

JUDGE ABRAMS

13 CV 2687

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AMPLIFY EDUCATION, INC.,

Plaintiff,

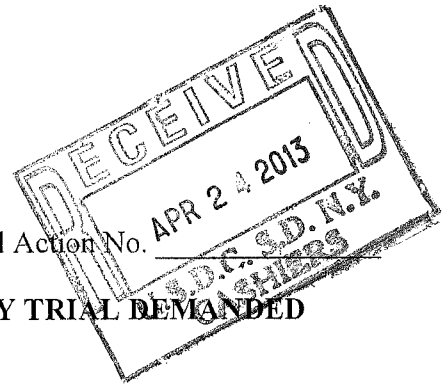
v.

GREENWOOD PUBLISHING GROUP, INC.  
d/b/a HEINEMANN,

Defendant.

Civil Action No. \_\_\_\_\_

JURY TRIAL DEMANDED



**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Amplify Education, Inc. (“Amplify”) alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement brought by Amplify against Defendant Greenwood Publishing Group, Inc. d/b/a Heinemann (“Heinemann”) for infringement of United States Patent Nos. 7,114,126 (“the ’126 patent”) and 7,568,160 (“the ’160 patent”) (collectively, the “Patents-in-Suit”).

**THE PARTIES**

2. Plaintiff Amplify is a Delaware corporation with offices at 55 Washington Street, Suite 900, Brooklyn, NY 11201-1071 and 1155 Avenue of the Americas, New York, NY 10036.

3. Upon information and belief, Defendant Heinemann is a corporation organized under the laws of Delaware with a principal place of business at 361 Hanover St., Portsmouth, NH 02801.

## **JURISDICTION AND VENUE**

4. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271 *et. seq.*

5. This Court has original jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Heinemann because it purposefully engages in business in the United States and within this district and provides infringing products and services within this district, including but not limited to providing Fountas & Pinnell's Benchmark Assessment System products and services to schools within the Southern District of New York.

7. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b), because, among other reasons, Heinemann is subject to personal jurisdiction in this district and has infringed and continues to infringe the Patents-in-Suit in this district.

## **BACKGROUND FACTS**

8. Amplify (formerly Wireless Generation, Inc.) was founded in 2000 by two Rhodes Scholars and former teachers who shared a passion for technology and education, and a vision for a business that would put technology in the hands of teachers and into classrooms. Since then, Amplify has grown from a start-up to a national leader in education reform and has been at the forefront of individualized, technology-based learning that is revolutionizing education for students and teachers. Amplify has been dedicated to bringing together educational expertise and groundbreaking technology to enhance classroom learning, and was the first company to introduce classroom assessments using mobile devices.

9. Amplify's investment into research and development in the area of education technology has enabled it to provide products and services that make student data accessible, meaningful, and actionable, including software that helps educators measure student progress and enables personalization in real-time.

10. Amplify's ability to enhance classroom learning through the use of technology depends on protecting its inventions by seeking and obtaining patents covering those inventions, and on its ability to protect its proprietary technology through enforcement of its patent rights.

11. On information and belief, Heinemann is a publisher of professional books for teachers, including but not limited to Fountas & Pinnell's Benchmark Assessment systems, and in particular Fountas & Pinnell's Reading Record App, which infringes Amplify's patents.

12. Amplify has been and will be significantly damaged by the acts complained of in this Complaint.

**COUNT I: INFRINGEMENT OF U.S. PATENT NO. 7,114,126**

13. Amplify restates and re-alleges each of the allegations contained in all preceding paragraphs of this Complaint, and incorporates them herein.

14. Amplify is the owner of all right, title, and interest under the '126 patent, including the right to sue for past, current, and future infringement.

15. The '126 patent was duly and lawfully issued by the United States Patent and Trademark Office on September 26, 2006, and is entitled "System and Method for Real-Time Observation Assessment." A true and correct copy of the '126 patent is attached as Exhibit A herein.

16. The '126 patent is valid and enforceable under the United States Patent Laws.

17. Amplify believes that Heinemann has infringed, is currently infringing, and will infringe the '126 patent, in violation of 35 U.S.C. § 271 *et seq.*, without authority for making, using, selling, offering for sale in the United States products covered by one or more claims of the '126 patent.

18. The infringing products include, but are not limited to, Fountas & Pinnell's Benchmark Assessment systems, and in particular Fountas & Pinnell's Reading Record App.

19. Amplify has been damaged by Heinemann's infringement of the '126 patent and will continue to be damaged unless Heinemann is enjoined by this Court.

20. Amplify does not have an adequate remedy at law.

**COUNT II: INFRINGEMENT OF U.S. PATENT NO. 7,568,160**

21. Amplify restates and re-alleges each of the allegations contained in all preceding paragraphs of this Complaint, and incorporates them herein.

22. Amplify is the owner of all right, title, and interest under the '160 patent, including the right to sue for past, current, and future infringement.

23. The '160 patent was duly and lawfully issued by the United States Patent and Trademark Office on July 28, 2009, and is entitled "System and Method for Real-Time Observation Assessment." A true and correct copy of the '160 patent is attached as Exhibit B herein.

24. The '160 patent is valid and enforceable under the United States Patent Laws.

25. Amplify believes that Heinemann has infringed, is currently infringing, and will infringe the '160 patent, in violation of 35 U.S.C. § 271 *et seq.*, without authority for making, using, selling, offering for sale in the United States products covered by one or more claims of the '160 patent.

26. The infringing products include, but are not limited to, Fountas & Pinnell's Benchmark Assessment systems, and in particular Fountas & Pinnell's Reading Record App.

27. Amplify has been damaged by Heinemann's infringement of the '160 patent and will continue to be damaged unless enjoined by this Court.

28. Amplify does not have an adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Amplify requests the following judgment and relief from the Court:

A. Judgment that Heinemann infringes the '126 and '160 patents by, without authority, making, using, selling, and offering for sale in the United States products covered by one or more claims of the '126 and '160 patents;

B. An award of a permanent injunction enjoining Heinemann and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and any and all those acting for any of them or on their behalf, or acting in concert or participation with them, from infringing Amplify's '126 and '160 patents;

C. An award to Amplify for the damages necessary to compensate it for Heinemann's infringement of the '126 and '160 patents pursuant to 35 U.S.C. § 284;

D. An award to Amplify of its costs, attorneys' fees, and all other expenses incurred in this action pursuant to 35 U.S.C. § 285;

E. Pre-judgment and post-judgment interest; and

F. Any other and further relief that the Court deems just and proper.


#### **JURY DEMAND**

Amplify demands a trial by jury on all issues triable by jury.

Dated: April 24, 2013

Respectfully submitted,

FISH & RICHARDSON P.C.

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\* *pro hac vice application to be filed*