

# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

## Summons in a Civil Case

TOM MILLER INVESTMENTS, LLC,  
A Michigan Limited Liability Company,  
d/b/a TMI CUSTOM AIR SYSTEMS  
Plaintiff(s),

v.

Case No. \_\_\_\_\_  
Hon. \_\_\_\_\_

HUNTAIR, INC.,  
A Delaware Corporation

Defendant(s).

### Notice to Defendant

This summons is notification that you are being sued by the above named plaintiff(s). You are required to:

1. Serve upon the **plaintiff's attorney**:

CRAIG A. REDINGER  
YOUNG BASILE  
301 E. Liberty, Suite 700  
Ann Arbor, MI 48104

an answer to the complaint within 20 days after receiving this summons, or take other actions that are permitted by the Federal Rules of Civil Procedure.

2. File with the court any answer that you serve on the parties to this action within the time limits specified.

Failure to answer or take other actions permitted by the Federal Rules of Civil Procedure may result in the issuance of a judgment by default against you for the relief demanded in the complaint.

David J. Weaver, Clerk of Court

By: \_\_\_\_\_  
Deputy Clerk

Date of Issuance:



**Summons and Complaint Return of Service**

Case No. \_\_\_\_\_  
Hon. \_\_\_\_\_

A copy of the Summons and Complaint has been served upon the Defendant in the manner indicated below:

Name of Defendant Served: \_\_\_\_\_  
Date of Service: \_\_\_\_\_

**Method of Service**

\_\_\_ Personally served at this address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ Left copies at defendant's usual place of abode with (name of person):  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ Other (specify):  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ Returned unexecuted (reason):  
\_\_\_\_\_  
\_\_\_\_\_

**Service Fees:** Travel \$ \_\_\_\_\_ Service \$ \_\_\_\_\_ Total \$ \_\_\_\_\_

**Declaration of Server**

I declare under the penalty of perjury that the information contained in this Return of Service is true and correct.

Name of Server: \_\_\_\_\_

Signature of Server: \_\_\_\_\_

Date: \_\_\_\_\_

Server's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET** County in which action arose GENESEE

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
 TOM MILLER INVESTMENTS, LLC, A Michigan  
 Limited Liability Company, d/b/a  
 TMI CUSTOM AIR SYSTEMS  
**(b)** County of Residence of First Listed Plaintiff Genesee  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number)  
 CRAIG A. REDINGER, YOUNG BASILE  
 301 E. Liberty, Ste 700, Ann Arbor,  
 MI 48104 (734) 662-0270

**DEFENDANTS**  
 HUNTAIR, INC.,  
 A Delaware Corporation  
 County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
 LAND INVOLVED.  
 Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  
 3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant  
 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from another district (specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

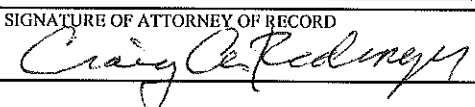
**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC § 1331; 1338(a); 2201

Brief description of cause:  
Patent infringement

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE June 6, 2008 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY: RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes  
 No

If yes, give the following information:

Court: U.S. District Court, Eastern District

Case No.: 08-10363

Judge: Paul V. Gadola

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

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**PATENT, TRADEMARK, COPYRIGHT INFORMATION**

(To be distributed when 820, 830, 840 category case is filed)

1. If this is a patent action, please respond:

<b>PATENT NO.</b>	<b>DATE OF PATENT</b>	<b>PATENTEE</b>
7,137,775	November 21, 2006	HUNTAIR
7,179,046	February 20, 2007	HUNTAIR


2. If this is a trademark action, please respond:

<b>TRADEMARK NO.</b>	<b>DATE OF TRADEMARK</b>	<b>TRADEMARK APPLICANT</b>

3. If this is a copyright action, please respond:

<b>COPYRIGHT REG. NO.</b>	<b>TITLE OF WORK</b>	<b>AUTHOR OF WORK</b>

DATE: June 6, 2008

  
CRAIG A. REDINGER

**UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF MICHIGAN**

TOM MILLER INVESTMENTS, LLC,  
A Michigan Limited Liability Company,  
d/b/a TMI CUSTOM AIR SYSTEMS,

Case No.

Plaintiff,

Judge:

v.

HUNTAIR, INC.,  
A Delaware Corporation,

Defendant.

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**COMPLAINT**

Now comes the above-named Plaintiff, by and through its attorneys, and for its complaint against the Defendant, states as follows:

1. This action arises under the patent laws of the United States, Title 35, the United States Code, and under the Declaratory Judgment Act of the United States, specifically, 28 U.S.C. § 2201. Further, the action arises under the common law of the State of Michigan prohibiting tortious interference with business relationships.

2. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1338(a) and 28 U.S.C. § 2201. Further, this Court has supplemental jurisdiction over the common law claims pursuant 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

4. The Plaintiff, TOM MILLER INVESTMENTS, LLC, is a Michigan Limited Liability Company, doing business under the name TMI Custom Air Systems.

Plaintiff's headquarters are located at 200 Quality Way, Holly, Michigan 48442.

5. Defendant Huntair, Inc., is a corporation organized and existing under the laws of the State of Delaware, and has its headquarters at 11555 Southwest Myslony Street, Tualatin, Oregon 97062.

6. Defendant Huntair manufactures, markets and distributes within this district and in the State of Michigan, custom air handlers and related products for commercial and clean room applications.

7. Plaintiff also manufactures and distributes custom air handlers for commercial buildings and structures.

8. The Defendant is the owner, by assignment, of U.S. Patent No. 7,137,775 ("the '775 Patent"), entitled "Fan Array Fan Section in Air-Handling Systems."

9. The Defendant is the owner, by assignment, of U.S. Patent No. 7,179,046 ("the '046 Patent"), entitled "Fan Array Fan Section in Air-Handling Systems."

COUNT I – DECLARATORY JUDGMENT OF NONINFRINGEMENT

10. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1-9 above, as if fully set forth herein.

11. The Plaintiff and Defendant are competitors in the field pertaining to the manufacture and sale of custom air handling equipment for commercial buildings. Plaintiff and Defendant frequently are named as qualified bidders in association with construction projects calling for the installation of air handling equipment.

12. In October of 2007, Plaintiff and Defendant were both designated as eligible bidders for the manufacture and sale of air handling equipment to be sold to and installed at facilities owned by Amcol located in Chicago, Illinois.

13. Plaintiff has submitted a bid for the Amcol project, and has been in communication with Amcol's designated mechanical contractors pertaining to that bid.

14. Representatives of Amcol's mechanical contractors, Hill Mechanical, have been advised by sales agents of the Defendant that the Defendant intends to bring patent infringement litigation against the Plaintiff in the event that the Plaintiff is the successful bidder on the Amcol project. Defendant's representatives have advised Amcol's mechanical contractors that only Huntair is eligible to deliver air handling systems consistent with Amcol's specifications, by virtue of Huntair's ownership of the above-referenced '775 and '047 Patents.

15. As a result of statements made by the Defendant's agents to Plaintiff's prospective customer, Plaintiff risks loss of the opportunity to be selected to perform work at Amcol.

16. The Defendant has, accordingly, asserted rights under the above-referenced patents based on certain identified ongoing and planned activity of the Plaintiff, and the Plaintiff contends that it has a right to engage in that accused activity without license or permission from the Defendant. As a result, an actual case or controversy arises under the laws of the United States.

17. Plaintiff alleges that products which it has offered for sale, used or sold do not infringe either the '775 or the '046 Patent, and seeks a declaration of noninfringement accordingly.



COUNT II – DECLARATORY JUDGMENT OF PATENT INVALIDITY

18. Plaintiff realleges and incorporates by reference the allegations of the Complaint as set forth in Paragraphs 1-17 above, as if fully set forth herein.

19. The inventions which are claimed in the '046 Patent and the '775 Patent were, on information and belief, in public use or on sale in this country, or patented or described in a printed publication, more than one year prior to the filing dates of the respective patents-in-suit.

20. The inventions claimed in the respective patents-in-suit were, at the time said inventions were made, obvious to those skilled in the art, and hence, not entitled to patent protection.

21. The patents-in-suit are defective in that they fail to particularly point out and claim the invention.

22. Accordingly, the patents-in-suit are invalid pursuant to 35 U.S.C. § 102, 35 U.S.C. § 103 and 35 U.S.C. § 112.

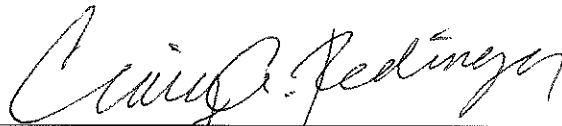
23. For the reasons set forth in Count I of this Complaint, an actual case or controversy exists between the parties, and Plaintiff is entitled to a declaration that the '046 patent and the '775 patent are invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. A declaration that the Plaintiff's multi-fan array air-handling systems do not infringe any claim of the '046 or the '775 Patent.

- B. A declaration that the '046 and '775 Patents are invalid pursuant to 35 U.S.C. § 102.
- C. A declaration that the '046 and '775 Patents are invalid pursuant to 35 U.S.C. § 103.
- D. A declaration that the '046 and '775 Patents are invalid pursuant to 35 U.S.C. § 112.
- E. Preliminary and permanent injunctive relief, enjoining the Defendant, and those acting in concert with them, from making any claim against the Plaintiff for infringement of the '046 and '775 Patents based on any previously or currently manufactured product of the Plaintiff.
- F. Preliminarily and permanently enjoining the Defendants, and those acting in concert with them, from representing to any actual or prospective customer of the Plaintiff, or any other person, that the conduct of the Defendant infringes either the '046 or the '775 Patents.
- G. Damages sufficient to compensate the Plaintiff for losses suffered as a result of lost sales by virtue of the Defendant's actions.
- H. Such other relief as may be appropriate in equity and good conscience.



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DATED: June 6, 2008