

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Kärcher North America, Inc.,	)	
a Delaware corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
Tornado Industries LLC, an Illinois corporation,	)	
d/b/a Tornado Industries, Inc. and also	)	
d/b/a Tornado Industries,	)	
	)	
Defendant.	)	

COMPLAINT WITH JURY DEMAND

Plaintiff Kärcher North America, Inc. ("Kärcher"), for its Complaint with Jury Demand against the above-named Defendant Tornado Industries LLC, d/b/a Tornado Industries, Inc. and/or Tornado Industries ("Tornado"), 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 4555 Airport Way Denver, Colorado 80239.

3. Tornado is a corporation organized under the laws of the State of Illinois with its principal place of business at 3101 Wichita Court, Fort Worth, Texas 76140, and upon information and belief, doing business as Tornado Industries, Inc. and doing business as Tornado Industries.

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. Tornado 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 Tornado's tortious conduct.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) because Tornado has a regular and established place of business in this district, it has offered infringing product for sale in this 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. 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® mark.

11. In November 2004, Kärcher's Windsor® brand introduced the industry's first stand-on platform for floor care equipment under the name and now registered trademark, "Chariot." Windsor® Chariots increase productivity, cleaning consistency, and job quality by providing increased floor coverage, reduced operator fatigue, and greater maneuverability than the 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 2 iScrub 20 Deluxe Commercial Scrubber; the Chariot 2 iScrub 20 Deluxe with ORB Technology Commercial Scrubber; the Chariot iGloss 20 Commercial Burnisher; the Chariot 2 iScrub 20 Commercial Scrubber; the Chariot 2 iScrub 22 SP Commercial Scrubber; the Chariot 2 iVac 24 ATV Commercial Vacuum; the Chariot 3 CV 86/1 RS Bp Commercial Vacuum; the Chariot 3 iScrub 26 Commercial Scrubber; the Chariot 3 iExtract 26 DUO Commercial Extractor; and the Chariot 3 iScrub 26 SP 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. Other Chariot variants provide similar efficiency gains.



15. Chariot products, including the Chariot 2 iScrub 20, pictured above, consist of a chassis, two rear 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 2 iScrub 20, these controls include:

- (1) speed adjustment knob;
- (2) fluid and other control mechanisms;
- (3) a horn;
- (4) a directional control system, which moves the device either forward or reverse;
- (5) emergency button; and
- (6) key switch.

Some Chariots, including the Chariot 2 iScrub 20, also include an "operator presence" switch whereby the machines must detect an operator in order for the machine to operate, thus enhancing operator safety.

16. The Chariot 2 iScrub 20 Deluxe, pictured below, utilizes a "clamshell" design to permit easy access to the machine's recovery tank and batteries.



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

17. 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.

18. For example, U.S. Patent No. 9,015,887 ("the '887 Patent"), entitled "Floor Treatment Apparatus," was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on April 28, 2015 from an application filed on August 10, 2013. The earliest priority date of the '887 Patent is May 14, 2003. (A copy of the '887 Patent is attached as Ex. 1 and is incorporated by reference.)

19. Kärcher owns all rights, title, and interest in and to the '887 Patent by assignment from the inventors.

20. The Abstract of the '887 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."

21. The '887 Patent includes six independent claims and thirty-seven claims overall. Independent claim 1 of the '887 Patent provides:

1. A floor treatment apparatus with a platform upon which the operator can stand during operation, comprising:
a chassis having a front and a back and a lower surface, a front surface adjacent the front, a rear surface adjacent the back, a left side and right side and a platform;
at least a first wheel, a second wheel and a third wheel, the first wheel and the second wheel located substantially toward the back of the apparatus;
at least one of a debris collection device and a fluid collection device connected adjacent the lower surface;
a power source interconnected to at least one of the wheels;
a mechanism operably interconnected to at least one of the wheels to allow an operator to steer the floor treatment apparatus;
wherein the platform is located substantially below the steering mechanism and with a portion thereof positioned substantially directly below an axis extending between the centers of the first wheel and the second wheel, and wherein the platform includes a throttle actuator to regulate electrical power which is in the form of a foot pedal and an operator presence device, which is operatively connected to and which selectively interrupts operation of the throttle actuator.

22. U.S. Patent No. 9,451,861 ("the '861 Patent"), entitled "Floor Treatment Apparatus," was duly and legally issued by the USPTO on September 27, 2016 from an application

filed on March 10, 2015. The '861 Patent has an earliest priority date of May 14, 2003. (A copy of the '861 Patent is attached as Ex. 2 and is incorporated by reference.)

23. Kärcher owns all rights, title, and interest in and to the '861 Patent by assignment from the inventors.

24. The '861 Patent has three independent claims and fifteen overall. Independent claim 1 of the '861 Patent is set forth in its entirety below:

1. A floor treatment apparatus with a platform upon which the operator can stand during operation, comprising:
a chassis having a front and a back and a lower surface, a front surface adjacent the front, a rear surface adjacent the back, a left side and right side and a platform;
at least a first wheel, a second wheel and a third wheel, the first wheel and the second wheel located substantially toward the back of the chassis;
a collection device connected adjacent the lower surface;
a power source operatively associated with one of the wheels;
a steering mechanism operatively associated with at least one of the wheels;
wherein the platform is located substantially below the steering mechanism, and wherein the platform includes a throttle actuator to regulate electrical power which is in the form of a foot pedal and an operator presence device, which is operatively connected to, and which selectively interrupts operation of the throttle actuator.

25. U.S. Patent No. 9,757,005 ("the '005 Patent"), entitled "Floor Treatment Apparatus," was duly and legally issued by the USPTO on September 12, 2017 from an application filed on August 24, 2016. Like the '887 and '861 Patents, the '005 Patent has an earliest priority date of May 14, 2003. (A copy of the '005 Patent is attached as Ex. 3 and is incorporated by reference.)

26. Kärcher owns all rights, title, and interest in and to the '005 Patent by assignment from the inventors.

27. The '005 Patent has five independent claims and thirty-one claims overall.

Independent claim 1 of the '005 Patent is set forth in its entirety below:

1. A floor treatment apparatus, comprising:
 - a chassis having a front, a back, 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, the platform extending rearwardly from a portion of the rear surface, and 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, wherein the platform includes a top surface adapted to receive the feet of an operator, and wherein the platform includes 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 associated with the chassis and having a portion that is accessible by an operator; and
 - a floor treating device connected adjacent to the lower surface of the chassis, the floor treating device configured to scrub floors, clean carpets, vacuum floors, wax floors, burnish floors, remove wax from a floor, or remove varnish from a floor, wherein the floor treating device can be quickly changed from one floor treating device to another.

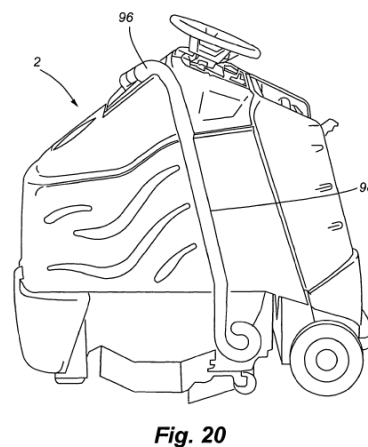
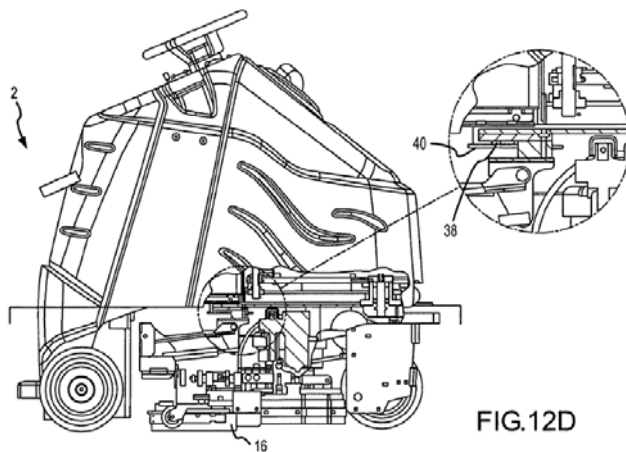
28. U.S. Patent No. 9,730,566 ("the '566 Patent"), entitled "Floor Treatment Apparatus," was duly and legally issued by the USPTO on August 15, 2017 from an application filed on August 26, 2016. Like the '887, '861, and '005 Patents, the '566 Patent has an earliest priority date of May 14, 2003. (A copy of the '566 Patent is attached as Ex. 4 and is incorporated by reference.)

29. Kärcher owns all rights, title, and interest in and to the '566 Patent by assignment from the inventors.

30. The '566 Patent has four independent claims and thirty claims overall. Independent claim 1 of the '566 Patent is set forth in its entirety below:

1. A floor treatment apparatus, comprising:
 - a chassis comprising a front, a back, a lower surface, a front surface adjacent the front, an upper surface, a rear surface located substantially behind a center point of the chassis, a left surface, and a right surface;
 - a platform located partially between a portion of the right surface and the left surface and at least partially behind the rear surface, wherein the platform includes a top surface adapted to receive the feet of an operator;
 - a throttle and an operator presence device associated with a portion of the top surface;
 - one or more batteries electrically connected to an electric monowheel drive;
 - a steering mechanism associated with the chassis and having a portion accessible to an operator; and
 - a floor treating device connected adjacent to the lower surface of the chassis, the floor treating device configured to scrub floors, clean carpets, vacuum floors, wax floors, burnish floors, remove wax from a floor, or remove varnish from a floor.

31. Exemplary figures from the '887, '861, '005 and '566 Patents are included below.



32. 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. Tornado Copies Kärcher's Chariot Product Line

33. Tornado is a longtime competitor of Kärcher in the floor cleaning industry.

34. Recently, Tornado introduced the BDSO 27/28 Stand-on Automatic Scrubber Model No: 99786 ("BDSO 27/28").

35. The BDSO 27/28, pictured below, copies many of the technologies developed by Kärcher for the Chariot product line, including technologies described and claimed in the Patents identified above.



36. Like the Windsor[®] Chariot, the BDSO 27/28 is a battery-operated stand-on floor cleaning machine. Tornado's marketing materials for the BDSO 27/28, copies of which are attached hereto as Ex. 5 and incorporated by reference, describe the following BDSO 27/28 characteristics:

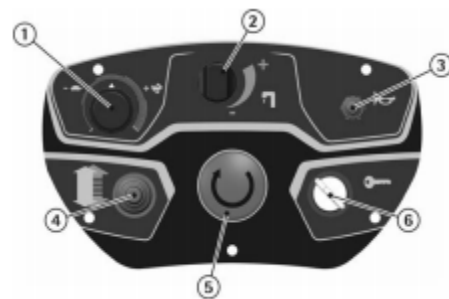
- (a) "Maximum visibility and working position."
- (b) "Effortless control in a comfortable platform."

- (c) "Ride-on scrubbers provide comfort and convenience, while walk-behind scrubbers offer cost savings. The Tornado BDSO 27/28 combines the best of both worlds."
- (d) "[C]overs lots of ground without the operator having to take a single step and maneuvers around obstacles with superior control."
- (e) "Control speed, solution, pads, and more with ease."

(Ex. 5, pp. 1-2.) Also like the Windsor[®] Chariot, the BDSO 27/28's control panel (shown below) provides operators with (1) speed adjustment knob; (2) fluid and other control mechanisms; (3) a horn; (4) a directional control system, which moves the device either forward or reverse; (5) emergency button; and (6) key switch:

CONTROLS BOARD LEGEND

- 1. SPEED ADJUSTMENT KNOB
- 2. WATER VALVE
- 3. HORN
- 4. DIRECTION LEVER (FORWARD/BACKWARD)
- 5. EMERGENCY BUTTON
- 6. KEY SWITCH



(Ex. 5, p. 10.)

37. In an apparent attempt to take Kärcher's Chariot sales, Tornado is offering the BDSO 27/28 for sale at a manufacturer's suggested retail price of \$8,500, pricing which is like that of Kärcher.

38. Upon information and belief, Tornado can only offer the BDSO 27/28 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.

39. Tornado's unauthorized manufacture of, sale of, and/or offers to sell a stand-on floor cleaning machine that utilizes patented features of the Windsor® 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. 9,015,887)

40. The allegations set forth in the foregoing paragraphs 1 through 39 are hereby realleged and incorporated herein by reference.

41. Tornado has directly infringed one or more claims of the '887 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 '887 Patent ("887 Accused Products").

42. Upon information and belief, Tornado's '887 Accused Products include but are not limited to its BDSO 27/28 stand-on floor cleaning machines.

43. Upon information and belief, Tornado had actual knowledge of the '887 Patent and of its alleged infringement of that Patent since before the filing of this Complaint, and its infringement of the '887 Patent was willful and in wanton disregard of Kärcher's patent rights.

44. Because of Tornado's infringement of the '887 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. 9,451,861)

45. The allegations set forth in the foregoing paragraphs 1 through 44 are hereby realleged and incorporated herein by reference.

46. Tornado has directly infringed one or more claims of the '861 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 '861 Patent ("861 Accused Products").

47. Upon information and belief, Tornado's '861 Accused Products include but are not limited to its BDSO 27/28 stand-on floor cleaning machines.

48. Upon information and belief, Tornado had actual knowledge of the '861 Patent and of its alleged infringement of that Patent since before the filing of this Complaint, and its infringement of the '861 Patent was willful and in wanton disregard of Kärcher's patent rights.

49. Because of Tornado's infringement of the '861 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. 9,757,005)

50. The allegations set forth in the foregoing paragraphs 1 through 49 are hereby realleged and incorporated herein by reference.

51. Tornado has directly infringed one or more claims of the '005 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 '005 Patent ("005 Accused Products").

52. Upon information and belief, Tornado's '005 Accused Products include but are not limited to its BDSO 27/28 stand-on floor cleaning machines.

53. Upon information and belief, Tornado had actual knowledge of the '005 Patent and of its alleged infringement of that Patent since before the filing of this Complaint, and its infringement of the '005 Patent was willful and in wanton disregard of Kärcher's patent rights.

54. Because of Tornado's infringement of the '005 Patent, Kärcher has suffered and will continue to suffer irreparable harm in this judicial district.

VIII. FOURTH CLAIM FOR RELIEF
(Patent Infringement Under 35 U.S.C. § 271 – U.S. Patent No. 9,730,566)

55. The allegations set forth in the foregoing paragraphs 1 through 54 are hereby realleged and incorporated herein by reference.

56. Tornado has directly infringed one or more claims of the '566 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 '566 Patent ("566 Accused Products") (the accused products set forth in Claims I-IV are collectively referred to as "Accused Products").

57. Upon information and belief, Tornado's '566 Accused Products include but are not limited to its BDSO 27/28 stand-on floor cleaning machines.

58. Upon information and belief, Tornado had actual knowledge of the '566 Patent and of its alleged infringement of that Patent since before the filing of this Complaint, and its infringement of the '566 Patent was willful and in wanton disregard of Kärcher's patent rights.

59. Because of Tornado's infringement of the '566 Patent, Kärcher has suffered and will continue to suffer irreparable harm in this judicial district.

IX. PRAYER FOR RELIEF

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

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

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

j. That Tornado 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.

X. JURY DEMAND

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

Respectfully submitted,

Dated: July 9, 2019

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