

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
PADUCAH DIVISION**

Paducah River Painting, Inc.	)	
A Kentucky Corporation	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:10-cv-00202-TBR
	)	
	)	Jury Trial Demanded
McNational, Inc.	)	
A Florida Corporation,	)	
McGinnis, Inc.	)	
An Ohio Corporation	)	
National Maintenance & Repair of Kentucky, Inc.	)	
A Kentucky Corporation	)	
	)	
Defendants,	)	

**AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

COMES NOW Plaintiff, Paducah River Painting, Inc. (hereinafter “Paducah River” or “Plaintiff”) of Paducah, Kentucky, by and through its attorneys, and for its amended complaint against Defendants, McNational, Inc. (hereinafter “McNational”), McGinnis, Inc. (hereinafter “McGinnis”), and National Maintenance & Repair of Kentucky, Inc. (hereinafter “NMRKy”, where McNational, McGinnis and NMRKy are hereinafter referred to jointly as “Defendants”), allege that:

1. Plaintiff, Paducah River, is a Kentucky corporation with a principal place of business at 390 Riverside Lane, Calvert City, Kentucky 42029.
2. Paducah River, among other things, refurbishes river barges in accordance with Plaintiff’s Patent Rights, as hereinafter described.

3. Defendant, McNational, Inc. (McNational) is a Delaware corporation having its principal place of business located at Commerce Row #5, 225 Main Street, Destin, Florida 32541, and has a mailing address of 502 Second Street Ext., P.O Box 534, South Point, Ohio 45680-0534.

4. McNational has advertised on its website [www.mcnational.com](http://www.mcnational.com), and in trade publications, such as Waterways Journal, that it performs “Sandblasting and Painting Services” of barges at South Point, Ohio, and that McNational has expanded its facilities at South Point, Ohio to construct a “new state of the art environmentally friendly sandblasting and painting facility ... that will handle dry and liquid barges up to 54; wide to 300’ long with an enclosed automated continuous sandblasting and painting system with minimal turnaround times”.

5. Defendant, McGinnis, Inc. (McGinnis), is an Ohio Corporation.

6. McGinnis is a wholly owned subsidiary of McNational.

7. McGinnis has its principal place of business at 502 Second Street Ext., South Point, Ohio 45680.

8. McGinnis operates a property near South Point, Ohio that includes a facility for the sandblasting and painting of barges with marineways permitting the removal of such barges from the Ohio River and the return of such barges to the river.

9. Hereafter the facility in South Point, Ohio is referred to as the South Point Facility.

10. At least part of the South Point Facility is within one-half mile or less of the border of the Commonwealth of Kentucky.

11. McGinnis owns and operates at least four facilities in Kentucky, namely: (A) a facility in Hebron, Kentucky; (B) a facility in Ludlow, Kentucky; (C) a facility in Greenup County, Kentucky near Wurtland, Kentucky; and (D) another facility near Wurtland, Kentucky named Debbie Jo Dock (hereafter “DJD”) Facility. These four facilities are hereafter collectively referred to as “McGinnis’ Four Kentucky Facilities”.

12. Attached as Exhibit 1 is a page published on the McGinnis’ website [www.mcginisinc.com](http://www.mcginisinc.com) and showing a map representing the location of McGinnis’ Four Kentucky Facilities and the South Point, Ohio Facility.

13. All four of these aforesaid McGinnis’ Four Kentucky Facilities are located on real estate owned or leased by McGinnis.

14. All McGinnis’ Four Kentucky Facilities have employees located in Kentucky.

15. Upon information and belief, employees from each of the McGinnis’ Four Kentucky Facilities have communicated by telephone, facsimile, and/or email with employees at the McGinnis corporate offices in South Point, Ohio, within the past 12 months.

16. Upon information and belief, employees from the corporate office of McGinnis in South Point, Ohio have visited each of the McGinnis’ Four Kentucky Facilities within the past 12 months.

17. McGinnis has a facility on the Ohio River at Ohio River Dock located near Coal Grove, Ohio (hereafter “Coal Grove Facility”). At least part of the Coal Grove Facility is located within a mile or less of the border of the Commonwealth of Kentucky.

18. McGinnis has a facility on the Ohio River near Wheelersburg, Ohio (hereafter “Wheelersburg Facility”). At least part of the Wheelersburg Facility is located within a mile or less of the border of the Commonwealth of Kentucky.

19. McGinnis has a facility adjacent the Ohio River near Cincinnati, Ohio (hereafter “Cincinnati Facility”). At least part of the Cincinnati Facility is located within a mile or less of the border of the Commonwealth of Kentucky.

20. Exhibit 1 shows McGinnis’ website representation of a map showing the location of the Coal Grove, Wheelersburg, and Cincinnati Facilities.

21. Defendant, National Maintenance & Repair of Kentucky (NMRKy) is a Kentucky corporation.

22. McGinnis owns all of the shares of NMRKy.

23. NMRKy has its principal office at P.O. Box 769, South Point, Ohio 45680 and has places of business located in the Western District of Kentucky at 4350 Clarks River Road, Paducah, McCracken County, Kentucky 42002 and at 1175 Clarks Ferry Road, Ledbetter, Livingston County, Kentucky 42058.

24. Upon information and belief, employees from the corporate office McGinnis in South Point, Ohio have visited NMRKy’s facilities in Paducah, Kentucky during the last 12 months.

25. Upon information and belief, employees from the corporate office of McGinnis in South Point, Ohio have communicated with employees of NMRKy via email telephone, and/or facsimile during the past 12 months.

### **JURISDICTION AND VENUE**

26. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, including, but not limited to, 35 U.S.C. §§ 271 and 281.

27. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331 and §1338(a) as Plaintiff alleges substantial claims arising under the Patent Act of 1952 (Title 35 of the United States Code).

28. Venue is proper in the Court by virtue of 28 U.S.C. §1391(b) and (c).

### **COUNT I --- PATENT INFRINGEMENT**

29. Paragraphs 1- 28 are incorporated herein by reference.

30. On November 23, 2010, United States Letters Patent No. 7,837,410 entitled “Barge Transportation System and Refurbishing System and Method of Transporting and Refurbishing Barges” (hereinafter referred to as the “ ‘410 Patent”). issued to the Plaintiff, Paducah River, by virtue of assignment, of the entire right, title and interest in and to, and including the right to sue for past infringement and including provisional rights, as defined by 35 U.S.C. § 154(d), for inventions in methods of refurbishing barges and in refurbishment systems for refurbishing barges. A copy of the ‘410 Patent is attached as Exhibit 2.

31. Defendants have infringed, and/or induced the infringement of, and/or have contributorily infringed the ‘410 Patent by making, using, offering to sell, or selling in this country during the term of the ‘410 Patent, without authority, barge transportation systems, barge refurbishment systems. and/or the method of transporting and refurbishing

barges or other vessels that embody the patented inventions, and the Defendants will continue to do so unless enjoined by this Court, all in violation of 35 U.S.C § 271.

32. Paducah River has complied with 35 U.S.C. § 287(a) by placing a notice of the Letters Patent at Paducah River's barge refurbishment facility on systems that embody the patented systems of the invention of the '410 Patent. The filing on November 23, 2011, and serving of the initial Complaint gave actual notice to Defendants of their infringement of the '410 Patent, as does the filing of this Amended Complaint.

33. Paducah River has been damaged as a result of the Defendants' patent infringing activities and is entitled to damages in accordance with 35 U.S.C. §284, and Paducah River will continue to be damaged and irreparably harmed unless this Court enjoins such activities.

34. The aforesaid infringement by the Defendants has been willful and deliberate with actual knowledge of the '410 Patent and of Plaintiff's notice of infringement of the '410 Patent through the filing of the Original Complaint in this case.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays:

A. That Defendants, their respective parent and/or subsidiary company(s), officers, agents, servants, affiliates, employees, attorneys and representatives and all those in privy or acting in concert with Defendants be preliminarily and permanently enjoined and restrained from infringing, inducing infringement, and/or contributing to the infringement of the '410 Patent in accordance with 35 U.S.C. §283;

B. That this Court enter judgment for Plaintiff against Defendants for all damages resulting from Defendants' infringement, inducement of infringement, and/or contributory infringement of the '410 Patent in accordance with 35 U.S.C. §284, and that these damages be trebled in accordance with 35 U.S.C. §284;

C. That this Court award Plaintiff its reasonable attorney's fees in accordance with 35 U.S.C. §285;

D. That this Court award Plaintiff interest and costs in accordance with 35 U.S.C. §284 and that this Court award such further relief as this Court deems just and equitable;

E. That all of the Defendants be held jointly and severally liable for all awards granted by this Court to Plaintiff; and

F. That this Court award such other and further relief as the Court deems proper and appropriate under the circumstances.

#### **JURY TRIAL DEMAND**

In accordance with Rules 5 and 38, Federal Rules of Civil Procedure, Plaintiff, Paducah River, hereby demands a jury trial.

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Respectfully Submitted,

POLSTER, LIEDER, WOODRUFF &  
LUCCHESI, L.C.

/s/McPherson D. Moore

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***Attorneys for Plaintiff***

Attachments: Exhibit 1 - Published page from McGinnis, Inc. Website  
[www.mcginisinc.com](http://www.mcginisinc.com) showing map of the locations of  
McGinnis' Kentucky and Ohio Facilities  
Exhibit 2 - U. S. Patent 7,837,410



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on February 25, 2011 with the Court via CM/ECF system and via e-mail thereby effectuating service via electronic means upon the following:

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