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 11 3M Innovative Properties Company

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)

**NOTICE OF REQUEST AND
 REQUEST FOR JUDICIAL NOTICE
 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, Gerald L. Karel, and Daniel S. Floyd in support; 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

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to Federal Rule of Evidence 201 and
3 supporting case law, defendants 3M Company and 3M Innovative Properties Company
4 (collectively, “3M”), by and through their attorneys of record, hereby request that the
5 Court take judicial notice of the below-listed documents in connection with its
6 consideration of Defendants’ Notice of Motion and Motion to Transfer Pursuant to 28
7 U.S.C. § 1404(a), filed with this court on December 13, 2010 and noticed for hearing
8 on February 7, 2011 at 11:00 a.m.

9 The documents that are the subject of this Request for Judicial Notice were
10 either filed in a related patent infringement action brought by 3M against Avery
11 Dennison Corporation (“Avery”) in the U.S. District Court for the District of
12 Minnesota, captioned *3M Company, et al. v. Avery Dennison Corp.*, Civil Action No.
13 10-cv-02630 MJD/FLN (D. Minn.), or are documents filed in other matters in other
14 federal courts involving the parties to this action. 3M accordingly requests that the
15 Court take judicial notice of the Minnesota patent action and the other referenced
16 actions between the parties, and all pleadings and papers filed therein. The following
17 documents are subject to this Request:

18 1. Attached hereto as Exhibit A is a true and correct copy of 3M’s
19 COMPLAINT filed on June 25, 2010 in the action *3M Company, et al. v. Avery*
20 *Dennison Corp.*, Civil Action No. 10-cv-02630 MJD/FLN, Dkt. #1 (D. Minn.).

21 2. Attached hereto as Exhibit B is a true and correct copy of 3M’s FIRST
22 AMENDED COMPLAINT filed on September 3, 2010 in the action *3M Company, et*
23 *al. v. Avery Dennison Corp.*, Civil Action No. 10-cv-02630 MJD/FLN, Dkt. #32 (D.
24 Minn.).

25 3. Attached hereto as Exhibit C is a true and correct copy of
26 DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
27 TO PLAINTIFF’S AMENDED COMPLAINT FOR PATENT INFRINGEMENT filed
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1 on September 20, 2010 in the action *3M Company, et al. v. Avery Dennison Corp.*,
2 Civil Action No. 10-cv-02630 MJD/FLN, Dkt. #47 (D. Minn.).

3 4. Attached hereto as Exhibit D is a true and correct copy of the NOTICE of
4 Pretrial Conference, entered on November 23, 2010 in the action *3M Company, et al.*
5 *v. Avery Dennison Corp.*, Civil Action No. 10-cv-02630 MJD/FLN, Dkt. #86 (D.
6 Minn.), setting the Pretrial Conference in the Minnesota patent infringement action for
7 January 11, 2011.

8 5. Attached hereto as Exhibit E is a true and correct copy of 3M's MOTION
9 FOR PRELIMINARY INJUNCTION filed on July 28, 2010 in the action *3M*
10 *Company, et al. v. Avery Dennison Corp.*, Civil Action No. 10-cv-02630 MJD/FLN,
11 Dkt. #9 (D. Minn.).

12 6. Attached hereto as Exhibit F is a true and correct copy of the Court's
13 Minutes entered on November 12, 2010 in the action *3M Company, et al. v. Avery*
14 *Dennison Corp.*, Civil Action No. 10-cv-02630 MJD/FLN, Dkt. #69 (D. Minn.), taking
15 the parties' motions under advisement and requesting additional briefing.

16 7. Attached hereto as Exhibit G is a true and correct copy of the rough
17 transcript of proceedings held before the Hon. Michael J. Davis on November 12, 2010
18 in the action *3M Company, et al. v. Avery Dennison Corp.*, Civil Action No. 10-cv-
19 02630 MJD/FLN (D. Minn.).

20 8. Attached hereto as Exhibit H is a true and correct copy of the
21 DECLARATION OF MARK KLEINSCHMIT and attached exhibits filed on
22 September 10, 2010 in support of Avery's Opposition to 3M's Motion for a
23 Preliminary Injunction in the action *3M Company, et al. v. Avery Dennison Corp.*,
24 Civil Action No. 10-cv-02630 MJD/FLN, Dkt. #43 (D. Minn.).

25 9. Attached hereto as Exhibit I is a true and correct copy of the Docket
26 Report of proceedings in the action *Avery Dennison Corp. v. Minnesota Mining*, Civil
27 Action No. 1:01-cv-00125-JJF (D. Del. filed Feb. 23, 2001).

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1 10. Attached hereto as Exhibit J is a true and correct copy of Avery's
2 COMPLAINT against 3M filed on May 3, 2010 in the action *Avery Dennison Corp. v.*
3 *3M Co.*, Civil Action No. 1:10-cv-00372-GMS, Dkt. #1 (D. Del.).

4 11. Attached hereto as Exhibit K is a true and correct copy of the Docket
5 Report of proceedings in the action *3M Innovative Prop., et al v. Avery-Dennison*,
6 Civil Action No. 01-CV-1781 JRT/FLN (D. Minn. filed Sept. 27, 2001).

7 Judicial notice of the foregoing exhibits is appropriate under the Federal Rules
8 of Evidence, which require that judicial notice be taken of facts not subject to
9 reasonable dispute and that are "capable of accurate and ready determination by
10 reference to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid.
11 201(b). A court "may take notice of proceedings in other courts, both within and
12 without the federal judicial system, if those proceedings have a direct relation to
13 matters at issue." *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*,
14 971 F. 2d 244, 248 (9th Cir. 1992); *see also Schweitzer v. Scott*, 469 F. Supp. 1017,
15 1020 (C.D. Cal. 1979) ("[T]he Court is empowered to and does take judicial notice of
16 court files and records.").

17 The Minnesota patent action brought by 3M against Avery involves the same
18 parties, the same products, and includes substantially the same facts and contentions as
19 this action. In particular, as set forth in detail in the moving papers, there is clear and
20 substantial overlap between factual and legal issues pertaining to Avery's affirmative
21 claims in this action and its affirmative defenses in the Minnesota patent action.

22 Judicial notice is appropriate "at any stage of the proceeding." Fed. R. Evid.
23 201(f). The documents listed above were filed in the related Minnesota patent action
24 or other proceedings between the parties to this action, and hence are all appropriate
25 for judicial notice.

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1 For all of the foregoing reasons, 3M respectfully requests that the Court take
2 judicial notice of the above-listed documents.

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4 DATED: December 13, 2010

GIBSON, DUNN & CRUTCHER LLP

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7 By: /s/ M. Sean Royall
 M. Sean Royall

8 Attorneys for Defendants
9 3M Company and
10 3M Innovative Properties Company

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