

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01284-CMA-MJW

KÄRCHER NORTH AMERICA, INC.,  
a Delaware corporation,

Plaintiff,

v.

NILFISK-ADVANCE, INC.,  
a Minnesota corporation,

Defendant.

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**SECOND AMENDED COMPLAINT WITH JURY DEMAND**

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Plaintiff Kärcher North America, Inc. ("Kärcher" or "Plaintiff"), by way of its Second Amended Complaint against the above-named Defendant Nilfisk-Advance, Inc. ("Nilfisk" or "Defendant"), alleges the following:

**I. NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

**II. THE PARTIES**

2. Kärcher is a corporation organized under the laws of the State of Delaware with a principal place of business at 1351 West Stanford Avenue, Englewood, Colorado 80110.

3. Nilfisk is a corporation organized under the laws of the State of Minnesota with its principal place of business at 14600 21st Avenue North, Plymouth, Minnesota 55447-3408. Nilfisk is subject to service of process in Colorado through its Registered Agent, National Registered Agents, Inc., located at 1675 Broadway, Suite 1200, Denver, Colorado 80202.

### **III. JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction over the asserted claim under 28 U.S.C. §§ 1331 and 1338.

6. Nilfisk is subject to personal jurisdiction in this judicial district because: (1) it regularly conducts business within and has had systematic and continuous contacts with this judicial district; (2) the activities giving rise to Kärcher's claims occurred, at least in part, within this judicial district; and (3) Kärcher has been damaged in this judicial district by Nilfisk's tortious conduct.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) because Nilfisk is subject to personal jurisdiction in this judicial district, it has offered infringing product for sale in this judicial district, and at least a part of the events giving rise to the asserted claim and of the resulting damage occurred in this district.

#### **IV. GENERAL ALLEGATIONS**

##### **A. Kärcher and the Windsor® Chariot**

8. Kärcher is a world leader in cleaning equipment. Kärcher manufactures and sells both individual cleaning products and complete cleaning systems for residential, commercial and industrial use, and also provides cleaning services in the commercial and industrial cleaning market. Kärcher utilizes one of North America's largest networks of cleaning equipment dealers to provide Kärcher commercial customers with sales, service, and warranty support.

9. Among numerous other cleaning products, Kärcher manufactures and sells commercial grade cleaning equipment, including a full line of commercial scrubbers, sweepers, vacuums, and floor machines. Kärcher also provides training for these products to both its customers and distributors.

10. Many of Kärcher's commercial grade cleaning products and services are offered through a Kärcher division doing business under the Windsor® service mark.

11. In November 2004, Kärcher's Windsor® brand introduced the industry's first stand-on platform for floor care equipment under the name "Chariot." Windsor® Chariots increase productivity, cleaning consistency, and job quality by providing increased floor coverage, reduced operator fatigue, and greater maneuverability than traditional walk-behind cleaning machines they were designed to replace.

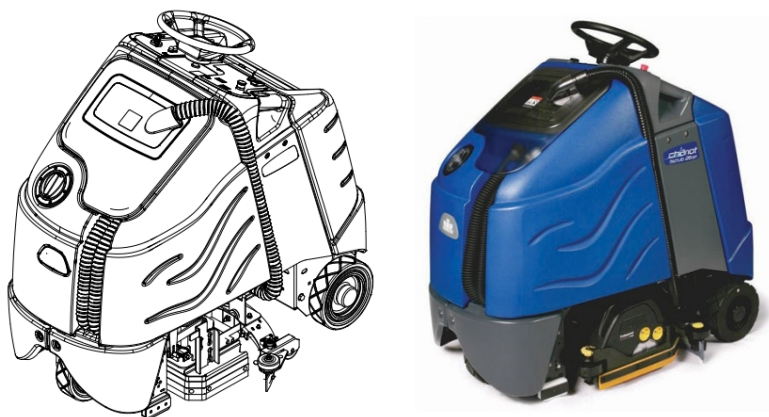
12. Windsor® Chariots are easy-to-use machines that provide operators with superior, full-circle visibility of obstacles. Moreover, the Windsor® Chariot's small

footprint and ultra-tight turning radius make it ideal for cleaning in busy, complex building layouts without disrupting workflow.

13. Since introducing the original Windsor® Chariot, Kärcher has developed a line of Chariot products that today includes, by way of example only, the Chariot iScrub 24 Commercial Scrubber; the Chariot iGloss Commercial Burnisher; the Chariot iExtract Commercial Extractor; the Chariot 2 iVac 24 ATV Commercial Vacuum; the Chariot 2 iScrub 20 Deluxe Commercial Scrubber; and the Chariot 3 iScrub 26 Commercial Scrubber. As evident from these product names, Windsor® Chariot ride-on floor cleaners are available with a variety of floor cleaning tools, including scrubbers, burnishers, vacuums, sweepers, and extractors.

14. Windsor® Chariots are offered at competitive price points that enable customers to save substantial sums of money in cleaning costs. For example, an operator of the Chariot 2 iScrub 20 can expect to save anywhere from \$15,000 to \$41,000 dollars in operational costs over three years, as compared to using a traditional 17" to 26" walk-behind auto-scrubber.

15. Other Chariot variants provide similar efficiency gains.



16. Chariot products, including the Chariot iScrub 24 pictured above, consist of a chassis resting on fixed rear side wheels and a steerable front center wheel. The Chariot carries batteries for powering the electric motors that propel the machine and activate the machine's cleaning device. Each Chariot includes an operator platform located at the rear of the machine, on which the machine operator rides. The operator maneuvers the Chariot using a steering wheel and controls the machine's various systems using a pedal on the operator platform and the controls on a control panel. On the Chariot iScrub 24, these controls include: (1) a key-operated power switch; (2) a safety shut-off switch; (3) a forward/reverse selector switch; (4) a horn; and (5) a mode selector dial, which allows selection of two throttle speeds and of various cleaning modes. Some Chariots, such as the Chariot 2 iScrub 20 Deluxe, also include an "operator presence" pedal on the platform that must be depressed for the machine to operate, thus enhancing operator safety.

17. The Chariot 2 iScrub 20 Deluxe, pictured below, utilizes a "clamshell" design to permit easy access to the machine's recovery tank and batteries. Successful implementation of the clamshell feature required the development by Kärcher of an innovative steering column that can extend and flex when the upper lid is opened. The steering mechanism eliminates any need for disconnecting the steering wheel from the steering column before opening the upper lid, and so permits Chariot operators to benefit from less down-time and a correlative increase in productivity.



**B. Kärcher's Patent Rights in the Chariot Product Line**

18. To protect its substantial investment in the Chariot product line, including the innovations developed in conjunction therewith, Kärcher has sought and received—at great effort and expense—numerous issued patents and pending applications. Kärcher obtained these patents to ensure that competitors would not unfairly copy the Chariot's innovations and incorporate them into a competing product that, due to the copying, could be sold at a lower price than the Chariot.

19. For example, U.S. Patent No. 7,533,435 ("the '435 Patent"), entitled "Floor Treatment Apparatus," was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on May 19, 2009 from an application filed on February 15, 2005. The earliest priority date of the '435 Patent is May 14, 2003. (A copy of the '435 Patent is attached as Ex. 1 to the First Amended Complaint.)

20. Kärcher owns all rights, title, and interest in and to the '435 Patent by assignment from the inventors.

21. The Abstract of the '435 Patent provides that "[t]he present invention relates generally to an apparatus for cleaning or otherwise treating a floored surface that includes a platform adapted to support the weight of an operator." The Abstract further explains that "one embodiment of the present invention is capable of generally performing 360° turns to facilitate the treatment of difficult to access portions of the floored surface."

22. The '435 Patent includes seven independent claims and 122 claims overall. Independent claim 1 of the '435 Patent provides:

1. A floor treatment apparatus comprising:
  - a chassis having a front and a back and with a lower surface, a front surface adjacent the front, an upper surface, a rear surface adjacent the back, a left surface and a right surface;
  - a first wheel operably interconnected to the lower surface adjacent to the left surface and located closer to the rear surface than the front surface;
  - a second wheel operably interconnected to the lower surface adjacent the right surface and located closer to the rear surface than the front surface;
  - a platform located substantially between at least a portion of the right surface, at least a portion of the left surface and extending rearwardly from a portion of the rear surface, the platform also substantially located within the chassis and positioned substantially directly above an axis extending between the center of the first wheel and the center of the second wheel and wherein the platform includes a top surface which is adapted to receive the feet of an operator, a throttle and an operator presence device operatively connected to and which selectively interrupts operation of the throttle;
  - a powered wheel operably connected adjacent the lower surface of the chassis;
  - a steering mechanism substantially housed within the chassis and having a portion that is accessible by an operator;

and an operable floor treating device connected adjacent to the lower surface of the chassis.

23. U.S. Patent No. 8,528,142 ("the '142 Patent"), entitled "Floor Treatment Apparatus," was duly and legally issued by the USPTO on September 10, 2013 from an application filed on May 6, 2013. Like the '435 Patent, the '142 Patent has an earliest priority date of May 14, 2003. (A copy of the '142 Patent is attached as Ex. 2 to the First Amended Complaint.)

24. Kärcher owns all rights, title, and interest in and to the '142 Patent by assignment from the inventors.

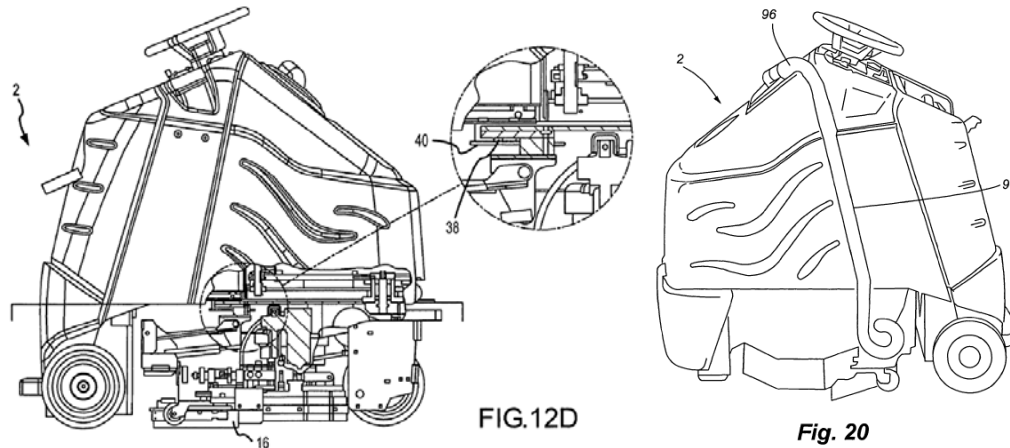
25. The '142 Patent has five independent claims and twenty-seven claims overall. Independent claim 1 of the '142 Patent is set forth in its entirety below:

1. A floor treatment apparatus comprising:
  - a chassis having a front and a back and with a lower surface, a front surface adjacent the front, an upper surface, a rear surface adjacent the back, a left surface, and a right surface;
  - a first wheel operably interconnected to the lower surface adjacent to the left surface and located closer to the rear surface than the front surface;
  - a second wheel operably interconnected to the lower surface adjacent the right surface and located closer to the rear surface than the front surface;
  - a platform located substantially between at least a portion of the right surface and at least a portion of the left surface, and closer to the lower surface than the upper surface, wherein the platform extends rearwardly from a portion of the rear surface, wherein a portion of the platform is positioned between the first wheel and the second wheel such that a portion of the platform penetrates a three-dimensional cylindrical volume that is defined by the outer surface of the first wheel and the second wheel, and wherein the platform includes a throttle and an operator presence device, which is operatively connected to and which selectively interrupts operation of the throttle;



a power source positioned substantially within the chassis;  
an electric monowheel drive motor associated with the power source;  
a third wheel associated with the electric monowheel drive motor and operably connected adjacent the lower surface of the chassis;  
a steering mechanism associated with the third wheel;  
a floor treating device connected adjacent to the lower surface of the chassis; and  
wherein the chassis includes a rear cowling that is capable of selective rotation about an axis parallel to the axis extending between the center of the first wheel and the center of the second wheel.

26. Exemplary figures from the '435 and '142 Patents are included below.



27. U.S. Patent No. 8,302,240 ("the '240 Patent"), entitled "Selectively Adjustable Steering Mechanism for Use on a Floor Cleaning Machine," was duly and legally issued by the USPTO on November 6, 2012 from an application filed on July 29, 2009. (A copy of the '240 Patent is attached as Ex. 3 to the First Amended Complaint.)

28. Kärcher owns all rights, title, and interest in and to the '240 Patent by assignment from the inventors.

29. The Abstract of the '240 Patent states:

A floor cleaning machine is provided that includes a chassis that supports at least one cleaning element. The chassis is supported by a plurality of wheels, one which is steerable via a steering wheel that is interconnected to a housing also associated with the chassis. The chassis provided includes a plurality of movable housing members, one of which is associated with the steering wheel. To access the internal components of the floor cleaning machine, the front housing is rotated or moved away from the other housings wherein the steering wheel does not require disconnection to allow this movement.

'240 Patent, Abstract.

30. The '240 Patent has two independent claims and nine total claims.

31. U.S. Patent No. 8,397,333 ("the '333 Patent"), entitled "Selectively Adjustable Steering Mechanism for Use on a Floor Cleaning Machine," was duly and legally issued by the USPTO on March 19, 2013, from an application filed on August 20, 2012. The earliest priority date of the '333 Patent is July 29, 2009. (A copy of the '333 Patent is attached as Ex. 4 to the First Amended Complaint.)

32. Kärcher owns all rights, title, and interest in and to the '333 Patent by assignment from the inventors.

33. The '333 Patent has two independent claims and six total claims.

34. U.S. Patent No. 8,887,340 ("the '340 Patent"), entitled "Floor Cleaning Apparatus" was duly and legally issued by the USPTO on November 18, 2014 from Application Serial No. 14/133,248. (A copy of the '340 Patent is attached as Ex. 1

hereto and is incorporated by reference.) Kärcher owns all rights, title and interest in and to the '340 Patent by assignment from the inventors.

35. The Abstract of the '340 Patent states:

A floor cleaning machine is provided that includes a chassis that supports at least one cleaning element. The chassis is supported by a plurality of wheels, one which is steerable via a steering wheel that is interconnected to a housing also associated with the chassis. The chassis provided includes a plurality of movable housing members, one of which is associated with the steering wheel. To access the internal components of the floor cleaning machine, the front housing is rotated or moved away from the other housings wherein the steering wheel does not require disconnection to allow this movement.

('340 Pat., Abstract.)

36. The '340 Patent includes one independent claim and three total claims.

37. Exemplary figures from the '240, '333 and '340 Patents are provided below.

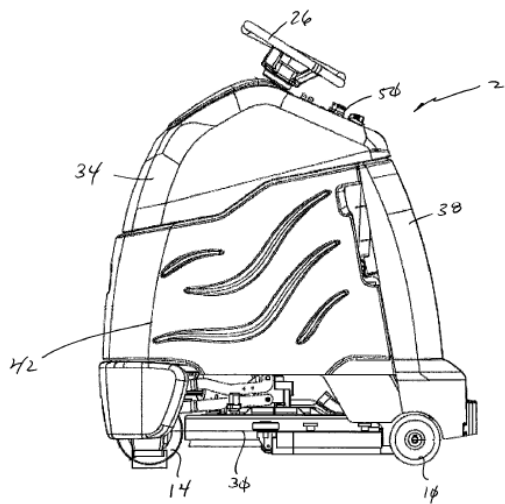


FIG. 1

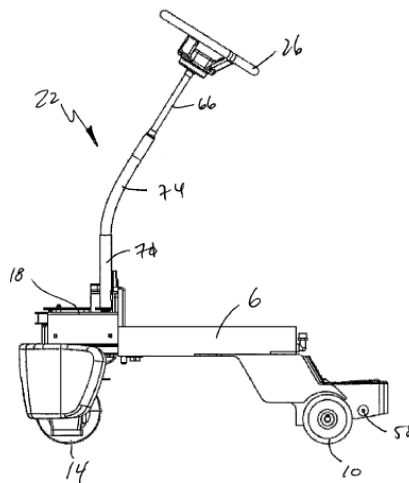


FIG. 3

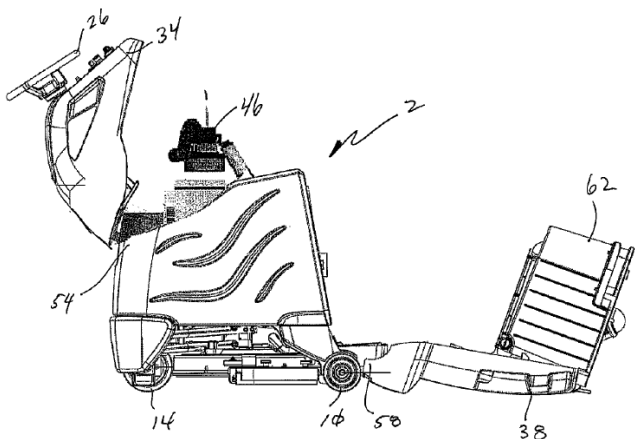


FIG. 2

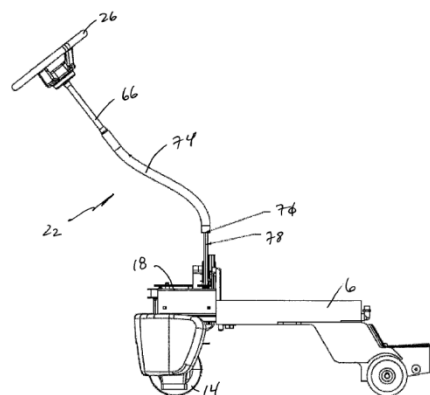


FIG. 4

38. In addition to the issued patents described above, Kärcher continues to file and prosecute patent applications directed to the innovations developed in conjunction with its Chariot line of products.

**C. Nilfisk Copies Kärcher's Chariot Product Line**

39. Nilfisk is a longtime competitor to Kärcher in the floor cleaning industry.

40. Nilfisk introduced the SC1500 Stand-up Scrubber ("SC1500"), which Nilfisk is offering for sale under its Advance brand. Nilfisk has offered for sale two variants of the SC1500: the SC1500 REV and the SC1500 Disc.

41. Both the SC1500 REV, pictured below, and the SC1500 Disc copy many of the technologies developed by Kärcher for the Chariot product line, including technologies described and claimed in the patents identified above.



42. Like the Windsor<sup>®</sup> Chariot, the SC1500 is a battery-operated stand-on floor cleaning machine. Nilfisk's marketing materials for the SC1500, copies of which are attached to the First Amended Complaint as Exhibit 5, describe the following SC1500 characteristics:

- (a) "Great sight lines with a clear view of the floor and the surroundings."
- (b) "Faster overall scrub speed combined with easier to use steering wheel control and compact size cleans more area faster and reduces the overall cost to clean."
- (c) "Safety dead-man switch and GO pedal make the machine safe and easy to control."



- (d) "It is extremely maneuverable and compact which provides easy access to even congested areas like in retail or in healthcare facilities."
- (e) "Dash mount speed control is within easy reach of the operator for quick speed changes."
- (f) "All scrubbing parameters are centrally located under the graphical display and are controlled with a dedicated button for each parameter."
- (g) "Flip up lid and tilt back tank provides easy access to the recovery tank, debris catch cage, batteries and EcoFlex container."



43. Also like the Windsor<sup>®</sup> Chariot, the SC1500's control panel (shown below) provides operators with (1) a key-operated power switch; (2) a safety shut-off switch; (3) a forward/reverse selector switch; (4) a horn; and (5) mode selection controls, which allow for throttle adjustment and selection of various cleaning modes.



44. In an apparent attempt to take Kärcher's Chariot sales, Nilfisk has offered the SC1500 Disc for sale at an MSRP of \$7,553.00, and the SC1500 REV for sale at an MSRP of \$7,753.00, pricing which is similar to that of Kärcher.

45. Upon information and belief, Nilfisk can only offer the SC1500 for sale at such prices because it copied the Chariot's innovative and patented features, rather than investing in its own research and development to create its own innovative features.

46. Nilfisk's unauthorized manufacture of, sale of, and/or offers to sell a stand-on floor cleaning machine that utilizes patented features of the Windsor<sup>®</sup> Chariot has caused and will continue to cause substantial and irreparable harm to Kärcher, including, but not limited to, irreversible price erosion and loss of market position.

**V. FIRST CLAIM FOR RELIEF**  
**(Patent Infringement Under 35 U.S.C. § 271 – U.S. Patent No. 7,533,435)**

47. The allegations set forth in the foregoing paragraphs 1 through 46 are hereby realleged and incorporated herein by reference.

48. Kärcher has marketed the Chariot with the '435 Patent number.

49. Nilfisk has directly infringed one or more claims of the '435 Patent, in violation of 35 U.S.C. § 271, in this judicial district and elsewhere by making, using, selling, and/or offering for sale a product or products that infringe one or more claims of the '435 Patent ("Accused Products").

50. Upon information and belief, Nilfisk's Accused Products include but are not limited to its SC1500 stand-on floor cleaning machines.

51. Upon information and belief, Nilfisk had actual knowledge of the '435 Patent and of its alleged infringement of that patent since before the filing of this Second Amended Complaint, and its infringement of the '435 Patent was willful and in wanton disregard of Kärcher's patent rights.

52. Because of Nilfisk's infringement of the '435 Patent, Kärcher has suffered and will continue to suffer irreparable harm in this judicial district.

**VI. SECOND CLAIM FOR RELIEF**  
**(Patent Infringement Under 35 U.S.C. § 271 – U.S. Patent No. 8,528,142)**

53. The allegations set forth in the foregoing paragraphs 1 through 52 are hereby realleged and incorporated herein by reference.

54. Nilfisk has directly infringed one or more claims of the '142 Patent, in violation of 35 U.S.C. § 271, in this judicial district and elsewhere by making, using, selling, and/or offering for sale a product or products that infringe one or more claims of the '142 Patent ("Accused Products").

55. Upon information and belief, Nilfisk's Accused Products include but are not limited to its SC1500 stand-on floor cleaning machines.



56. Because of Nilfisk's infringement of the '142 Patent, Kärcher has suffered and will continue to suffer irreparable harm in this judicial district.

**VII. THIRD CLAIM FOR RELIEF**  
**(Patent Infringement Under 35 U.S.C. § 271 – U.S. Patent No. 8,887,340)**

57. The allegations set forth in the foregoing paragraphs 1 through 56 are hereby realleged and incorporated herein by reference.

58. Nilfisk has directly infringed one or more claims of the '340 Patent, in violation of 35 U.S.C. § 271, in this judicial district and elsewhere by making, using, selling, and/or offering for sale a product or products that infringe one or more claims of the '340 Patent ("Accused Products").

59. Upon information and belief, Nilfisk's Accused Products include but are not limited to its SC1500 stand-on floor cleaning machines.

Because of Nilfisk's infringement of the '340 Patent, Kärcher has suffered and will continue to suffer irreparable harm in this judicial district.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Kärcher prays for judgment in its favor and against Nilfisk as follows:

a. That Nilfisk has infringed one or more claims of Kärcher's asserted Patents;

b. That Nilfisk, its officers, directors, agents, servants, employees, privies, representatives, attorneys, parent and subsidiary corporations or other related entities, successors, assigns, licensees, retail distributors, and all persons in active concert or

participation with any of them, be preliminarily and permanently enjoined from further acts of infringement of the asserted Patents;

c. That Kärcher be awarded damages in an amount to be determined at trial for Defendant's infringing activities, which are at least a reasonable royalty;

d. That Kärcher be awarded treble damages by reason of the willful, wanton, and deliberate nature of Defendant's infringement pursuant to 35 U.S.C. § 284;

e. That Kärcher be awarded punitive damages;

f. That Kärcher be awarded its pre-judgment and post-judgment interest;

g. That Kärcher be awarded costs and expenses of suit, including expert witness fees;

h. That Kärcher be awarded its attorneys' fees as this is an exceptional case under 35 U.S.C. § 285;

i. That Nilfisk be ordered to deliver to Kärcher, for destruction at Kärcher's option, all products that infringe Kärcher's Patents;

j. That Nilfisk be required to account for all gains, profits, advantages, and unjust enrichment derived from its violations of law; and

k. That Kärcher be awarded other and further relief as the Court deems appropriate and just.

#### **IX. JURY DEMAND**

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

Respectfully submitted,

Dated: November 24, 2014

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ATTORNEYS FOR PLAINTIFF  
KÄRCHER NORTH AMERICA, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this November 24, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Lori R. Brown  
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