

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

RUBBERMAID INCORPORATED,

Plaintiff,

v.

CENTREX PLASTICS, LLC,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Rubbermaid Incorporated (“Rubbermaid” or “Plaintiff”), for its complaint against defendant, Centrex Plastics, LLC (“Centrex” or “Defendant”), seeking damages, injunctive relief and other relief for patent infringement, alleges as follows:

NATURE OF ACTION

1. This is an action for patent infringement arising under Title 35 of the United States Code, seeking monetary damages and injunctive relief against Centrex due to its violation of Rubbermaid’s rights in U.S. Patent Nos. 6,079,339 and 6,178,896 (together, the “Patents-in-Suit”).

PARTIES, JURISDICTION AND VENUE

2. Plaintiff Rubbermaid Incorporated is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business at 8900 North Pointe Executive Park Drive, Huntersville, North Carolina 28078.

3. On information and belief, Centrex is an Ohio limited liability company, having a principal place of business at 814 West Lima Street, Findlay, Ohio, 45840.

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant transacts business within this district, including, without limitation, the offer for sale of the infringing products described herein.

6. Upon information and belief, venue in this district is proper pursuant to 28 U.S.C §§ 1391(b) and (c) and 1400(b).

PATENTS-IN-SUIT

7. On May 26, 1998, a nonprovisional utility patent application entitled “Shelving System” was filed with the United States Patent and Trademark Office, which application resulted in the granting of United States Patent No. 6,079,339, issued on June 27, 2000 (“the ‘339 Patent”). A true and accurate copy of the ‘339 Patent, which is valid and subsisting, is attached hereto as Exhibit A and incorporated herein by reference.

8. On March 2, 2000, a nonprovisional utility patent application entitled “Shelving System” was filed with the United States Patent and Trademark Office, which application resulted in the granting of United States Patent No. 6,178,896, issued on January 30, 2001 (“the ‘896 Patent”). A true and accurate copy of the ‘896 Patent, which is valid and subsisting, is attached hereto as Exhibit B and incorporated herein by reference.

9. Rubbermaid is the owner by assignment of all rights, title and interest in and to the Patents-in-Suit and possesses all rights of recovery thereunder, including the right to sue for infringement and recover injunctive relief and past damages.

COUNT I
(Infringement of U.S. Patent No. 6,079,339)

10. Rubbermaid hereby incorporates by reference the allegations contained in paragraphs 1 through 9 of this Complaint as if stated herein.

11. Defendant, without Rubbermaid's authorization and in violation of 35 U.S.C. § 271, has infringed and continues to infringe one or more claims of the '339 Patent by making, using, offering to sell and/or selling ventilated resin shelving units of various dimensions, including, without limitation, the shelving unit that Centrex identifies as a "Ventilated Resin 5-Tier 18" Shelf Unit" identified as "Blue Hawk #0339949," a "Ventilated Resin 5-Tier 24" Shelf Unit" identified as "Blue Hawk #0339949," and similar shelf units, including without limitation ventilated and non-ventilated versions, in 4- and 5-tier and 18" and 24" configurations, which are covered by one or more claims of the '339 Patent.

12. To the extent that the facts learned in discovery show that Defendant's infringement of the '339 Patent is or has been willful, Rubbermaid reserves the right to request such a finding at the time of trial.

13. Defendant's infringement of the '339 Patent has caused damage to Rubbermaid, including deprivation of rights, remunerations and profits which would have otherwise come to Rubbermaid but for the infringement, and Rubbermaid is entitled to recover damages.

14. Defendant's continuing infringement of the '339 Patent will continue to damage Rubbermaid, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by the Court.

15. As a result of Defendant's wrongful conduct, Rubbermaid is entitled to injunctive relief.

COUNT II
(Infringement of U.S. Patent No. 6,178,896)

16. Rubbermaid hereby incorporates by reference the allegations contained in paragraphs 1 through 15 of this Complaint as if stated herein.

17. Defendant, without Rubbermaid's authorization and in violation of 35 U.S.C. § 271, has infringed and continues to infringe one or more claims of the '896 Patent by making, using, offering to sell and/or selling ventilated resin shelving units of various dimensions, including, without limitation, the shelving unit that Centrex identifies as a "Ventilated Resin 5-Tier 18" Shelf Unit" identified as "Blue Hawk #0339949," a "Ventilated Resin 5-Tier 24" Shelf Unit" identified as "Blue Hawk #0339946," and similar shelf units, including without limitation ventilated and non-ventilated versions, in 4- and 5-tier and 18" and 24" configurations, which are covered by one or more claims of the '896 Patent.

18. To the extent that the facts learned in discovery show that Defendant's infringement of the '896 Patent is or has been willful, Rubbermaid reserves the right to request such a finding at the time of trial.

19. Defendant's infringement of the '896 Patent has caused damage to Rubbermaid, including deprivation of rights, remunerations and profits which would have otherwise come to Rubbermaid but for the infringement, and Rubbermaid is entitled to recover damages.

20. Defendant's continuing infringement of the '896 Patent will continue to damage Rubbermaid, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by the Court.

21. As a result of Defendant's wrongful conduct, Rubbermaid is entitled to injunctive relief.

RELIEF REQUESTED

WHEREFORE, Rubbermaid prays:

A. That this Court order, adjudge and decree that Defendant has infringed the claims of the Patents-in-Suit in violation of 35 U.S.C. § 271.

B. That injunctions, preliminary and permanent, be issued out of this Court restraining Defendant, and its officers, agents, servants and employees, and all persons within Defendant's control, from directly or indirectly making or causing to be made, selling, or causing to be sold, or offering for sale, importing, or using or causing to be used in any way the inventions of the claims of the Patents-in-Suit, or otherwise directly infringing, contributorily infringing or inducing infringement of the Patents-in-Suit.

C. That this Court order Defendant, its officers, agents, servants and employees to deliver up to this Court for destruction all products infringing upon, directly or otherwise, any claim of the Patents-in-Suit or the use of which would infringe, directly or otherwise, any claim of the Patents-in-Suit.

D. That Defendant be ordered, pursuant to 35 U.S.C. § 284, to account for and pay to Rubbermaid damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

E. That, if the evidence warrants, the damages awarded by the Court to Rubbermaid be trebled in view of intentional copying of Rubbermaid's patented inventions and willful and wanton violation of Rubbermaid's patent rights.

F. That, if the evidence warrants, this Court find this to be an exceptional case under 35 U.S.C. § 285 and order Defendant to pay to Rubbermaid reasonable attorney's fees and all other costs which may be incurred by Rubbermaid.

G. That this Court order Defendant to pay the costs of this action, pre-judgment interest and post-judgment interest.

H. That this Court grant to Rubbermaid such other and further relief as may be deemed just and equitable.

JURY DEMAND

Rubbermaid hereby demands trial by jury on all issues so triable.

Dated: October 23, 2012

Respectfully submitted,

/s/ Robert A. Muckenfuss
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