

Scott E. Davis, OSB #02288

Email: scott.davis@klarquist.com

John D. Vandenberg, OSB #89375

Email: john.vandenberg@klarquist.com

Michael N. Zachary, OSB #04120

Email: michael.zachary@klarquist.com

KLARQUIST SPARKMAN, LLP

121 S.W. Salmon Street, Suite 1600

Portland, Oregon 97204

Telephone: 503-595-5300

Facsimile: 503-595-5301

Attorneys for Plaintiff CollegeNET, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

COLLEGENET, INC.,
a Delaware corporation,

Plaintiff,

v.

APPLYYOURSELF, INC.,
a Delaware corporation,

Defendant.

Civil Nos. 02-CV-484-HU (LEAD CASE)
02-CV-1359-HU

**SUPPLEMENTAL
COMPLAINT**

SUPPLEMENTAL COMPLAINT

For its supplemental complaint against Defendant, Plaintiff alleges:

PARTIES

1. Plaintiff CollegeNET, Inc. (hereinafter “CollegeNET”) is a Delaware corporation having its principal place of business in Portland, Oregon.

2. Defendant ApplyYourself, Inc. (hereinafter “ApplyYourself”), is a Delaware corporation having a place of business at 13135 Lee Jackson Highway, Suite 300, Fairfax, Virginia, 22033.

JURISDICTION

3. Plaintiff CollegeNET’s cause of action for patent infringement against Defendant ApplyYourself arises under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281. Consequently, this Court has original subject matter jurisdiction over this suit pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Defendant ApplyYourself has purposely availed itself and submitted to the authority of this Court to assert counterclaims against Plaintiff CollegeNET. This Court therefore has jurisdiction over the related claims asserted herein against Defendant ApplyYourself.

5. In light of its activities within Oregon, Defendant ApplyYourself is subject to the personal jurisdiction of this Court. Upon information and belief, Defendant ApplyYourself conducts business in Oregon and in this judicial district and division by, among other things, purposefully providing and/or offering its ApplyYourself web-based college application system and method (hereinafter “the ApplyYourself System”) to one or more Oregon customers and, on information and belief, by purposefully providing and allowing Oregon individuals and residents access to and use of the ApplyYourself System. As such, ApplyYourself has upon information

and belief infringed patents owned by Plaintiff CollegeNET, including U.S. Patent No. 6,460,042 B1 (hereinafter “the ‘042 patent”), by way of Defendant ApplyYourself’s activities in and connected to Oregon.

6. Pursuant to 28 U.S.C. § 1400(b), this Court is a proper venue for this action..

ORIGINAL COUNT ONE – PATENT INFRINGEMENT

7. Plaintiff CollegeNET has never licensed or permitted Defendant ApplyYourself to practice any of the legal rights granted under the ‘042 patent.

8. Upon information and belief, Defendant ApplyYourself is currently making, using, offering for sale, and/or selling its ApplyYourself System in the United States.

9. Upon information and belief, Defendant ApplyYourself infringes one or more claims of the ‘042 patent under 35 U.S.C. § 271.

10. Plaintiff CollegeNET is suffering irreparable damage due to the infringing acts of Defendant ApplyYourself, and because the infringing acts of Defendant ApplyYourself are continuing, Plaintiff CollegeNET will suffer additional irreparable damage unless Defendant ApplyYourself is enjoined from this Court from those acts which infringe the ‘042 patent.

11. Plaintiff CollegeNET is suffering monetary damage as a result of Defendant ApplyYourself’s infringement of the ‘042 patent.

**SUPPLEMENTAL COUNT ONE:
PATENT INFRINGEMENT DAMAGES FROM JUNE 30, 2003, TO PRESENT**

12. Plaintiff CollegeNET hereby realleges and incorporates by reference all allegations contained in Paragraphs 1 through 11 of this Supplemental Complaint in this Court.

13. Since June 30, 2003, Plaintiff CollegeNET has continued to be the owner of the '042 patent.

14. At no time has Plaintiff CollegeNET ever licensed or permitted Defendant ApplyYourself to practice any of the legal rights granted under the '042 patent.

15. On October 15, 2003, judgment was entered in this Court in favor of Plaintiff CollegeNET, holding that Defendant ApplyYourself infringed Plaintiff CollegeNET's rights in the '042 patent, and awarding damages.

16. Pursuant to the pretrial order entered by this Court on August 27, 2003, the stipulated period of damages due to Defendant ApplyYourself's infringement of the '042 patent was limited to applications processed prior to June 30, 2003.

17. Accordingly, the October 15, 2003 judgment awarded Plaintiff CollegeNET damages only for Defendant ApplyYourself's infringing acts occurring on or before June 30, 2003.

18. Since June 30, 2003, Defendant ApplyYourself has continued to perform the actions found by the Jury and the U.S. Court of Appeals for the Federal Circuit to infringe the '042 patent.

19. Upon information and belief, Defendant ApplyYourself is currently making, using, offering for sale, and/or selling its ApplyYourself System (including i-Class) in the United States, thus continuing its infringement of the '042 patent.

20. Plaintiff CollegeNET has suffered irreparable damage due to the infringing acts of Defendant ApplyYourself, and because the infringing acts of Defendant ApplyYourself are continuing, Plaintiff CollegeNET will suffer additional irreparable damage unless Defendant ApplyYourself is enjoined by this Court from those acts which infringe the '042 patent.

21. Since June 30, 2003, Plaintiff CollegeNET has suffered and is currently suffering further monetary damage as a result of Defendant ApplyYourself's infringement of the '042 patent.

**SUPPLEMENTAL COUNT TWO:
ENHANCED DAMAGES FOR WILLFUL INFRINGEMENT**

22. Plaintiff CollegeNET hereby realleges and incorporates by reference all allegations contained in Paragraphs 1 through 21 of this Supplemental Complaint in this Count.

23. On August 2, 2005, the Federal Circuit issued its Opinion in this case which, among other things, confirmed the Jury's Verdict that ApplyYourself infringed the '042 patent.

24. At the trial which commenced on August 26, 2003, ApplyYourself challenged the validity of U.S. Patent No. 6,345,278 B1 (hereinafter "the '278 patent"), of which the '042 patent is a continuation.

25. The jury rejected ApplyYourself's challenge to the '278 patent's validity.

26. ApplyYourself acquiesced in the jury's decision by not challenging it on appeal, further demonstrating its knowledge that the related claims of the '042 patent are valid.

27. Since at least on or about August 2, 2005, ApplyYourself, on information and belief, has known that its i-Class System infringes the '042 patent, and has known that the '042 patent is presumed valid.

28. When it learned of the Court of Appeals' ruling, ApplyYourself did not cease using, making, or promoting its infringing i-Class system.

29. Upon information and belief, since August 2, 2005, Defendant ApplyYourself has not sought or obtained any competent written opinion from an attorney that the infringed claims of the '042 patent are invalid.

30. Upon information and belief, Defendant ApplyYourself has and continues to infringe the '042 patent willfully, in flagrant disregard to Plaintiff CollegeNET's rights in the '042 patent, by among other things continuing to make, use, and promote its i-Class System, which has been found to infringe the presumptively valid '042 patent, with no reasonable basis to believe the patent was invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff CollegeNET prays for the following relief:

- (1) An order permanently enjoining Defendant ApplyYourself, its agents, officers, assigns and others acting in concert with Defendant ApplyYourself from infringing, inducing infringement of, and/or contributing to infringement of the '042 patent;
- (2) An award of damages, to fully compensate Plaintiff CollegeNET for Defendant's infringement of the '042 patent
- (3) An award of enhanced damages pursuant to 35 U.S.C. § 284 for past and continued willful infringement of the '042 patent;
- (4) An award of pre-judgment interest and post-judgment interest on the damages awarded;
- (5) An award consisting of Plaintiff CollegeNET's attorney's fees, costs and disbursements incurred herein; and
- (6) Such other relief as the Court deems equitable under the circumstances.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38 and Local Rule 38.1(b), Plaintiff CollegeNET demands a jury trial on all issues triable to a jury.

Respectfully submitted,

Dated: February 3, 2006

By: /s/ John D. Vandenberg

Scott E. Davis, OSB #02288

Email: scott.davis@klarquist.com

John D. Vandenberg, OSB #89375

Email: john.vandenberg@klarquist.com

Michael N. Zachary, OSB #04120

Email: michael.zachary@klarquist.com

KLARQUIST SPARKMAN, LLP

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Portland, Oregon 97204

Telephone: 503-595-5300

Facsimile: 503-595-5301

Attorneys for Plaintiff CollegeNET, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 3, 2006, a true copy of the foregoing **SUPPLEMENTAL COMPLAINT**, was served by electronic mail and by electronic filing on:

Kathleen C. Bricken, OSB #94266
Email: kbricken@gsblaw.com
Garvey, Schubert & Barer
121 S.W. Morrison St., Eleventh Floor
Portland, Oregon 97204-3141
Telephone: 503-228-3939
Facsimile: 503-226-0259

And by electronic mail to:

Raymond Jones
Email: rjones@cmgpc.com
Carr, Morris & Graeff, P.C.
(1) 1120 G. Street, N.W., Suite 930
Washington, D.C. 20005-3801
(2) Telephone: 202-789-1000
Direct: 202-628-2436
Facsimile: 202-628-3834

J. Michael Jakes
E-mail: mike.jakes@finnegan.com
Robert Shaffer
Email: robert.shaffer@finnegan.com
901 New York Avenue, NW
Washington, DC 20001-4413
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

Attorneys for Defendant ApplyYourself, Inc.

By: /s/ John D. Vandenberg
Scott E. Davis, OSB #02288
Email: scott.davis@klarquist.com
John D. Vandenberg, OSB #89375
Email: john.vandenberg@klarquist.com
Michael N. Zachary, OSB #04120
Email: michael.zachary@klarquist.com
KLARQUIST SPARKMAN, LLP
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