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U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**FILED**

DEC 20 2006

U. S. DISTRICT COURT  
E. DISTRICT OF MO.

JAMES H. CLARK,

Plaintiff,

vs.

FLOYD CRUES et al.,

Defendants.

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Case No. 4:05CV1344 - JCH

Judge Hamilton

**PLAINTIFF'S FIRST  
SUPPLEMENTAL PLEADING TO HIS AMENDED COMPLAINT**

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COMES NOW; Plaintiff, James H. Clark, by representing himself "pro se" and "in forma pauper," and pursuant to Federal Rule of Civil Procedure (FRCP) Rule 15(d), "upon Motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transitions or occurrences or events which may have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of claim for relief or defenses. Only if the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time thereof."

Plaintiff has very little experience in civil related matters, lacks most resources needed to adequately defend his rights, and with mental health impairments, has recently become aware the Defendants have been acknowledging; "Full and Exclusive Ownership Rights" of his Intellectual Property to include any related letters, patents, copyrights, trademarks, confidential information, any other proprietary rights, intangible property or work product, that are delivered, produced or created in connection with this "agreement" with the "Board" as a consultant.

Plaintiff seeks to Supplement his Amended Pleading with a "Patent Infringement" cause of action against the acknowledged Defendants pursuant to FRCP Rule 15(d).

## **PATENT INFRINGEMENT**

**Against Defendants; Board of Education of the City of St. Louis, Floyd Crues, Steve Warmack, Ken Brostron, SLPS, Ron Archibald, Robert Jackson, Vincent Schoemehl, Darnetta Clinkscale, and the Board of Education of the City of St. Louis**

300. Plaintiff restates each and every allegation contained in the numbered paragraphs of the amended complaint.

301. During the spring of 2004, Plaintiff created, authored and developed on his own time, and successfully implemented a behavioral modification concept recognized as the “Out of Area” program.

302. The “Out of Area” program Patent Application was filed in the United States Patent and Trademark Office and is entitled SYSTEM AND METHOD FOR OUT OF AREA BEHAVIOR MODIFICATION IN SCHOOLS, which is recognized as Patent Application No: 11/153,118.

303. The Court and the Honorable Judge Hamilton have correctly acknowledged and identified the validity of the above referenced Patent (Doc. No. 6).

304. Plaintiff or “patentee” is the only person with the behavioral modification experiences, dedication, and creativeness to invent a concept as recognized herein.

305. Noting the Doctrine of Equivalents, the Defendants infringement action’s does not prevent them from evading liability for Patent Infringement by making trivial changes to avoid the literal language of the Patent claims. *Graver Tank Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 70S.Ct. 854 (1950).

306. Existence of an implied license is an affirmative defense to an action for patent infringement, and the party asserting that defense has the burden of establishing that an implied license exists under the facts of the case. *Lucent Technologies, Inc., v. Newbridge Networks Corp.*, 168 F.Supp.2d 181.

307. As defined in Black's Law Dictionary, an implied license through patent context is the circumstances surrounding the conduct give rise to an affirmative grant or consent or permission to infringe a patent's claim.

308. An implied license may also arise when a patentee authorizes the sale or express grant of a license to a buyer, who then resells the license to a third party.

309. Only a patentee may bring an action for a Patent Infringement; unless a licensee holds all substantial rights under the Patent, a licensee may not enforce a Patent without patentee. 35 U.S.C.A., Section 281. – *Aptix Corp. v. Quickturn Design systems, Inc.*, 269 F.2d 1369.

310. In order to assert standing for a Patent Infringement, a Plaintiff must demonstrate that they held an enforceable title to the Patent at the conception of the lawsuit. *U.S.C.A. Const. Art. 3 section 1, et seq. – Id.*

311. It is the courts role to construe claims of disputed Patent. – *Air Turbine Technology, Inc. v. Atlas Copco AB*, 295 F.supp.2d 1323.

312. Defendants Warmack initially provided the Plaintiff's "Out of Area" programmatic information to Defendant Crues in the spring of 2004.

313. Defendants Crues used the Plaintiff invention for his own advantages, (a) by utilizing it towards his acquirement as superintendent of SLPS in June 2004, and (b) proffering \$7,000.00 upon his initiation thereof the Plaintiff's invention, which was an infringement.

314. Defendant Board of Education of the City of St. Louis infringed on the Plaintiff's patent, and may still be doing so by claiming "Full and Exclusive Ownership Rights" are hereby assigned to the "Board" of Education of the City of St. Louis."

315. Defendants Clinskale, Shoemehl, Jackson, and Archibald approved of the \$7,000.00 compensation bonus for Defendant Crues, whether intentionally or not.

316. Mere voluntary cessation of allegedly illegal conduct does not moot patent infringement case. *Emerson Elec. Co. v. Spartan Tool, L.L.C.*, 223 F.Supp.2d 856.

317. Plaintiff was deceived by the Defendants; not only when he tried to help SLPS in the spring of 2004, but; throughout the 2004-05 school year by depriving him of his teaching rights, and denying the Plaintiff of his property and liberty interests protected by the procedural due process clause of the fourteenth amendment.

318. Defendant Board of Education of the City of St. Louis approved to compensate two unqualified companies; the first being Robert Lee and/or SSS and awarded him \$700,000.00 from October 2004 through February 2005, upon which the public became aware of Lee's illegal company, incongruence with failing to implement the Plaintiff's program successfully.

319. In late February or early March of 2005, Defendant Board of Education of the City of St. Louis approved to compensate another unqualified company called Touchdown Enterprise Inc., approximately \$247,000.00 to finish the school year at selected locations.

320. Summarizing, the SLPS, Board of Education approved to compensate approximately \$947,000.00 (or \$1,000,000.00 with legal fees), for one school year, to attempt to implement the Plaintiff's "Out of Area" program.

321. One school year, one school district, and approximately \$1,000,000.00 was approved to service the Plaintiff's patent protected and Intellectual Property.

322. Value has been prematurely set, and provable for the Plaintiff's Intellectual Property.

323. Both Lee & SSS and Touchdown Enterprise Inc. failed to successfully implement the Plaintiff's program.

324. Plaintiff is the only person capable of successfully implementing any of his "All - School" Behavioral Modification programs, which consists of three recognized as, (1) the Level system for elementary school populations, (2) the "Out of Area" program, which is designed for middle schools, and (3) the "High School shut Down Room," which is strictly for high school populations.

325. Pursuant to the *Punduit Test*, Plaintiff can establish, (a) a high demand for his product recognized as public school discipline, (b) absence of any acceptable or non-infringing substitute, (c) marketing capabilities to exploit the demand, and (d) projected proffering and amounts thereof.

326. Summarizing the Courts responsibilities for determining patent infringement requires that someone (a) without authority, (b) makes, sells, uses, offers to sell, or imports, (c) the patented product, (d) within the United States, and (e) during the term of the patent. 35 U.S.C.A, Section 271.

327. Defendant Crues and Defendant Board of Education of the City of St. Louis, (a) had no authority, (b) proffered from and may be still proffering, (c) the Plaintiff's patented product, (d) within the U.S., and (e) during the patent period.

328. Plaintiff has been significantly emotionally and physically damaged as a direct and proximate result of the Defendants acts.

329. Pursuant to Title 35 U.S.C.A, Sections 286 and 318, Title 28 U.S.C.A, Section 1338, and other applicable Patent laws, Plaintiff is entitled to relief accordingly.

330. To recover lost profits, prevailing patent infringement Plaintiff must show causation in fact, establishing that "but for" infringement, he would have made additional profits. *Applera Corp. v. Micromass UK Ltd.*, 204 F.Supp.2d 724.

- A. Plaintiff is un-employed; therefore, not proffering because of the Defendants,
- B. The perfect solution to public, and private school discipline sits dormant,
- C. Students can and will continue to disrupt and disrespect the educational process, which the Plaintiff and only the Plaintiff has the power to stop, and
- D. Thank you SLPS for ruining the Plaintiff's life.

331. Each Defendant was either; an employee, agent, respective officers, attorney, or member of the Board of Education of the City of St. Louis and SLPS; as such, corporate SLPS and the "Board" are liable for damages accordingly.

**WHEREFORE**, Plaintiff prays for the Court and the Honorable Judge Hamilton to grant judgment in his favor and against Defendants; Crues, Brostron, Warmack, SLPS, Board of Education of the City of St. Louis, to include Jackson, Archibald, Clinkscale, and Schoemehl, for Patent Infringement, and to be held liable, jointly and severally, for; but not limited to, the following damages:

- A. Compensation for actual damages in compensation equivalent to Plaintiff's actual computed teaching salary through retirement including the 2005-06, and 2006-07 school years in an amount of approximately \$1,320,000.00,
- B. Compensation for intangible sufferings and damages, which will be computed prior to, or during the trial,
- C. Compensation for costs incurred and other legal expenses in the amount of no less than \$250,000.00 or an equivalent amount to that of the Defendants legal costs incurred for this matter,
- D. Relief in the form of compensation for pecuniary damages from business proffer losses, as computed in the Rule 26(a) disclosures in the amount of \$7,200,000.00 extending through the 2006-07 school year and/or the projected trial date for this matter set to begin on the 7<sup>th</sup> day of May 2007,
- E. Royalty damages in the form of compensation to be computed prior to, or during the trial,
- F. Interest for all damages awarded based at fair market value at computed from the dates of accrued damages,
- G. Punitive damages in the form of compensation equivalent to twice all other damage awards computed; pursuant to Missouri laws, in an approximate amount of \$17,540,000.00,
- H. Pre-judgment interest, treble damages, enhanced damages, pursuant to the discretion of the Court, and
- I. All other relief the Court deems just, proper, and fair.

Respectfully Submitted,

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**JAMES H. CLARK**  
8276 Albin Avenue  
St. Louis MO, 63114  
(314) 426-6587 (home phone)

**CERTIFICATE OF SERVICE**

I hereby certify; a true and accurate copy of the foregoing, was faxed and/or mailed  
postage prepaid and/or hand delivered on this 20<sup>th</sup> day of December 2006 to:

Mr. James Hetlage  
LASHLY & BAER, P.C.  
714 Locust Street  
St. Louis MO, 63101

  
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JAMES H. CLARK