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18 *Pro Hac Vice Applications Forthcoming

19 *Attorneys for Plaintiff*

20
21 **UNITED STATES DISTRICT COURT**

22 **DISTRICT OF NEVADA**

23 RUBBERMAID COMMERCIAL) CASE NO.:
 PRODUCTS LLC,)
 24 Plaintiff,) **COMPLAINT**
 vs.)
 25) **(JURY DEMAND)**
 TRUST COMMERCIAL PRODUCTS and)
 26 TAIZHOU YINSHAN BRUSH CO., LTD)
 27 Defendants.)
 28

1 Plaintiff Rubbermaid Commercial Products LLC (“Rubbermaid”) hereby states its
2 complaint against Defendants Trust Commercial Products (“Trust”) and TaiZhou YinShan Brush
3 Co., Ltd. (“Yinshan”) (collectively “Defendants”) as follows:

4 **INTRODUCTION**

5 1. This is an action for patent and copyright infringement arising from Defendants’
6 systematic, brash, and willful infringement and copying of Rubbermaid’s intellectual property
7 relating to a number of housekeeping and material handling carts, and the catalog used to sell
8 those products. This infringement is causing Rubbermaid immediate and irreparable harm, and
9 Rubbermaid seeks this Court’s assistance in putting an end to Defendants’ unlawful actions.
10 Accordingly, Rubbermaid seeks damages and injunctive relief for Defendants’ willful
11 infringement of Rubbermaid’s patents and copyrighted material.
12

13 **JURISDICTION AND VENUE**

14 2. The Court has subject matter jurisdiction over this action under the provisions of
15 28 U.S.C. §§ 1331 and 1338(a).
16

17 3. This Court has personal jurisdiction over Defendants based upon Defendants’
18 contacts with this forum, including Defendants intentional conduct of business in Nevada,
19 Defendants’ exhibition and conducting of business at the 2013 ISSA Trade Show in Las Vegas,
20 Nevada occurring on November 18–21, 2013, and Defendants’ commission of infringing acts in
21 Nevada that violate the laws of the United States. Such actions include, without limitation,
22 importing, promoting, distributing, offering to sell, and selling products and works in the United
23 States that infringe Rubbermaid’s design patents and copyrights.
24

25 4. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391 (b), (c) and (d),
26 1400(b).
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PARTIES

1
2 5. Rubbermaid Commercial Products LLC is a Delaware limited liability company
3 with its principal place of business in Virginia. Rubbermaid’s sole member is Rubbermaid Inc.,
4 an Ohio corporation with its principal place of business in North Carolina. Rubbermaid Inc. is a
5 wholly-owned subsidiary of Newell Rubbermaid Inc., a publicly traded company, and a
6 Delaware corporation with its principal place of business in Georgia.
7

8 6. On information and belief, Defendant Trust Commercial Products is a Chinese
9 corporation with a business address of Room 1101, Tianshan Mansion, No.30(A), Tianshan
10 Road, Changning, Shanghai, China. Trust conducts business within this district, including
11 without limitation by importing, marketing, promoting, and offering for sale infringing products
12 in this District, and by copying a Rubbermaid brochure and disseminating the copied works
13 within this District, including but not limited to at the 2013 ISSA Trade Show in Las Vegas,
14 Nevada (“ISSA”), as described below.
15

16 7. On information and belief, Defendant TaiZhou YinShan Brush Co., Ltd is a
17 Chinese corporation with a business address of 321Yinshan Road Huangyan 318020 Zhejiang
18 China. Yinshan conducts business within this district, including without limitation by importing,
19 marketing, promoting, and offering for sale infringing products in this District, and by copying
20 the contents of a Rubbermaid brochure and disseminating the copied works within this District,
21 including but not limited to at the 2013 ISSA Trade Show in Las Vegas, Nevada (“ISSA”), as
22 described below.
23

THE RUBBERMAID PATENTS AND COPYRIGHTED MATERIAL

24
25 8. Rubbermaid is a leading manufacturer and designer of housekeeping and material
26 handling carts. Rubbermaid has invested time and significant monetary and employee resources
27
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1 in designing and developing these ideas and products, and has a reasonable expectation of
2 exclusivity in the marketplace based on the intellectual property laws of the United States.

3 9. In recognition of Rubbermaid's innovation, Rubbermaid has received a number of
4 awards and accolades. For example, Rubbermaid won a 2011 ISSA Innovation Award for its
5 HYGEN™ Clean Water System. The HYGEN™ Clean Water System is a breakthrough floor-
6 cleaning product that features an integrated water filter, which allows cleaning solutions to be
7 used for longer durations during a cleaning task. Likewise, Rubbermaid's Collapsible X-Cart is
8 on the 2013 ISSA Innovation Awards supplies ballot. Awards and nominations such as these
9 demonstrate Rubbermaid's position as an industry leader.

10
11 10. Many of the carts Rubbermaid sells embody the various design patents belonging
12 to Rubbermaid. As set forth below, there are four patents at issue in this action.

13
14 11. The United States Patent Office issued United States Design Patent Number
15 D474570, entitled "Housekeeping Cart", (the "'570 Patent") to inventors Donald Presnell, David
16 M. Doberxzyn, and Dale T. Maza on May 13, 2003. The named inventors assigned the '570
17 Patent to Rubbermaid. The '570 Patent is attached as Exhibit A.

18
19 12. The United States Patent Office issued United States Design Patent Number
20 D618418, entitled "Utility Cart", (the "'418 Patent") to inventors Mark Allen Catron and Jared
21 Matola on June 22, 2010. The named inventors assigned the '418 Patent to Rubbermaid. The
22 '418 Patent is attached as Exhibit B.

23
24 13. The United States Patent Office issued United States Design Patent Number
25 D618419, entitled "Utility Cart", (the "'419 Patent") to inventors Mark Allen Catron and Jared
26 Matola on June 22, 2010. The named inventors assigned the '419 Patent to Rubbermaid. The
27 '419 Patent is attached as Exhibit C.

28

1 20. Rubbermaid also manufactures material handling carts that embody some of the
2 Asserted Patents. Material handling carts are typically used by electricians, tradesmen, and
3 maintenance professionals to transport various tools and supplies. Rubbermaid is leader in the
4 material handling carts market. In the United States alone, Rubbermaid has sold thousands of
5 these TradeMaster[®] Mobile Cabinets and Work Centers, and sales of this product generally
6 average about \$1,000,000 per year.
7

8 21. The relevant Rubbermaid model numbers for these material handling carts are
9 4512-88, 4513-88, 4532-88, 4533-88, and 4548-88. Rubbermaid's TradeMaster[®] Mobile
10 Cabinet and Work Center embodies the design of material handling cart shown in the '604
11 Patent.

12 22. Rubbermaid also makes the Flat Shelf Cart (which embodies the design shown in
13 '418 Patent) and the Heavy Duty Utility Cart (which embodies the design of the utility cart
14 shown in '419 Patent). The relevant Rubbermaid model numbers for the Flat Shelf Cart are
15 4505, 4525, and 4545. The relevant Rubbermaid model numbers for Heavy Duty Utility Cart are
16 4500-88, 4520-10, 4520-88, 4546, and 4546-10. The Flat Shelf and Heavy Duty Utility carts are
17 some of Rubbermaid's most popular and top selling products, with domestic sales in excess of
18 \$15 million every year.
19

20 23. Rubbermaid sells its products direct to end-users and through distributors
21 throughout the world, including North America, South America, Asia, and Europe. Rubbermaid
22 also uses trade shows, such as ISSA, to showcase its innovative products and ideas, network, and
23 build distribution channels.
24

25 24. Also as part of its marketing and distribution system, Rubbermaid created and
26 uses a catalog of products and descriptions (the "Rubbermaid Catalog") that customers use for
27 ordering Rubbermaid products. Excerpts from Rubbermaid Catalog are attached as Exhibit E.
28

1 25. The Rubbermaid Catalog contains many of the images and textual descriptions
2 contained in the Catalog are original to Rubbermaid, and created by Rubbermaid. For example,
3 Rubbermaid created and distributed a sales brochure (the “Rubbermaid Brochure”) related to its
4 material handling carts. The Rubbermaid Brochure and artwork, photographs, images and,
5 textual descriptions contained therein are the original works of Rubbermaid and are entitled to
6 copyright protection under the copyright laws of the United States, 17 U.S.C. §§ 101, *et seq.*
7 The Rubbermaid Brochure is attached as Exhibit F.

8
9 26. To that end, on November 14, 2013 Rubbermaid submitted the application for
10 copyright protection of the Rubbermaid Brochure, which illustrates the flat carts offered for sale
11 by Rubbermaid and which correlate the illustrations with descriptions associated with the
12 products. Rubbermaid completed and submitted the appropriate paperwork and submitted the
13 requisite copies of the Rubbermaid Brochure to the United States Copyright office. A copy of
14 the completed copyright application is attached as Exhibit G. Rubbermaid understands that the
15 United States Copyright Office received the completed application on the same day it was filed.
16

17 27. Rubbermaid has used its Rubbermaid Brochure as part of its marketing plan.
18 Rubbermaid has widely distributed the Rubbermaid Brochure and Catalog to customers and
19 distributors throughout the world, including by disseminating the Brochure at various trade
20 shows such as ISSA and by making them available on Rubbermaid’s website.
21

22 DEFENDANTS’ INFRINGING ACTIONS

23 28. Defendants manufacture products in China. Defendants advertise and offer for
24 sale products in the United States, including their Grandmaid Housekeeping Carts, Bitbar Mobile
25 Work Center, Bitbar Utility Carts, and Bitbar Flat-shelf Carts (collectively the “Accused
26 Products”), that infringe the Asserted Patents.
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1 29. For several years, Rubbermaid purchased toilet brushes and other products from
2 Defendant Yinshan. Yinshan now uses the brand name “Trust” and “Trust Commercial
3 Products.” Under that brand name, Defendants have manufactured, imported, and offered for
4 sale in the United States carts (among other products) that constitute infringements of the
5 Asserted Patents.

6 30. Defendants have further intentionally, and without Rubbermaid’s authorization,
7 copied the Rubbermaid Brochure, and distributed and disseminated that catalog to customers in
8 an effort to obtain additional sales of Defendants’ products.

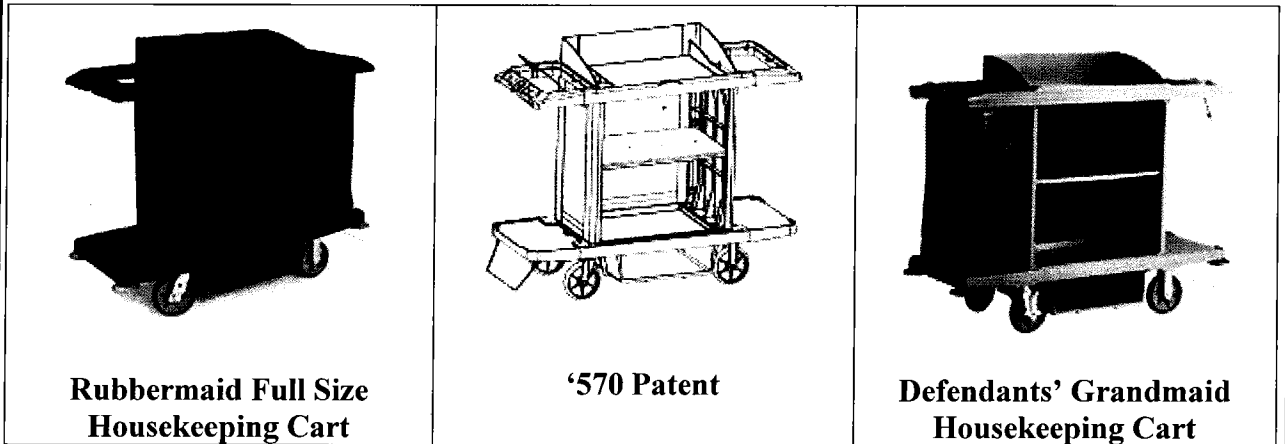
9 31. Upon discovering Defendants’ infringing activities and deceit, Rubbermaid made
10 the decision to terminate its business relationship with Defendant Yinshan. This termination
11 process is ongoing.

12 32. Specific examples of the Accused Products are compared to the Asserted Patents
13 and the Rubbermaid Products in the Figures below. For each Figure, the relevant Rubbermaid
14 Product is on the left, the Asserted Patent Figure is in the center, and the Accused Product is on
15 the right. Notably, however, because Defendants do not provide identifying indicia on all of
16 their Accused Products and because Rubbermaid has not been able to secure an image of each
17 Accused Product, the Figures may not set forth all of Defendants’ infringements.

18 33. Defendants’ Grandmaid Housekeeping Cart infringes the ‘570 Patent. As is
19 evident from Figure 1 below, an ordinary observer would find that Defendants’ product
20 embodies the design set forth in the ‘570 Patent. For example, Defendants’ Grandmaid
21 Housekeeping Cart incorporates the same overall shape, configuration, and proportionality of
22 Rubbermaid’s patented design. Both designs include a top shelf complete with cantilevered
23 wings on each side of the shelf and vertical dividers that partition the surface of the top shelf.
24 Moreover, the bottom shelves of Defendants’ Grandmaid Housekeeping Cart, Rubbermaid’s
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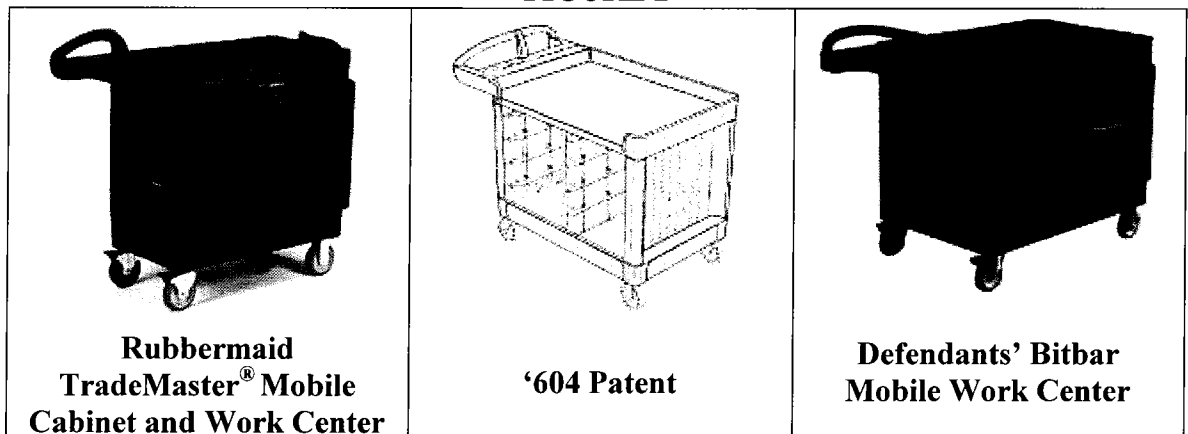
1 Classic Housekeeping Cart, and the '570 patent are virtual identical to each other. The
 2 Grandmaid Housekeeping cart incorporates additional aspects of Rubbermaid's patented design
 3 that contribute to the overall similarities of the designs.

4 **FIGURE 1**



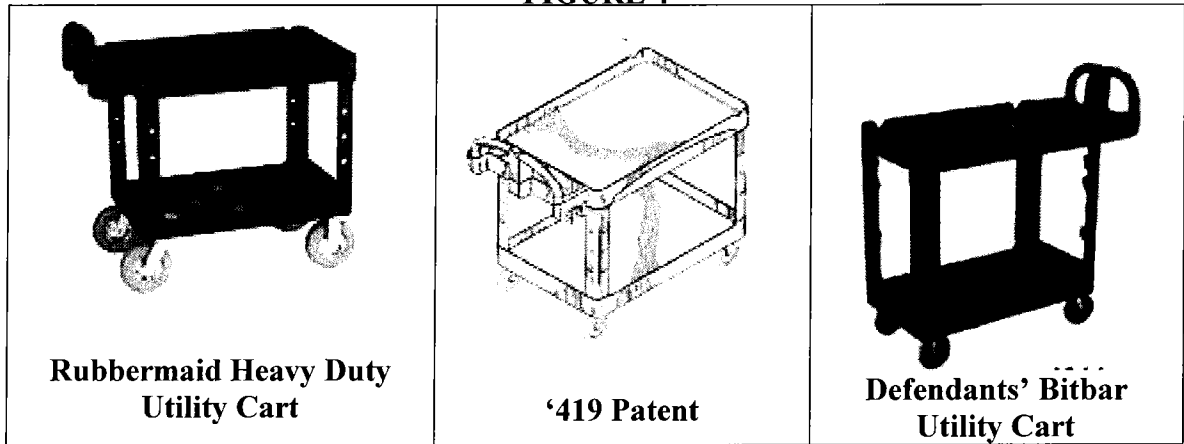
34. Defendants' Bitbar Mobile Work Center infringes the '604 Patent. As is evident from Figure 2 below, an ordinary observer would find that Defendants' product embodies the design set forth in the '604 Patent. For example, both designs show a top shelf that is lined on three sides by short perimeter walls. The designs also contain substantially similar handles and storage compartments near those handles, and the entire structure of Defendants' design is strikingly similar to Rubbermaid's. The Bitbar Utility Cart incorporates additional aspects of Rubbermaid's patented design that contribute to the overall similarities of the designs.

FIGURE 2



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FIGURE 4



37. The Accused Products compete with Rubbermaid's products embodying the Asserted Patents.

38. Upon information and belief, Defendants proudly advertise that they once made products for Rubbermaid, and that in promoting the Accused Products, Defendants promise that their products are of the same quality as Rubbermaid's products. Defendants then offer to beat Rubbermaid's standard pricing.

39. Rubbermaid customers have pointed to the availability of the Accused Products when negotiating the purchase price with Rubbermaid. Therefore, the availability of the Accused Products lowers the purchase price Rubbermaid could otherwise command in a fair market.

40. Several of Rubbermaid's component suppliers have reported that Defendants have contacted them seeking to purchase the exact same parts Rubbermaid uses in its products. This has caused irreparable damage to Rubbermaid's good will and reputation.

41. In marketing these Accused Products, Defendants use a catalog that has copied the some of the specific images and textual descriptions of the Rubbermaid Brochure.

42. Defendants have then distributed these copied materials to their own customers. Those copied pages of Defendants' catalog are virtually identical to the images, photographs,

1 artwork, and textual descriptions of the Rubbermaid Brochure. Excerpts from the Defendants'
2 Catalog are attached as Exhibit H.

3 43. This copying and distribution was done without authorization from Rubbermaid.

4 44. While there are number of similarities between Rubbermaid's Brochure and
5 Defendants' Catalog, two particularly egregious examples follow:

6
7 **EXAMPLE 1**

8 **RUBBERMAID BROCHURE**

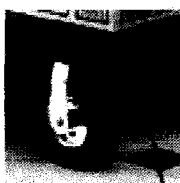
9 **CASTERS TO MEET YOUR NEEDS**

10 We rigorously tested and selected the optimal casters for each
11 of our products, creating the most efficient and durable
12 material handling solutions for your specific requirements.
13 (See caster options on page 16.)



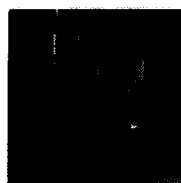
14 **POLYOLEFIN**

15 Hardened polyolefin
16 casters provide the
17 soft tread casters for
18 making, moving and
19 cleaning product drums,
20 wheel kit, open water
21 static tank or pick up
22 metal shavings, spills, and
23 other debris. Excellent on
24 concrete, wood, carpet,
25 and steel surfaces.



26 **PNEUMATIC**

27 Pneumatic casters provide a
28 cushioned and quiet ride for
heavy loads, making them
ideal for long hauls through
various inside and out
facilities on virtually all sur-
faces from smooth concrete
to gravel.




29 **THERMOPLASTIC RUBBER
(TPR)**

30 TPR casters absorb shock and
provide floor surface protection
and quiet operation. Excellent
on linoleum, tile, terrazzo,
resin, smooth concrete, and
carpet.

31 **DEFENDANTS' CATALOG (Continued on the Next Page)**

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DEFENDANTS' CATALOG



Casters meeting your demands

Select optimized casters for each product through repeated tests to provide you with most effective and durable material transport solution.

Polyolefin


Pneumatic

Thermoplastic Rubber

DEFENDANTS' CATALOG—HORIZONTALLY FLIPPED IMAGE

Casters meeting your demands

Select optimized casters for each product through repeated tests to provide you with most effective and durable material transport solution.



Thermoplastic Rubber

Pneumatic



Polyolefin

EXAMPLE 2

RUBBERMAID BROCHURE

WILL NOT WARP, DENT, SPLINTER, RUST, OR ROT

Tough, resilient surface absorbs impact and provides quiet operation. Virtually maintenance-free: resistant to most chemicals, impervious to water damage, and is easily cleaned.

Metal—dents and rust

Wood—splinters and rot


DEFENDANTS' CATALOG (Continued on the Next Page)

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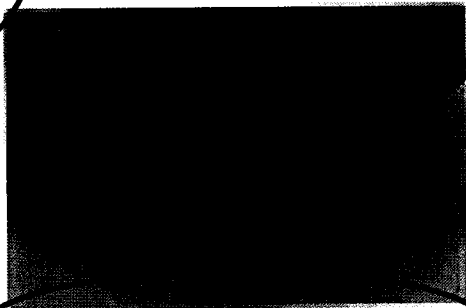
DEFENDANTS' CATALOG

Resist distortion, denting, breaking, rusting and decaying.

Tough, resilient surface absorbs impact and provides quiet operation. Virtually maintenance-free; resistant to most chemicals, impervious to water damage, and is easily cleaned.



Metal — dents and rusts.



Wood — splinters and rot

45. On information and belief, Defendants have committed these acts of patent and copyright infringement willfully, and with the intent to deceive consumers and cause confusion in the marketplace as to the actual source and sponsorship of goods. Defendants knew or should have known of Rubbermaid's intellectual property rights discussed above, and have deliberately and willfully infringed on those rights by copying the Rubbermaid Design Patents and the Brochure.

DEFENDANTS' PRESENCE AT ISSA

46. From November 18–21, 2013, the 2013 ISSA/Interclean North America tradeshow ("ISSA") is taking place Las Vegas, Nevada. ISSA is the leading cleaning-industry-

1 professionals convention in North America. The show draws thousands of exhibitors and
2 attendees from around the world.

3 47. Rubbermaid attends and exhibits at trade shows like ISSA in order to showcase
4 and demonstrate its innovative designs and products, take product orders, network with
5 attendees, and sell products. In many instances, the ISSA show is the only face-to-face contact
6 Rubbermaid has with its customers and business associates. Rubbermaid has attended every
7 ISSA trade show for at least the last twenty years.

9 48. This year, Defendants are exhibiting and offering to sell their products, including
10 the Accused Products, at ISSA in Las Vegas, Nevada. Thus, Defendants offered for sale
11 products infringing upon the Asserted Patents.

12 49. Defendants are also distributing their Catalog (which contains images and text are
13 substantially similar to the Rubbermaid Brochure) to individuals who visit Defendants' booth at
14 ISSA.

16 50. Upon information and belief, Defendants are attending and exhibiting at ISSA for
17 the purpose of soliciting clients in the United States and obtaining orders for products, including
18 the Accused Products. Moreover, Defendants are distributing their Catalog for the purpose of
19 offering to sell the Accused Products. In other words, Defendants are offering to sell products
20 and take orders at ISSA, and then return to China where they will manufacture the Accused
21 Products and ship them back to customers both within and outside the United States.

23 51. Defendants have created the Accused Products that are infringements of the
24 Asserted Patents, and are distributing their Catalog, for the purpose of unlawfully competing
25 with Rubbermaid. Defendants' attempt to circumvent the intellectual property rights of
26 Rubbermaid will cause irreparable harm to Rubbermaid in the form of loss of exclusive use of
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1 their intellectual property rights, loss of market share, and an immeasurable blow to
2 Rubbermaid's good will and reputation as a market leader.

3 52. Specifically, Rubbermaid is suffering irreparable harm because (1) injuries related
4 to Rubbermaid's potential loss of market share, and loss of exclusive patent and copyright rights
5 cannot be readily quantified and relief may never be forthcoming; (2) Defendants' infringement
6 erodes and devalues Rubbermaid's intellectual property rights, and thereby inflicts injury to
7 Rubbermaid's goodwill and reputation; and (3) Defendants are foreign companies with no U.S.
8 presence or assets, so any monetary judgment would be uncollectible.

9
10 **CAUSES OF ACTION**

11
12 **COUNT I**
(Patent Infringement of the '570 Patent)

13 53. Rubbermaid incorporates all paragraphs above by reference.

14 54. Without Rubbermaid's authorization, license, or consent, Defendants have made,
15 used, offered to use, sold, and/or imported, and are continuing to make, use, offer to sell, sell,
16 and/or import into the United States the Accused Product that constitute infringements of the
17 Rubbermaid '570 Patent.

18 55. Upon information and belief, Defendants have and continue to induce others to
19 infringe Rubbermaid's '570 Patent.

20 56. Defendants' infringement has been intentional and willful, making this an
21 exceptional case.

22 57. Rubbermaid has been and continues to be irreparably harmed by Defendants' past
23 and ongoing infringement of Rubbermaid's '570 Patent.

24 58. Defendants' infringement of Rubbermaid's patents has caused Rubbermaid to
25 suffer damages in an amount to be determined at trial.
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COUNT II
(Patent Infringement of the '604 Patent)

59. Rubbermaid incorporates all paragraphs above by reference.

60. Without Rubbermaid's authorization, license, or consent, Defendants have made, used, offered to use, sold, and/or imported, and are continuing to make, use, offer to sell, sell, and/or import into the United States the Accused Product that constitute infringements of the Rubbermaid '604 Patent.

61. Upon information and belief, Defendants have and continue to induce others to infringe Rubbermaid's '604 Patent.

62. Defendants' infringement has been intentional and willful, making this an exceptional case.

63. Rubbermaid has been and continues to be irreparably harmed by Defendants' past and ongoing infringement of Rubbermaid's '604 Patent.

64. Defendants' infringement of Rubbermaid's patents has caused Rubbermaid to suffer damages in an amount to be determined at trial.

COUNT III
(Patent Infringement of the '418 Patent)

65. Rubbermaid incorporates all paragraphs above by reference.

66. Without Rubbermaid's authorization, license, or consent, Defendants have made, used, offered to use, sold, and/or imported, and are continuing to make, use, offer to sell, sell, and/or import into the United States the Accused Product that constitute infringements of the Rubbermaid '418 Patent.

67. Upon information and belief, Defendants have and continue to induce others to infringe Rubbermaid's '418 Patent.

1 86. Immediate and irreparable injury will result to Rubbermaid unless this Court
2 enters a Temporary Restraining Order and Injunction, pursuant to Fed. R. Civ. P. 65, enjoining
3 Defendants and its agents, servants, employees, attorneys, subsidiaries and any other individual
4 or entity in active concert or participation with it who receives actual notice of the order, from
5 (1) infringing, inducing others to infringe, or contributing to the infringement of the Asserted
6 Patents, including the manufacture, use, sale, importation, and offer to sell the Accused Products;
7 and (2) copying the Rubbermaid Brochure and infringing on Rubbermaid's copyright, and
8 distributing and disseminating the copied material.
9

10 87. Defendants' attempt to circumvent the intellectual property rights of Rubbermaid
11 is causing irreparable harm to Rubbermaid because (1) injuries related to Rubbermaid's potential
12 loss of market share, and loss of exclusive patent and copyright rights cannot be readily
13 quantified and relief may never be forthcoming; (2) Defendants' infringement erodes and
14 devalues Rubbermaid's intellectual property rights, and thereby inflicts injury to Rubbermaid's
15 goodwill and reputation; and (3) Defendants are foreign companies with no U.S. presence or
16 assets, so any monetary judgment would be uncollectible.
17

18 88. Rubbermaid has a likelihood of success on the merits given that there is no
19 dispute that Defendants have directly infringed and continue to infringe the Asserted Patents by
20 making, using, importing, offering to sell, and selling (directly or through intermediaries)
21 products embodying one or more claims of the Asserted Patents, including without limitation the
22 Accused Products in the United States and specifically at ISSA. Rubbermaid is also likely to
23 succeed on the merits of the copyright claim because Defendants directly copied Rubbermaid's
24 copyrighted material (i.e., the Rubbermaid Brochure) and have distributed the copied work in the
25 United States at ISSA.
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1 I. Awarding Rubbermaid prejudgment interest and post-judgment interest on any
2 damages awarded by reason of Defendants' infringement of the Asserted Patents and/or
3 Copyright;

4 J. Awarding Rubbermaid its costs incurred in bringing and maintaining this action,
5 including reasonable attorney fees;

6 K. Awarding such other and further relief as this Court may deem just, proper and
7 equitable.
8

9 **JURY DEMAND**

10 Plaintiff demands a trial by jury pursuant to Fed. R. Civ. P. 38.

11 Dated this 19th day of November, 2013.

12 **COTTON, DRIGGS, WALCH,**
13 **HOLLEY, WOLOSON & THOMPSON**

14 */s/ James D. Boyle*

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27 *Counsel for Plaintiff*
28 *Rubbermaid Commercial Products LLC*