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 18 3M Innovative Properties Company

19 UNITED STATES DISTRICT COURT
 20 CENTRAL DISTRICT OF CALIFORNIA
 21 WESTERN DIVISION

22 AVERY DENNISON CORPORATION,

23 Plaintiff,

24 v.

25 3M COMPANY and 3M INNOVATIVE
 26 PROPERTIES COMPANY,

27 Defendants.

28 CASE NO. CV 10-7931 MRP (RZx)

**DECLARATION OF DANIEL S.
 FLOYD IN SUPPORT OF
 DEFENDANTS' MOTION TO
 TRANSFER PURSUANT TO 28 U.S.C.
 § 1404(a)**

[Notice of Motion and Motion to Transfer Pursuant to 28 U.S.C. § 1404(a); Memorandum of Points and Authorities in support; Declarations of Mary Jo Abler and Gerald L. Karel in support; Notice of Request and Request for Judicial Notice; and [Proposed] Order filed concurrently herewith]

Hon. Mariana R. Pfaelzer

Hearing Date: February 7, 2011
 Hearing Time: 11:00 a.m.
 Hearing Place: Courtroom 12

Trial Date: Not Set
 Complaint Filed: October 21, 2010

DECLARATION OF DANIEL S. FLOYD

I, Daniel S. Floyd, declare as follows:

1. I am an attorney at law duly admitted to practice before all of the Courts of the State of California and this Court. I am a partner of Gibson, Dunn & Crutcher LLP, and am one of the attorneys at my firm primarily responsible for representing defendants 3M Company and 3M Innovative Properties Company (collectively, "3M") in this action. I submit this declaration in support of 3M's Motion to Transfer Pursuant to 28 U.S.C. § 1404(a). I have personal knowledge of the matters set forth herein, except where stated otherwise, and if called upon to testify I could and would competently testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of a printout from the "Contact Information" page of the Avery Dennison Reflective Products website, available at <http://www.reflectives.averydennison.com/contacts.asp>, which indicates that the North America Avery Dennison Graphics and Reflective Products Division is located at 250 Chester Street #6, Painesville, Ohio 44077.

3. Attached hereto as Exhibit B are true and correct copies of printouts from the Avery Dennison website that indicate addresses of offices maintained by the Reflective Films Division, which include locations in Painesville, Ohio, Mt. Prospect, Illinois, and Niles, Illinois.

4. Attached hereto as Exhibit C is a true and correct copy of Exhibit 7 to the Declaration of Mark Kleinschmit, which was filed on September 10, 2010 in support of Avery's Opposition to 3M's Motion for a Preliminary Injunction filed in the matter of *3M Company, et al. v. Avery Dennison Corp.*, Civil Action No. 10-cv-02630 MJD/FLN, Dkt. #43-7 (D. Minn.) ("the Patent Action"). This document is represented to be a memorandum from Jim Roth, Task Group Chair and Jason Davis, Subcommittee Chair to all D04 Main Members regarding a proposal submitted by Tom Bliss of 3M to add a Type XI to the D4956-05 Specification for Retroreflective Sheeting for Traffic Control, which was Item 2 of Subcommittee Ballot D04.38 (05-

1 03) (hereinafter “the Roth/Davis Memo”). This document is represented to contain
2 the 15 Negative votes, the corresponding not persuasive rationale, the D04.38
3 Subcommittee (“Subcommittee”) vote counts, and the technical ballot item. The
4 Roth/Davis Memo identifies numerous individuals as participating in the HTCM
5 Subcommittee balloting process. Associates at my law firm working under my
6 direction have attempted to determine the current location of these individuals, who
7 may be potential party or non-party witnesses in this litigation, based on publicly
8 available information.

9 5. Attached hereto as Exhibit D is a true and correct copy of a printout of
10 the www.linkedin.com profile for Mark Kleinschmit, Research and Development
11 Manager at Avery Dennison, which indicates that he is based in the Chicago, Illinois
12 area. As noted above, Mr. Kleinschmit proffered a Declaration in the Patent Action
13 and he submitted a Negative Vote and other Negative comments to the Subcommittee
14 in connection with its May 30, 2006 formal ballot, as described in the Roth/Davis
15 Memo.

16 6. Attached hereto as Exhibit E is a true and correct copy of a printout of the
17 www.linkedin.com profile for Drew Buoni, former General Manager for Asia Pacific
18 at Avery Dennison, which indicates that he is based in the Dallas/Fort Worth, Texas
19 area. Based on this document, it appears that Mr. Buoni is no longer employed by
20 Avery and is the current President/Founder at Aura Optical Systems. Mr.
21 Kleinschmit’s Declaration represents that Mr. Buoni submitted a Negative in
22 connection with the Subcommittee’s October 17, 2005 formal ballot. (*See Request for*
23 *Judicial Notice, Ex. H [Kleinschmit Decl., ¶ 12; Ex. 3], filed concurrently herewith.)*
24 In addition, Mr. Buoni submitted a Negative Vote to the Subcommittee in connection
25 with its May 30, 2006 formal ballot, as described in the Roth/Davis Memo.

26 7. Scott Chapman submitted a Declaration in support of Avery’s Opposition
27 to 3M’s Motion for a Preliminary Injunction filed on September 10, 2010 in the Patent
28 Action, Dkt. #41. Attached hereto as Exhibit F is a true and correct copy of a printout

1 of the www.linkedin.com profile for Scott Chapman, Regional Traffic & Safety
2 Segment Manager for North America at Avery Dennison, which indicates that he is
3 based in the Columbus, Ohio area.

4 8. Attached hereto as Exhibit G is a true and correct copy of a printout from
5 the Materials and Testing Section of the Louisiana Department of Transportation and
6 Development website, available at <http://www.dotd.la.gov/highways/construction/lab/>,
7 which indicates that Jason Davis, Special Testing Engineer for the Louisiana
8 Department of Transportation and Development, is based in Baton Rouge, Louisiana.
9 Mr. Davis submitted a Negative Vote and other Negative comments to the
10 Subcommittee in connection with its May 30, 2006 formal ballot, as described in the
11 Roth/Davis Memo.

12 9. Attached hereto as Exhibit H is a true and correct copy of the newsletter
13 *Quality Matters*, Vol. 4 Issue 1 (2008), published by the Materials and Testing Section
14 of the Louisiana Department of Transportation and Development, available at
15 http://www.dotd.state.la.us/highways/construction/lab/newsletters/qm_vol4_no1.pdf.
16 This document represents that Henry Lacinak retired from his position as the Materials
17 Testing and Evaluation Engineer over the Special Testing Unit and the Chemical Unit
18 of the Louisiana Department of Transportation and Development on January 4, 2008.
19 Mr. Lacinak submitted a Negative Vote and other Negative comments to the
20 Subcommittee in connection with its May 30, 2006 formal ballot, as described in the
21 Roth/Davis Memo.

22 10. Attached hereto as Exhibit I is a true and correct copy of a printout of the
23 www.linkedin.com profile for Brook Jerzyk, Director of Global Specifications and
24 Road Building at Reflexite Corporation, which indicates that she is based in the
25 Hartford, Connecticut area. Ms. Jerzyk submitted a Negative Vote to the
26 Subcommittee in connection with its May 30, 2006 formal ballot, as described in the
27 Roth/Davis Memo.

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1 11. Attached hereto as Exhibit J is a true and correct copy of a printout of the
2 www.linkedin.com profile for Chris Gaudette, Manager of Specifications and Testing
3 at Reflexite Corporation, which indicates that he is based in the Hartford, Connecticut
4 area. Mr. Gaudette submitted a Negative Vote to the Subcommittee in connection
5 with its May 30, 2006 formal ballot, as described in the Roth/Davis Memo.

6 12. Attached hereto as Exhibit K is a true and correct copy of a printout of
7 the www.linkedin.com profile for Hal Shapiro, former Product Manager at Avery
8 Dennison, which indicates that he is based in the Denver, Colorado area. Based on
9 this document, it appears that Mr. Shapiro is no longer employed by Avery and is the
10 Specifier Services Manager at Johns Manville. Mr. Shapiro submitted a Negative
11 Vote to the Subcommittee in connection with its May 30, 2006 formal ballot, as
12 described in the Roth/Davis Memo.

13 13. Attached hereto as Exhibit L is a true and correct copy of a printout of the
14 www.linkedin.com profile for Robert Lightle, President at Rocal, Inc., which indicates
15 that he is based in the Columbus, Ohio area. Mr. Lightle submitted a Negative Vote to
16 the Subcommittee in connection with its May 30, 2006 formal ballot, as described in
17 the Roth/Davis Memo.

18 14. Attached hereto as Exhibit M is a true and correct copy of a printout of
19 the "Phone List" page from the Ohio Department of Transportation website, available
20 at [http://www.dot.state.oh.us/Divisions/HighwayOps/Traffic/Pages/PhoneListinAlpha
21 beticalOrder.aspx](http://www.dot.state.oh.us/Divisions/HighwayOps/Traffic/Pages/PhoneListinAlphabeticalOrder.aspx), which indicates that Jim Roth is a Signing Engineer with the Ohio
22 Department of Transportation. Mr. Roth served as the Task Group Chair and
23 submitted a Negative Vote and Negative comments to the Subcommittee in connection
24 with its May 30, 2006 formal ballot, as described in the Roth/Davis Memo.

25 15. Attached hereto as Exhibit N is a true and correct copy of United States
26 Patent No. 7,029,134, which indicates that, at least in 2006, Dennis Couzin was based
27 in Evanston, Illinois; Steven Chapman was based in Niles, Illinois; and Kejian Huang,
28 was based in Buffalo Grove, Illinois. Messrs. Chapman, Huang, and Couzin

1 submitted Negative Votes and/or other Negative comments to the Subcommittee in
2 connection with its May 30, 2006 formal ballot, as described in the Roth/Davis Memo.

3 16. Attached hereto as Exhibit O is a true and correct copy of an excerpt from
4 a document entitled "Florida Department of Transportation District Two Utility
5 Company Address List" posted on the Florida Department of Transportation website,
6 available at <http://www.dot.state.fl.us/rddesign/utilities/Docs/D2/Utility-Contacts.pdf>,
7 which indicates that as of May 20, 2009, Philip D. Lancaster, P.E., was based in
8 Gainesville, Florida. Mr. Lancaster submitted a Negative Vote and other Negative
9 comments to the Subcommittee in connection with its May 30, 2006 formal ballot, as
10 described in the Roth/Davis Memo.

11 17. Attached hereto as Exhibit P is a true and correct copy of a printout of
12 the Bloomberg Businessweek website, available at [http://investing.businessweek.com/
13 research/stocks/people/board.asp?ticker=4064:JP](http://investing.businessweek.com/research/stocks/people/board.asp?ticker=4064:JP), which indicates that Ikuo Mimura is
14 on the Board of Directors for Nippon Carbide Industries Co., which is based in Tokyo,
15 Japan. Mr. Mimura submitted a Negative Vote and other Negative comments to the
16 Subcommittee in connection with its May 30, 2006 formal ballot, as described in the
17 Roth/Davis Memo.

18 18. Attached hereto as Exhibit Q is a true and correct copy of a printout of
19 the www.linkedin.com profile for Greg Fisher, Director of Global Analytical Labs at
20 Plastic Technologies, Inc. and former Senior Research and Development Engineer at
21 Avery Dennison, which indicates that he is based in the Toledo, Ohio area. Mr. Fisher
22 submitted a Negative Vote to the Subcommittee in connection with its May 30, 2006
23 formal ballot, as described in the Roth/Davis Memo.

24 19. Attached hereto as Exhibit R is a true and correct copy of the newsletter
25 *Bulletin*, Vol. 71 No. 6 (Nov. – Dec. 2005), published by the Virginia Department of
26 Transportation, available at [http://www.virginiadot.org/about/resources/bulletin2005-
27 11Nov.pdf](http://www.virginiadot.org/about/resources/bulletin2005-11Nov.pdf). This document represents that Wendy D. Ealding retired from her
28 position of Scientist Manager at the Virginia Department of Transportation in or

1 around 2005. Ms. Ealding submitted Negative comments to the Subcommittee in
2 connection with its May 30, 2006 formal ballot, as described in the Roth/Davis Memo.


3 20. Attached hereto as Exhibit S is a true and correct copy of a printout from
4 the Materials Division section of the Virginia Department of Transportation website,
5 available at <http://www.virginiadot.org/business/materials-default.asp>, which indicates
6 that Jim Swisher is a Chief Chemist at the Virginia Department of Transportation. Mr.
7 Swisher submitted Negative comments to the Subcommittee in connection with its
8 May 30, 2006 formal ballot, as described in the Roth/Davis Memo.

9 21. I have been unable to determine the current locations of Norman
10 Yamaguchi, Timothy Wade, and Ken Uding based on publicly available information.
11 These individuals submitted Negative Votes and/or other Negative comments to the
12 Subcommittee in connection with its May 30, 2006 formal ballot, as described in the
13 Roth/Davis Memo.

14 22. Attached hereto as Exhibit T is a true and correct copy of the Order
15 Dismissing Amphastar's Third Amended Counterclaim, entered on May 15, 2009 in
16 the matter of *Aventis Pharma S.A. v. Amphastar Pharms., Inc.*, Case No. 03-CV-
17 00887-MRP (PLA), Dkt. #1114, at 8 (C.D. Cal.) (Pfaelzer, J.).

18 I declare under penalty of perjury under the laws of the United States of
19 America that the foregoing is true and correct.

20 Executed this 13th day of December, 2010 at Los Angeles, California.

21
22 

23 Daniel S. Floyd

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