

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EVERGREEN ADHESIVES, INC. f.k.a.
WESTECH AEROSOL CORPORATION,

Plaintiff,

v.

3M COMPANY, and GTA-NHT, Inc.,

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Evergreen Adhesives, Inc. (“Evergreen”), for its Complaint against Defendant 3M COMPANY, (“3M Co.”), a Delaware Corporation, and GTA-NHT, Inc., (“GTA-NHT”) d/b/a Northstar Chemicals, Inc. (“Northstar”), a Massachusetts Corporation and a wholly-owned subsidiary of 3M Co. (together with GTA-NHT, “3M”), states and alleges as follows:

NATURE OF ACTION

1. This is an action for infringement of U.S. Patent No. 7,705,056 (“the ‘056 patent”). This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

PARTIES

2. Plaintiff Evergreen, formerly known as Westech Aerosol Corporation, is a Georgia corporation with its principal place of business in Bremerton, Washington.

3. Defendant 3M Co. is a Delaware corporation with its principal place of business in 3M Center, Saint Paul, Minnesota 55144. 3M Co. has regular and established places of business in Massachusetts, including in Chelmsford,¹ Methuen² and Rockland.³

4. Defendant GTA-NHT, Inc. is a Massachusetts Corporation, formed in or about 2010, with a principal and regular and established place of business at 30 Commerce Road, Rockland, MA 02370. GTA-NHT was at all relevant times and is still a wholly-owned subsidiary of 3M Co.

5. In or about October 2006, 3M Co. purchased all outstanding shares of Northstar, which manufactured and sold low volatile organic compounds (“VOC” or “VOCs”) spray adhesives. In or about June 2012, Northstar merged into GTA-NHT; GTA-NHT becoming the sole surviving company. On information and belief, Northstar no longer exists as a corporate entity and its interests have merged into GTA-NHT.

JURISDICTION AND VENUE

6. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over 3M Co. because 3M Co. regularly conducts business in the District of Massachusetts and purposefully directs infringing

¹ https://www.3m.com/3M/en_US/plant-locations-us/chelmsford/ (last accessed May 23, 2022).

² https://www.3m.com/3M/en_US/plant-locations-us/methuen/ (last accessed May 23, 2022).

³ https://www.3m.com/us/mfg_industrial/GeneralTapesAdhesives/GTA_ContactUs.html (last accessed May 23 2022).

acts to this district, such that this Court's assertion of jurisdiction over 3M Co. does not offend traditional notions of fair play and due process.

8. This Court has personal jurisdiction over GTA-NHT because it regularly conducts business in the District of Massachusetts and purposefully directs infringing acts to this district, such that this Court's assertion of jurisdiction over GTA-NHT does not offend traditional notions of fair play and due process.

9. Venue is proper in this district under the provisions of 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because 3M Co. and GTA-NHT have committed acts of infringement in this judicial district and have regular and established places of business in this judicial district, as alleged above.

EVERGREEN'S PATENT

10. The United States Patent and Trademark Office ("USPTO") duly issued the '056 patent, titled "Aerosol Adhesive and Canister-Based Aerosol Adhesive System," on April 27, 2010. The '056 patent is valid and enforceable. Copies of the '056 patent and *inter partes review* certificate are attached hereto as Exhibit 1.

11. The '056 patent issued in the name of the inventor, Dr. David Carnahan ("Dr. Carnahan"). Dr. Carnahan is a named inventor on several U.S. patents. Dr. Carnahan holds degrees in mathematics, chemistry, and business administration and earned a PhD from Emory University in 1986.

12. Dr. Carnahan founded Evergreen, formerly known as Westech Aerosol Corp., in Bremerton, Washington. Evergreen designs, manufactures, and sells aerosol

adhesives, including those that are low in VOCs. Over the years, Evergreen's low VOC aerosol adhesives have enjoyed market acceptance and industry recognition.

13. Evergreen is the owner, by assignment, of all right, title, and interest in and to the '056 patent including all rights to enforce the '056 patent.

14. The '056 patent is directed to a novel aerosol adhesive canister system. The patent was born out of the need to reduce emissions of VOCs, toxic air contaminants, and stratospheric ozone-depleting compounds from the application of adhesives, adhesive primers, sealants, and sealant primers.

15. In April 1989, the Southern California Air Quality Management District ("SCAQMD")⁴ adopted Rule 1168 with the goal of reducing VOC emissions from adhesive and sealant applications. Rule 1168 limits VOC emissions across eighteen different categories of emissions and requires Quantity and Emissions Reporting ("QER") from adhesive and sealant vendors. The SCAQMD has regularly amended Rule 1168 to increase the restrictions on VOCs.⁵ The rule has guided emissions standards across the United States.

⁴ The SCAQMD is the air pollution control agency for Orange County and the urban portions of Los Angeles, Riverside and San Bernardino counties. The area covers over 10,743 square miles and is home to over 16.8 million people, which accounts for about half the state of California.

⁵ Rule 1168 was first adopted on April 7, 1989, and has subsequently been amended many times over the years, placing ever more stringent restrictions on VOC emissions: March 2, 1990, Feb. 1, 1991, July 19, 1991, August 2, 1991, December 4, 1992, December 10, 1993, April 11, 1997, February 13, 1998, September 15, 2000, June 7, 2002, July 12, 2002, October 3, 2003, January 7, 2005, October 6, 2017.

16. Chemical solvents and propellants aid the expulsion of liquid mounting adhesives from aerosol cans, but these agents emit VOCs, which contribute to atmospheric pollution. Water-based adhesives pollute the atmosphere less. However, initial water-based solutions suffered from slow tack times⁶ and reduced adhesion, making them unsuitable for commercial use. Regulators sought to encourage development of a water-based formulation that would meet the performance standards (such as tack time and adhesive strength) of solvent-based adhesives. Established companies in the industry voiced their skepticism that such a solution was feasible. In 1992, three years after the SCAQMD promulgated Rule 1168, 3M wrote to the agency, complaining: “We cannot meet these limits with currently available technology.” Such complaints persisted. Ten years later, in 2002, Illinois Tools Works, a competing spray adhesives manufacturer, complained in a public forum to the SCAQMD that the proposed phase-out of methylene chloride adhesives would effectively mandate the use of water-based adhesives and that no vendor had a cost-effective solution to the problems of reduced tack time and adhesive strength.⁷

17. For years, the adhesives industry struggled to find a cost-effective solution to comply with increasing government regulation limiting the use of VOCs in adhesive products. Industry efforts to use non-VOC propellants in existing spray adhesive

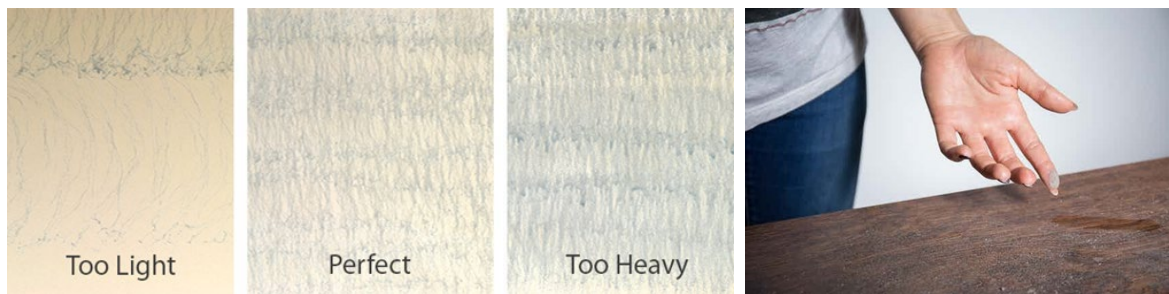
⁶ “Tack time” or “tack range” is the amount of time during which an adhesive film remains tacky. If an adhesive’s tack time is too short the technician has insufficient time to place the surfaces together.

⁷ <http://www3.aqmd.gov/hb/2002/July/0206min.html> (last accessed May 23, 2022).

applicators resulted in unusable spray patterns, with adhesives applied too coarse, too wet, or too thin for their intended use.

18. The '056 patent solved these problems. Dr. Carnahan's invention allows for the delivery of a proper amount of adhesive via a properly pressurized non-VOC propellant with a matched spray nozzle.

19. Due to his industry experience, Dr. Carnahan knew that most propellants were typically stored at about 70 psi (pounds per square inch) using a 50/50 mix of propane and isobutene. This mix of traditional hydrocarbon propellants dilutes the adhesive and helps it to spray more finely. Dr. Carnahan also knew that a non-VOC compressed gas propellant normally produces an undesirably coarser spray because non-VOC compressed gases fail to significantly reduce the viscosity of the adhesive. Using a non-VOC propellant at a typical pressure of 70 psi results in unusable spray patterns, as demonstrated in the following images:



20. If the spray pattern is too heavy, as shown in the rightmost image above, the adhesive "skins over" and does not dry. The solvent does not evaporate, resulting in a "wet" mess that does not adhere. On the other hand, if the spray pattern is too light there is insufficient adhesive to bind the surfaces. It takes an optimized spray pattern to

achieve the desired results. Achieving the necessary spray pattern requires a number of factors to align.

21. Dr. Carnahan's invention solved these problems by delivering a correctly balanced spray pattern using non-VOC propellant at an appropriate pressure with a matched spray nozzle. Mismatching any of these variables results in a too light or a too heavy spray pattern, as discussed above.

EVERGREEN, THE '056 PATENT AND 3M'S NOTICE

22. Dr. Carnahan produced his invention through his company, Evergreen. As CEO of Evergreen, Dr. Carnahan assembled an experienced management team that developed the company into a leader in the adhesives industry. Evergreen was the leader in adhesive solutions for several niche industries, developing a broad portfolio of technically advanced adhesives, including WT-MP13 (image at right), a low VOC, multi-purpose canister-based spray adhesive that was eco-friendly.



23. As Evergreen's market share grew, 3M realized that, notwithstanding its prior acquisition of Northstar, it needed help innovating and competing in the marketplace. 3M began systematically poaching Evergreen's employees. On or about 2005, 3M hired away Danny Gill, Evergreen's head of sales, and soon thereafter hired Ed Limmeroth, another Evergreen sales professional. In 2007, 3M hired away Ken Harker, another Evergreen sales representative. 3M has known about the then-pending patent

application that issued as the '056 patent since 2005, and about the '056 patent itself since 2010 because, among other reasons, these three employees, who left Evergreen to join 3M, were knowledgeable about the '056 patent and its application. On information and belief, these former Evergreen employees and others will testify that it was generally known at 3M, including by management and by those responsible for formulating adhesives for 3M, that Dr. Carnahan had one or more issued U.S. patents covering Evergreen's adhesive formulations.

24. On information and belief, 3M formulated certain low-VOC adhesive products having the same functionality and characteristics as Evergreen's products covered by the '056 patent. At the time 3M formulated such products, it knew that Evergreen's products were "patent pending" and were covered by the '056 patent.

25. 3M was aware at least as early as 2005 that Evergreen had pending patent applications covering its low-VOC canister adhesive products. At that time, Dr. Carnahan met with 3M representatives, who expressed an interest in purchasing Evergreen's assets, including all of Evergreen's intellectual property rights, which included a then-pending patent application that issued as the '056 patent. Evergreen informed 3M that Evergreen's low-VOC canister adhesive products were "patent pending."

26. 3M has been on notice of the '056 patent since at least January 28, 2016, when 3M cited the '056 patent as prior art in a patent application, Pub. No. WO2016081357A1, that issued to 3M Innovative Properties Company as U.S. Patent

No. 10,590,312 B2. On information and belief, 3M Innovative Properties Company is wholly owned by 3M and it exists to hold, license, and enforce intellectual property assets for the benefit of 3M and its subsidiaries.

LITIGATION HISTORY AND DEFENSE OF THE '056 PATENT

27. Evergreen first sued 3M for infringement of the '056 patent in January 2017 in the Western District of Washington in an action styled *Westech Aerosol Corporation v. 3M Company*, No. 17-cv-05067. The '056 patent has since been subject to intense scrutiny, and its fundamental inventive leap has withstood these challenges.

28. The following month, Evergreen sued Wilsonart, LLC ("Wilsonart") for infringement of the '056 patent in the Western District of Washington in an action styled *Westech Aerosol Corporation v. 3M Company*, No. 17-cv-05088.

29. In May 2017, the Supreme Court of the United States issued its opinion in *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017), interpreting the patent venue statute, 28 U.S.C. § 1400(b).

30. On December 6, 2017, in the 3M case, the Western District of Washington held that venue was not proper under *TC Heartland* because 3M had no regular and established place of business in that district and dismissed the complaint against 3M without prejudice.

31. On February 3, 2018, 3M filed a petition for *inter partes review* ("IPR") before the U.S. Patent Trial and Appeal Board ("PTAB") (IPR2018-00576), challenging the validity of every claim of the '056 patent on obviousness grounds.

32. On September 5, 2018, Wilsonart and Evergreen stipulated to stay the Wilsonart case pending the resolution of 3M's IPR against the '056 patent. The court granted the stay.

33. In a Final Written Decision issued on August 7, 2019, the PTAB held that 3M had failed to show that Claims 3, 4, and 9-11 of the '056 patent were invalid.

34. The Federal Circuit affirmed the PTAB's determination on June 25, 2021.

35. The Wilsonart case subsequently resumed in the Western District of Washington. Evergreen filed an amended complaint on May 13, 2022, in light of the proceedings before the PTAB and the Federal Circuit.

3M'S INFRINGEMENT

36. Claim 1 of the '056 patent is directed to "[a]n aerosol adhesive canister system, comprising: a gas cylinder canister; a hose connected to said canister; a spray gun connected to said hose; a hydrocarbon propellant held within said canister; and an aerosol adhesive held within said canister, said aerosol adhesive comprising a solvent mixture selected to have volatility characteristics for producing a specific spray pattern; a polymeric base in said solvent mixture; and a compressed gas dissolved in said solvent mixture."

37. Claims 3 and 4 depend from Claim 1 and require that "said compressed gas is pressurized in said canister" "to about 200 psi" and "in a range of about 160-200 psi," respectively.

38. 3M infringes Claims 3 and 4 of the '056 patent.

39. 3M sells aerosol adhesive products that infringe Claims 3 and 4 of the '056 patent because they practice every limitation of Claim 1 of the '056 patent, either literally or under the doctrine of equivalents, from which Claims 3 and 4 depend, and practice all further limitations disclosed in Claims 3 and 4, either literally or under the doctrine of equivalents.

40. The 3M accused products include but are not limited to: PB910 and PB 2008 (including all variants of color, UPC and 3M ID), 3M™ Foam Fast 74NF Cylinder Spray Adhesive (Clear), 3M™ General Purpose 60CA Cylinder Spray Adhesive, 3M™ Hi-Strength Non-Flammable 98NF Cylinder Spray Adhesive (Clear), 3M™ Hi-Strength Non-Flammable 98NF Cylinder Spray Adhesive (Red), 3M™ Hi-Strength Post Forming 94 CA Cylinder Spray Adhesive (Clear or Red), 3M™ Hi-Strength Postforming 94 CA Cylinder Spray Adhesive (Clear, Fragrance-Free), 3M™ Hi-Strength Postforming 94 CA Cylinder Spray Adhesive (Red, Fragrance-Free), 3M™ HoldFast 70 Cylinder Spray Adhesive (Clear), and Hi-Strength 94 ET Spray Adhesive (together “the 3M Accused Products”).

41. The 3M Accused Products practice every limitation of Claims 3 and 4 of the '056 patent, either directly or indirectly. Attached as Exhibit 2 is an exemplary claim chart of an allegedly infringing system – the 3M/Northstar PB910 Adhesive Spray Canister, an image of which is reproduced below:



See Exhibit A to Claim Chart (Exhibit 2).

42. The 3M Accused Products are designed to operate with and do operate with an attached hose and gun. For illustrative purposes only, below is an image of 3M/Northstar's PB910 Adhesive Spray Canister with an attached hose and gun:



2: Hand tighten smaller hose end to canister.



4: Attach standard gun to large end of hose. Hand tighten, using a 3/4" wrench to fully tighten.

See Exhibit A to Claim Chart (Exhibit 2).

43. The 3M Accused Products include a canister containing a hydrocarbon propellant. For example, the 3M/Northstar PB910 Adhesive Spray Canister contains propane and isobutene, both of which are hydrocarbon propellants.

SECTION 2: INGREDIENTS

<u>Ingredient</u>	<u>C.A.S. No.</u>	<u>% by Wt.</u>
Methyl Acetate	79-20-9	65-75%
Dimethyl Ether	115-10-6	<1%
Propane	74-98-6	<1%
Isobutane	75-28-5	<1%

See Exhibit B to Claim Chart (Exhibit 2) (annotations added).

44. The 3M Accused Products' aerosol adhesive comprises a solvent mixture selected to have volatility characteristics for producing a specific spray pattern, which is identified as Methyl Acetate in the 3M/Northstar PB910 Adhesive Spray Canister.



6: Turn gun trigger lock counter clockwise to open gun fully.

See Exhibit A to Claim Chart (Exhibit 2) (annotations added).

45. The 3M Accused Products include a polymeric base in the solvent mixture. For example, the 3M/Northstar PB910 Adhesive Spray Canister includes a "blend of synthetic rubbers dissolved in non-chlorinated organic solvents" having a 26 - 36% solid polymeric base.

Appearance:	Clear or Red
Glue Solids	26 - 36%
Specific Gravity:	.95 ± 0.02 gm/cc (7.9 ± 0.2 lb/gal)
Shear Adhesion:	> 100 psi
Shear Adhesion Failure Temp (SAFT):	>200 ° F
VOC less water and exempt solvent:	Canister: <40 g/l Bulk: <4 gm/liter

See Exhibit C to Claim Chart (Exhibit 2) (annotations added).

46. The 3M Accused Products contain a compressed gas dissolved in the solvent mixture. Specifically, the 3M/Northstar PB910 Adhesive Spray Canister contains compressed and dissolved nitrogen of about 29.1% by weight. .

47. Testing of the 3M/Northstar PB910 Adhesive Spray Canister found that the compressed gas in the canister is pressurized to “about 200 psi” and within the range of “about 160-200 psi.”

FIRST CAUSE OF ACTION (Against All Defendants)
DIRECT INFRINGEMENT OF THE '056 PATENT

48. Evergreen incorporates by reference the allegations in Paragraphs 1-47, as set forth above.

49. The '056 patent discloses and claims an Aerosol Adhesive and Canister-Based Aerosol Adhesive System.

50. Evergreen is the owner, by assignment, of all right, title, and interest in the '056 patent.

51. Defendant 3M has directly infringed at least Claims 3 and 4 of the '056 patent in violation of 35 U.S.C. § 271(a).

52. 3M has and continues to make, use, offer to sell, or sells products practicing Claims 3 and 4 of the '056 patent within the United States or imports into the United States at least for testing, demonstration, and sales purposes, infringing devices by combining the 3M canisters with hose and gun parts. Attached as Exhibit 2 is a claim chart demonstrating the element-by-element infringement of Claims 3 and 4 the '056 patent by an exemplary 3M Accused Product.

53. 3M's infringement of Claims 3 and 4 of the '056 patent as alleged herein has been willful because it has continued since 3M had knowledge of the '056 patent and because 3M continued to infringe after it knew or should have known that it was infringing the '056 patent. 3M has continued using and selling its infringing products even after losing its invalidity challenge before the PTAB and the Federal Circuit. 3M has had knowledge of its infringement as early as 2010 and no later than about January 27, 2017, at the time it was served with the initial complaint in the Western District of Washington action.

54. Evergreen has continuously marked its products embodying at least one claim of the '056 patent in compliance with 35 U.S.C. § 287 by including the word "patented" on labels affixed to such products together with the patent number since at least as early as July 2010 and at least as late as December 2021.

55. As a direct result of 3M's unlawful and willful infringement of the '056 patent, Evergreen has suffered and will continue to suffer damages in an amount to be proven at trial. Pursuant to 35 U.S.C. § 284, Evergreen is entitled to recover from 3M the

damages adequate to compensate for such infringement, in an amount no less than a reasonable royalty, which has yet to be determined.

56. As a direct result of 3M's infringement, Evergreen has suffered irreparable injury such that remedies available at law are inadequate to compensate for that injury.

57. Considering the balance of hardships between the Plaintiff and Defendant, a remedy in equity is warranted.

SECOND CAUSE OF ACTION (Against All Defendants)
INDUCED INFRINGEMENT OF THE '056 PATENT

58. Evergreen incorporates by reference the allegations of Paragraphs 1-47, as set forth above.

59. The '056 patent discloses and claims an Aerosol Adhesive and Canister-Based Aerosol Adhesive System.

60. Evergreen is the owner, by assignment, of all right, title, and interest in the '056 patent.

61. Defendant 3M has induced infringement of Claims 3 and 4 of the '056 patent in violation of 35 U.S.C. § 271(b) by causing others to make, use, offer to sell, or sell products practicing Claims 3 and 4 of the '056 patent within the United States or to import such products into the United States with knowledge and intent that such sale or use directly infringes at least Claims 3 and 4 of the '056 patent. 3M had such knowledge as early as 2010 and no later than about January 27, 2017, when it was served with the initial complaint in the Western District of Washington action. 3M has known since June 25,

2021, that its invalidity challenge as to Claims 3 and 4 of the '056 patent was unsuccessful, yet it continues to induce infringement of those claims.

62. 3M sells 3M Accused Products that practice every limitation of Claims 3 and 4 of the '056 patent (i.e., canisters containing a hydrocarbon propellant and an aerosol adhesive comprising a solvent mixture selected to have volatility characteristics for producing a specific spray pattern, a polymeric base in said solvent mixture, and a compressed gas dissolved in the solvent mixture at a pressure of about 200 psi and between 160-200 psi), specifically intending that the 3M Accused Products will be combined with hose and gun parts identified and sold by 3M (or sold by others), and thus imported, resold or used in a manner by others that directly infringes at least Claims 3 and 4 of the '056 patent. Attached as Exhibit 2 is a claim chart demonstrating the element-by-element infringement of Claims 3 and 4 of the '056 patent by an exemplary 3M Accused Product.

63. 3M publishes and distributes detailed instructions for its resellers and users instructing resellers and users on how to combine a canister containing all of the same components and ingredients identified above in connection with the 3M Accused Products (i.e., canisters containing a hydrocarbon propellant and an aerosol adhesive comprising a solvent mixture selected to have volatility characteristics for producing a specific spray pattern, a polymeric base in said solvent mixture, and a compressed gas dissolved in the solvent mixture at a pressure of about 200 psi and between 160-200 psi)

with hose and gun parts identified and sold by 3M (or sold by others) in a manner that directly infringes at least Claims 3 and 4 of the '056 patent.

64. For example, 3M instructs its customers on how best to combine infringing canisters, hoses, and guns.

65. The infringement by 3M of Claims 3 and 4 the '056 patent as alleged herein has been willful because it has continued since 3M had knowledge of the '056 patent, because 3M continued to infringe after it knew or should have known that it was infringing the '056 patent, and after it lost its invalidity challenge before the PTAB and the Federal Circuit.

66. Evergreen has continuously marked its products embodying at least one claim of the '056 patent in compliance with 35 U.S.C. § 287 by including the word "patented" on labels affixed to such products together with the patent number since at least as early as July 2010 and at least as late as December 2021.

67. As a direct result of 3M's unlawful and willful infringement of Claims 3 and 4 of the '056 patent, Evergreen has suffered and will continue to suffer damages in an amount to be proven at trial. Pursuant to 35 U.S.C. § 284, Evergreen is entitled to recover from 3M the damages adequate to compensate for such infringement, in an amount no less than a reasonable royalty, which has yet to be determined.

68. As a direct result of 3M's infringement as alleged herein, Evergreen has suffered irreparable injury such that remedies available at law are inadequate to compensate for that injury.

69. Considering the balance of hardships between the Plaintiff and Defendant, a remedy in equity is warranted.

THIRD CAUSE OF ACTION
CONTRIBUTORY INFRINGEMENT OF THE '056 PATENT

70. Evergreen incorporates by reference the allegations of Paragraphs 1-47, as set forth above.

71. The '056 patent discloses and claims an Aerosol Adhesive and Canister-Based Aerosol Adhesive System.

72. Evergreen is the owner, by assignment, of all right, title, and interest in the '056 patent.

73. Defendant 3M has contributed to the infringement of at least Claims 3 and 4 of the '056 patent in violation of 35 U.S.C. § 271(c) by selling a component of an infringing combination, namely a canister containing all of the same components and ingredients identified above (i.e., canisters containing a hydrocarbon propellant and an aerosol adhesive comprising a solvent mixture selected to have volatility characteristics for producing a specific spray pattern, a polymeric base in said solvent mixture, and a compressed gas dissolved in the solvent mixture at a pressure of about 200 psi and between 160-200 psi) with knowledge that this component constitutes a material part of the invention, that this component was especially made or especially adapted for use in an infringement of Claims 3 and 4 of the '056 patent, and that this component is not a staple article or commodity of commerce suitable for substantial non-infringing use. 3M had such knowledge as early as 2010 and no later than about January 27, 2017, when it

was served with the initial complaint in the Western District of Washington action. Attached as Exhibit 2 is a claim chart demonstrating the element-by-element infringement of Claims 3 and 4 the '056 patent by an exemplary 3M Accused Product.

74. A canister containing all of the same components and ingredients identified above (i.e., canisters containing a hydrocarbon propellant and an aerosol adhesive comprising a solvent mixture selected to have volatility characteristics for producing a specific spray pattern, a polymeric base in said solvent mixture, and a compressed gas dissolved in the solvent mixture at a pressure of about 200 psi and between 160-200 psi) is a material part of the invention claimed in Claims 3 and 4 of the '056 patent because all that is required to directly infringe Claims 3 and 4 is to combine the canister with a hose and a gun.

75. A canister containing all of the same components and ingredients identified above (i.e., canisters containing a hydrocarbon propellant and an aerosol adhesive comprising a solvent mixture selected to have volatility characteristics for producing a specific spray pattern, a polymeric base in said solvent mixture, and a compressed gas dissolved in the solvent mixture at a pressure of about 200 psi and between 160-200 psi) is especially made or especially adapted for use in an infringement of Claims 3 and 4 of the '056 patent because it was made or adapted to be combined with a hose and a gun in a manner that directly infringes at least Claims 3 and 4 of the '056 patent.

76. A canister containing all of the same components and ingredients identified above (i.e., a canister containing a hydrocarbon propellant and an aerosol adhesive

comprising a solvent mixture selected to have volatility characteristics for producing a specific spray pattern, a polymeric base in said solvent mixture, and a compressed gas dissolved in the solvent mixture) is not a staple article or commodity of commerce suitable for substantial non-infringing use because it has no other commercial use than to be combined with a hose and a gun in a manner infringing at least Claims 3 and 4 of the '056 patent.

77. 3M's infringement of Claims 3 and 4 of the '056 patent as alleged herein has been willful because it has continued since 3M had knowledge of the '056 patent and because 3M continued to infringe after it knew or should have known that it was infringing Claims 3 and 4 of the '056 patent, including after its invalidity challenges before the PTAB and Federal Circuit failed.

78. Evergreen has continuously marked its products embodying at least one claim of the '056 patent in compliance with 35 U.S.C. § 287 by including the word "patented" on labels affixed to such products together with the patent number since at least as early as July 2010 and at least as late as December 2021.

79. As a direct result of 3M's unlawful and willful infringement of the '056 patent, Evergreen has suffered and will continue to suffer damages in an amount to be proven at trial. Pursuant to 35 U.S.C. § 284, Evergreen is entitled to recover from 3M the damages adequate to compensate for such infringement, in an amount no less than a reasonable royalty, which has yet to be determined.

80. As a direct result of 3M's infringement as alleged herein, Evergreen has suffered irreparable injury such that remedies available at law are inadequate to compensate for that injury.

81. Considering the balance of hardships between the Plaintiff and Defendant, a remedy in equity is warranted.

JURY DEMAND

82. A jury trial is demanded on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Evergreen respectfully requests that the Court award the following relief:

a. A judgment in favor of Evergreen that 3M has infringed Claims 3 and 4 of the '056 patent, directly (either literally or under the doctrine of equivalents) and/or by inducement and/or contribution;

b. A permanent injunction barring 3M, and all others acting in concert with 3M, from infringing, inducing others to infringe, or contributing to the infringement of the '056 patent, and a permanent injunction barring 3M, and all others acting in concert with 3M, from making, using, offering to sell or selling the 3M Accused Products and other products that are not more than colorably different from the 3M Accused Products.

c. A judgment that 3M has willfully infringed Claims 3 and 4 of the '056 patent;

d. A judgment and order requiring that 3M shall account for and pay Evergreen the damages to which Evergreen is entitled as a consequence of 3M's infringement of Claims 3 and 4 of the '056 patent, such damages to be trebled because of the willful and deliberate character of the infringement;

e. A judgment and order requiring that 3M shall additionally account for and pay Evergreen damages and/or disgorge profits for the period of infringement of Claims 3 and 4 of the '056 patent following the period of damages established at trial;

f. A judgment and order that Evergreen is entitled to pre-judgment and post-judgment interest;

g. A judgment and order finding this case to be exceptional under 35 U.S.C. § 285, and that Evergreen is entitled to its reasonable attorney fees, costs, and expenses incurred prosecuting this action; and

h. Any and all other award or relief that the Court deems just and equitable.

Dated: May 27, 2022

Respectfully submitted,

/s/ Sandra J. Badin
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