such information was identified and described in an attachment to the Commission’s Notice of Intent.

Respondent Polypore International, Inc. (“Polypore”) asserts that the public disclosure of certain information identified in the attachment to the Commission’s Notice of Intent, which Polypore has set forth in Exhibit A hereto, meets the Commission’s criteria for granting *in camera* treatment, that public disclosure of such information would damage Polypore’s business, and that the prospective injury from the public disclosure of this limited, but confidential information outweighs the public interest in such disclosure. Specifically, Polypore seeks to have the information set forth on Exhibit A afforded *in camera* treatment when the Commission’s Opinion is placed on the public record. Exhibit A hereto includes all information cited in the attachment to the Notice of Intent as appearing in the Commission’s Opinion on pages 2, 3, 29, 30, 31, and 38.<sup>2</sup>

Public disclosure of this information would divulge Polypore’s sensitive and confidential business information to competitors and/or customers, and would cause irreparable harm and serious injury to Polypore. The material in question contains confidential, sensitive information which is material to Polypore’s business, and which would substantially harm Polypore’s business should it be disclosed.

---

<sup>2</sup> Respondent does not object to the public disclosure of the information cited in the attachment to the Notice of Intent as appearing on pages 4, 5, 15, 17, 18, 19, 20, 23, 24, 25, 28, 32, 34, 36, or page 5 of Commissioner Rosch’s Concurring Opinion.

For these reasons, Polypore has previously sought *in camera* treatment for the information contained in the Commission's Notice of Intent. See Respondent's First Motion for *In Camera* Treatment (April 9, 2009), Respondent's Second Motion for *In Camera* Treatment (May 5, 2009), Respondent's Third Motion for *In Camera* Treatment (June 11, 2009), Respondent's Fourth Motion for *In Camera* Treatment (June 18, 2009), Respondent's Fifth Motion for *In Camera* Treatment (November 3, 2009). Moreover, after analyzing this information under Rule 3.45 and the FTC decisions that articulate the standard for placing materials *in camera*, the Administrative Law Judge in this adjudicative proceeding also determined that such information warranted *in camera* treatment. See Order on Respondent's Motions for *In Camera* Treatment, dated August 11, 2009; Order on Respondent's Fifth Motion for *In Camera* Treatment and Exide's Motion for *In Camera* Treatment, dated November 19, 2009; and Order on Non-Parties' Motions for *In Camera* Treatment, dated July 10, 2009.

Specifically, the Administrative Law Judge determined that even when balanced against the importance of the information in explaining the rationale of decisions at the Commission, the information was sufficiently secret and sufficiently material to Polypore's business that disclosure would result in a serious competitive injury to Polypore, and consequently it was necessary for the information to be afforded *in camera* treatment. See generally Order on Respondent's Second Motion for *In Camera* Treatment, p. 2. It is important to note that "administrative law judges have broad discretion in determining what information should be placed *in camera* and [the Commission does] not ordinarily disturb their determinations except on the basis of a showing of abuse." *General Foods Corp.*, 95 F.T.C. 352 (1980).

Finally, disclosing such limited and specific confidential business information of Respondent serves no purpose in explaining the rationale of the Commission's decision. Only information of relevance to the Commission's determination should be made available for public

inspection. *RSR Corp.*, 88 F.T.C. 206 and 88 F.T.C. 734 (1976). Here, for example, disclosing the {

} is not necessary for an understanding of the Commission's Opinion and is nothing more than gratuitous detail. Accordingly, for the reasons set forth herein, Polypore respectfully requests an order requiring that the materials identified on Exhibit A to the instant Motion be afforded *in camera* treatment and that such information not be disclosed in the public version of the Commission's Order.

## II. THE LEGAL STANDARD

As Respondent will demonstrate herein and in the supporting Declaration of Harry D. Seibert ("Seibert Decl."), attached hereto as Exhibit B, the public disclosure of certain information identified in the attachment to the Commission's Notice of Intent, and more particularly set forth in Exhibit A hereto, will result in a clearly defined, serious injury to Respondent, thus justifying *in camera* treatment under the standard articulated by the Commission even when weighed against the Commission's interest in public disclosure.

In determining whether or not to release information for which Respondent has requested *in camera* treatment in the course of an adjudicative proceeding, the Commission is to balance the potential harm to Respondent of disclosure against the substantial interest in making publicly available the key facts and background underlying a Commission decision. *Orkin Exterminating Co.*, 108 F.T.C. 147 (1986). Only information of relevance to the Commission's determination, however, needs to be part of the record available for public inspection. *RSR Corp.*, 88 F.T.C. 206 and 88 F.T.C. 734 (1976); *see also* 16 C.F.R. § 3.45(a)(it is within the Commission's authority to disclose *in camera* material to the extent necessary for the proper disposition of the proceeding)(emphasis added). Moreover, *in camera* treatment of relevant information is

appropriate where the prospective injury from disclosure outweighs the public interest in full knowledge. *Id.* Where the information in question satisfies the Commission's high *in camera* standard, the information should not be disclosed publicly. 16 C.F.R. § 3.45(b).

Rule 3.45 governs *in camera* treatment of materials, stating that material shall be "placed *in camera* only after finding that its public disclosure would likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment." 16 C.F.R. § 3.45(b). The rule also indicates the FTC decisions which articulate the standard for affording material *in camera* treatment. *See H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *see also General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977); *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). According to this authority, applicants for *in camera* treatment must make a "clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury." *General Foods Corp.*, 95 F.T.C. at 355.

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).

**III.**  
**THE MATERIAL AT ISSUE MEETS THE LEGAL STANDARD FOR**  
**IN CAMERA TREATMENT – PUBLIC DISCLOSURE OF THE INFORMATION**  
**WOULD RESULT IN A CLEARLY DEFINED, SERIOUS INJURY TO POLYPORE**

The material contained in the portions of the Commission’s Opinion at issue, set forth in Exhibit A hereto, fall within the Commission’s strict standards for *in camera* treatment. The information identified by Polypore contains sensitive business 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).

Polypore has for several decades driven itself to set the standard and meet the competition in the battery separator market, including spending significant time and resources developing its product line and developing relationships with its customers. In doing so, Polypore has amassed significant competitively sensitive and confidential information, which, if disclosed, would result in a “clearly defined, serious injury.”

The public disclosure of the information set forth in Exhibit A would damage Polypore’s business by (1) {

} (among other things); and (2) {

}. (Seibert Decl., ¶ 5). Quite

simply, the information Polypore seeks to protect contains confidential information that is paramount to Polypore’s business, competitiveness, and profitability.

The information at issue also meets the six criteria set forth by the Commission for use in evaluating the need for *in camera* treatment. First, this information is not known publicly outside of Polypore's business. (Seibert Decl. ¶¶ 6-7). Second, within Polypore's business this information is known to only a handful of high level executives. (Seibert Decl. ¶¶ 6-7). Third, Polypore has taken all due precautions to safeguard the confidential nature of this information, including seeking *in camera* protection for such material during the adjudicative proceeding and filing the information *in camera* with the Secretary of the Commission. (Seibert Decl. ¶¶ 7-8). Fourth, this information is of great value to Polypore, as it relates to commercially sensitive business information, considerations and strategies. (Seibert Decl. ¶¶ 5, 9-10). Finally, this is the type of information that Polypore would not allow to be obtained by anyone outside of its organization and which could not be duplicated by anyone outside of Polypore. (Seibert Decl. ¶¶ 7, 9).

Moreover, the information set forth in Exhibit A is not necessary to explain the rationale of the Commission's decision. For example, {

}, set forth in the Commission's Opinion as mere background information, is not necessary for the public to understand the Commission's conclusion {  
{  
{

}, also provided as background information, is not necessary for an understanding of the rationale of the Commission's decision. (Comm. Opin., p. 3). Nor are the {

}

(Comm. Opin., pp. 29-30).

In sum, the public disclosure of specific information related to Polypore's {

}, by way of information such entities would otherwise have no way to know. (Seibert Decl. ¶¶ 4-10). Because the public disclosure of the information set forth on Exhibit A would cause substantial competitive harm to Respondent, the need for *in camera* treatment of this information outweighs the public's interest in such disclosure, particularly when considering that most of the information is not necessary to explain the basis for the Commission's Opinion.

**IV.**  
**THE MATERIAL AT ISSUE SHOULD BE KEPT *IN CAMERA* FOR  
THE PERIOD OF TIME SET FORTH IN THE ADMINISTRATIVE  
LAW JUDGE'S PREVIOUS ORDERS GRANTING *IN CAMERA* TREATMENT**

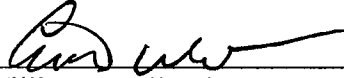
Once it is established that material deserves *in camera* treatment, the duration of such treatment must be determined. *See* 16 C.F.R. § 3.45(b). Previously in this adjudicative proceeding, the information contained in the material Polypore seeks to protect was granted *in camera* protection for a period of three or five years (ending June 1, 2012 or June 1, 2014). *See* Order on Respondent's Motions for *In Camera* Treatment, dated August 11, 2009; Order on Respondent's Fifth Motion for *In Camera* Treatment and Exide's Motion for *In Camera* Treatment, dated November 19, 2009; and Order on Non-Parties' Motions for *In Camera* Treatment, dated July 10, 2009. Accordingly, Polypore requests that the material at issue here be granted *in camera* treatment until June 1, 2012 or June 1, 2014, based upon the *in camera* period set forth in the previous Orders of the Administrative Law Judge. (Seibert Decl. ¶ 11).



WHEREFORE, Polypore respectfully requests that the Commission enter an Order granting *in camera* treatment for those portions of the Commission's Opinion set forth on Exhibit A to the instant Motion and requiring such portions to be redacted from the public record for a period of time through and including June 1, 2012 or June 1, 2014.

Dated: December 14, 2010

Respectfully submitted,



---

William L. Rikard, Jr.

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

[williamrikard@parkerpoe.com](mailto:williamrikard@parkerpoe.com)

[ericwelsh@parkerpoe.com](mailto:ericwelsh@parkerpoe.com)

John F. Graybeal

PARKER POE ADAMS & BERNSTEIN, LLP

150 Fayetteville Street

Raleigh, NC 27602

Telephone: (919) 835-4599

Facsimile: (919) 828-0564

[johngraybeal@parkerpoe.com](mailto:johngraybeal@parkerpoe.com)

*Attorneys for Respondent*

**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 Respondent's Motion for *In Camera* Treatment of Material Previously Afforded Such Treatment, 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)*, those portions of the Commission's Order set forth in Exhibit A to Respondent's Motion shall be subject to the requested *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding for a period of three to five years ending on June 1, 2012 or June 1, 2014.

By direction of the Commission.

\_\_\_\_\_  
Donald S. Clark  
Secretary

ORDERED: \_\_\_\_\_

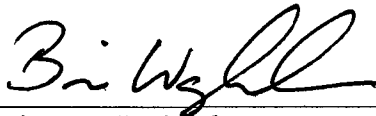
**CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2010, I caused to be filed via hand delivery and electronic mail delivery an original and twelve (12) copies of the foregoing *Respondent's Motion for In Camera Treatment of Material Previously Afforded Such Treatment [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 December 14, 2010, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing *Respondent's Motion for In Camera Treatment of Material Previously Afforded Such Treatment [Public]*, upon:

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) 335-9050  
Facsimile: (704) 334-4706

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

*Docket No. 9327*

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

**EXHIBIT A**

TO

**Respondent's Motion for *In Camera* Treatment of Material Previously Afforded Such  
Treatment**

**MATERIAL REDACTED PURSUANT TO RULE  
3.45(b) OF THE FEDERAL TRADE COMMISSION  
RULES OF PRACTICE, 16 C.F.R. ¶3.45(b)**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

*Docket No. 9327*

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

**EXHIBIT B**

TO

**Respondent's Motion for *In Camera* Treatment of Material Previously Afforded Such  
Treatment**

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

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

**Docket No. 9327**  
  
**PUBLIC**

**DECLARATION OF HARRY D. SEIBERT**

**HARRY D. SEIBERT**, being first duly sworn, deposes and says:

1. I am the Senior Vice President of Global Sales & Business Development of Daramic LLC (“Daramic”), a Polypore company. I am over the age of eighteen years and I make this affidavit on personal knowledge of its content.

2. I am familiar with the documents and other information maintained by Polypore and the level of confidentiality associated with the subject matter therein.

3. I submit this declaration in support of Polypore’s Motion for *In Camera* Treatment of Material Previously Afforded Such Treatment, requesting *in camera* treatment of certain material included in the Commission’s Opinion in the proceeding.

4. I have reviewed the material appearing on Exhibit A of Polypore’s Motion for *In Camera* Treatment of Material Previously Afforded Such Treatment and believe that such material contains highly sensitive and confidential information, which is material to Polypore’s business, and which would result in serious competitive injury to Polypore should it be made public.

5. As set forth in the sub-paragraphs herein, the information contained in the material appearing on Exhibit A of Polypore’s Motion for *In Camera* Treatment of Material



Previously Afforded Such Treatment contains highly sensitive information including, but not limited to, {

}.

The public disclosure of any of this confidential business information would be highly detrimental to Polypore as it {

} and result in a clearly defined, serious injury to Polypore.

a. **Confidential Information Contained on Commission Opinion - Page Number 2.**

{

}.

b. **Confidential Information Contained on Commission Opinion - Page Number 3.**

{

}.  
{

{

}.  
c.

**Confidential Information Contained on Commission Opinion - Page Number 29.**

The confidential information Polypore seeks to protect {

}.  
Significantly, access to this information would {

}.  
}

- e. **Confidential Information Contained on Commission Opinion - Page Number 31.**

{

}.  
}

- f. **Confidential. Information Contained on Commission Opinion - Page Number 38.**

{

}.

6. The information contained in the material appearing on Exhibit A of Polypore's Motion for *In Camera* Treatment of Material Previously Afforded Such Treatment has been maintained internally by Polypore in a confidential manner, only being shared with those individuals requiring such knowledge.


7. Prior to this administrative proceeding, the information contained in the material appearing on Exhibit A of Polypore's Motion for *In Camera* Treatment of Material Previously Afforded Such Treatment, to the best of my knowledge and belief, has been revealed only to appropriate Polypore personnel and any contracting parties to particular documents. General Polypore employees do not have access to the information contained in the material appearing on Exhibit A of Polypore's Motion for *In Camera* Treatment of Material Previously Afforded Such Treatment. Such information is not in the public domain and cannot be obtained through other means.

8. Polypore has taken, and continues to take, all due precautions to safeguard the confidential nature of the information contained in the material appearing on Exhibit A of Polypore's Motion for *In Camera* Treatment of Material Previously Afforded Such Treatment. In particular, Polypore has previously sought and been granted *in camera* treatment for this material by way of the following motions to the Administrative Law Judge in this proceeding: Respondent's First Motion for *In Camera* Treatment (April 9, 2009), Respondent's Second

Further Declarant sayeth not.

I declare, under penalty of perjury, that the above statements are true and correct.

Sworn to December 3<sup>rd</sup>, 2010.

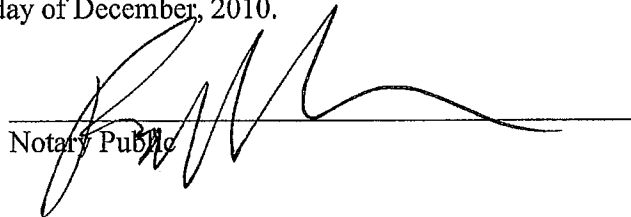
  
Harry D. Seibert

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Denise Mammenbach, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that HARRY D. SEIBERT personally appeared before me this day and acknowledged the execution of the forgoing instrument.

Witness my hand and seal, this 3<sup>rd</sup> day of December, 2010.

  
Notary Public

My Commission Expires:

August 12, 2015

[NOTARY SEAL]

