

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

BROOM DESIGNS LLC

Plaintiff,

v.

ZORO TOOLS, INC., and
NEWELL BRANDS, INC.

Defendants.

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Case No. 1:22-cv-03846

JURY TRIAL DEMANDED

**COMPLAINT FOR INFRINGEMENT OF
U.S. DESIGN PATENT NO. D693,078**

Plaintiff Broom Designs LLC (“Plaintiff”) files this complaint against Defendants Zoro Tools, Inc. (“Zoro”) and Newell Brands Inc. (“Newell”) (collectively, “Defendants”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for design patent infringement under the laws of the United States, 35 U.S.C. § 271 *et seq.* arising from Defendants’ unauthorized making, using, offering to sell, and/or selling of push brooms that infringe Plaintiff’s design patent, U.S. Design Patent No. D693,078 (“the ’078 Patent”) (Ex. A), issued on November 5, 2013.

PARTIES

2. Plaintiff Broom Designs LLC is a limited liability company organized under the laws of the State of Minnesota.

3. Upon information and belief, Defendant Zoro is a corporation organized under the laws of the State of Delaware with a principal place of business at 909 Asbury Drive, Buffalo Grove, Illinois 60089.

4. Upon information and belief, Newell Brands Inc. is a corporation organized under the laws of the State of Delaware with a principal place of business at 6655 Peachtree Dunwoody Road, Atlanta, Georgia 30328.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff asserts claims for damages pursuant to the Patent Act, 35 U.S.C. § 271, over which this Court has original jurisdiction.

6. This Court has personal jurisdiction over Zoro because, upon information and belief, Zoro maintains its principal place of business in this District, has purposefully availed itself of the privilege of transacting business in this District, and has committed acts of infringement in this District by offering for sale and selling infringing products.

7. This Court has personal jurisdiction over Newell because Newell maintains a place of business in this District (at 29 E Stephenson St., Freeport, Illinois 61032), has purposefully availed itself of the privilege of transacting business in this District, and has committed acts of direct or indirect infringement in this District by offering for sale, selling, or contributing or inducing the sale of infringing products via its rubbermaidcommercial.com website and, upon information and belief, by making, using, selling, offering to sell, or importing infringing products itself or via its subsidiary business unit Rubbermaid Commercial Products, LLC (“RCP”), and contributing to or inducing infringement of the ’078 Patent by RCP or distributors (such as Defendant Zoro)

8. Venue in this district is proper as to Newell and Zoro under 28 U.S.C. §§1391(b), 1391(c), and 1400(b) because, upon information and belief, Newell and Zoro maintain at least one regular and established place of business within this District and have committed acts of direct or indirect infringement in this District.

BROOM DESIGNS LLC'S '078 PATENT

9. On May 3, 2013, Mr. Nathan James Nordvik filed U.S. Patent Application Serial No. 29/453,834 (“the ’834 Application”) with the United States Patent and Trademark Office (“USPTO”).

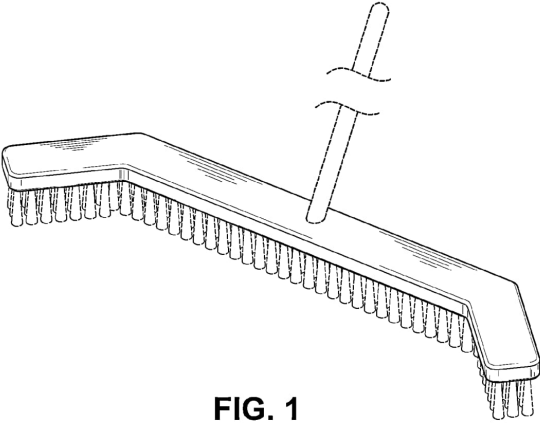
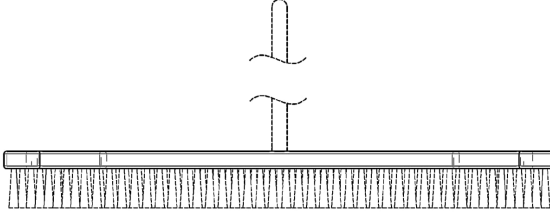
10. On November 5, 2013, the ’834 Application issued as the ’078 Patent, identifying Mr. Nordvik as its inventor of record.

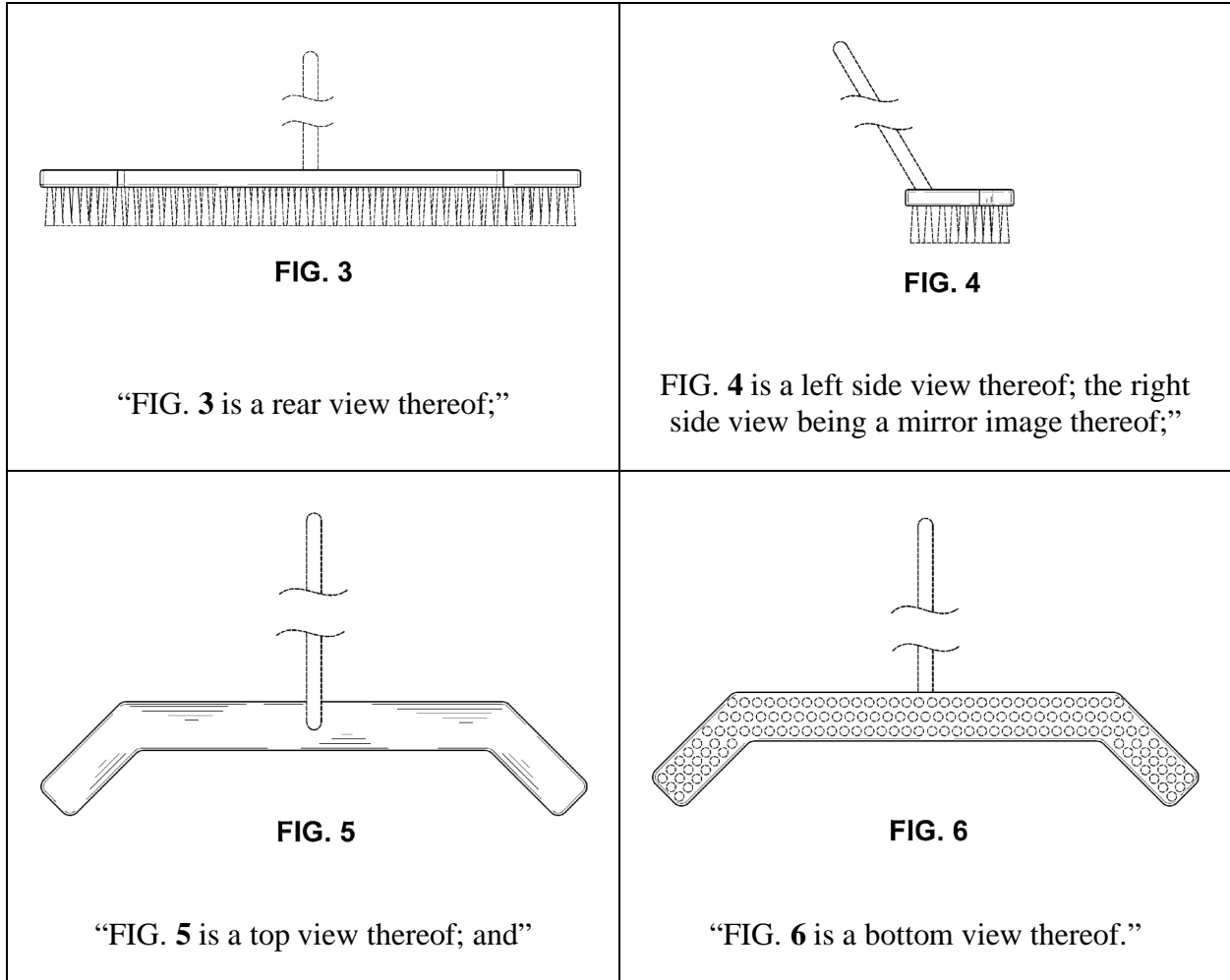
11. The face of the patent lists fifteen prior art references, eleven of which were cited by the examiner during prosecution of the ’834 Application.

12. The ’078 Patent claims “[t]he ornamental design for a push broom, as shown and described.”

13. The Description states: “The broken lines in the drawings illustrate environmental structure and form no part of the claimed design.”

14. The ’078 Patent disclosed six figures depicting the push broom. Each figure is set forth in the below table, together with its corresponding description as set forth in the ’078 Patent:

 <p>FIG. 1</p> <p>“FIG. 1 is a front perspective view of a push broom according to the present invention;”</p>	 <p>FIG. 2</p> <p>“FIG. 2 is a front view thereof;”</p>
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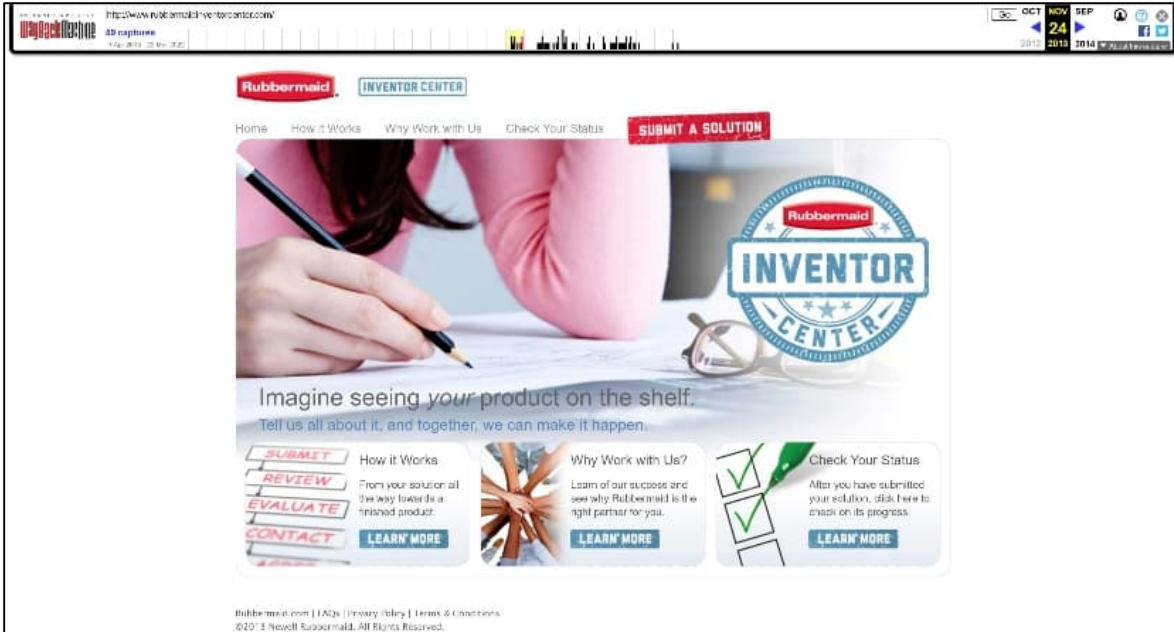
Ex. A. at 2-4.

15. On June 29, 2018, the '078 Patent was assigned to Plaintiff.

SUBMISSION OF THE CLAIMED DESIGN TO NEWELL

16. In or about early 2014, Mr. Nordvik submitted the claimed design of the '078 Patent to Newell via Newell's Inventor Center website.

17. As shown in the below image, obtained using the Internet Archive's Wayback Machine, Newell's Inventor Center website encouraged members of the public to “tell [Newell Rubbermaid] all about” their solutions. *See* Ex. B, Dkt. 1-2 at 1 (Rubbermaid Inventor Center homepage, captured Nov. 24, 2013):

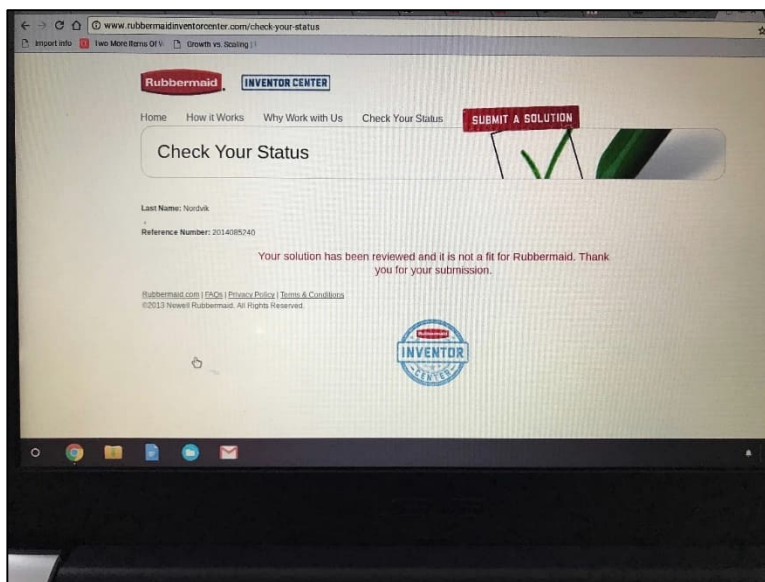


18. The Rubbermaid Inventor Center’s website Terms and Conditions make clear that, by submitting an invention to the Inventor Center, the submitter was notifying both Newell and its subsidiaries of the invention. *See* Ex. B, Dkt. 1-2 at 2 (Rubbermaid Inventor Center Terms & Conditions, captured Nov. 25, 2013).

19. Upon information and belief, the Terms and Conditions of the Rubbermaid Inventor Center website were the same from at least November 25, 2013, to August 25, 2018. *See* Ex. B, Dkt. 1-2 at 3 (Rubbermaid Inventor Center Terms & Conditions, captured Aug. 25, 2018).

20. Upon information and belief, Mr. Nordvik’s submission of the claimed design of the ’078 Patent was assigned one or more of Reference Numbers 2014085240, 2014021533, and 2014022987.

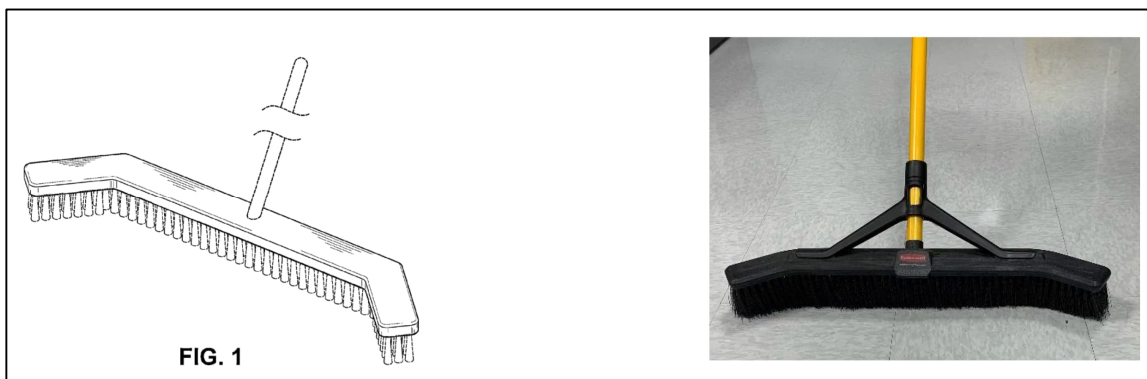
21. Newell notified Mr. Nordvik, via the Rubbermaid Inventor Center website, that his “solution has been reviewed and it is not a fit for Rubbermaid.” A screen capture of that notice as to Reference Number 2014085240 is attached to this Complaint as Exhibit C and reproduced below.



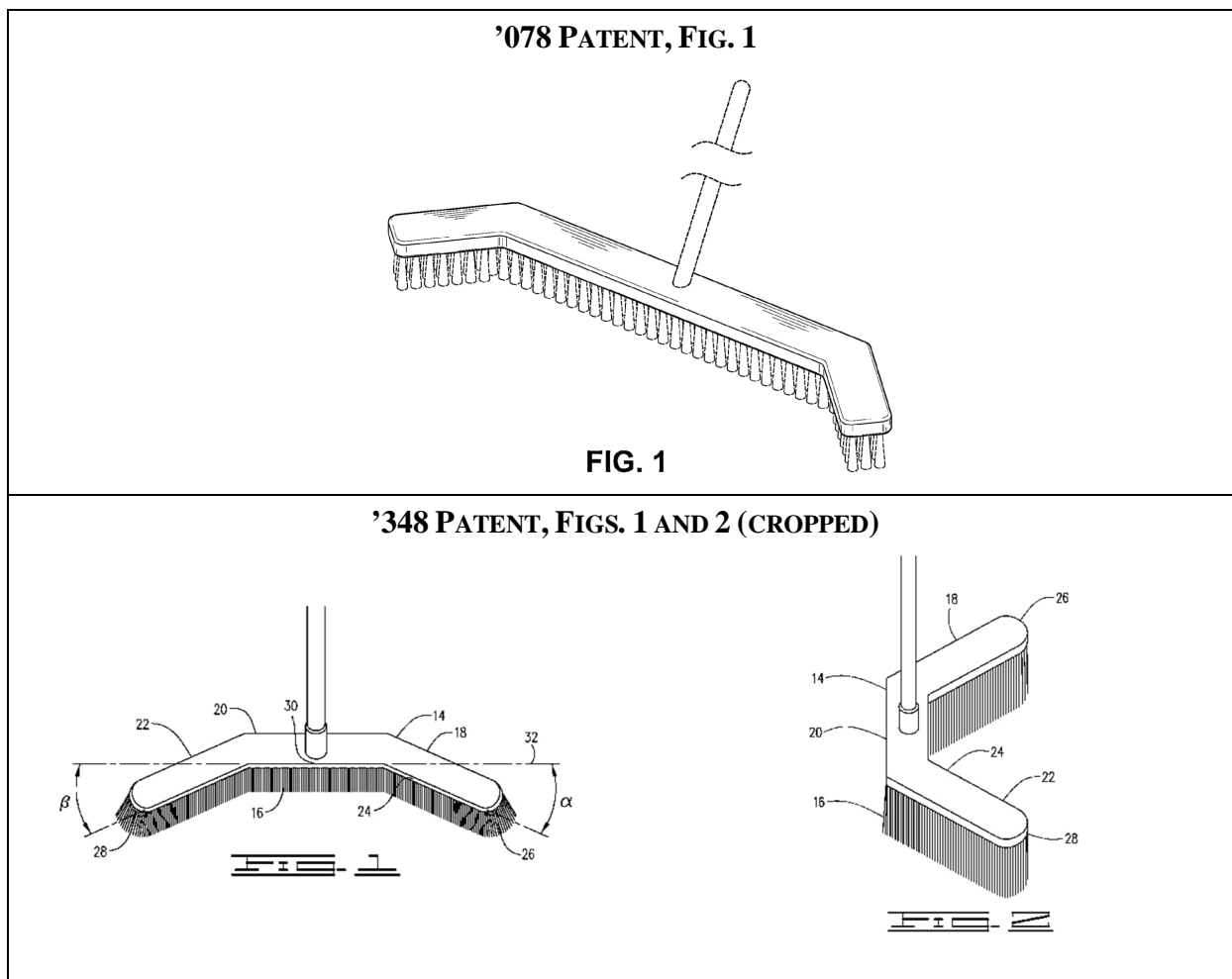
NEWELL’S WILLFUL INFRINGEMENT OF THE ’078 PATENT

22. After Mr. Nordvik initiated discussions with Newell and it claimed his invention was not a fit for Newell, Mr. Nordvik discovered that Home Depot was offering for sale RCP-branded products bearing the design of the ’078 Patent, which Newell and RCP marketed as the “MAXIMIZER™ Push-to-Center Broom” (“Infringing Product”).

23. On June 5, 2019, counsel for Plaintiff sent a letter to The Home Depot stating that a broom that The Home Depot was offering for sale and selling, the 24-inch version of the Maximizer broom, embodied the claimed design of the ’078 Patent, and demanding that The Home Depot cease selling the Infringing Product. *See Ex. D, Dkt. 1-4. See also id.* at 9 (comparison of ’078 Patent and the 24-inch version of the Maximizer broom):



24. The Home Depot informed its supplier, RCP, of Plaintiff's letter and the '078 Patent, and counsel for Rubbermaid Commercial Products. Ex. E. Then, on June 28, 2019, counsel for RCP contacted counsel for Plaintiff, arguing that the '078 Patent is invalid and comparing it to the *18-inch* version of the Maximizer broom to argue that the 18-inch version (which Plaintiff's letter was not directed towards) does not infringe the patent. Ex. F. However, the prior art cited by RCP, U.S. Patent No. 8,739,348 ("the '348 Patent") does not invalidate the '078 Patent because the two designs create substantially different visual impressions. Compared to the claimed design of the '078 Patent, the '348 Patent's broom head discloses a middle piece that is substantially smaller, side pieces that are substantially larger, ends that are rounded rather than substantially rectangular, and a single orthogonal interface between the top surface and side surface of the broom head (rather than a beveled interfacing surface). The differences in the overall visual impressions created by the two designs are evident in the below comparison:



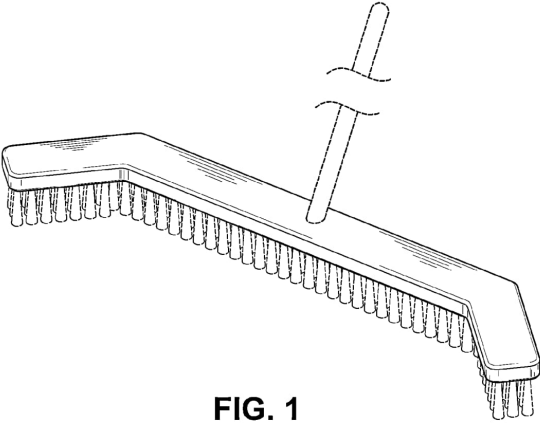

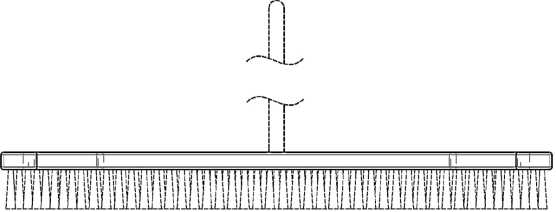

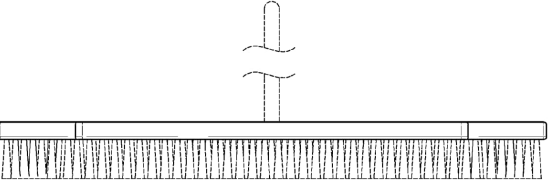

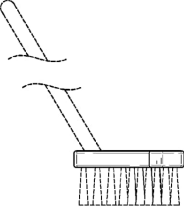

25. Despite RCP's claim that it did not infringe the '078 Patent and that the '078 Patent is invalid, upon information and belief, RCP discontinued selling the 24-inch version of the Maximizer broom by the end of that year.

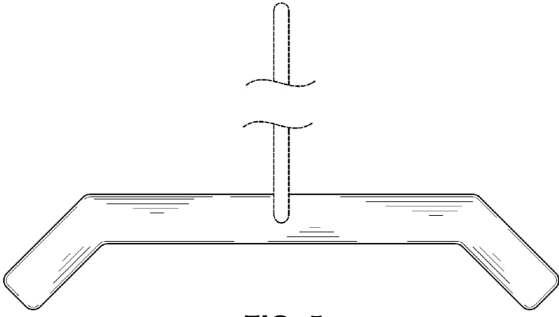

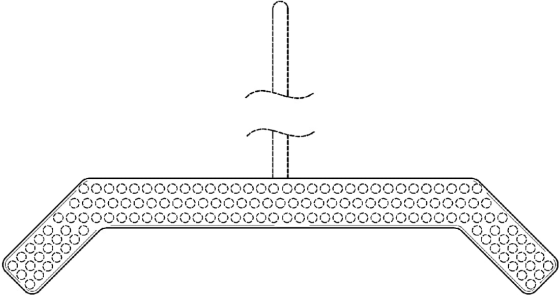

26. However, at a later date, Plaintiff realized that RCP and Newell were advertising a 36-inch version of the Infringing Product on their website.

27. Plaintiff further learned that Newell's website advertised numerous non-retail channels of distribution for this 36-inch version of the Maximizer.

28. The Infringing Product, purchased from Zoro on June 30, 2022, and pictured below, incorporates a design that is substantially the same from the perspective of an ordinary observer

as the design claimed by the '078 Patent, as shown by the below claim chart comparing each view disclosed by the '078 Patent with corresponding photographs of the Infringing Product:

'078 PATENT	36-INCH MAXIMIZER BROOM (ZORO)
 <p data-bbox="451 793 539 827">FIG. 1</p>	
 <p data-bbox="467 1117 555 1150">FIG. 2</p>	
 <p data-bbox="467 1402 555 1436">FIG. 3</p>	
 <p data-bbox="483 1726 571 1759">FIG. 4</p>	

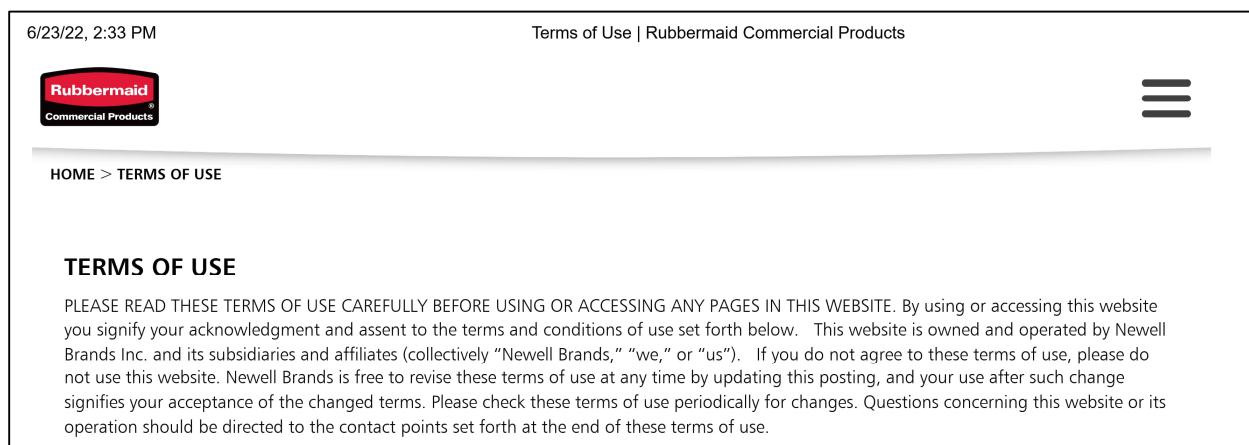
'078 PATENT	36-INCH MAXIMIZER BROOM (ZORO)
 <p data-bbox="462 571 544 604">FIG. 5</p>	
 <p data-bbox="462 940 544 974">FIG. 6</p>	

29. Upon information and belief, RCP is a business unit owned, operated, and controlled by Newell, and within Newell’s portfolio of brands. In its quarterly Earnings Release and Financials documents, Newell describes RCP as a business and brand of Newell, includes RCP’s financial results in its own “continuing operations,” and assumes RCP’s depreciation expense. *See, e.g.*, Newell Q2 2019 Earnings Release and Financials, Ex. G at 1, 3-4 (announcing Newell’s “intention to *retain* Rubbermaid Commercial Products Business,” countermanding its previously announced intent to divest the RCP business unit as part of a broader restructuring of Newell’s brand portfolio) (emphasis added).

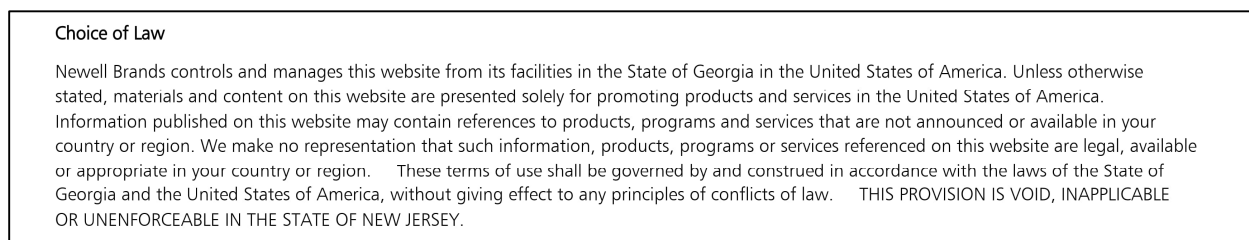
30. Newell further advertises RCP’s product launches as its own, alongside those of the other brands in Newell’s portfolio. *See, e.g.*, Newell Brands Q1 2022 Supplemental Information, Ex. H at 14.

31. Upon information and belief, Rubbermaid Commercial Products is led by a Newell employee. *See* Ex. I (Newell employee profile page for Mike McDermott, Business Unit CEO, Commercial) (“Mike McDermott is the Business Unit CEO, Commercial *at Newell Brands, inclusive of the Rubbermaid Commercial Products*, Quickie, MAPA and Spontex brands.”) (emphasis added).

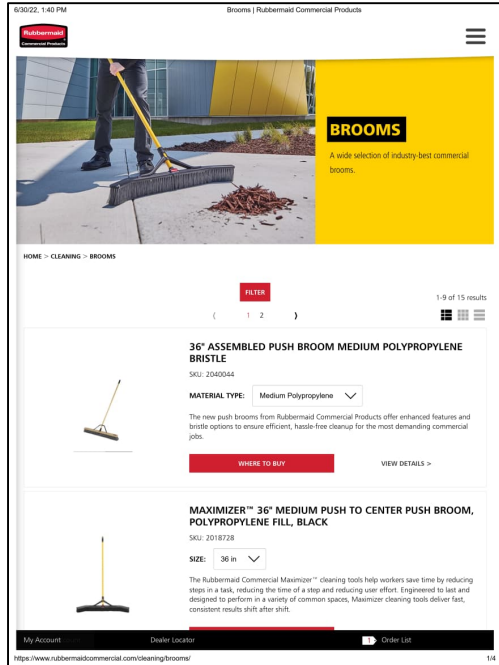
32. The RCP website is owned and operated by Newell. *See* Ex. J at 1, Terms of Use, <https://www.rubbermaidcommercial.com/terms-of-use/>, downloaded June 30, 2022 (“This website is owned and operated by Newell Brands Inc. and its subsidiaries and affiliates (collectively ‘Newell Brands,’ ‘we,’ or ‘us’).”):



See also id. at 2:

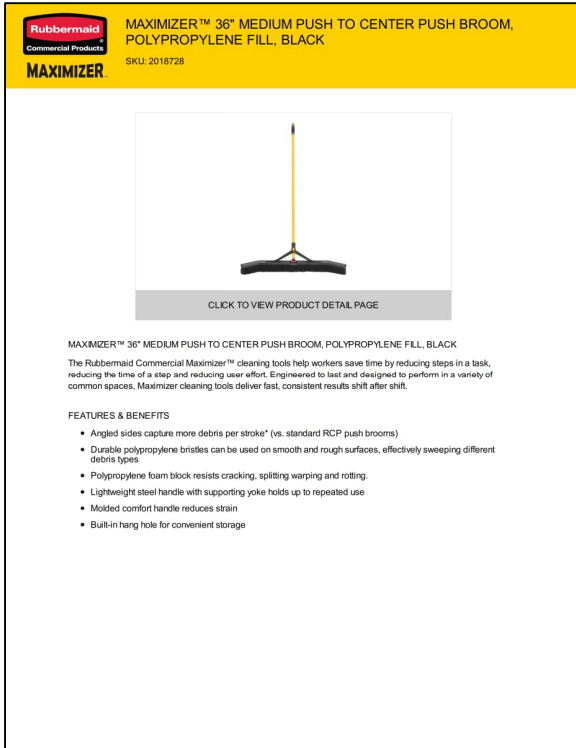


33. Newell advertises the Infringing Product on Newell’s website for RCP, [rubbermaidcommercial.com](https://www.rubbermaidcommercial.com). A large photograph of an Infringing Product is featured at the top of the “BROOMS” section, alongside the heading banner, on Newell’s RCP website:

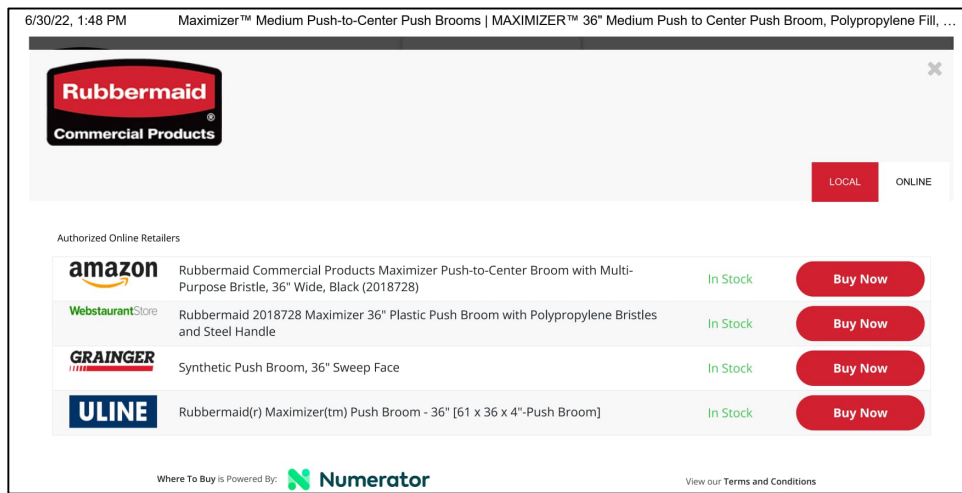


Ex. K at 1, “Brooms | Rubbermaid Commercial Products,” *available at* <https://www.rubbermaidcommercial.com/cleaning/brooms/> (accessed June 30, 2022).

34. Newell’s RCP website further features a product information sheet for the Infringing Product. *See* Ex. L, “MAXIMIZER™ 36" MEDIUM PUSH TO CENTER PUSH BROOM, POLYPROPYLENE FILL, BLACK,” <https://www.rubbermaidcommercial.com/cleaning/brooms/maximizer-medium-push-to-center-push-brooms/?sku=2018728>, downloaded June 30, 2022:



35. Newell’s website further advertises local and online distributors via whom it sells the Infringing Product. See Ex. M:



36. Upon information and belief, Newell, itself and/or through the actions of its subsidiary, RCP, makes, uses, and sells the Infringing Product.

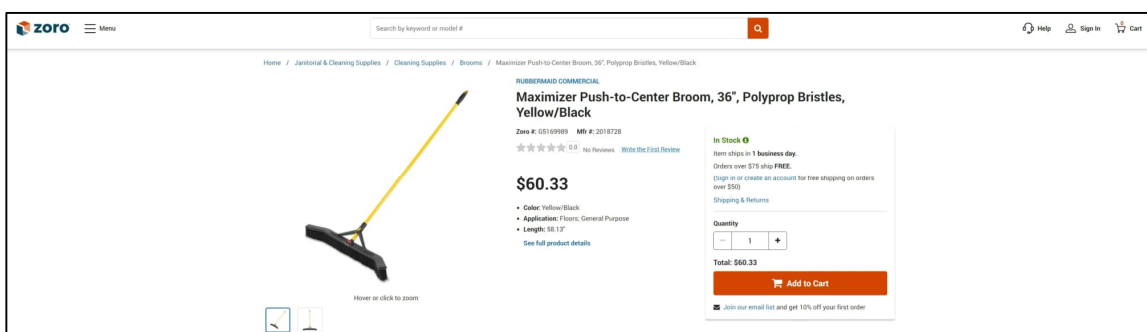
37. The Infringing Product is made in China. See Ex. N at 3.

38. Upon information and belief, Newell further infringes the '078 Patent by importing the Infringing Product into the United States from China.

39. Upon information and belief, Newell's direct, contributory, and induced acts of infringement are deliberate, knowing, and willful.

ZORO'S INFRINGEMENT OF THE '078 PATENT

40. Defendant Zoro offers for sale and, upon information and belief, sells the Infringing Product via its online store as "Zoro #: G5169989. *See Ex. O:*



41. The "Mfr. #" of 2018728 listed on Zoro's webpage for Zoro # G5169989 matches RCP's SKU number for the Infringing Product as identified on its website. *See Exhibits K-O.*

42. Zoro does not restrict sales of the Infringing Product in any states. *Ex. O.*

FIRST CLAIM FOR RELIEF

(Newell's Infringement of the '078 Patent)

43. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

44. The Infringing Product bears a design that, from the perspective of an ordinary observer, is substantially the same as the claimed design of the '078 Patent.

45. Defendant Newell, through its employees, agents, or subsidiary business unit RCP, has and continues to directly and indirectly infringe the '078 Patent by making, using, selling, offering for sale, or importing the Infringing Product.

46. Upon information and belief, Defendant Newell indirectly infringes the '078 Patent by knowingly and actively inducing infringement thereof by its subsidiary business unit RCP, who makes, uses, sells, offers for sale, and imports the Infringing Product at Newell's behest.

47. Upon information and belief, Defendant Newell further indirectly infringes the '078 Patent by knowingly and actively inducing infringement thereof by its distributor partners, such as Defendant Zoro, who then offers for sale, sells, or re-sells the Infringing Product.

48. Upon information and belief, Defendant Newell's acts of direct and indirect infringement were and are willful and deliberate.

49. Plaintiff has been damaged in an amount to be determined as a direct and proximate result of Defendants' infringement.

50. Plaintiff has been irreparably damaged by Newell's infringing activities and will continue to be irreparably harmed unless those activities are enjoined by this Court, as Newell's continued infringement harms Plaintiff's ability to license the claimed design of the '078 Patent to other business and manufacturing partners who would directly compete with Defendants in marketing products embodying the design claimed by the '078 Patent.

SECOND CLAIM FOR RELIEF
(Zoro's Infringement of the '078 Patent)

51. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

52. The Infringing Product bears a design that, from the perspective of an ordinary observer, is substantially the same as the claimed design of the '078 Patent.

53. Defendant Zoro, through its employees and/or agents, has and continues to directly infringe the '078 Patent by selling and offering for sale the Infringing Product.

54. Upon information and belief, Defendant Newell further indirectly infringes the '078 Patent by knowingly and actively inducing infringement thereof by Zoro, who then offers for sale, sells, or re-sells the Infringing Products.

55. Upon information and belief, at least Defendant Newell's acts of infringement were and are willful and deliberate.

56. Plaintiff has been damaged in an amount to be determined as a direct and proximate result of Defendants' infringement.

57. Plaintiff has been irreparably damaged by Defendants' infringing activities and will continue to be irreparably harmed unless those activities are enjoined by this Court, as Defendants' continued offer and sale of the Infringing Product harms Plaintiff's ability to license the claimed design of the '078 Patent to other business and manufacturing partners who would directly compete with Defendants in marketing products embodying the design claimed by the '078 Patent.

PRAYER FOR RELIEF

1. Judgment that Defendants have infringed the '078 Patent;
2. Judgment that at least Defendant Newell Brands, Inc. has willfully infringed the '078 Patent;
3. A preliminary and permanent injunction enjoining Defendants, their officers, agents, servants, employees, distributors, resellers, suppliers, and any and all other persons acting in concert with them or participating in their acts of infringement from committing further acts of infringement of the '078 Patent;
4. An award to Plaintiff of all damages sustained as a result of Defendants' acts of infringement of the '078 Patent, including Defendants' total profits on sales of any article of manufacture that incorporates the patented design under 35 U.S.C. § 289, a reasonable royalty, lost profits, price erosion, and all other forms of damages to which Plaintiff is entitled;

5. An award of any and all restitution or equitable damages to which Plaintiff is entitled;
6. A judgment declaring this case to be exceptional and awarding Plaintiff its reasonable attorney's fees under 35 U.S.C. § 285;
7. Pre-judgment and post-judgment interest;
8. All costs incurred resulting from this lawsuit;
9. All other relief that this Court may deem just and proper.

Dated: July 25, 2022

Respectfully submitted,

/s/ Barry F. Irwin, P.C.

Barry F. Irwin, P.C.

Iftexhar A. Zaim

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