

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SANFORD L.P. (d/b/a DYMO), DYMO  
B.V.B.A., and NEWELL RUBBERMAID,  
INC.

Plaintiffs,

v.

Civil Action No. 1:14-cv-07616-VSB

ESSELTE AB, ESSELTE LEITZ GMBH &  
CO. KG, ESSELTE CORPORATION, and  
DAVID BLOCK

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT  
ESSELTE CORPORATION TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant Esselte Corporation (“Esselte Corp.”) by and through its undersigned counsel, respond to the First Amended Complaint of Plaintiffs Sanford L.P. (d/b/a DYMO), DYMO B.V.B.A., and Newell Rubbermaid, Inc. (collectively, “Plaintiffs”) as follows. This Answer is made on behalf of Esselte Corporation only. Esselte AB, Esselte Leitz GmbH & Co. KG, and David Block have responded separately to Plaintiffs’ First Amended Complaint. Esselte Corp. denies each and every allegation contained in the First Amended Complaint, including any allegations purportedly contained in the title headings, that is not expressly admitted below. Any factual allegation below is admitted only as to the specific admitted facts, not as to any purported conclusions, characterizations, implications, or speculations that arguably follow from the admitted facts. Esselte Corp. denies that Plaintiffs are entitled to the relief requested, or to any other relief.

**NATURE OF THE ACTION**

1. Esselte Corp. admits that the Complaint purports to allege infringement of U.S. Patent Nos. 5,826,995, 6,152,623, 6,890,113, 7,140,791, and 7,990,567 (collectively, the “Asserted Patents”), but denies that there is any legal or factual basis for any such claims or that Plaintiffs are entitled to any damages or injunctive relief. Esselte Corp. admits that the Complaint purports to allege claims of breach of contract of the Stock Purchase Agreement (“SPA”) and David Block’s Separation Agreement as well as claims of tortious interference with contractual relations. To the extent those claims have been asserted against Esselte Corp., Esselte Corp. has moved to dismiss those claims under Fed. R. Civ. P. 12(b)(6).

**THE PARTIES**

2. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and on that basis denies them.

3. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and on that basis denies them.

4. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and on that basis denies them.

5. Esselte Corp. admits that Esselte AB is a Swedish corporation with its principal place of business located at Sundbybergsvägen 1, 171 73 Solna, Sweden.

6. Esselte Corp. admits that Esselte Leitz GmbH & Co. KG is a German partnership with its principal place of business located in Stuttgart, Germany.

7. Esselte Corp. admits that it is an Arizona company with an address of 8465 N. 90th Street Pima Center, Suite 6 Scottsdale, AZ 85258. Esselte Corp. admits that it has a registered agent, National Registered Agents Inc., in Arizona, located at 2390 Camelback Rd.,

Phoenix, AZ 85016. Esselte Corp. denies the remaining allegations in Paragraph 7.

8. Esselte Corp. admits that it and Esselte Leitz GmbH & Co. KG are each a direct and/or indirect subsidiary of Esselte AB. Esselte Corp. denies the remaining allegations in Paragraph 8.

9. Esselte Corp. admits that David Block is a California citizen, with his residence at 7145 View Avenue, El Cerrito, CA 94530. Esselte further admits that Mr. Block is employed by Esselte. Corp.

10. Paragraph 10 makes allegations as to David Block only ,and thus no response is required from Esselte Corp.

#### **FACTUAL BACKGROUND**

11. Esselte Corp. admits that as of July 28, 2005, Esselte AB owned Goldcup D 892 AB, org. no. 556682-8108, a corporation organized under the laws of the Kingdom of Sweden (“DYMO AB”), as well as Esselte Holdings, Inc., a Delaware corporation and Esselte BVBA, a corporation organized under the laws of the Kingdom of Belgium.

12. Esselte Corp. admits that as of July 28, 2005, DYMO AB, Esselte Holdings, Inc., and Esselte BVBA were in the business of designing, developing, manufacturing, distributing, servicing, selling, marketing and supplying labeling printers, label makers, label embossers and related consumables.

13. Esselte Corp. admits that on July 28, 2005, Newell Rubbermaid, Inc. (“Newell”) entered into a Stock Purchase Agreement (“SPA”) with Esselte AB. Esselte Corp. asserts that the SPA speaks for itself; Esselte Corp. denies the allegations of Paragraph 13 to the extent they are inconsistent with the terms of the SPA. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13, and on that basis denies them.

14. Esselte Corp. asserts that the SPA speaks for itself; Esselte Corp. denies the allegations of Paragraph 14 to the extent they are inconsistent with the terms of the SPA. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14, and on that basis denies them.

15. Esselte Corp. admits that U.S. Patent Numbers 5,826,995, 6,152,623, and 6,890,113, and U.S. Patent Application Numbers 10/975,409 and 10/436,363 are listed in Annex 1 of the Disclosure Schedule as defined by the SPA. Esselte Corp. asserts that the SPA speaks for itself; Esselte Corp. denies the allegations of Paragraph 15 to the extent they are inconsistent with the terms of the SPA. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15, and on that basis denies them.

16. Esselte Corp. admits that certain individuals named as inventors on the face of certain of the Asserted Patents had been employed by various subsidiaries of Esselte AB but denies that all named inventors were employed by subsidiaries of Esselte AB. Esselte Corp. admits that David Block is named as an inventor on the face of U.S. Patent Number 6,890,113, but denies that Mr. Block was employed by DYMO AB, Esselte Holdings, Inc., or Esselte AB (the "Companies"). Esselte Corp. admits that the individuals named in Paragraph 16 remained employed with affiliates or divisions of the Newell Companies for a period of time after the SPA. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16, and on that basis denies them.

17. Esselte Corp. admits on information and belief that before the SPA was executed in 2005, Philip J. Damiano was President of DYMO Corporation. Esselte Corp. admits that Phil Damiano was retained by Newell as the President and General Manager of the DYMO division.

Esselte Corp. further admits that Damiano left DYMO in 2008. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17, and on that basis denies them.

18. Esselte Corp. admits on information and belief that before the SPA was executed in 2005, Mr. Block was Vice President – Product Development for DYMO Corporation. Esselte Corp. admits that Block became the Vice President of Research and Development and Technology for the DYMO division. Esselte Corp. further admits that Block left DYMO in 2011. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 18, and on that basis denies them.

19. Esselte Corp. admits on information and belief that before the SPA was executed in 2005, Kris Vandermeulen was employed by DYMO B.V.B.A. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 19, and on that basis denies them.

20. Esselte Corp. admits that on information and belief before the SPA was executed in 2005, Tom De Fruytier was an International Marketing Manager employed by DYMO B.V.B.A. and his responsibilities included marketing for the LabelWriter product in the Europe and Asia-Pacific regions. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20, and on that basis denies them.

21. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, and on that basis denies them.

22. Esselte Corp. admits that in 2012, Philip Damiano was hired as the President of New Business Development and David Block was hired as the Vice President of Product Development. Esselte Corp. further admits that Kris Vandermeulen and Tom De Fruytier are

employed by Esselte Business B.V.B.A. Esselte Corp. denies the remaining allegations in Paragraph 22.

23. Denied.

24. Esselte Corp. admits that in February 2014, an Application for Equipment Authorization FCC Form 731 was filed with the Federal Communications Commission (“FCC”) on behalf of Esselte Leitz GmbH & Co. KG c/o Esselte Holdings, Inc., which included a draft user manual for the Leitz Icon printer as an exhibit. Esselte Corp. asserts that the draft user manual speaks for itself; Esselte Corp. denies the allegations of Paragraph 24 to the extent they are inconsistent with that document. Esselte Corp. further admits that the FCC issued a Grant of Equipment Authorization for “The Leitz Icon Printer.” Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24, and on that basis denies them.

25. Esselte Corp. admits that Plaintiffs purport to attach a copy of the Leitz Icon Printer user guide as Exhibit 7 to the Complaint. Esselte Corp. admits that page 6 of the user guide attached to the Complaint reads as is shown in Paragraph 25 of the Complaint. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 25, and on that basis denies them.

26. Esselte Corp. admits that the Leitz Icon Printer utilizes Leitz Intelligent Label Cartridges. Esselte admits that page 7 of the user guide attached to the Complaint reads as is shown in Paragraph 26 of the Complaint.

27. Esselte Corp. admits that the Leitz Icon Smart Labeling System includes software. Esselte Corp. further admits that the Leitz Icon Printer can be connected to a computer via a wireless connection. Esselte Corp. denies the remaining allegations in Paragraph 27.

28. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28, and on that basis denies them.

29. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29, and on that basis denies them.

30. Denied.

31. Denied.

32. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32, and on that basis denies them.

33. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33, and on that basis denies them.

34. Denied.

35. Denied.

#### **JURISDICTION AND VENUE**

36. Esselte Corp. admits that Plaintiffs purport to state a claim under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. § 271, *et seq.* Esselte Corp. admits that Plaintiffs purport to assert subject matter jurisdiction under 28 U.S.C. § 1331 and § 1338(a).

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Paragraph 41 of the Complaint states a conclusion of law to which no response is required. To the extent a response is required, Esselte Corp. denies the allegations in Paragraph 41.

42. Denied.

43. Denied.

**COUNT ONE**  
**WILLFUL INFRINGEMENT OF U.S. PATENT NO. 5,826,995**

44. Esselte Corp. incorporates its responses to the foregoing paragraphs as though fully set forth herein.

45. Esselte Corp. admits that the face of U.S. Patent Number 5,826,995 (“the ‘995 Patent”) indicates that it is entitled “Cassette for a Thermal Printer,” and issued on October 27, 1998. Esselte Corp. admits that a purported copy of the ‘995 Patent was attached as Exhibit 2 to the Complaint. Esselte Corp. denies the remaining allegations in Paragraph 45.

46. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46, and on that basis denies them.

47. Esselte Corp. admits that the ‘995 Patent contains the text: “a tape holding case for a thermal printer, said tape holding case holding at least a supply of image receiving tape and having an outlet through which the image receiving tape can be fed out, the tape holding case having a wall portion adjacent the outlet, wherein the wall portion is configured and dimensioned to cooperate with an output roller of a printing device into which the tape holding case is inserted, with the wall portion and roller both contacting the tape so that rotation of the roller slides the tape against the wall portion to feed the tape out of the tape holding case.”

48. Denied.

49. Denied.



50. Denied.

51. Denied.

52. Denied.

**COUNT TWO**  
**WILLFUL INFRINGEMENT OF U.S. PATENT NO. 6,152,623**

53. Esselte Corp. incorporates its responses to the foregoing paragraphs as though fully set forth herein.

54. Esselte Corp. admits that the face of U.S. Patent Number 6,152,623 (“the ‘623 Patent”) indicates that it is entitled “Tape Printing Apparatus and Tape Holding Cases,” and issued on November 28, 2000. Esselte Corp. admits that a purported copy of the ‘623 Patent was attached as Exhibit 3 to the Complaint. Esselte Corp. denies the remaining allegations in Paragraph 54.

55. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55, and on that basis denies them.

56. Esselte Corp. admits that the ‘623 Patent contains the text: “a tape holding case for use with a tape printing apparatus having a print head for printing an image on an image receiving tape and a surface, said print head and said surface having a first printing position in which said print head acts against said surface and a second non-printing position in which said print head and said surface are spaced apart, said tape holding case housing a supply of image receiving tape and having an interaction portion for separating the print head and the surface so that the print head and the surface are in the second position during insertion of the tape holding case in the tape printing apparatus, said interaction portion being arranged so that the print head and the surface are in the first position when the tape holding case is received in said tape printing apparatus.”

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

**COUNT THREE**  
**WILLFUL INFRINGEMENT OF U.S. PATENT NO. 6,890,113**

62. Esselte Corp. incorporates its responses to the foregoing paragraphs as though fully set forth herein.

63. Esselte Corp. admits that the face of U.S. Patent Number 6,890,113 (“the ‘113 Patent”) indicates that it is entitled “Tape Printers,” and issued on May 10, 2005. Esselte Corp. admits that the face of the ‘113 Patent lists David Block as an inventor. Esselte Corp. admits that a purported copy of the ‘113 Patent was attached as Exhibit 4 to the Complaint. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 63, and on that basis denies them.

64. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64, and on that basis denies them.

65. Esselte Corp. admits that the ‘113 Patent contains the text: “a [tape printing] method for printing an image on an image receiving tape comprising the steps of: receiving data containing information for a plurality of individual labels; processing said data to identify a plurality of individual label data fields to be printed on said plurality of individual labels; generating a plurality of individual labels from the identified data; and printing said plurality of individual labels.”

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

**COUNT FOUR**  
**WILLFUL INFRINGEMENT OF U.S. PATENT NO. 7,140,791**

71. Esselte Corp. incorporates its responses to the foregoing paragraphs as though fully set forth herein.

72. Esselte Corp. admits that the face of U.S. Patent Number 7,140,791 (“the ‘791 Patent”) indicates that it is entitled “Vertical Autosizing Printing System,” and issued on November 28, 2006 from U.S. patent application No. 10/975,409. Esselte Corp. admits that a purported copy of the ‘791 Patent was attached as Exhibit 5 to the Complaint. Esselte Corp. asserts that the SPA speaks for itself; Esselte Corp. denies the allegations of Paragraph 72 to the extent they are inconsistent with the terms of the SPA. Esselte Corp. denies the remaining allegations in Paragraph 72.

73. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73, and on that basis denies them.

74. Esselte Corp. admits that the ‘791 Patent contains the text: “a method for printing an image on an elongate image receiving medium comprising the steps: inputting data defining the image to be printed; selecting a vertical printing mode in which the image is to be printed across the width of the elongate image receiving medium; initiating a print operation for printing the image; generating print data, in accordance with a print data generation method which ensures that the image fits in the width of the elongate receiving medium, wherein the print data generation method comprises the steps of calculating a length of the image with a first character

size and comparing said length to at least two predetermined ranges, each of said predetermined ranges being associated with a predetermined character size; and printing the image with the predetermined character size corresponding to the range in which said calculated length is situated.”

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

**COUNT FIVE**  
**WILLFUL INFRINGEMENT OF U.S. PATENT NO. 7,990,567**

80. Esselte Corp. incorporates its responses to the foregoing paragraphs as though fully set forth herein.

81. Esselte Corp. admits that the face of U.S. Patent Number 7,990,567 (“the ‘567 Patent”) indicates that it is entitled “Label Printer,” and issued on August 2, 2011. Esselte Corp. admits that the face of the ‘567 Patent indicates that it is a continuation of U.S. patent application No. 10/436,363. Esselte Corp. admits that a purported copy of the ‘567 Patent was attached as Exhibit 6 to the Complaint. Esselte Corp. asserts that the SPA speaks for itself; Esselte Corp. denies the allegations of Paragraph 81 to the extent they are inconsistent with the terms of the SPA. Esselte Corp. denies the remaining allegations in Paragraph 81.

82. Esselte Corp. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82, and on that basis denies them.

83. Esselte Corp. admits that the ‘567 Patent contains the text: “a method for printing an image on an image receiving medium comprising the steps of: inputting the image to be

printed; printing the image on the image receiving medium; storing a plurality of images, such that each time an image is printed said image is stored; and recalling one of said stored images, wherein the method further comprises one of editing and reprinting said recalled stored image.”

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

**COUNT SIX**  
**BREACH OF CONTRACT BY ESSELTE**

89. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

90. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

91. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

92. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

93. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

94. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

95. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

96. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

97. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

98. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

99. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

100. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

101. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

102. Count Six fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

**COUNT SEVEN**  
**TORTIOUS INTERFERENCE WITH ASSIGNMENT AGREEMENT**

103. Count Seven fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

104. Count Seven fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

105. Count Seven fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

106. Count Seven fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

107. Count Seven fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

**COUNT EIGHT**  
**TORTIOUS INTERFERENCE WITH ASSIGNMENT AGREEMENT**

108. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

109. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

110. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

111. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

112. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

113. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.



114. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

115. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

116. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

117. Count Eight fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

**COUNT NINE**  
**BREACH OF CONTRACT BY BLOCK**

118. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

119. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

120. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

121. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

122. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

123. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

124. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

125. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

126. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

127. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

128. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

129. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

130. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

131. Count Nine makes allegations as to David Block only, and thus no response is required from Esselte Corp.

**COUNT TEN**  
**TORTIOUS INTERFERENCE WITH CONTRACT BY ESSELTE**

132. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

133. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

134. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

135. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

136. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

137. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

138. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

139. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

140. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

141. Count Ten fails to state a claim upon which relief can be granted. Esselte Corp. has moved to dismiss this count. Accordingly, no response is required from Esselte Corp. at this time.

**RESPONSE TO PLAINTIFFS' JURY DEMAND**

142. Esselte Corp. admits that Plaintiffs request a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

**RESPONSE TO PLAINTIFFS' PRAYER FOR RELIEF**

143. Esselte Corp. denies that Plaintiffs are entitled to be awarded any of the relief sought in its prayer for relief against Esselte Corp., including the relief requested in Sub-Paragraphs (A) – (J) of Paragraph 143 of the Complaint.

**AFFIRMATIVE DEFENSES**

144. Without assuming any burden that it would not otherwise bear, and reserving its right to assert additional defenses (including defenses to those counts which Esselte Corp. has moved to dismiss), Esselte Corp., for its defenses, pleads:

**FIRST DEFENSE  
(Failure to State a Claim)**

145. The Complaint fails to state a claim for which relief can be granted against Esselte Corp.

**SECOND DEFENSE**  
**(Non-Infringement of the Asserted Patents)**

146. Esselte Corp. has not infringed and does not infringe, either directly or indirectly, any of the Asserted Patents, either literally or under the doctrine of equivalents.

**THIRD DEFENSE**  
**(Invalidity of the Asserted Patents)**

147. The Asserted Patents are invalid for failure to comply with one or more requirements of United States Code, Title 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

**FOURTH DEFENSE**  
**(Claims Barred)**

148. Plaintiffs' claims are barred in whole or in part based on prosecution history estoppel and/or prosecution history disclaimer.

**FIFTH DEFENSE**  
**(Limitations on Damages and Costs)**

149. Plaintiffs failed to provide adequate notice to Esselte Corp. of alleged infringement and are thus barred under 35 U.S.C. § 287 from recovering damages prior to the date of the filing of the Complaint. On information and belief, Plaintiffs failed to comply with the marking requirements of 35 U.S.C. § 287. Plaintiffs are barred by 35 U.S.C. § 288 from recovering any costs associated with its action.

**SIXTH DEFENSE**  
**(No Willful Infringement)**

150. Esselte Corp. has not, does not and/or will not willfully infringe any valid or enforceable claim of the Asserted Patents, and Plaintiffs are not entitled to enhanced damages.

**SEVENTH DEFENSE**  
**(Attorneys' Fees)**

151. Esselte Corp. is entitled to an award of its reasonable attorneys' fees to be assessed against Plaintiffs in accordance with the provisions of 35 U.S.C. § 285 or such other authorities as the Court deems applicable, including without limitation, Fed. R. Civ. P. 11. This case stands out both in terms of the weakness of Plaintiffs' litigation position and the unreasonable manner in which Plaintiffs have pursued the litigation.

152. Esselte Corp. is entitled to its costs, expenses, and attorneys' fees under 28 U.S.C. § 1927 due to Plaintiffs' unreasonable and vexatious conduct.

153. Since at least December 15, 2014, Plaintiffs have been on notice that their allegations that Esselte Corp. infringes the '623 patent and the '791 patent lack a good faith basis. DYMO has not withdrawn its allegation that Esselte infringes those patents, and indeed, has reasserted those patents in its First Amended Complaint.

154. On Christmas Eve 2014, Plaintiffs filed a motion for a preliminary injunction in which Plaintiffs set forth Plaintiffs' theory that Esselte infringes certain claims of the Asserted Patents. Plaintiffs' theory of infringement was based on objectively and subjectively baseless claim construction positions and was made without regard to the prior art, and this should have been determined during a reasonable pre-filing investigation. For example, DYMO's own prior art products and press releases touted the very functionality that DYMO alleged infringed the Asserted Patents. DYMO persisted in advancing its baseless claim construction positions after these issues were specifically brought to DYMO's attention, which was unreasonable and vexatious.

155. At the preliminary injunction hearing, Esselte Corp. employee David Block testified about his extensive history working with label printing software. Block demonstrated

that the features and functionality had existed in the prior art long before the Asserted Patents were filed. Less than two weeks after Block testified at the preliminary injunction hearing, Plaintiffs' named Block as a defendant in his personal capacity alleging that Block breached his separation agreement by allegedly using and/or disclosing purported "confidential information." Plaintiffs' retaliation against Block for providing truthful and accurate testimony and its effort to exert pressure against Block is unreasonable and vexatious litigation conduct.

156. Plaintiffs' misreading of the Stock Purchase Agreement to attempt to create a warranty of patent validity which does not exist, and assertion of a clearly time-barred claim based on this nonexistent warranty is also unreasonable and vexatious litigation conduct. Further, Plaintiffs' assertion of tortious interference with contractual relations without identifying an underlying breach of contract is similarly unreasonable vexatious litigation conduct.

**ADDITIONAL DEFENSES RESERVED**  
**(Reservation of Additional Defenses)**

157. Esselte reserves all defenses (including defenses to those counts which Esselte Corp. has moved to dismiss) under Rule 8 of the Federal Rules of Civil Procedure, the patent laws of the United States, and any other defenses at law or in equity that may exist now or that may be available in the future.

Dated: March 26, 2015

Respectfully submitted,

GOODWIN PROCTER LLP

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**CERTIFICATE OF SERVICE**

I, Douglas J. Kline, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies shall be served by first class mail postage prepaid on all counsel who are not served through the CM/ECF system on March 26, 2015.

/s/ Douglas J. Kline