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10 Attorneys for Defendants 3M Company and
 3M Innovative Properties Company

11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 WESTERN DIVISION

15 AVERY DENNISON CORPORATION,
 16 Plaintiff,
 17 v.
 18 3M COMPANY and 3M INNOVATIVE
 19 PROPERTIES COMPANY,
 20 Defendants.

CASE NO. CV 10-7931 MRP (RZx)
ANSWER TO COMPLAINT

Complaint Filed: October 21, 2010

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1 Defendants 3M COMPANY and 3M INNOVATIVE PROPERTIES
2 COMPANY (“3M” or “Defendants”), by and through its undersigned attorneys,
3 hereby submits its answer to the Complaint filed on October 21, 2010 by Avery
4 Dennison Corporation (“Avery” or “Plaintiff”), admitting, denying and otherwise
5 stating as follows (the numbered paragraphs correspond to those in Plaintiff’s
6 Complaint).

7 **Responses to Individual Paragraphs**

8 1. 3M denies that Type XI sheeting constitutes a relevant market for
9 purposes of the antitrust laws. 3M states that, at times, government agencies will
10 specify Type XI sheeting in connection with a particular bid, but further states this is
11 based on the performance characteristics of Type XI sheeting versus alternative
12 sheeting. 3M states that, until recently, it was the only company that had innovated
13 and created Type XI sheeting. Except as admitted or stated, 3M denies the allegations
14 of paragraph 1.

15 2. 3M denies that sheeting composed of ASTM International sheeting Types
16 VIII, IX, and XI constitutes a relevant market for purposes of the antitrust laws. 3M
17 states that, at times, government agencies will specify a Type VIII, IX, and/or XI
18 sheeting in connection with a particular bid, but further states that this is based on the
19 performance characteristics of that sheeting versus alternative sheeting. 3M further
20 states that there are other competitors for Type VIII, IX, and XI sheeting. Except as
21 admitted or stated, 3M denies the allegations of paragraph 2.

22 3. 3M denies the allegations of paragraph 3.

23 4. 3M admits that in or around 2004, the ASTM D04.38 Subcommittee
24 began considering a Type XI specification for high performance retroreflective
25 sheeting. 3M admits that the first Type XI specification the D04.38 Subcommittee
26 considered was proposed by 3M. Except as admitted, 3M denies the allegations of
27 paragraph 4.

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1 5. 3M states that as of December 2004, it had issued patents and pending
2 patent applications generally relating to high performance retroreflective sheeting
3 technology. 3M states that some of the issued patents and pending patent applications
4 related to specific tools, products, and methods of manufacturing sheeting that would
5 meet the then proposed Type XI specification that was different than the Type XI
6 specification ultimately adopted by ASTM. Except as stated, 3M denies the
7 allegations of paragraph 5.

8 6. 3M states that the Type XI specification proposed by 3M in or around
9 December 2004 described retroreflective sheeting exhibiting superior optical
10 performance as compared to existing ASTM sheeting Types. 3M states that to the
11 extent its products that meet the Type XI specification are commercially successful,
12 that success reflects the superior performance and quality (including safety benefits) of
13 those products. 3M states that its patents were lawfully obtained and reflect 3M's
14 significant investment and innovation. Except as stated, 3M denies the allegations of
15 paragraph 6.

16 7. 3M admits that during the consideration of the proposed Type XI standard
17 in or around 2004, objections in the form of "Negatives" were made by participants,
18 and that these Negatives were addressed pursuant to ASTM rules and practices. 3M
19 further admits that it provided correct information to the relevant ASTM subcommittee
20 considering the Type XI specification, including the fact that certain specific claims of
21 pending patent applications had a status of "withdrawn." 3M states that the withdrawn
22 status of those specific claims had no bearing on 3M's previously issued patents, on
23 other pending patent claims not specifically identified in the information 3M provided
24 to the Subcommittee, or on pending patent claims not specifically objected to during
25 the consideration of the proposed Type XI standard in or around 2004 through
26 December 2006. 3M further states that the Type XI specification originally proposed
27 by 3M was rejected in December 2006 by the Main Committee, and later, a new
28 separate evaluation process was initiated that led to ASTM Committee D04.38

1 approval of a different Type XI specification. Except as admitted or stated, 3M denies
2 the allegations of paragraph 7.

3 8. 3M denies the allegations of paragraph 8.

4 9. 3M admits that it prosecuted additional patent applications and claims
5 after December 2006 relating to its Type XI sheeting. 3M lacks information and belief
6 as to Avery's investments in the research and development of Type XI sheeting, and
7 further states that Avery did not inform 3M of its potential development of sheeting
8 that would meet the proposed Type XI specification. Except as admitted or stated, 3M
9 denies the allegations of paragraph 9.

10 10. 3M admits that it is promoting its Type XI sheeting, and further admits
11 that it has filed an action for patent infringement against Avery based on Avery's
12 infringement of thirteen 3M patents. Except as admitted or stated, 3M denies the
13 allegations of paragraph 10.

14 11. 3M admits that Avery has begun promoting and selling its OmniCube™
15 T-11500 product, and that Avery represents that the product meets the Type XI
16 specification. 3M lacks sufficient information and belief to admit or deny the
17 remaining allegations of paragraph 11, and on that basis denies them.

18 12. 3M admits the allegations of paragraph 12.

19 13. 3M admits the allegations of paragraph 13.

20 14. 3M denies the allegations of paragraph 14.

21 15. 3M denies the allegations of paragraph 15.

22 16. 3M denies the allegations of paragraph 16.

23 17. 3M denies the allegations of paragraph 17

24 18. 3M admits the allegations of paragraph 18.

25 19. 3M admits the allegations of paragraph 19.

26 20. 3M admits that 3M Innovative Properties Company is a wholly-owned
27 subsidiary of 3M Company having a principal place of business at 3M Center, St. Paul,
28 Minnesota 55133. Except as admitted, 3M denies the allegations of paragraph 20.

1 21. 3M admits that the Complaint purports to be a civil action arising under
2 the Sherman Act, the Lanham Act, the California Business & Professions Code, and
3 common law. Except as admitted, 3M denies the allegations of paragraph 21.

4 22. 3M admits that the Complaint claims that the Court has subject matter
5 jurisdiction over the action under 15 U.S.C. § 15(a) and 28 U.S.C. §§ 1331, 1337(a)
6 and 1367. Except as admitted, 3M denies the allegations of paragraph 22.

7 23. 3M admits the allegations of paragraph 23.

8 24. 3M admits the allegations of paragraph 24.

9 25. 3M states that paragraph 25 attempts to provide a simplified explanation
10 of retroreflective sheeting that is accurate for its apparent very limited purpose. Except
11 as stated, 3M denies the allegations of paragraph 25.

12 26. 3M states that paragraph 26 attempts to provide a simplified explanation
13 of retroreflective sheeting that is accurate for its apparent very limited purpose. Except
14 as stated, 3M denies the allegations of paragraph 26.

15 27. 3M states that paragraph 27 attempts to provide a general statement of the
16 background of ASTM's involvement in retroreflective sheeting standards that is
17 accurate for its apparent very limited purpose. Except as stated, 3M denies the
18 allegations of paragraph 27.

19 28. 3M states that paragraph 28 attempts to provide a general statement of the
20 background, purpose, and scope of ASTM that is accurate for its apparent very limited
21 purpose. Except as stated, 3M denies the allegations of paragraph 28.

22 29. 3M states that paragraph 29 attempts to provide a general statement of the
23 committee organization of ASTM that is accurate for its apparent very limited purpose.
24 Except as stated, 3M denies the allegations of paragraph 29.

25 30. 3M admits the allegations of paragraph 30.

26 31. 3M admits the allegations of paragraph 31.

27 32. 3M states that one of the specifications for which the HTCM
28 Subcommittee and the Retroreflective Task Force is responsible is Specification No.

1 4956, and that the specification includes prismatic sheeting. Except as stated, 3M
2 denies the allegations of paragraph 32.

3 33. 3M admits the allegations of paragraph 33.

4 34. 3M states that various federal, state, and local governments voluntarily
5 choose to utilize Spec. No. D4956 in connection with specifications for products that
6 use retroreflective sheeting. Except as stated, 3M denies the allegations of paragraph
7 34.

8 35. 3M states that Type XI retroreflective sheeting in fact provides overall
9 optical performance superior to other sheeting types, and that this is not merely a
10 widely held perception. 3M states that various federal, state, and local governments at
11 times voluntarily choose to request or require Type XI of Spec. No. D4956 in
12 connection with specifications for retroreflective sheeting or products that use
13 retroreflective sheeting. Except as stated, 3M denies the allegations of paragraph 35.

14 36. 3M admits the allegations of paragraph 36.

15 37. 3M denies the allegations of paragraph 37.

16 38. 3M states that it first presented a proposal for a Type XI specification to
17 the ASTM in or around the December 2004 meeting, and that according to the minutes
18 of the meeting the proposal was not taken up at the December 2004 meeting due to
19 insufficient meeting time. Except as stated, 3M lacks sufficient information and belief
20 to admit or deny the allegations of paragraph 38 and on that basis denies them.

21 39. 3M lacks sufficient information and belief to admit or deny the allegations
22 of paragraph 39 and on that basis denies them.

23 40. 3M admits the allegations of paragraph 40.

24 41. 3M states that the Retroreflective Task Force met on June 15, 2005 in
25 Reno, Nevada. Except as stated, 3M lacks sufficient information and belief to admit or
26 deny the allegations of paragraph 41 and on that basis denies them.

27 42. 3M admits that in 2005, certain members of the Retroreflective Task
28 Group expressed the opinion that adoption of the proposed Type XI specification

1 would create a proprietary specification that, at that time, only 3M products satisfied.
2 Except as admitted, 3M denies the allegations of paragraph 42.

3 43. 3M lacks sufficient information and belief to admit or deny allegations of
4 the state of mind of the representatives referenced in paragraph 43, and on that basis
5 denies the allegations.

6 44. 3M admits that it put forward a formal ballot in the HTCM Subcommittee
7 on October 17, 2005 seeking to add a new Type XI specification to Spec. No. D4956.
8 3M admits that the proposal drew nine negative votes, and states that seven non-voting
9 members and two non-members also filed Negatives. Except as admitted or stated, 3M
10 denies the allegations of paragraph 44.

11 45. 3M denies the allegations of paragraph 45.

12 46. 3M admits that it attempted to recruit new members to the HTCM
13 Subcommittee who were interested in retroreflective sheeting technology. 3M states
14 that it is informed and believes Avery also recruited members to the HTCM
15 Subcommittee. 3M states that the proposed Type XI specification introduced in
16 December 2004 was subsequently rejected in December 2006. Except as admitted or
17 stated, 3M denies the allegations of paragraph 46.

18 47. 3M admits that prior to October 17, 2005, new members joined the
19 HTCM Subcommittee. 3M states that to the best of its knowledge these members
20 joined in accordance with ASTM rules and had a legitimate interest in the work of the
21 Subcommittee. Except as admitted or stated, 3M denies the allegations of paragraph
22 47.

23 48. 3M admits that on December 7, 2005, a HTCM Subcommittee meeting
24 was held in Dallas, Texas. 3M admits that the Negatives were not resolved at the
25 meeting, but were addressed through letter ballots following the meeting, and that a
26 vote to overcome the Negatives required a two-thirds majority. Except as admitted or
27 stated, 3M lacks sufficient information and belief to admit or deny the allegations of
28 paragraph 48 and on that basis denies them.

1 49. 3M admits the allegations of paragraph 49.

2 50. 3M lacks sufficient information and belief to admit or deny the allegations
3 of paragraph 50, and on that basis denies the allegations.

4 51. 3M denies the allegations of paragraph 51.

5 52. 3M states that paragraph 52 partially quotes out of context a small portion
6 of the Negative cited, and 3M states that the Negative speaks for itself. 3M further
7 states that the proposed Type XI specification at issue was subsequently rejected in
8 December 2006. Except as stated, 3M denies the allegations of paragraph 52.

9 53. 3M admits that paragraph 53 partially quotes the Negative offered by
10 Plaintiff's representative, and 3M states that the Negative speaks for itself. Except as
11 admitted, 3M denies the allegations of paragraph 53.

12 54. 3M admits that paragraph 54 partially quotes the Negative offered by
13 Plaintiff's representative, and 3M states that the Negative speaks for itself. Except as
14 admitted, 3M denies the allegations of paragraph 54.

15 55. 3M admits that it provided written responses to the then-pending
16 Negatives to the proposed Type XI specification. 3M states that the Type XI
17 specification at issue in or around 2004 was subsequently rejected in December 2006.
18 Except as admitted or stated, 3M denies the allegations of paragraph 55.

19 56. 3M states that paragraph 56 selectively quotes in a misleading fashion one
20 of 3M's written responses to Plaintiff's Negatives, and 3M states that the complete
21 response speaks for itself. 3M states that its response was an accurate statement of fact
22 concerning withdrawal of certain specific patent claims, and that Plaintiff has
23 improperly sought to characterize 3M's response as a broad statement of future
24 intention that was never made. Except as stated, 3M denies the allegations of
25 paragraph 56.

26 57. 3M admits that on or about March 25, 2006 Plaintiff distributed a
27 PowerPoint presentation to certain members of the HTCMT Subcommittee, and that
28 paragraph 57 selectively quotes from that PowerPoint. 3M states that the PowerPoint

1 speaks for itself. Except as admitted or stated, 3M denies the allegations of paragraph
2 57.

3 58. 3M lacks sufficient information and belief to admit or deny the allegation
4 of Plaintiff's state of mind referenced in paragraph 58 and on that basis denies that
5 allegation. 3M admits that the March 25, 2006 PowerPoint presentation that Plaintiff's
6 representative distributed to certain members of the HTCMT Subcommittee listed the
7 patents and/or publications listed in paragraph 58. Except as admitted, 3M denies the
8 allegations of paragraph 58.

9 59. 3M admits that its representative circulated an email on March 27, 2006
10 that contained an accurate statement of fact concerning 3M's withdrawal of certain
11 patent claims, and that the email was sent after a conference call among the HTCMT
12 Subcommittee members. Except as admitted, 3M denies the allegations of paragraph
13 59.

14 60. 3M states that paragraph 60 selectively quotes from the referenced email.
15 Except as stated, 3M denies the allegations of paragraph 60.

16 61. 3M admits that a conference call was held to discuss the pending
17 Negatives on March 28, 2006. Except as admitted, 3M lacks sufficient information
18 and belief to admit or deny the allegations of paragraph 61, and on that basis denies
19 them.

20 62. 3M lacks sufficient information and belief to admit or deny the allegations
21 of paragraph 62, and on that basis denies them.

22 63. 3M admits the allegations of paragraph 63.

23 64. 3M admits that each Negative was defeated by the required two-thirds
24 majority at the HTCMT Subcommittee level. Except as admitted, 3M denies the
25 allegations of paragraph 64.

26 65. 3M admits that the membership of HTCMT had increased in number by
27 May 30, 2006. 3M states that it recruited new members, as did Avery. Except as
28

1 admitted, 3M lacks sufficient information and belief to admit or deny the allegations of
2 paragraph 65, and on that basis denies them.

3 66. 3M admits that on October 4, 2006 the Main Committee issued its own
4 formal ballot on the proposal to add a new Type XI specification to Spec. No. D4956,
5 which drew 119 affirmative votes and 11 negative votes. 3M also admits that before
6 this vote the Negatives were defeated at the HTCM Subcommittee, but 3M denies the
7 allegations of paragraph 66 that these Negatives were defeated because of 3M
8 representations about withdrawing patent claims.

9 67. 3M admits the allegations of paragraph 67.

10 68. 3M admits that an ASTM meeting, including an HTCM Subcommittee
11 meeting, was scheduled for December 6-7, 2006 in Atlanta, Georgia. 3M states that it
12 took steps to encourage attendance of members at this HTCM Subcommittee meeting.
13 Except as admitted or stated, 3M denies the allegations of paragraph 68.

14 69. 3M admits that the HTCM Subcommittee met on December 6, 2006 to
15 consider the proposed Type XI specification. 3M admits that on that date it was
16 hosting a customer meeting in Atlanta, that certain customers in attendance were also
17 HTCM Subcommittee members, that 3M provided transportation for certain HTCM
18 Subcommittee members to attend the meeting, and that in certain instances 3M
19 received proxies from members to vote in favor of the proposed Type XI specification.
20 3M states that its actions were in accordance with ASTM rules. Except as admitted,
21 3M denies the allegations of paragraph 69.

22 70. 3M admits that on December 6, 2006, the HTCM Subcommittee
23 approved the Type XI specification and sent it for final approval by the Main
24 Committee. 3M further admits that it provided transportation for certain members to
25 attend the HTCM Subcommittee meeting. Except as admitted, 3M denies the
26 allegations of paragraph 70.

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1 71. 3M admits that on December 7, 2006, the Main Committee rejected the
2 proposed Type XI specification previously approved by the HCTM Subcommittee.
3 Except as admitted, 3M denies the allegations of paragraph 71.

4 72. 3M states that paragraph 72 is incomplete, inaccurate, and an
5 oversimplification of the separate process that later commenced to consider a new
6 Type XI specification for Spec. D4956 after the initially proposed Type XI
7 specification was rejected in December 2006. 3M admits that in connection with the
8 separate evaluation process, the Committee agreed to drop previously approved Type
9 VII and X specifications, and addressed the issue of daytime luminescence values. 3M
10 states that other issues beyond daytime luminescence were discussed, and that,
11 pursuant to ASTM rules, any issue from the previous process to consider a Type XI
12 specification could be raised. Except as stated or admitted, 3M denies the allegations
13 of paragraph 72.

14 73. 3M denies Plaintiff's characterization that in September 2008, 3M
15 "reintroduced" its proposal to revise Spec. No. D4956 to include a new Type XI type
16 sheeting. 3M states that, after the rejection of the Type XI specification in December
17 2006, 3M's proposed Type XI specification was withdrawn. 3M states that a separate
18 and different evaluation process later commenced after a new Type XI specification
19 proposal was made, and that this separate process led to the adoption of a different
20 Type XI specification in June 2009. Except as stated, 3M denies the allegations of
21 paragraph 73.

22 74. 3M states that in June 2009, the ASTM HCTM Committee approved the
23 adoption of a Type XI specification in Spec. No. D4956. 3M further states that this
24 Type XI specification reflected the work of the relevant Task Force and Subcommittee
25 members, and was different than the proposed Type XI specification rejected by the
26 Main Committee in December 2006. 3M admits that the revised Spec No. D4956 with
27 the new Type XI specification was published in August 2009. Except as stated or
28 admitted, 3M denies the allegations of paragraph 74.

1 75. 3M states that its pursuit of patent claims after December 2006 was a
2 matter of public record. 3M denies the allegations that Avery was unaware of the 3M
3 patents and patent applications referenced in paragraph 75. 3M is informed and
4 believes that the other members of the HTCM Subcommittee were also aware of 3M's
5 patents and patent applications referenced in paragraph 75. 3M lacks sufficient
6 information and belief to admit or deny the allegation concerning Plaintiff's research
7 and development of its OmniCube™ product, and on that basis denies that allegation.
8 Except as stated or otherwise denied, 3M denies the allegations of paragraph 75.

9 76. 3M admits the allegations of paragraph 76.

10 77. 3M admits that years before the Type XI specification was approved, 3M
11 had innovated and developed a product that meets the approved Type XI specification.
12 3M lacks sufficient information and belief to admit or deny the remaining allegations
13 of paragraph 77, and on that basis denies them.

14 78. 3M admits that it has engaged in marketing to promote to existing and
15 potential customers the benefits, including enhanced safety, of 3M's Type XI sheeting.
16 Except as admitted, 3M denies the allegations of paragraph 78.

17 79. 3M denies the allegations of paragraph 79.

18 80. 3M admits that it had a grant program in place in 2009 to provide price
19 discounts to government agencies to upgrade their road signs. Except as admitted, 3M
20 denies the allegations of paragraph 80.

21 81. 3M denies the allegations of paragraph 81.

22 82. 3M admits that on June 25, 2010, it filed a complaint in the United States
23 District Court of the District of Minnesota alleging that Plaintiff's OmniCube™
24 product infringes certain patents owned by 3M. 3M further admits that it has moved
25 for a preliminary injunction seeking a Court order barring Plaintiff from manufacturing
26 or selling its OmniCube™ product, pending final judgment. Except as admitted, 3M
27 denies the allegations of paragraph 82.

28 83. 3M denies the allegations of paragraph 83.

1 84. 3M lacks sufficient information and belief to admit or deny the allegations
2 of paragraph 84, and on that basis denies them.

3 85. 3M lacks sufficient information and belief to admit or deny the allegations
4 of paragraph 85, and on that basis denies them.

5 86. 3M lacks sufficient information and belief to admit or deny the allegations
6 of paragraph 86, and on that basis denies them.

7 87. 3M states that it has entered into agreements with contractors to promote
8 and sell its products. Except as stated, 3M denies the allegations of paragraph 87.

9 88. 3M hereby incorporates by reference its responses to paragraphs 1-87 of
10 the Complaint as set forth above.

11 89. 3M denies the allegations of paragraph 89.

12 90. 3M admits that ASTM ultimately adopted and publicized a new Type XI
13 specification in Spec. No. D4956 in August 2009. Except as admitted, 3M denies the
14 allegations of paragraph 90.

15 91. 3M denies the allegations of paragraph 91.

16 92. 3M admits that Type XI sheeting has achieved success in the market due
17 to its many benefits.

18 93. 3M states that Type XI sheeting offers superior performance and other
19 benefits compared to alternative sheeting products, and on that basis believes 3M will
20 achieve success in the marketplace. Except as admitted, 3M denies the allegations of
21 paragraph 93.

22 94. 3M denies the allegations of paragraph 94.

23 95. 3M denies that there is a separate Type XI sheeting market. 3M states
24 that it lacks sufficient information and belief to admit or deny whether it has sold
25 “nearly 100%” of the Type XI sheeting purchased to date, and on that basis denies the
26 allegation. Except as admitted, 3M denies the allegations of paragraph 95.

27 96. 3M denies that there is a separate “Broad High Performance Sheeting
28 Market” as defined by Plaintiff in the Complaint. 3M lacks sufficient information and

1 belief to admit or deny the remaining allegations of paragraph 96 and on that basis
2 denies them.

3 97. 3M denies the allegations of paragraph 97.

4 98. 3M denies the allegations of paragraph 98.

5 99. 3M denies the allegations of paragraph 99.

6 100. 3M hereby incorporates by reference its responses to paragraphs 1-99 of
7 the Complaint as set forth above.

8 101. 3M denies the allegations of paragraph 101.

9 102. 3M denies the allegations of paragraph 102.

10 103. 3M denies the allegations of paragraph 103.

11 104. 3M denies the allegations of paragraph 104.

12 105. 3M hereby incorporates by reference its responses to paragraphs 1-104 of
13 the Complaint as set forth above.

14 106. 3M denies the allegations of paragraph 106.

15 107. 3M denies the allegations of paragraph 107.

16 108. 3M denies the allegations of paragraph 108.

17 109. 3M denies the allegations of paragraph 109.

18 110. 3M denies the allegations of paragraph 110.

19 111. 3M states that it has entered into written agreements with contractors to
20 promote and sell its products. Except as stated, 3M denies the allegations of paragraph
21 111.

22 112. 3M denies the allegations of paragraph 112.

23 113. 3M denies the allegations of paragraph 113.

24 114. 3M hereby incorporates by reference its responses to paragraphs 1-113 of
25 the Complaint as set forth above.

26 115. 3M denies the allegations of paragraph 115.

27 116. 3M denies the allegations of paragraph 116.

28 117. 3M denies the allegations of paragraph 117.

1 118. 3M denies the allegations of paragraph 118.

2 119. 3M denies the allegations of paragraph 119.

3 120. 3M states that it has entered into agreements with contractors to promote
4 and sell its products. Except as stated, 3M denies the allegations of paragraph 120.

5 121. 3M denies the allegations of paragraph 121.

6 122. 3M denies the allegations of paragraph 122.

7 123. 3M hereby incorporates by reference its responses to paragraphs 1-122 of
8 the Complaint as set forth above.

9 124. 3M denies the allegations of paragraph 124.

10 125. 3M denies the allegations of paragraph 125.

11 126. 3M denies the allegations of paragraph 126.

12 127. 3M denies the allegations of paragraph 127.

13 128. 3M denies the allegations of paragraph 128.

14 129. 3M denies the allegations of paragraph 129.

15 130. 3M denies the allegations of paragraph 130.

16 131. 3M hereby incorporates by reference its responses to paragraphs 1-130 of
17 the Complaint as set forth above.

18 132. 3M denies the allegations of paragraph 132.

19 133. 3M denies the allegations of paragraph 133.

20 134. 3M denies the allegations of paragraph 134.

21 135. 3M denies the allegations of paragraph 135.

22 136. 3M denies the allegations of paragraph 136.

23 137. 3M hereby incorporates by reference its responses to paragraphs 1-136 of
24 the Complaint as set forth above.

25 138. 3M denies the allegations of paragraph 138.

26 139. 3M denies the allegations of paragraph 139.

27 140. 3M denies the allegations of paragraph 140.

28 141. 3M denies the allegations of paragraph 141.

1 142. 3M denies the allegations of paragraph 142.

2 143. 3M denies the allegations of paragraph 143.

3 144. 3M denies the allegations of paragraph 144.

4 145. 3M denies the allegations of paragraph 145.

5 146. 3M denies the allegations of paragraph 146.

6 147. 3M denies the allegations of paragraph 147.

7 148. 3M admits that Avery purports to assert a claim of unfair competition in
8 its own name only and that Avery does not purport to act for the interest of any other
9 person or entity or for the general public. Except as admitted, 3M lacks sufficient
10 information and belief to admit or deny the allegations of paragraph 148, and on that
11 basis denies them.

12 149. 3M denies the allegations of paragraph 149.

13 150. 3M denies the allegations of paragraph 150.

14 151. 3M hereby incorporates by reference its responses to paragraphs 1-150 of
15 the Complaint as set forth above.

16 152. 3M denies the allegations of paragraph 152.

17 153. 3M denies the allegations of paragraph 153.

18 154. 3M denies the allegations of paragraph 154.

19 155. 3M denies the allegations of paragraph 155.

20 156. 3M denies the allegations of paragraph 156.

21 157. 3M denies the allegations of paragraph 157.

22 158. 3M denies the allegations of paragraph 158.

23 159. 3M denies the allegations of paragraph 159.

24 160. 3M denies the allegations of paragraph 160.

25 161. 3M denies the allegations of paragraph 161.

26 162. 3M denies the allegations of paragraph 162.

27 163. 3M denies the allegations of paragraph 163.

28 164. 3M denies the allegations of paragraph 164.

1 165. 3M hereby incorporates by reference its responses to paragraphs 1-164 of
2 the Complaint as set forth above.

3 166. 3M denies the allegations of paragraph 166.

4 167. 3M denies the allegations of paragraph 167.

5 168. 3M denies the allegations of paragraph 168.

6 169. 3M denies the allegations of paragraph 169.

7 170. 3M denies the allegations of paragraph 170.

8 171. 3M admits that 3M representatives served on the Retroreflective Task
9 Group and HTCM Subcommittee, attended ASTM HTCM meetings, worked on
10 proposals relating to a new Type XI specification to Spec. No. D4956, and at times met
11 with other ASTM members. 3M states that at various times it provided accurate
12 information concerning 3M's patents and patent applications during discussion of the
13 proposed Type XI specification. Except as admitted, 3M denies the allegations of
14 paragraph 171.

15 172. 3M denies the allegations of paragraph 172.

16 173. 3M denies the allegations of paragraph 173.

17 174. 3M denies the allegations of paragraph 174.

18 175. 3M denies the allegations of paragraph 175.

19 176. 3M denies the allegations of paragraph 176.

20 **SEPARATE AND ADDITIONAL DEFENSES**

21 Without assuming any burden of proof that it would not otherwise bear, 3M
22 asserts the following separate and additional defenses.

23 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

24 Plaintiff's claims fail to state facts sufficient to constitute a claim for relief
25 against 3M.

26 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

27 Avery lacks standing to assert some or all of the claims alleged in the
28 Complaint.

1 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

2 Avery has not suffered an injury-in-fact or antitrust injury as a result of 3M’s
3 alleged conduct.

4 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

5 The Complaint, or portions thereof, is barred by the applicable statute of
6 limitations.

7 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

8 The Complaint, or portions thereof, is barred by the doctrine of laches.

9 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

10 The Complaint, or portions thereof, is barred by the doctrine of estoppel.

11 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

12 The Complaint, or portions thereof, is barred by the doctrine of waiver.

13 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

14 The Complaint is barred in whole or in part insofar as it challenges the exercise
15 of rights protected by the First Amendment of the United States Constitution and by
16 the *Noerr-Pennington* doctrine.

17 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

18 3M’s conduct was at all relevant times privileged, justified, or permitted in the
19 course of fair business competition.

20 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

21 3M alleges, without admitting any liability whatsoever, that at all times 3M’s
22 conduct was undertaken in good faith to advance legitimate business interests and had
23 the effect of promoting, encouraging, and increasing competition.

24 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

25 To the extent that the Complaint purports to assert claims for statutory unfair
26 competition or any other like claims under California law based on conduct covered by
27 the Lanham Act, such claims are exclusively governed by the Lanham Act and are
28 therefore preempted.

1 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

2 With respect to Avery’s Fifth and Sixth Counts, and any of the other causes of
3 action to the extent based on allegations in the Fifth or Sixth Counts, Avery is not
4 entitled to relief because there is no likelihood of consumer confusion or consumer
5 deception resulting from 3M’s conduct.

6 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

7 With respect to Avery’s Fifth and Sixth Counts, and any of the other causes of
8 action to the extent based on allegations in the Fifth or Sixth Counts, Avery is not
9 entitled to relief because any statements of fact ascribed to 3M in the Complaint were
10 and are in fact true and cannot constitutionally be prohibited.

11 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

12 Avery’s claims for equitable relief are barred to the extent there is an adequate
13 remedy at law.

14 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

15 The Complaint and each purported cause of action contained therein is barred, in
16 whole or in part, because Avery’s damages, if any, were caused by independent,
17 intervening, and/or superseding events not challenged by the Complaint, including but
18 not limited to lawful conduct by 3M.

19 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

20 Avery has failed to mitigate its damages, if any, and any recovery should be
21 reduced or denied accordingly.

22 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

23 3M has insufficient knowledge or information upon which to form a belief as to
24 whether it may have as yet unstated separate and additional defenses available. 3M
25 reserves the right to amend this Answer to add, delete, or modify defenses based upon
26 legal theories which may or will be divulged through clarification or amendment of
27 Avery’s Complaint, through discovery, or through further legal analysis of Avery’s
28 claims and positions in this litigation.

1 WHEREFORE, 3M respectfully prays for judgment as follows:

2 1. That Avery take nothing from its Complaint;

3 2. That the Complaint, and each and every purported claim for relief alleged
4 therein, be dismissed with prejudice;

5 3. That 3M be awarded its full costs of suit, including, but not limited to,
6 costs and attorneys' fees; and

7 4. For such other and further relief in favor of 3M that the Court may deem
8 just and proper.

9
10 DATED: December 13, 2010

11 M. Sean Royall
12 Daniel S. Floyd
13 Samuel G. Liversidge
14 GIBSON, DUNN & CRUTCHER LLP

15 By: /s/ Daniel S. Floyd
 Daniel S. Floyd

16 Attorneys for Defendants
17 3M Company and
18 3M Innovative Properties Company

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