

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DIGITAL-VENDING SERVICES	§	
INTERNATIONAL, LLC	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	Civil Action No. _____
THE UNIVERSITY OF PHOENIX, INC.,	§	
APOLLO GROUP, INC.,	§	
CAPELLA EDUCATION COMPANY,	§	
LAUREATE EDUCATION, INC., and	§	
WALDEN UNIVERSITY, INC.	§	
	§	JURY TRIAL DEMANDED
Defendants.	§	

ORIGINAL COMPLAINT

For its Original Complaint, Digital-Vending Services International, LLC (“DVSI”) alleges as follows:

I. THE PARTIES

1. Plaintiff DVSI (“DVSI”) is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 1750 K Street, NW, Suite 1200B, Washington D.C. 20006.

2. Upon information and belief, Defendant The University of Phoenix, Inc. (“University of Phoenix”) is a corporation organized and existing under the laws of the State of Arizona with its principal place of business at 4615 East Elwood Street, Phoenix, AZ 85040-1958. Defendant University of Phoenix may be served by serving its registered agent for service of process, CT Corporation, at 350 N. Paul Street, Dallas, Texas 75201.

3. Upon information and belief, Defendant Apollo Group, Inc. (“Apollo”) is a corporation organized and existing under the laws of the State of Arizona with its principal place

of business at 4615 East Elwood Street, Phoenix, Arizona 85040-1958. Defendant Apollo may be served by serving its registered agent for service of process, CT Corporation, at 2394 E. Camelback Road, Phoenix, Arizona 85016.

4. Upon information and belief, Defendant Capella Education Company (“Capella”) is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business at 225 South Sixth Street, 9th Floor, Minneapolis, Minnesota 55402. As Defendant Capella does not disclose a registered agent for service of process, Defendant Capella may be served at its principal place of business.

5. Upon information and belief, Defendant Laureate Education, Inc. (“Laureate”) is a corporation organized and existing under the laws of the State of Maryland with its principal place of business at 650 South Exeter Street, Baltimore, Maryland 21202-4382. Defendant Laureate may be served by serving its registered agent for service of process, Robert W. Zentz, at 650 South Exeter Street, Baltimore, Maryland 21202-4382.

6. Upon information and belief, Defendant Walden University, Inc. (“Walden”) is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at 1001 Fleet Street, Baltimore, Maryland 21202-4382. Defendant Walden may be served by serving its registered agent for service of process, Capitol Corporate Services, Inc., 516 N. Charles Street, 5th Floor, Baltimore, Maryland 21202.

II. JURISDICTION AND VENUE

7. This action arises under the United States Patent Act, codified at 35 U.S.C. § 1 *et seq.* This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over University of Phoenix, Apollo, Capella, Laureate, and Walden (collectively, “Defendants”) because, upon information and belief, Defendants reside in this District, have transacted business in this District, have committed acts of infringement in this District and continue to commit acts of infringement in this District.

9. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b), because Defendants reside in this District, have committed acts of direct and indirect infringement in this District, have transacted business in this District, and have established minimum contacts with the Eastern District of Texas.

III. FACTUAL BACKGROUND

10. Digital-Vending Services International LLC (“DVSI”), headquartered in Washington, D.C., owns three internet architecture and engineering patents – U.S. Patent #6,170,014, #6,282,573 and #6,606,664 and a fourth related pending patent application. DVSI and its patent ownership grew out of work done by Community Learning and Information Network, Inc. (“CLIN”), a non-profit corporation which was founded for the purpose of developing distance learning tools.

11. CLIN was formed in 1992 with a “Blue Ribbon” Board of Directors that included, among others, the Chairman Emeritus of the United States National Commission on Libraries and Information Sciences, a former President of the National Education Association, a former U.S. Secretary of Labor, the Dean of the School of Education at the George Washington University, the President of the National Council of La Raza, the head of the Missouri State School Boards Association, the former head of the National Guard Bureau, and other distinguished education leaders and public servants.

12. Lieutenant General (retired) Mac McKnight served as Chairman of the CLIN Board of Directors. General McKnight was former Commanding General of the Army Information System Command and the Chief Advisor to the Chairman of the Joint Chiefs of Staff on networks, information technology and telecommunications.

13. Since the inception of CLIN, CLIN has worked to promote public-private partnerships focusing on using technology to advance life-long learning opportunities for communities and the military. One of CLIN's goals was to implement a community linked information delivery system that could provide all Americans with equal access to the education, training and information required for life long learning. CLIN's efforts involved the use of videoconferencing systems for lectures and information recorded on computer disks to provide distance learning in classroom settings. Part of CLIN's effort also included helping bring high speed internet connectivity to K-12 schools and helping develop teacher training programs on how to incorporate internet use in the classroom. Another part of CLIN's effort included developing a "shared usage payment model" to help local communities pool resources to pay for technology and content. The National Guard used CLIN's "shared usage" model for its congressionally mandated distance learning network, which won a Smithsonian Computerworld Award in 1998.

14. In 2003, DVSI was organized by members of CLIN. The members of DVSI include community leaders with backgrounds in education, defense, software, and aerospace. CLIN continues to be a stakeholder of DVSI, but assigned all of its patents, trademarks, software code, etc. to DVSI in 2003.

III. THE '014 PATENT

15. On January 2, 2001, United States Patent No. 6,170,014 (the '014 Patent), entitled "Computer Architecture for Managing Courseware in a Shared Use Operating Environment" was duly and lawfully issued by the United States Patent and Trademark Office, naming Vincent S. Darago and Christopher Jenkins as inventors and CLIN as assignee. A true and correct copy of the '014 Patent is attached as Exhibit A. CLIN assigned all right, title and interest to DVSI, which is the current assignee of all right, title and interest in and to the '014 Patent, and which holds the right to sue and recover for past, present, and future infringement thereof.

16. The Defendants have infringed and continue to infringe the '014 Patent by their making, use, offer for sale, and sale of systems and services covered by the claims of the '014 Patent. The Defendants have also infringed and continue to infringe the '014 Patent by contributing to and inducing infringement by others. Defendants are therefore liable to Plaintiff for infringement of the '014 Patent under 35 U.S.C. § 271.

17. Acts of infringement by Defendants have caused damage to DVSI. DVSI is entitled to recover from Defendants the damages sustained by DVSI as a result of Defendants' wrongful acts in an amount subject to proof at trial, but not less than a reasonable royalty. Defendants' infringement of DVSI's rights under the '014 Patent will continue to damage DVSI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

18. Upon information and belief, Defendants' infringement of the '014 Patent is willful and deliberate, entitling DVSI to increased damages under 35 U.S.C. § 284.

19. This case is exceptional, entitling DVSI to recover attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

IV. THE '573 PATENT

20. On August 28, 2001, United States Patent No. 6,282,573 (the '573 Patent), entitled "Computer Architecture for Managing Courseware in a Shared Use Operating Environment" was duly and lawfully issued by the United States Patent and Trademark Office, naming Vincent S. Darago and Christopher Jenkins as inventors and Community Learning and Information Network as assignee. A true and correct copy of the '573 Patent is attached as Exhibit B. DVSI is the assignee of all right, title and interest in and to the '573 Patent, and holds the right to sue and recover for past, present, and future infringement thereof.

21. The Defendants have infringed and continue to infringe the '573 Patent by their making, use, offer for sale, and sale of systems and services covered by the claims of the '573 Patent. The Defendants have also infringed and continue to infringe the '573 Patent by contributing to and inducing infringement by others. Defendants are therefore liable to Plaintiff for infringement of the '573 Patent under 35 U.S.C. § 271.

22. Acts of infringement by Defendants have caused damage to DVSI. DVSI is entitled to recover from Defendants the damages sustained by DVSI as a result of Defendants' wrongful acts in an amount subject to proof at trial, but not less than a reasonable royalty. Defendants' infringement of DVSI's rights under the '573 Patent will continue to damage DVSI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

23. Upon information and belief, Defendants' infringement of the '573 Patent is willful and deliberate, entitling DVSI to increased damages under 35 U.S.C. § 284.

24. This case is exceptional, entitling DVSI to recover attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

V. THE '664 PATENT

25. On August 12, 2003, United States Patent No. 6,606,664 (the '664 Patent), entitled "Computer Architecture for Managing Courseware in a Shared Use Operating Environment" was duly and lawfully issued by the United States Patent and Trademark Office, naming Vincent S. Darago and Christopher Jenkins as inventors and DVSI as assignee. A true and correct copy of the '664 Patent is attached as Exhibit C. DVSI is the assignee of all right, title and interest in and to the '664 Patent, and holds the right to sue and recover for past, present, and future infringement thereof.

26. The Defendants have infringed and continue to infringe the '664 Patent by their making, use, offer for sale, and sale of systems and services covered by the claims of the '664 Patent. The Defendants have also infringed and continue to infringe the '664 Patent by contributing to and inducing infringement by others. Defendants are therefore liable to Plaintiff for infringement of the '664 Patent under 35 U.S.C. § 271.

27. Acts of infringement by Defendants have caused damage to DVSI. DVSI is entitled to recover from Defendants the damages sustained by DVSI as a result of Defendants' wrongful acts in an amount subject to proof at trial, but not less than a reasonable royalty. Defendants' infringement of DVSI's rights under the '664 Patent will continue to damage DVSI, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

28. Upon information and belief, Defendants' infringement of the '664 Patent is willful and deliberate, entitling DVSI to increased damages under 35 U.S.C. § 284.

29. This case is exceptional, entitling DVSI to recover attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

VI. JURY DEMAND

30. DVSI demands a trial by jury.

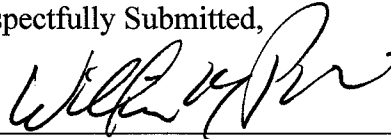
VII. PRAYER FOR RELIEF

WHEREFORE, DVSI prays for relief against Defendants as follows:

- a. Judgment that Defendants have infringed, induced others to infringe, and committed acts of contributory infringement with respect to the claims of the '014, '573 and '664 Patents;
- b. Judgment that Defendants' patent infringement has been, and continues to be, willful;
- c. A permanent injunction enjoining the Defendants, their respective officers, agents, servants, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing infringement of the '014, '573 and '664 Patents;
- d. Awarding DVSI damages adequate to compensate for the infringement by Defendants, but in no event less than a reasonable royalty for the use made of the inventions by Defendants, together with interests and costs under 35 U.S.C. § 284;
- e. Trebling the aforesaid damages due to Defendants' willful infringement, pursuant to 35 U.S.C. § 284;
- f. Awarding pre- and post-judgment interest on the damages assessed;
- g. Declaring this case exceptional pursuant to 35 U.S.C. § 285, and awarding DVSI its reasonable attorney fees;
- h. Costs of court; and
- i. Awarding to DVSI such other and further relief as the Court deems just.

DATED: March 3, 2008

Respectfully Submitted,



William M. Parrish
ATTORNEY-IN-CHARGE
State Bar No. 15540325
Michael P. Adams
State Bar No. 00872050
Winstead, P.C.
401 Congress Avenue
Suite 2100
Austin, TX 77001
(512) 370-2800
(512) 370-2850 (fax)
bparrish@winstead.com

Andrew G. DiNovo
State Bar No. 00790594
Jay D. Ellwanger
State Bar No. 24036522
DiNovo Price Ellwanger LLP
P. O. Box 201690
Austin, Texas 78720-1690
(512) 681-4012
(512) 628-3410 (fax)
adinovo@dpelaw.com