

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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OMNIGLOW CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

GLOBAL ONE ENTERPRISES, LLC,
an Arizona LLC,

Defendant.

U.S. DISTRICT COURT
DISTRICT OF MASS

LA 03-30242-MPN

**COMPLAINT FOR DECLARATORY JUDGMENT OF
PATENT INVALIDITY**

The Plaintiff, OMNIGLOW CORPORATION, sues the Defendant, GLOBAL ONE ENTERPRISES, LLC, under the Declaratory Judgment Act, and states as follows:

JURISDICTION AND VENUE

1. This is an action to declare the rights of the parties pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. This court has subject matter jurisdiction of this cause pursuant to 35 U.S.C. § 271, et. seq.

2. This court has personal jurisdiction over the Defendant by virtue of Massachusetts General Laws Ch. 223A(a) and (b); and threats of infringement litigation sent directly to the Plaintiff in this district, and sales of product to the Plaintiff including the Defendant's sale of products directly related to the Patent in suit to the Plaintiff in Massachusetts.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

THE PARTIES

4. OMNIGLOW CORPORATION is a Delaware corporation having its principal place of business located at 96 Windsor Street, West Springfield, Massachusetts. Plaintiff is a leading

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10/14/03
to CL.

innovator in the field of chemiluminescent technology, and a manufacturer and distributor of a wide variety of chemiluminescent light products for commercial, military and recreational applications.

5. GLOBAL ONE ENTERPRISES LLC, is an Arizona corporation having its principal place of business at 1739 E. Broadway, Suite 1-123, Tempe, Arizona. Defendant is a distributor of chemiluminescent novelty items, including chemiluminescent jewelry.

COUNT I

DECLARATORY JUDGMENT FOR PATENT INVALIDITY

6. On September 16, 2003, U.S. Patent No. 6,619,808 was issued to Aaron Pelto for a “Chemiluminescent Device Having a Multi-Colored Casing and Method Therefor” (Exhibit “A” attached). Upon information and belief, the Defendant is the owner, by assignment, of the ‘808 patent.

7. On September 26, 2003, counsel for Defendant sent a cease and desist letter to one of the Plaintiff’s customers demanding that it cease all further sales of its “swirl” products, including tri-colored light sticks, bracelets, and necklaces by October 3, 2003. Failing such cessation, Defendant threatened prompt legal action for patent infringement (Exhibit “B” attached).

8. Defendant’s letter of September 26, 2003 was responded to by the Plaintiff’s general counsel, as the supplier of the “swirl” products sold by its customer (Exhibit “C” attached).

9. On September 30, 2003 Defendant, through its counsel, sent the Plaintiff a cease and desist letter into this district. The letter made certain demands upon Plaintiff and also threatened infringement litigation (Exhibit “D” attached).

10. Plaintiff's general counsel responded to the September 30th letter, by rejecting the demand that it cease further sales of its SWIZZLE GLOW™ line of products, and by advising Defendant of invalidity contentions relating to the '808 patent (Exhibit "E" attached).

11. By letter of October 9, 2003 to Plaintiff's general counsel, Defendant rejected the contentions of patent invalidity raised by Plaintiff, and reasserted its threat to bring patent infringement litigation against Plaintiff including accusing it of willful patent infringement (Exhibit "F" attached).

12. An actual controversy exists between the parties, who are competitors in the field of chemiluminescent devices.

13. The Defendant has sought to affect the Plaintiff's sales through correspondence with one of its customers and is expected to correspond with other customers in due course.

14. The Plaintiff believes that the '808 patent is invalid under 35 U.S.C. §102, including §102(a), on the basis of prior art patents which were not examined during the prosecution of the '808 patent. Relevant prior art includes but is not limited to, U.S. Patent No. 3,576,987, issued in 1971 for a "Chemical Lighting Device to Store, Initiate and Display Chemical Light"; U.S. Patent No. 4,379,320 issued in 1981 for a "Chemical Lighting Device"; U.S. Patent No. 5,609,409 issued in 1997 for a Chemiluminescent Stemmed Drinking Glass; and other known prior art that was sold but not patented.

15. Additional prior art is likely to be discovered which is pertinent to the invalidity of the '808 patent, including invalidity under 35 U.S.C. §103.

16. The Plaintiff is entitled to be able to conduct its business in an atmosphere free of litigation threats, and litigation threats made to its customers, and therefore chooses to establish the rights of the parties through the Declaratory Judgment Act.

WHEREFORE, the Plaintiff prays that this court:

- a. enter judgment that the '808 patent is invalid under 35 U.S.C. §102 and §103; and
- b. such other relief as this court deems appropriate.

Respectfully submitted,

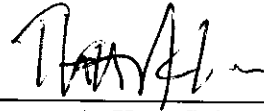
THOMAS A. KENEFICK, III, P.C.

73 Chestnut Street

Springfield, Mass. 01103

Telephone: (413) 734-7000

Facsimile: (413) 731-1302



Thomas A. Kenefick, III



US006619808B1

(12) **United States Patent**
Pelto

(10) **Patent No.:** **US 6,619,808 B1**
(45) **Date of Patent:** **Sep. 16, 2003**

(54) **CHEMILUMINESCENT DEVICE HAVING A MULTI-COLORED CASING AND METHOD THEREFOR**

(76) **Inventor:** **Aaron Pelto**, 1739 E. Broadway Suite 1-123, Tempe, AZ (US) 85282

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** **10/102,747**

(22) **Filed:** **Mar. 22, 2002**

(51) **Int. Cl.⁷** **F21K 2/00**

(52) **U.S. Cl.** **362/34; 362/84; 362/101; 206/219**

(58) **Field of Search** **362/34, 84, 101, 362/159, 104, 154, 231, 238; 206/219**

(56) **References Cited**

U.S. PATENT DOCUMENTS

RE30,103 E * 9/1979 Spector 362/34

4,954,113 A	9/1990	Kim
5,043,851 A	8/1991	Kaplan
5,383,100 A	1/1995	Kikos
5,390,086 A	2/1995	Holland
5,557,869 A	9/1996	Doulgas
6,106,129 A	8/2000	Cranor
6,196,921 B1	3/2001	Larson
6,257,750 B1	7/2001	Strasser

* cited by examiner

Primary Examiner—Sandra O’Shea

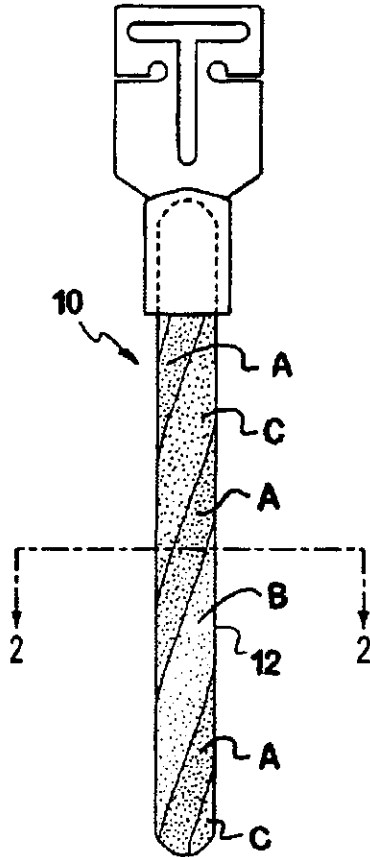
Assistant Examiner—John Anthony Ward

(74) *Attorney, Agent, or Firm*—Jeffrey Weiss; Harry M. Weiss; Weiss, Moy & Harris, P.C.

(57) **ABSTRACT**

A chemiluminescent device having a casing with distinct regions having different colored appearances, so that a single color of light produced by the reaction of chemiluminescent reaction may produce a multicolored appearance. Preferably, the regions are formed into discrete designs as defined by the shapes of the regions.

5 Claims, 1 Drawing Sheet



U.S. Patent

Sep. 16, 2003

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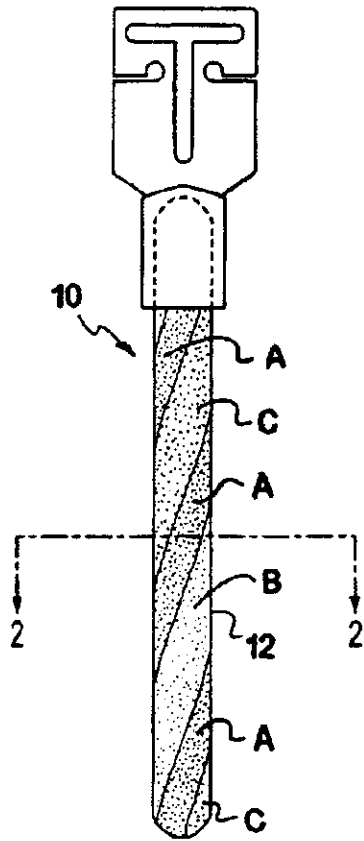


FIG. 1

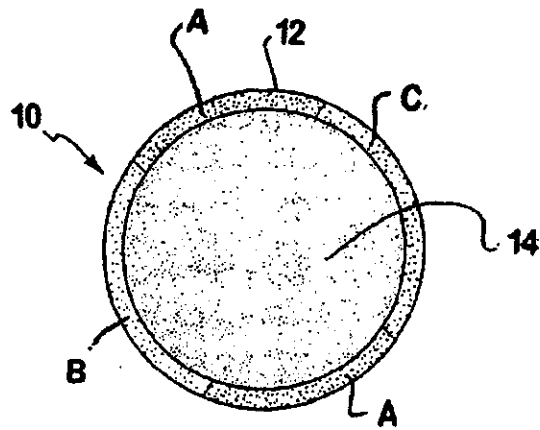


FIG. 2

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CHEMILUMINESCENT DEVICE HAVING A MULTI-COLORED CASING AND METHOD THEREFOR

FIELD OF THE INVENTION

This invention relates generally to chemiluminescent devices and methods therefor and, more specifically, to a chemiluminescent device in which a single color of light produced by a chemiluminescent reaction is transmitted through a multi-colored casing to produce a multi-color effect.

BACKGROUND OF THE INVENTION

Chemiluminescent devices are well known. They generally comprise an outer casing, within which are positioned the reactants in a chemiluminescent reaction. These reactants are typically an activator, an oxalate, and a dye in solvent. So that the reaction will not take place before the device is ready to be used, it is necessary to place either the activator or oxalate in a breakable ampule, which when broken allows the reactants to mix, producing light.

Prior art chemiluminescent devices typically display only a single color. It is possible to vary a particular color produced by the reaction by changing the particular reactants used. The prior art includes reactants capable of producing blue, green, yellow, or red light.

U.S. Pat. No. 5,390,086, issued to Holland, however, discloses a device having at least two separate chambers, each containing its own set of chemiluminescent reactants—including different colored dyes. When each individual reaction is allowed to proceed, the device is capable of producing more than one color of light. There are several drawbacks associated with the Holland device. It is relatively complicated and relatively expensive to manufacture, given the need to provide a structure having multiple chambers and the need to provide multiple dyes.

A need therefore existed for a chemiluminescent device and method capable of using a single dye and a single set of reactants to create a multi-color effect. A need still further existed for a chemiluminescent device and method capable of producing a multi-colored, illuminated design having discrete features. The present invention satisfies these needs and provides other, related, advantages.

SUMMARY OF THE INVENTION

An object of the present invention is to provide a chemiluminescent device and method capable of using a single dye and a single set of reactants to create a multi-color effect.

A further object of the present invention is to provide a chemiluminescent device and method capable of producing a multi-colored, illuminated design having discrete features.

BRIEF DESCRIPTION OF THE PREFERRED EMBODIMENTS

In accordance with one embodiment of the present invention, a chemiluminescent device is disclosed capable of producing a multi-colored effect is disclosed. The device comprises, in combination: chemiluminescent reactants capable of producing light having a first colored appearance; and a casing containing the chemiluminescent reactants and capable of permitting the light to pass through at least a portion thereof; wherein the casing comprises at least a first and a second region, wherein the first region and the second region exhibit distinct color characteristics from one

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another; wherein the light, upon passing through at least one of the first region and the second region, takes on a second colored appearance.

In accordance with another embodiment of the present invention, a method of producing a multi-colored effect in a chemiluminescent device is disclosed. The method comprises the steps of: providing chemiluminescent reactants capable of producing light having a first colored appearance; providing a casing containing the chemiluminescent reactants and capable of permitting the light to pass through at least a portion thereof; wherein the casing comprises at least a first and a second region, wherein the first region and the second region exhibit distinct color characteristics from one another; wherein the light, upon passing through at least one of the first region and the second region, takes on a second colored appearance; and allowing the chemiluminescent reactants to combine.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a front view of an embodiment of multi-colored chemiluminescent device of the present invention.

FIG. 2 is a cross-sectional view of the device of FIG. 1, taking along line 2—2.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

Referring now to FIGS. 1–2, an embodiment of the device 10 of the present invention is shown. In this embodiment, the device 10 is what is commonly referred to as a light stick. Chemiluminescent devices having other configurations are also known, including for example necklaces, bracelets, and others. The term “device” as used herein is intended to refer to any type of chemiluminescent device.

The casing 12 surrounds the chemiluminescent reactants 14 located therein, and permits the transmission of light therethrough. The casing 12 may be comprised of materials known in the art for such use. The chemiluminescent reactants 14 are preferably reactants capable of producing light having a single colored appearance (including white), including any of the chemiluminescent reactants known in the art. For some embodiments, it may be desired to provide more than one set of chemiluminescent reactants 14, including in individual chambers, so that more than one color of light can be produced, which light will then be transmitted through a casing 12 as herein described.

The casing 12 comprises at least two regions A and B, wherein regions A and B are differently colored. In this regard, it would be possible to have a region A that is not colored and thus will not alter the colored appearance of the light produced by the chemiluminescent reaction, and a region B that is colored. It would also be possible to have a region A that is opaque, and that will not permit the passage of light therethrough, so as to contribute to the creation of a desired visual effect in combination with other regions that do permit passage. Generally, it will be preferred that region A and region B each be colored and that the two colors be distinct from one another.

As shown in FIG. 1, more than two regions A and B may be provided, and the device 10 illustrated therein has a third region C. Region C is preferably colored, and is preferably different from each of regions A and B. It should be noted that it would be possible to provide more than three regions A, B, and C. It should also be noted that, depending on the type of visual effect that is sought to be created, it may be desirable to have two or more regions having one color,

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which color would be distinct from that of one or more other regions. Within the limits of there being at least two, distinct, regions A and B, the appearance of the casing 12 may be varied in an essentially infinite number of ways.

Still referring to FIG. 1, it is preferred to organize the regions into a discrete design, defined by the shapes of the different regions. For example, the device 10 of FIG. 1 illustrates one embodiment of the present invention, having a candy-cane or barber-shop pole type of design, with regions A, B and C swirling along the length of the device 10—and with region A being repeated twice. Thus, the embodiment of FIG. 1 consists of two sections A having a first color, a section B having a second color, and a section C having a third color. In this manner, a single color of light emitted by the reactants 14 will be exhibited as colors A, B and C, depending on the portion of the casing 12 through which they are transmitted.

The variations on this design, and thus the different possible embodiments of the present invention, are essentially infinite. For example, the regions could be colored and organized to create a zebra design, a cheetah design, team colors, names, logos, animated characters, political messages, religious messages, safety messages, and so forth.

The casing 12 is preferably formed in a process by which the portions comprising each region to be used in the design are first created from suitable casing material, in the desired size and shape taking into account the type of chemiluminescent device that is to be created. The regions are then fused together in the shape of the casing, with the reactants being inserted therein before the casing is sealed. Other methods of manufacture, such as the dying of the casing 12 to create the different regions, may also be possible.

While the invention has been particularly shown and described with reference to preferred embodiments thereof, it will be understood by those skilled in the art that the foregoing and other changes in form and details may be made therein without departing from the spirit and scope of the invention.

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I claim:

1. A chemiluminescent device capable of producing a multi-colored effect comprising, in combination:

5 chemiluminescent reactants capable of producing light having a first colored appearance; and

a casing defining a sealed container adapted to hold said chemiluminescent reactants and capable of permitting said light to pass through at least a portion thereof;

10 wherein at least one of said chemiluminescent reactants contacts an interior surface of said casing;

wherein said casing comprises at least a first and a second region, wherein said first region and said second region exhibit distinct color characteristics from one another;

15 wherein said light, upon passing through at least one of said first region and said second region, takes on a second colored appearance.

2. The device of claim 1 wherein said light, upon passing through said first region takes on said second colored appearance and upon passing through said second region takes on a third colored appearance.

3. The device of claim 2 wherein said casing further comprises a third region, wherein said first region, said second region, and said third region exhibit distinct color characteristics from one another; and

wherein said light, upon passing through said third region, takes on a fourth colored appearance.

4. The device of claim 1 wherein said first region and said second region form a discrete design defined at least by shapes of said first region and said second region.

5. The device of claim 3 wherein said first region, said second region, and said third region form a discrete design defined at least by shapes of said first region, said second region and said third region.

* * * * *

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September 26, 2003

Via Facsimile and First Class Mail

Michael Schrimmer, President
Chemical Light, Inc.
595 Lakeview Pkwy.
Vernon Hills, IL 60061

Re: United States Patent No 6,619,808

Dear Mr. Schrimmer:

Our firm represents Global One Enterprises, LLC, the owner of U.S. Patent No. 6,619,808. A copy of the '808 Patent is enclosed herewith.

We understand that Chemical Light has been offering for sell and selling a variety of what it calls "swirl" products. These include tri-color light sticks, bracelets, and necklaces.

This entire line of swirl products infringes claims in the '808 Patent. Indeed, it is clear to Global One that this entire line of products was copied from Global One's successful tie dye series of glow products. Global One hereby demands that all further sales, or offers for sale, of these "swirl" products be ended by October 3, 2003. In the event that they do not, Global One anticipates proceeding with prompt legal action to prevent any such future sales, and to recover damages for all sales occurring subsequent to the issuance of the '808 Patent.

Very truly yours

WEISS, MOY & HARRIS, P.C.

Jeffrey Weiss

September 30, 2003

Via Facsimile: 202-682-1723
Confirmation by U.S. Mail

Weiss & Moy, P.C.
1101 14th Street, N.W., Suite 500
Washington, D.C. 20005

Attention: Jeffrey Weiss, Esq.

Re: U.S. Patent No. 6,619,808

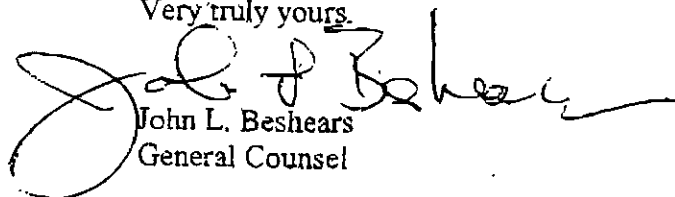
Dear Mr. Weiss:

Michael Schrimmer, President of Chemical Light, Inc., a customer of Omniglow Corporation, has brought to our attention your letter to him of September 26, 2003 regarding the above-referenced patent.

As a supplier of certain "swirl" products to Chemical Light, Inc., we are concerned about your allegation of infringement of the above-referenced patent by these products. We have therefore asked our patent attorneys, on behalf of our customer and ourselves, to review your client's patent and report to us on their conclusions as to infringement. We will contact you when this investigation has been completed.

Please call me should you have any questions regarding the foregoing.

Very truly yours,


John L. Beshears
General Counsel

cc: Michael Schrimmer
Fred Kaplan

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September 30, 2003

Via Facsimile and First Class Mail

Fred Kaplan
Omniglow Corporation
96 Windsor St.
W. Springfield, MA 01089

Re: Omniglow and Global One

Dear Mr. Kaplan:

During the course of our firm's prior correspondence with Omniglow, Global One disclosed to Omniglow the existence of a new glow product that it typically refers to with the name "tye dye." It has a multi-colored casing, and is able to create a multi-color effect from a chemi-luminescent reaction producing only a single color.

At an early stage, Global One provided an exemplar of the new product to Omniglow. Later, when the product was released for sale, Omniglow became a significant Global One customer for tye dye products. That later ceased, when Omniglow apparently began having identical products manufactured for it, and sold through Chemical Light and other distributors.

As we advised Omniglow from the beginning, Global One was seeking patent protection for its new concept. Its patent, a copy of which is enclosed, has now issued as U.S. Patent No. 6,619,608.

Global One intends to fully enforce its rights under the '808 Patent. To that end, all sales and offers to sell infringing products, including for example the "swirl" line of products offered by Chemical Light, must cease as of the date of this letter, and confirmation that this has occurred must be provided in writing by October 3, 2003. By that date, Omniglow must also identify the source of its manufacture of "swirl" products, as well as all of its American distributors of such products. In the event that these

things do not occur within this time frame, Global One anticipates proceeding with prompt legal action to prevent any such future sales, and to recover damages for all sales occurring subsequent to the issuance of the '808 Patent.

Given that Omniglow has advocated so strenuously the need for the glow industry to respect Omniglow patent rights, Global One expects that Omniglow will be no less attentive to the rights of others.

Very truly yours,

WEISS & MOY, P.C.

Jeffrey Weiss



October 8, 2003

Via Facsimile: 202-682-1723
Confirmation by U.S. Mail

CONFIRMATION COPY

Weiss & Moy, P.C.
1101 14th Street, N.W., Suite 500
Washington, D.C. 20005

Attention: Jeffrey Weiss, Esq.

Re: U.S. Patent No. 6,619,808

Dear Mr. Weiss:

As promised in my letters to you of September 30 and October 1, 2003, responsive, respectively, to your letters of September 26, 2003 to Chemical Light, Inc. and of September 30, 2003 to Omniglow Corporation, regarding U.S. Patent No. 6,619,808, Omniglow ordered a review of this patent by its outside patent attorneys.

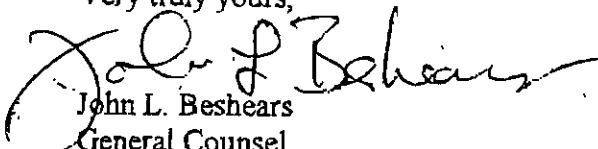
Such review confirms Omniglow's initial reaction to Mr. Pelto's application and patent – the technology that is the subject matter of the patent is old and was well known in the industry for many years before Mr. Pelto filed for patent registration. Omniglow's predecessor, American Cyanamid Company, long ago patented and sold chemical light devices that included a coloring agent in the walls of the plastic container – see U.S. Patent Nos. 3,576,987 and 4,379,320. Omniglow knows another company that made and sold, in the mid-1980's, chemiluminescent necklaces with inlaid, contrasting color stripes which allowed a common chemical to produce a multi-color effect. Many other devices and patents also incorporate or reference the subject matter of Mr. Pelto's patent. See, for example, U.S. Patent No. 5,609,409.

As I am sure you are aware, it is also well known that the use of chemical light can simply be a substitute for the use of battery or electric light. Thus, a patent application drawn on an illuminated, colored casing for chemiluminescent devices should have referenced similar battery and electric lighting devices. Such prior art, both chemiluminescent and non-chemiluminescent, is so obvious that it would appear that the failure to cite it was intentional.

Office of the General Counsel

In light of the foregoing, Omniglow rejects your demand to cease the sale of its SWIZZLE GLOW™ line of products and has advised its customer, Chemical Light, Inc., to also reject your demand and continue its sale of such products, which it markets as "swirl" products. Omniglow will zealously defend itself and its customers against any allegations of infringement brought by your client based on U.S. Patent No. 6,619,808, and, in view of applicable prior art that is easily discovered, should a lawsuit based on such patent be filed, Rule 11 sanctions will be sought.

Very truly yours,


John L. Beshears
General Counsel

cc: Fred Kaplan
Michael Schrimmer

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October 9, 2003

Via Facsimile

John L. Beshears, Esq.
Omniglow Corporation
20-C Pimentel Court
Novato, CA 94949

Re: Omniglow and Global One

Dear Mr. Beshears:

We have reviewed your October 8 letter, as well as each of the issued U.S. Patents to which you refer.

Global One categorically rejects your assertion that any of the issued U.S. Patents that you cite raise any question concerning the validity of the '808 Patent. None discloses a chemiluminescent device having a sealed, multi-colored casing, which contains chemiluminescent reactants -- or otherwise discloses any of the more particular embodiments claimed in the '808 Patent.¹

We also do not credit your reference to "another company" that supposedly made some type of inlaid necklace device in the 1980's. Your letter offers no evidence concerning the features of such a necklace, the identity of the company that supposedly made and sold it, or when this actually occurred. (In this regard, since the '808 Patent is presumed valid, it would be Omniglow's burden to establish invalidity through clear and convincing evidence.)

We note that when Global One and Omniglow first communicated regarding Global One's efforts to patent its tye dye product, Omniglow only brought to Global One's attention the Holland patent.

¹This is by no means intended to be an exhaustive recitation of the reasons why this art does not anticipate or render obvious the claimed invention.

Omniglow never mentioned any of the other patents contained in your letter, and certainly never claimed that another company had a similar product in the 1980's. Moreover, Omniglow sought to persuade Global One to transfer at least a partial interest in its pending application to Omniglow. That effort is clearly inconsistent with Omniglow's current view that the '808 Patent is somehow invalid and possessing of no value.

In addition, Global One's doubt concerning a supposed prior art product finds support in the Holland patent itself, filed in 1993. It makes the following statement regarding the state of the prior art:

Heretofore, the prior art presented a chemiluminescent light that generated light within a single spectral range.

* * *

No one heretofore has addressed the need for a chemiluminescent light device that teaches the benefits of placing a plurality of colored chemiluminescent components in a parallel or interwoven fashion, allowing for the distinct characteristics of color blending from a distance.

U.S. Patent No. 5,390,086, Col. 1, lines 56-58 and 66-68; Col. 2, lines 1-3. The clear implication of your letter is that the Holland patent, which we understand Omniglow now owns and has apparently asserted offensively (including against Global One), misstated the state of the prior art to the Patent Office and could well be itself invalid under Omniglow's reasoning.

Under all of the circumstances, Global One is highly suspicious of Omniglow's sudden recollection of an earlier multi-colored product. If Omniglow truly has evidence to support its assertion of a prior art product, the time to provide it is now. If we do not receive such evidence by the close of business on Monday, October 13, 2003, we will assume that Omniglow has no such evidence.

Finally, it is remarkable to Global One that both Omniglow and Chemical Light have continued sales of the swirl products pending this dispute. Your letter effectively concedes infringement. It argues only that these companies will somehow be able to prove by clear and convincing evidence that the '808 Patent is invalid, yet it has no evidence to support its arguments. Please be advised that Global One will contend that the conduct of Omniglow and Chemical Light amounts to willful patent infringement, entitling it to an award of treble damages and attorneys' fees in addition to the recovery of lost profits on these companies' sales.

Very truly yours,

WEISS & MOY, P.C.


Jeffrey Weiss