IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE GILLETTE COMPANY, Plaintiff, v. ENERGIZER HOLDINGS, INC., SCHICK MANUFACTURING, INC., EVEREADY BATTERY COMPANY, INC., and ENERGIZER BATTERY, INC., Defendants.	Civil Action No. 03-12455 (DPW) JURY TRIAL DEMANDED

REPLY TO COUNTERCLAIMS

Plaintiff and counterclaim-defendant The Gillette Company ("Gillette"), by its attorneys, replies to Defendants' Counterclaims as follows:

COUNT ONE
Declaratory Judgment of Non-Infringement of The Patents in Suit

1. Avers that the allegations of paragraph 1 require no substantive response, but to the extent a responsive pleading is required, denies the allegations contained therein.

2. Admits that Defendants purport to bring this counterclaim under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the Patent Laws of the United States, 35 U.S.C. § 101, et seq.; and denies that Defendants are entitled to any relief under those statutes.

3. Admits that Defendants purport to invoke the Court's jurisdiction pursuant to 28 U.S.C. §§ 2201, 2202, 1331 and 1338(a).

4. Admits that venue is proper in this District.

5. Denies the allegations in paragraph 5, except admits that Gillette has charged Defendants with infringement and/or inducing infringement of the US 6,415,517 and 6,499,595 patents ("'517 and '595 patents").

6. Denies the allegations in paragraph 6.

7. Denies the allegations in paragraph 7, except admits that Gillette asserts that Defendants are infringing and/or inducing infringement of the '517 and '595 patents.

COUNT TWO
Declaratory Judgment of Invalidity of The Patents in Suit

8. Replying to paragraph 8, repeats and re-alleges its replies to paragraphs 1 through 7.

9. Admits that Defendants purport to maintain a claim for declaratory judgment of the invalidity of the '517 and '595 patents.

10. Denies the allegations in paragraph 10, except admits that Gillette has charged Defendants with infringement and/or inducing infringement of the '517 and '595 patents.

11. Denies the allegations in paragraph 11.

12. Denies the allegations in paragraph 12, except admits that Gillette asserts that Defendants are infringing and/or inducing infringement of the '517 and '595 patents.

FIRST DEFENSE

Each of the counterclaims fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendants are not entitled to a declaratory judgment of non-infringement of the '517 and '595 patents, by virtue of their actions infringing the same.

THIRD DEFENSE

Defendants are not entitled to a declaratory judgment, by virtue of the validity of the '517 and '595 patents.

FOURTH DEFENSE

Defendants are not entitled to recover damages, by virtue of their failure to mitigate damages.

FIFTH DEFENSE

Defendants are not entitled to recover damages, by virtue of the doctrine of set-off.

SIXTH DEFENSE

Each of the counterclaims is barred by the doctrines of unclean hands and inequitable conduct.

SEVENTH DEFENSE

Each of the counterclaims is barred, in whole or in part, by the doctrines of waiver, laches, and estoppel.

EIGHTH DEFENSE

Defendants are not entitled to costs, expenses and attorneys' fees under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE Gillette requests dismissal with prejudice of Defendants' counterclaims, denial of any relief to the Defendants, and the award of attorneys' fees and costs for the defense of Defendants' counterclaims, and granting Gillette such other and further relief as the Court deems just and proper.

JURY DEMAND

Gillette demands a trial by jury on all issues so triable.

THE GILLETTE COMPANY

By its attorneys,

/s/ Levina Wong

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