

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

UNITED STATES GYPSUM COMPANY,

Plaintiff,

v.

NEW NGC, INC.

Defendant.

Civil Action No.

**JURY TRIAL DEMANDED**

PUBLIC REDACTED VERSION

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, United States Gypsum Company (“USGC”), complains against Defendant, New NGC, Inc. (“Defendant”), as follows:

**NATURE OF ACTION**

1. This is an action for patent infringement of United States Patent Nos. 6,343,284; 6,632,550; 7,425,236; 7,758,980; 7,964,034; 8,142,914 and 8,500,904 (collectively, the “Patents-in-Suit”) under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* The patented technology relates to gypsum-containing products, such as gypsum wallboard, having increased resistance to deformation, and to compositions and methods for producing such products. Defendant makes, uses, offers for sale and sells gypsum products, including gypsum wallboard, that embody the patented technology and that are made using the patented compositions and manufacturing methods.

2. On October 25, 2016, USGC provided written notice to Defendant that Defendant is infringing the Patents-in-Suit, and requested a meeting of representatives to discuss and attempt to resolve the matter. Two such meetings subsequently took place as non-binding dispute resolution proceedings on November 15, 2016 and December 16, 2016. In advance of the first

meeting, USGC provided claim charts showing how Defendant's products infringe certain representative claims of the Patents-in-Suit. The parties were unable to reach an agreement.

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In this lawsuit, USGC seeks compensation for Defendant's unauthorized use of USGC's patented inventions.

#### **THE PARTIES**

4. Plaintiff USGC is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 550 West Adams Street, Chicago, Illinois 60661. USGC is a leading manufacturer and distributor of building materials, including gypsum products used to construct walls, ceilings, roofs and floors of various types of buildings. USGC conducts extensive research and development efforts to create and commercialize new technology for its products, including the technology covered by the Patents-in-Suit.

5. Defendant New NGC, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 2001 Rexford Road, Charlotte, North Carolina 28211. Defendant does business under the assumed name National Gypsum Company. Defendant directly competes with USGC in the production, marketing and sale of gypsum wallboard products. Defendant conducts business in and is doing business in this District and elsewhere in the United States including, without limitation, using, promoting, offering to sell, importing and/or selling gypsum products that embody the patented technology, and

enabling resellers to offer for sale and sell the products in this District and end-user purchasers to use such products in this District. Defendant is registered to do business in Delaware and has a designated registered agent in Delaware for purposes of service of process.

### **JURISDICTION AND VENUE**

6. This action arises under the Patent Laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and the Delaware Long Arm Statute, due at least to its substantial business conducted in this forum, directly and/or through intermediaries, including having (i) solicited business in the State of Delaware, transacted business within the State of Delaware and attempted to derive financial benefit from residents of the State of Delaware, including benefits directly related to the instant patent infringement causes of action set forth herein; (ii) placed its products into the stream of commerce throughout the United States and transacted business in Delaware and in this District; and (iii) either alone or in conjunction with others, committed acts of infringement within this District and induced others to commit acts of infringement within this District. On information and belief, Defendant, directly and/or through intermediaries, has advertised (including through websites), offered to sell, sold and/or distributed infringing products, and/or has induced the sale and use of infringing products in Delaware. Defendant has, directly or through its distribution network, purposefully and voluntarily placed such products in the stream of commerce knowing and expecting them to be purchased and used by consumers in Delaware and in this District.

8. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because Defendant is subject to personal jurisdiction in this District, resides in this District, has regularly conducted business in this District, and/or has committed acts of patent infringement in this District. Without limitation, on information and belief, within this District Defendant, directly and/or through intermediaries, has advertised, offered to sell, sold and/or distributed infringing products, and/or has induced the sale and use of infringing products.

9. [REDACTED]

[REDACTED]

[REDACTED]

#### **THE PATENTS-IN-SUIT**

10. On January 29, 2002, U.S. Patent No. 6,342,284 (“’284 Patent”), entitled “Gypsum-Containing Product Having Increased Resistance To Permanent Deformation And Method And Composition For Producing It,” a copy of which is attached hereto as Exhibit A, was duly and legally issued. The ’284 Patent issued from U.S. patent application Serial Number 09/138,355 filed August 21, 1998, which claims legal priority to an earlier application filed on August 21, 1997.

11. The inventors have assigned all right, title, and interest in the ’284 Patent to USGC, and USGC is the sole owner of all right, title and interest in and to the ’284 Patent including the right to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the ’284 Patent.

12. On October 14, 2003, U.S. Patent No. 6,632,550 (“’550 Patent”), entitled “Gypsum-Containing Product Having Increased Resistance To Permanent Deformation And Method And Composition For Producing It,” a copy of which is attached hereto as Exhibit B,

was duly and legally issued. The '550 Patent issued from U.S. patent application Serial Number 09/249,814 filed February 16, 1999, which claims legal priority to the same August 21, 1997 application as the '284 Patent.

13. The inventors have assigned all right, title, and interest in the '550 Patent to USGC, and USGC is the sole owner of all right, title and interest in and to the '550 Patent including the right to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the '550 Patent.

14. On September 16, 2008, U.S. Patent No. 7,425,236 ("236 Patent"), entitled "Gypsum-Containing Board And Tile, And Method For Producing Same," a copy of which is attached hereto as Exhibit C, was duly and legally issued. The '236 Patent issued from U.S. patent application Serial Number 11/760,886 filed June 11, 2007, which claims legal priority to the same August 21, 1997 application as the '284 Patent.

15. The inventors have assigned all right, title, and interest in the '236 Patent to USGC, and USGC is the sole owner of all right, title and interest in and to the '236 Patent including the right to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the '236 Patent.

16. On July 20, 2010, U.S. Patent No. 7,758,980 ("980 Patent"), entitled "Gypsum-Containing Board And Tile, And Method For Producing Same," a copy of which is attached hereto as Exhibit D, was duly and legally issued. The '980 Patent issued from U.S. patent application Serial Number 12/190,203 filed August 12, 2008, which claims legal priority to the same August 21, 1997 application as the '284 Patent.

17. The inventors have assigned all right, title, and interest in the '980 Patent to USGC, and USGC is the sole owner of all right, title and interest in and to the '980 Patent

including the right to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the '980 Patent.

18. On June 21, 2011, U.S. Patent No. 7,964,034 ("034 Patent"), entitled "Gypsum-Containing Product And Method For Producing Same," a copy of which is attached hereto as Exhibit E, was duly and legally issued. The '034 Patent issued from U.S. patent application Serial Number 12/797,013 filed June 9, 2010, which claims legal priority to the same August 21, 1997 application as the '284 Patent.

19. The inventors have assigned all right, title, and interest in the '034 Patent to USGC, and USGC is the sole owner of all right, title and interest in and to the '034 Patent including the right to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the '034 Patent.

20. On March 27, 2012, U.S. Patent No. 8,142,914 ("914 Patent"), entitled "Gypsum-Containing Product And Gypsum Board," a copy of which is attached hereto as Exhibit F, was duly and legally issued. The '914 Patent issued from U.S. patent application Serial Number 13/027,944 filed February 15, 2011, which claims legal priority to the same August 21, 1997 application as the '284 Patent.

21. The inventors have assigned all right, title, and interest in the '914 Patent to USGC, and USGC is the sole owner of all right, title and interest in and to the '914 Patent including the right to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the '914 Patent.

22. On August 6, 2013, U.S. Patent No. 8,500,904 ("904 Patent"), entitled "Gypsum-Containing Product," a copy of which is attached hereto as Exhibit G, was duly and legally issued. The '904 Patent issued from U.S. patent application Serial Number 13/630,125 filed

September 28, 2012, which claims legal priority to the same August 21, 1997 application as the '284 Patent.

23. The inventors have assigned all right, title, and interest in the '904 Patent to USGC, and USGC is the sole owner of all right, title and interest in and to the '904 Patent including the right to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the '904 Patent.

24. The Patents-in-Suit cover foundational technologies developed by USGC relating to the formulation and manufacture of gypsum-containing products. The patented technology utilizes one or more condensed phosphoric acid or condensed phosphate compounds to enhance sag resistance and other properties such as strength and dimensional stability of gypsum panels and other gypsum products. In addition to improving product performance, the patented technology also reduces manufacturing, transportation and handling costs. USGC started using the patented technology in its commercial products in or about 1998 offering USGC a competitive advantage directly attributable to its considerable investments and efforts developing the patented technology.

25. In 2010, USGC introduced its USG Sheetrock<sup>®</sup> Brand UltraLight Panels, the industry's first ultralightweight gypsum panel for use in interior wall and ceiling applications. USGC manufactures this product line using the patented technology. The USG Sheetrock<sup>®</sup> Brand UltraLight Panels are believed to be the lightest ½-inch wallboard panels available, weighing up to 30% less than conventional wallboard panels. These products quickly achieved widespread commercial success in the marketplace and acclaim throughout the industry, offering USGC a further competitive advantage attributable to the patented technology.

**DEFENDANT'S INFRINGING PRODUCTS AND METHODS**

26. Defendant makes, uses, sells, offers for sale and/or imports into the United States a variety of gypsum board products in direct competition with USGC's products. Defendant's gypsum products are distributed through specialty wallboard distributors, building materials dealers, home improvement centers and other retailers and contractors.

27. Starting in or about 2011, Defendant's competing products include but not limited to its Gold Bond® High Strength LITE® ½-inch gypsum board, which it has marketed as being formulated to be 25% lighter than Defendant's original ½-inch High Strength Gypsum Board, as well as its Gold Bond® XP® ½-inch and ⅝-inch gypsum boards. Upon information and belief, Defendant manufactures its Gold Bond High Strength LITE, XP gypsum boards, and other boards using techniques involving mixing a calcined calcium sulfate material (calcium sulfate hemihydrate) with water, an accelerator, and aqueous foam, with the foam creating voids and allowing the density and board weight to be decreased.

28. The Gold Bond High Strength LITE and XP gypsum boards are cast in the form of boards consisting of a set gypsum core between paper cover sheets, with the core comprising an interlocking matrix of set gypsum crystals and including uniformly distributed voids.

29. Direct evaluation and testing of Defendant's Gold Bond High Strength LITE and XP gypsum boards confirms that they and potentially other of Defendant's gypsum board products contain sodium trimetaphosphate ("STMP"), or a similar condensed phosphate enhancement compound, to enhance resistance to sag, strength and other commercially important properties of the products.

30. Due to the use of STMP or other similar phosphate additive, the Gold Bond High Strength LITE and, on information and belief, XP gypsum boards and other boards are



characterized by significantly improved sag resistance measured according to the industry standard ASTM C473-95 technique being less than about 0.1 inch per two foot length of board.

31. Despite not having a license to the Patents-in-Suit, Defendant's Gold Bond High Strength LITE and XP gypsum boards embody the patented technology and have been manufactured using the compositions and methods claimed in these patents.

32. USGC is continuing to investigate whether Defendant is manufacturing and selling other infringing gypsum boards.

**FIRST CAUSE OF ACTION—INFRINGEMENT OF THE '284 PATENT**

33. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 32, as if fully set forth herein.

34. Defendant, directly and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continues to directly infringe the '284 Patent, including at least claims 2, 5–7, 10–15, 26, 34 and 40, and upon information belief, claims 1, 3, 4, 18, 22, 32, and 33, pursuant to 35 U.S.C. § 271(a) by making, using, offering for sale, selling and/or importing gypsum board products that embody the inventions claimed in the '284 Patent, within the United States and within this District.

35. Defendant has been and is engaged in one or more of these direct infringing activities at least with respect to its Gold Bond High Strength LITE ½-inch gypsum board products, its Gold Bond XP ½-inch and ⅝-inch gypsum board products, and also with any other gypsum board products made using any of the enhancement materials and/or manufacturing methods claimed in the '284 Patent ("Accused Products"). The extent of Defendant's infringement of the '284 Patent will be confirmed during discovery.

36. Defendant's direct infringement of the '284 Patent has injured USGC, and USGC is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. § 284. Unless it ceases its infringing activities, Defendant will continue to injure USGC by infringing the '284 Patent.

37. USGC provided notice to the public that its own products are covered by the '284 Patent beginning in at least April 2016, in accordance with 35 U.S.C. § 287.

38. On information and belief, Defendant has acted egregiously and with willful misconduct in that its actions constitute direct infringement of a valid patent, and this was either known or so obvious that Defendant should have known about it. Upon information and belief, Defendant has lawyers and other active agents who regularly review patents and published patent applications relevant to technology in the fields of the Patents-in-Suit, specifically including patents directed to gypsum wallboard products issued to competitors such as USGC. Upon information and belief, Defendant itself has been issued over 185 patents, including over 40 patents prosecuted in the USPTO in the same classifications as the '284 Patent, giving Defendant intimate knowledge of the art in fields relevant to this civil action. The timing, circumstances and extent of Defendant first obtaining actual knowledge of the '284 Patent will be confirmed during discovery.

39. Having knowledge of the '284 Patent, Defendant knew or it became apparent to Defendant that the manufacture, sale, importing, offer for sale and use of the Accused Products results in infringement of the '284 Patent. Upon information and belief, Defendant nevertheless has been and will continue to make the Accused Products in the United States in large volumes and has been and will continue to sell the Accused Products through its distributors and resellers.

40. On information and belief, Defendant is aware of the size and importance of the United States market for lightweight gypsum wallboard and knows that the patented technology is necessary for Defendant to compete effectively with USGC's Sheetrock® Brand UltraLight Panels and/or other gypsum panels made by USGC.

41. Defendant derives significant revenue by selling the Accused Products, and its extensive sales and marketing efforts and sales volume evidence its intent to infringe one or more claims of the '284 Patent by making, using, offering to sell, selling or importing the Accused Products in the United States.

42. Defendant has had actual notice of USGC's infringement allegations under the '284 Patent since receiving the October 25, 2016 letter sent by USGC to Defendant, and Defendant received further detailed information supporting USGC's infringement claims during the direct discussions that followed.

43. Despite not having a license, Defendant continues to infringe the '284 Patent by making, using, selling, offering for sale and/or importing in the United States the Accused Products in reckless disregard of USGC's patent rights. On information and belief, Defendant will continue its infringement notwithstanding actual knowledge of the '284 Patent and without a good faith basis to believe that its activities do not infringe any valid claim of the '284 Patent.

44. All infringement of the '284 Patent following Defendant's knowledge of the '284 Patent is willful, and USGC is entitled to treble damages and attorneys' fees and costs incurred in this action under 35 U.S.C. §§ 284 and 285.

**SECOND CAUSE OF ACTION—INFRINGEMENT OF THE '550 PATENT**

45. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 44, as if fully set forth herein.

46. Defendant, directly and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continues to directly infringe the '550 Patent, including at least claims 1, 2, 5, 7–9, and 54–57, and upon information and belief, claims 3 and 6, pursuant to 35 U.S.C. § 271(a) by making, using, offering for sale, selling and/or importing gypsum board products that embody the inventions and are made using the methods claimed in the '550 Patent, within the United States and within this District.

47. Defendant has been and is engaged in one or more of these direct infringing activities with respect to at least its Gold Bond High Strength LITE ½-inch gypsum board products, its Gold Bond XP ½-inch and ⅝-inch gypsum board products, and any other gypsum board products made using any of the enhancement materials and/or manufacturing methods claimed in the '550 Patent (“Accused Products”). The extent of Defendant’s infringement of the '550 Patent will be confirmed during discovery.

48. Defendant’s direct infringement of the '550 Patent has injured USGC, and USGC is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. § 284. Unless it ceases its infringing activities, Defendant will continue to injure USGC by infringing the '550 Patent.

49. USGC provided notice to the public that its own products are covered by the '550 Patent beginning in at least April 2016, in accordance with 35 U.S.C. § 287.

50. On information and belief, Defendant has acted egregiously and with willful misconduct in that its actions constitute direct infringement of a valid patent, and this was either known or so obvious that Defendant should have known about it. Upon information and belief, Defendant has lawyers and other active agents who regularly review patents and published patent applications relevant to technology in the fields of the Patents-in-Suit, specifically including

patents directed to gypsum wallboard products issued to competitors such as USGC. Upon information and belief, Defendant itself has been issued over 185 patents, including over 40 patents prosecuted in the USPTO in the same classifications as the '550 Patent, giving Defendant intimate knowledge of the art in fields relevant to this civil action. The timing, circumstances and extent of Defendant first obtaining actual knowledge of the '550 Patent will be confirmed during discovery.

51. Having knowledge of the '550 Patent, Defendant knew, or it became apparent to Defendant that the manufacture, sale, importing, offer for sale and use of the Accused Products results in infringement of the '550 Patent. Upon information and belief, Defendant nevertheless has been and will continue to make the Accused Products in the United States in large volumes and has been and will continue to sell the Accused Products through its distributors and resellers.

52. On information and belief, Defendant is aware of the size and importance of the United States market for lightweight gypsum wallboard and knows that the patented technology is necessary for Defendant to compete effectively with USGC's patented Sheetrock® Brand UltraLight Panels and/or other gypsum panels made by USGC.

53. Defendant derives significant revenue by selling the Accused Products, and its extensive sales and marketing efforts and sales volume evidence its intent to infringe one or more claims of the '550 Patent by making, using, offering to sell, selling or importing the Accused Products in the United States.

54. Defendant has had actual notice of USGC's infringement claim under the '550 Patent since receiving the October 25, 2016 letter sent by USGC to Defendant, and Defendant received further detailed information supporting USGC's infringement claims during the direct discussions that followed.

55. Despite not having a license, Defendant continues to infringe the '550 Patent by making, using, selling, offering for sale and/or importing in the United States the Accused Products in reckless disregard of USGC's patent rights. On information and belief, Defendant will continue its infringement notwithstanding actual knowledge of the '550 Patent and without a good faith basis to believe that its activities do not infringe any valid claim of the '550 Patent.

56. All infringement of the '550 Patent following Defendant's knowledge of the '550 Patent is willful, and USGC is entitled to treble damages and attorneys' fees and costs incurred in this action under 35 U.S.C. §§ 284 and 285.

**THIRD CAUSE OF ACTION—INFRINGEMENT OF THE '236 PATENT**

57. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 56, as if fully set forth herein.

58. Defendant, directly and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continues to directly infringe the '236 Patent, including at least claim 2 thereof, pursuant to 35 U.S.C. § 271(a) by using the methods claimed in the '236 Patent in making gypsum board products, and using, offering for sale, selling and/or importing such gypsum board products within the United States and within this District.

59. Defendant has been and is engaged in one or more of these direct infringing activities with respect to at least its Gold Bond High Strength LITE ½-inch gypsum board products, its Gold Bond XP ½-inch and ⅝-inch gypsum board products, and any other gypsum board products made using any of the enhancement materials and/or manufacturing methods claimed in the '236 Patent ("Accused Products"). The extent of Defendant's infringement of the '236 Patent will be confirmed during discovery.

60. Defendant's direct infringement of the '236 Patent has injured USGC, and USGC is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. § 284. Unless it ceases its infringing activities, Defendant will continue to injure USGC by infringing the '236 Patent.

61. On information and belief, Defendant has acted egregiously and with willful misconduct in that its actions constitute direct infringement of a valid patent, and this was either known or so obvious that Defendant should have known about it. Upon information and belief, Defendant has lawyers and other active agents who regularly review patents and published patent applications relevant to technology in the fields of the Patents-in-Suit, specifically including patents directed to gypsum wallboard products issued to competitors such as USGC. Upon information and belief, Defendant itself has been issued over 185 patents, including over 40 patents prosecuted in the USPTO in the same classifications as the '236 Patent, giving Defendant intimate knowledge of the art in fields relevant to this civil action. The timing, circumstances and extent of Defendant first obtaining actual knowledge of the '236 Patent will be confirmed during discovery.

62. Having knowledge of the '236 Patent, Defendant knew or became apparent to Defendant that the manufacture, sale, importing, offer for sale and use of the Accused Products results in infringement of the '236 Patent. Upon information and belief, Defendant nevertheless has been and will continue to make the Accused Products in the United States in large volumes and has been and will continue to sell the Accused Products through its distributors and resellers.

63. On information and belief, Defendant is aware of the size and importance of the United States market for lightweight gypsum wallboard and knows that the patented technology

is necessary for Defendant to compete effectively with USGC's patented Sheetrock® Brand UltraLight Panels and/or other gypsum panels made by USGC.

64. Defendant derives significant revenue by selling the Accused Products, and its extensive sales and marketing efforts and sales volume evidence its intent to infringe one or more claims of the '236 Patent by making, using, offering to sell, selling or importing the Accused Products in the United States.

65. Defendant has had actual notice of USGC's infringement claim under the '236 Patent since receiving the October 25, 2016 letter sent by USGC to Defendant, and Defendant received further detailed information supporting USGC's infringement claims during the direct discussions that followed.

66. Despite not having a license, Defendant continues to infringe the '236 Patent by making, using, selling, offering for sale and/or importing in the United States the Accused Products in reckless disregard of USGC's patent rights. On information and belief, Defendant will continue its infringement notwithstanding actual knowledge of the '236 Patent and without a good faith basis to believe that its activities do not infringe any valid claim of the '236 Patent.

67. All infringement of the '236 Patent following Defendant's knowledge of the '236 Patent is willful, and USGC is entitled to treble damages and attorneys' fees and costs incurred in this action under 35 U.S.C. §§ 284 and 285.

#### **FOURTH CAUSE OF ACTION—INFRINGEMENT OF THE '980 PATENT**

68. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 67, as if fully set forth herein.

69. Defendant, directly and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continues to directly infringe the '980 Patent, including at



least claim 1, 4, 6 and 7, and upon information and belief, claims 2 and 5, pursuant to 35 U.S.C. § 271(a) by making, using, offering for sale, selling and/or importing gypsum board products that embody the inventions claimed in the '980 Patent within the United States and within this District.

70. Defendant has been and is engaged in one or more of these direct infringing activities with respect to at least its Gold Bond High Strength LITE ½-inch gypsum board products, its Gold Bond XP ½-inch and ⅝-inch gypsum board products, and any other gypsum board products made using any of the enhancement materials and/or manufacturing methods claimed in the '980 Patent ("Accused Products"). The extent of Defendant's infringement of the '980 Patent will be confirmed during discovery.

71. Defendant's direct infringement of the '980 Patent has injured USGC, and USGC is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. § 284. Unless it ceases its infringing activities, Defendant will continue to injure USGC by infringing the '980 Patent.

72. USGC provided notice to the public that its own products are covered by the '980 Patent beginning in at least April 2016, in accordance with 35 U.S.C. § 287.

73. On information and belief, Defendant has acted egregiously and with willful misconduct in that its actions constitute direct infringement of a valid patent, and this was either known or so obvious that Defendant should have known about it. Upon information and belief, Defendant has lawyers and other active agents who regularly review patents and published patent applications relevant to technology in the fields of the Patents-in-Suit, specifically including patents directed to gypsum wallboard products issued to competitors such as USGC. Upon information and belief, Defendant itself has been issued over 185 patents, including over 40

patents prosecuted in the USPTO in the same classifications as the '980 Patent, giving Defendant intimate knowledge of the art in fields relevant to this civil action. The timing, circumstances and extent of Defendant first obtaining actual knowledge of the '980 Patent will be confirmed during discovery.

74. Having knowledge of the '980 Patent, Defendant knew or it became apparent to Defendant that the manufacture, sale, importing, offer for sale and use of the Accused Products results in infringement of the '980 Patent. Upon information and belief, Defendant nevertheless has been and will continue to make the Accused Products in the United States in large volumes and has been and will continue to sell Accused products through its distributors and resellers.

75. On information and belief, Defendant is aware of the size and importance of the United States market for lightweight gypsum wallboard and knows that the patented technology is necessary for Defendant to compete effectively with USGC's patented Sheetrock® Brand UltraLight Panels and/or other gypsum panels made by USGC.

76. Defendant derives significant revenue by selling the Accused Products, and its extensive sales and marketing efforts and sales volume evidence its intent to infringe one or more claims of the '980 Patent by making, using, offering to sell, selling or importing the Accused Products in the United States.

77. Defendant has had actual notice of USGC's infringement claim under the '980 Patent since receiving the October 25, 2016 letter sent by USGC to Defendant, and Defendant received further detailed information supporting USGC's infringement claims during the direct discussions that followed.

78. Despite not having a license, Defendant continues to infringe the '980 Patent by making, using, selling, offering for sale and/or importing in the United States the Accused

Products in reckless disregard of USGC's patent rights. On information and belief, Defendant will continue its infringement notwithstanding actual knowledge of the '980 Patent and without a good faith basis to believe that its activities do not infringe any valid claim of the '980 Patent.

79. All infringement of the '980 Patent following Defendant's knowledge of the '980 Patent is willful, and USGC is entitled to treble damages and attorneys' fees and costs incurred in this action under 35 U.S.C. §§ 284 and 285.

**FIFTH CAUSE OF ACTION—INFRINGEMENT OF THE '034 PATENT**

80. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 79, as if fully set forth herein.

81. Defendant, directly and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continues to directly infringe the '034 Patent, including at least claims 1, 2, 4, 5 and 7–9, pursuant to 35 U.S.C. § 271(a) by using the methods claimed in the '034 Patent in making gypsum board products, and using, offering for sale, selling and/or importing such gypsum board products within the United States and within this District.

82. Defendant has been and is engaged in one or more of these direct infringing activities with respect to at least its Gold Bond® High Strength LITE ½-inch gypsum board products, its Gold Bond XP ½-inch and ⅝-inch gypsum board products, and any other gypsum board products made using any of the enhancement materials and/or manufacturing methods claimed in the '034 Patent ("Accused Products"). The extent of Defendant's infringement of the '034 Patent will be confirmed during discovery.

83. Defendant's direct infringement of the '034 Patent has injured USGC, and USGC is entitled to recover damages adequate to compensate for such infringement pursuant to 35

U.S.C. § 284. Unless it ceases its infringing activities, Defendant will continue to injure USGC by infringing the '034 Patent.

84. On information and belief, Defendant has acted egregiously and with willful misconduct in that its actions constitute direct infringement of a valid patent, and this was either known or so obvious that Defendant should have known about it. Upon information and belief, Defendant has lawyers and other active agents who regularly review patents and published patent applications relevant to technology in the fields of the Patents-in-Suit, specifically including patents directed to gypsum wallboard products issued to competitors such as USGC. Upon information and belief, Defendant itself has been issued over 185 patents, including over 40 patents prosecuted in the USPTO in the same classifications as the '034 Patent, giving Defendant intimate knowledge of the art in fields relevant to this civil action. The timing, circumstances and extent of Defendant first obtaining actual knowledge of the '034 Patent will be confirmed during discovery.

85. Having knowledge of the '034 Patent, Defendant knew or became apparent to Defendant that the manufacture, sale, importing, offer for sale and use of the Accused Products results in infringement of the '034 Patent. Upon information and belief, Defendant nevertheless has been and will continue to make the Accused Products in the United States in large volumes and has been and will continue to sell the Accused Products through its distributors and resellers.

86. On information and belief, Defendant is aware of the size and importance of the United States market for lightweight gypsum wallboard and knows that the patented technology is necessary for Defendant to compete effectively with USGC's patented Sheetrock Brand UltraLight Panels and/or other gypsum panels made by USGC.

87. Defendant derives significant revenue by selling the Accused Products, and its extensive sales and marketing efforts and sales volume evidence its intent to infringe one or more claims of the '034 Patent by making, using, offering to sell, selling or importing the Accused Products in the United States.

88. Defendant has had actual notice of USGC's infringement claim under the '034 Patent since receiving the October 25, 2016 letter sent by USGC to Defendant, and Defendant received further detailed information supporting USGC's infringement claims during the direct discussions that followed.

89. Despite not having a license, Defendant continues to infringe the '034 Patent by making, using, selling, offering for sale and/or importing in the United States the Accused Products in reckless disregard of USGC's patent rights. On information and belief, Defendant will continue its infringement notwithstanding actual knowledge of the '034 Patent and without a good faith basis to believe that its activities do not infringe any valid claim of the '034 Patent.

90. All infringement of the '034 Patent following Defendant's knowledge of the '034 Patent is willful, and USGC is entitled to treble damages and attorneys' fees and costs incurred in this action under 35 U.S.C. §§ 284 and 285.

**SIXTH CAUSE OF ACTION—INFRINGEMENT OF THE '914 PATENT**

91. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 90, as if fully set forth herein.

92. Defendant, directly and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continues to directly infringe the '914 Patent, including at least claims 1–4 and 8, and upon information and belief, claims 6 and 10, pursuant to 35 U.S.C. § 271(a) by using the methods claimed in the '914 Patent in making gypsum board products, and

using, offering for sale, selling and/or importing such gypsum board products within the United States and within this District.

93. Defendant has been and is engaged in one or more of these direct infringing activities with respect to at least its Gold Bond High Strength LITE ½-inch gypsum board products, its Gold Bond XP ½-inch and ⅝-inch gypsum board products, and any other gypsum board products made using any of the enhancement materials and/or manufacturing methods claimed in the '914 Patent ("Accused Products"). The extent of Defendant's infringement of the '914 Patent will be confirmed during discovery.

94. Defendant's direct infringement of the '914 Patent has injured USGC, and USGC is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. § 284. Unless it ceases its infringing activities, Defendant will continue to injure USGC by infringing the '914 Patent.

95. USGC provided notice to the public that its own products are covered by the '914 Patent beginning in at least April 2016, in accordance with 35 U.S.C. § 287.

96. On information and belief, Defendant has acted egregiously and with willful misconduct in that its actions constitute direct infringement of a valid patent, and this was either known or so obvious that Defendant should have known about it. Upon information and belief, Defendant has lawyers and other active agents who regularly review patents and published patent applications relevant to technology in the fields of the Patents-in-Suit, specifically including patents directed to gypsum wallboard products issued to competitors such as USGC. Upon information and belief, Defendant itself has been issued over 185 patents, including over 40 patents prosecuted in the USPTO in the same classifications as the '914 Patent, giving Defendant intimate knowledge of the art in fields relevant to this civil action. The timing, circumstances and

extent of Defendant first obtaining actual knowledge of the '914 Patent will be confirmed during discovery.

97. Having knowledge of the '914 Patent, Defendant knew or became apparent to Defendant that the manufacture, sale, importing, offer for sale and use of the Accused Products results in infringement of the '914 Patent. Upon information and belief, Defendant nevertheless has been and will continue to make the Accused Products in the United States in large volumes and has been and will continue to sell the Accused Products through its distributors and resellers.

98. On information and belief, Defendant is aware of the size and importance of the United States market for lightweight gypsum wallboard and knows that the patented technology is necessary for Defendant to compete effectively with USGC's patented Sheetrock® Brand UltraLight Panels and/or other gypsum panels made by USGC.

99. Defendant derives significant revenue by selling the Accused Products, and its extensive sales and marketing efforts and sales volume evidence its intent to infringe one or more claims of the '914 Patent by making, using, offering to sell, selling or importing the Accused Products in the United States.

100. Defendant has had actual notice of USGC's infringement claim under the '914 Patent since receiving the October 25, 2016 letter sent by USGC to Defendant, and Defendants received further detailed information supporting USGC's infringement claims during the direct discussions that followed.

101. Despite not having a license, Defendant continues to infringe the '914 Patent by making, using, selling, offering for sale and/or importing in the United States the Accused Products in reckless disregard of USGC's patent rights. On information and belief, Defendant will continue its infringement notwithstanding actual knowledge of the '914 Patent and without a

good faith basis to believe that its activities do not infringe any valid claim of the '914 Patent.

102. All infringement of the '914 Patent following Defendant's knowledge of the '914 Patent is willful, and USGC is entitled to treble damages and attorneys' fees and costs incurred in this action under 35 U.S.C. §§ 284 and 285.

**SEVENTH CAUSE OF ACTION—INFRINGEMENT OF THE '904 PATENT**

103. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 102, as if fully set forth herein.

104. Defendant, directly and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continues to directly infringe the '904 Patent, including at least claims 1–3, 6, 8 and 15, and upon information and belief, claims 4, 11–13 and 18, pursuant to 35 U.S.C. § 271(a) by using the methods claimed in the '904 Patent in making gypsum board products, and using, offering for sale, selling and/or importing such gypsum board products within the United States and within this District.

105. Defendant has been and is engaged in one or more of these direct infringing activities with respect to at least its Gold Bond High Strength LITE ½-inch gypsum board products, its Gold Bond XP ½-inch and ⅝-inch gypsum board products, and any other gypsum board products made using any of the enhancement materials and/or manufacturing methods claimed in the '904 Patent ("Accused Products"). The extent of Defendant's infringement of the '904 Patent will be confirmed during discovery.

106. Defendant's direct infringement of the '904 Patent has injured USGC, and USGC is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. § 284. Unless it ceases its infringing activities, Defendant will continue to injure USGC by infringing the '904 Patent.



107. USGC provided notice to the public that its own products are covered by the '904 Patent beginning in at least April 2016, in accordance with 35 U.S.C. § 287.

108. On information and belief, Defendant has acted egregiously and with willful misconduct in that its actions constitute direct infringement of a valid patent, and this was either known or so obvious that Defendant should have known about it. Upon information and belief, Defendant has lawyers and other active agents who regularly review patents and published patent applications relevant to technology in the fields of the Patents-in-Suit, specifically including patents directed to gypsum wallboard products issued to competitors such as USGC. Upon information and belief, Defendant itself has been issued over 185 patents, including over 40 patents prosecuted in the USPTO in the same classifications as the '904 Patent, giving Defendant intimate knowledge of the art in fields relevant to this civil action. The timing, circumstances and extent of Defendant first obtaining actual knowledge of the '904 Patent will be confirmed during discovery.

109. Having knowledge of the '904 Patent, Defendant knew or became apparent to Defendant that the manufacture, sale, importing, offer for sale and use of the Accused Products results in infringement of the '904 Patent. Defendant nevertheless has been and will continue to make the Accused Products in the United States in large volumes and has been and will continue to sell the Accused Products through its distributors and resellers.

110. On information and belief, Defendant is aware of the size and importance of the United States market for lightweight gypsum wallboard and knows that the patented technology is necessary for Defendant to compete effectively with USGC's patented Sheetrock<sup>®</sup> Brand UltraLight Panels and/or other gypsum panels made by USGC.

111. Defendant derives significant revenue by selling the Accused Products, and its extensive sales and marketing efforts and sales volume evidence its intent to infringe one or more claims of the '904 Patent by making, using, offering to sell, selling or importing the Accused Products in the United States.

112. Defendant has had actual notice of USGC's infringement claim under the '904 Patent since receiving the October 25, 2016 letter sent by USGC to Defendant, and Defendant received further detailed information supporting USGC's infringement claims during the direct discussions that followed.

113. Despite not having a license, Defendant continues to infringe the '904 Patent by making, using, selling, offering for sale and/or importing in the United States the Accused Products in reckless disregard of USGC's patent rights. On information and belief, Defendant will continue its infringement notwithstanding actual knowledge of the '904 Patent and without a good faith basis to believe that its activities do not infringe any valid claim of the '904 Patent.

114. All infringement of the '904 Patent following Defendant's knowledge of the '904 Patent is willful, and USGC is entitled to treble damages and attorneys' fees and costs incurred in this action under 35 U.S.C. §§ 284 and 285.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for:

1. Judgment that the '284, '550, '236, '980, '034, '914 and '904 Patents are each valid and enforceable;
2. Judgment that the '284, '550, '236, '980, '034, '914 and '904 Patents are infringed by Defendant;

3. Judgment that Defendant's acts of patent infringement relating to the patents are willful;
4. An award of damages arising out of Defendant's acts of patent infringement, together with pre-judgment and post-judgment interest;
5. Judgment that the damages so adjudged be trebled in accordance with 35 U.S.C. § 284;
6. An award of Plaintiff's attorneys' fees, costs and expenses incurred in this action in accordance with 35 U.S.C. § 285; and
7. Such other and further relief as the Court may deem just and proper.

#### **JURY DEMAND**

Plaintiff demands trial by jury of all issues triable of right by a jury.

#### **RESERVATION OF RIGHTS**

Plaintiff's investigation is ongoing, and certain material information remains in the sole possession of Defendant or third parties, which will be obtained via discovery herein. Plaintiff expressly reserves the right to amend or supplement the causes of action set forth herein in accordance with Rule 15 of the Federal Rules of Civil Procedure.

February 6, 2017  
Redacted Version Filed: February 10, 2017

OF COUNSEL:

Karl R. Fink  
Timothy P. Maloney  
Nicole L. Little  
FITCH, EVEN, TABIN & FLANNERY, LLP  
120 South LaSalle Street, Suite 1600  
Chicago, Illinois 60603  
(312) 577-7000

BAYARD, P.A.

/s/ Stephen B. Brauerman  
Richard D. Kirk (rk0922)  
Stephen B. Brauerman (sb4952)  
Sara E. Bussiere (sb5725)  
222 Delaware Avenue, Suite 900  
Wilmington, DE 19801  
(302) 655-5000  
rkirk@bayardlaw.com  
sbrauerman@bayardlaw.com  
sbussiere@bayardlaw.com

*Counsel for Plaintiff*