

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WALKER DIGITAL, LLC

Plaintiff,

v.

**COMPASSLEARNING, INC., PEARSON
EDUCATION, INC., RENAISSANCE
LEARNING, INC., AND PREVISOR, INC.**

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Walker Digital, LLC, files this complaint for patent infringement against Defendants Compass Learning, Inc., Pearson Education, Inc., Renaissance Learning, Inc., and PreVisor, Inc., (collectively the “Defendants”):

THE PARTIES AND PATENTS-IN-SUIT

1. Plaintiff Walker Digital, LLC (“Walker Digital”) is a Delaware limited liability company with its principal place of business located at 2 High Ridge Park, Stamford, CT 06905. Walker Digital is a research and development laboratory that has been the genesis for many successful businesses, including priceline.com, Inc. and Synapse, Inc.

2. On information and belief, Defendant CompassLearning, Inc. (“CompassLearning”) is a Delaware corporation with its principal place of business located at 203 Colorado St., Austin, TX 78701. CompassLearning may be served via its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

3. On information and belief, Defendant Pearson Education, Inc. (“Pearson”) is a Delaware corporation with its principal place of business located at One Lake Street, Upper Saddle River, NJ 07458. Pearson may be served via its registered agent, Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

4. On information and belief, Defendant Renaissance Learning, Inc. (“Renaissance”) is a Wisconsin corporation with its principal place of business located at 2911 Peach Street, P.O. Box 8036, Wisconsin Rapids, WI 54495-8036. Renaissance may be served via its registered agent, Steven A. Schmidt, 2911 Peach St., P.O. Box 8036, Wisconsin Rapids, WI 54494.

5. On information and belief, Defendant PreVisor, Inc. (“PreVisor”), perhaps also known as SHLPreVisor, Inc., is a Delaware Corporation with its principal place of business located at 1805 Old Alabama Rd., Suite 150, Roswell, GA 30076-2230. PreVisor may be served via its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

7. On information and belief, each of the Defendants is subject to this Court’s jurisdiction because each of the Defendants have, upon information and belief, transacted business in the District and in the State of Delaware. Specifically, each Defendant either directly and/or through intermediaries, upon information and belief, ships, distributes, offers for sale, sells, (including via the provision of such services over the Internet) products and services in this

District. Additionally, Defendants CompassLearning, Pearson, and PreVisor are corporations organized and existing under the laws of the State of Delaware. Each Defendant thus has, upon information and belief, minimum contacts with this District and State, has purposefully availed itself of the privileges of conducting business in this District and State, regularly conducts and solicits business within the State of Delaware, and has committed acts of patent infringement in this District and State.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

THE ASSERTED PATENTS

9. On September 7, 1999, the United States Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent No. 5,947,747 (the “‘747 patent”), entitled “Method and Apparatus for Computer-Based Educational Testing” to Jay S. Walker, Bruce Schneier, and James A. Jorasch, who assigned their rights and interests in the ‘747 patent to Walker Digital. A true and correct copy of the ‘747 patent is attached as Exhibit A.

10. On September 9, 2003, the USPTO duly and legally issued U.S. Patent No. 6,616,458 B1 (the “‘458 patent”), entitled “Method and Apparatus for Administering a Survey,” in the names of Jay S. Walker, James A. Jorasch, and Magdalena Mik who assigned their rights and interests in the ‘458 patent to Walker Digital. A true and correct copy of the ‘458 patent is attached as Exhibit B.

11. On January 27, 2009, the USPTO duly and legally issued U.S. Patent No. 7,483,670 B2 (the “‘670 patent”), entitled “Method and Apparatus for Educational Testing,” to Jay S. Walker, Bruce Schneier, and James A. Jorasch, who assigned their rights and interests in

the '670 patent to Walker Digital. A true and correct copy of the '670 patent is attached as Exhibit C.

12. Walker Digital is the owner of the entire right, title and interest in the '747, '458 and '670 patents ("the Asserted Patents").

FACTUAL BACKGROUND

13. Walker Digital is a research and development laboratory consisting of a diverse group of innovators who study human behavior and utilize modern information technology to design novel solutions to business problems. Walker Digital has invested millions of dollars developing ground-breaking solutions to problems encountered in a wide range of industries including retail, vending, credit cards, security, gaming, educational testing, and GPS directions. This investment was used for many things, including the development of facilities to assist with the research, development and testing of new inventions, which, in turn, generated additional new solutions to problems and additional inventions. Many of these inventions and solutions have been the genesis for successful businesses, including priceline.com and Synapse, Inc.

14. Jay Walker, the chairman of Walker Digital, is perhaps best known as the founder of priceline.com, which brought unprecedented technology and a new level of value to the travel industry. The business processes that guide priceline.com's success were created in the invention lab of Walker Digital. Mr. Walker is named on more than 450 issued and pending U.S. and international patents, including the methods and apparatus for educational testing described and claimed in the Asserted Patents, which represent breakthroughs in the field of electronic educational testing.

COUNT I

(Infringement of the '747 Patent)

15. Walker Digital incorporates and realleges the allegations of paragraphs 1-14 as if fully set forth herein.

16. Upon information and belief, Defendant CompassLearning is infringing (literally and/or under the doctrine of equivalents) the '747 patent in this District and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling online testing and evaluation products and services, including Compass Learning's Odyssey Educational Solutions products (including, but not limited to, the Compass Learning's Odyssey Assessment, Odyssey Math and Odyssey ELL products) covered by one or more claims, including, but not limited to, claim 25 of the '747 patent.

17. Upon information and belief, Defendant Pearson is infringing (literally and/or under the doctrine of equivalents) the '747 patent in this District and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling online testing and evaluation products and services (including, but not limited to, Benchmark Assessment products) that are covered by one or more claims, including but not limited to, claim 25 of the '747 patent.

18. Upon information and belief, Defendant Renaissance is infringing (literally and/or under the doctrine of equivalents) the '747 patent in this District and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling online testing and evaluation products and services (including, but not limited to, Renaissance's STAR

Assessments, Accelerated Reader, Accelerated Math and 2Know products) that are covered by one or more claims, including, but not limited to, claim 25 of the '747 patent.

19. Defendants committed these acts of infringement without license or authorization.

20. As a result of Defendants' infringement of the '747 patent, Walker Digital has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

21. Walker Digital has also suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Defendants, their agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '747 patent.

COUNT II

(Infringement of the '458 Patent)

22. Walker Digital incorporates and realleges the allegations of paragraphs 1-21 as if fully set forth herein.

23. Upon information and belief, Defendant Pearson is infringing (literally and/or under the doctrine of equivalents) the '458 patent in this District and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling adaptive online testing and evaluation products and services (including, but not limited to, Benchmark Assessment products, including NCLEX CAT and CompTIAA) that are covered by one or more claims, including, but not limited to, claim 3 of the '458 patent.

24. Upon information and belief, Defendant PreVisor is infringing (literally and/or under the doctrine of equivalents) the '458 patent in this District and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling adaptive online testing and evaluation products and services (including, but not limited to, PreView Computer Adaptive Testing products) that are covered by one or more claims, including, but not limited to, claim 3 of the '458 patent.

25. Upon information and belief, Defendant Renaissance is infringing (literally and/or under the doctrine of equivalents) the '458 patent in this District and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling adaptive online testing and evaluation products and services (including, but not limited to, Renaissance's STAR Assessments, Accelerated Reader, Accelerated Math and 2Know products) that are covered by one or more claims, including, but not limited to, claim 3 of the '458 patent.

26. The Defendants committed these acts of infringement without license or authorization.

27. As a result of the Defendants' infringement of the '458 patent, Walker Digital has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

28. Walker Digital has also suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Defendants, their agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '458 patent.

COUNT III

(Infringement of the '670 Patent)

29. Walker Digital incorporates and realleges the allegations of paragraphs 1-28 as if fully set forth herein.

30. Upon information and belief, Defendant CompassLearning is infringing (literally and/or under the doctrine of equivalents) the '670 patent in this District and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling online testing and evaluation products and services, including, but not limited to, Compass Learning's Odyssey Educational Solutions products (*e.g.*, Compass Learning's Odyssey Assessment, Odyssey Math and Odyssey ELL products) covered by one or more claims, including, but not limited to, claim 1 of the '670 patent.

31. Upon information and belief, Defendant Renaissance is infringing (literally and/or under the doctrine of equivalents) the '670 patent in this District and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling online testing and evaluation products and services (including, but not limited to, Renaissance's STAR Assessments, Accelerated Reader, Accelerated Math and 2Know products) that are covered by one or more claims, including, but not limited to, claim 1 of the '670 patent.

32. Defendants committed these acts of infringement without license or authorization.

33. As a result of Defendants' infringement of the '670 patent, Walker Digital has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

34. Walker Digital has also suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Defendants, their agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '670 patent.

DEMAND FOR JURY TRIAL

Plaintiff Walker Digital, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

PRAYER FOR RELIEF

For the above reasons, Walker Digital respectfully requests that this Court grant the following relief in favor of Walker Digital and against Defendants:

(a) A judgment in favor of Walker Digital that Defendants Renaissance, CompassLearning, and Pearson have directly infringed, (either literally or under the doctrine of equivalents) one or more claims of the '747 patent;

(b) A judgment in favor of Walker Digital that Defendants Renaissance, Pearson, and PreVisor have directly infringed, (either literally or under the doctrine of equivalents) one or more claims of the '458 patent;

(c) A judgment in favor of Walker Digital that Defendants CompassLearning and Renaissance have directly infringed, (either literally or under the doctrine of equivalents) one or more claims of the '670 patent;

(d) A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with them, from infringing the Asserted Patents;

(e) A judgment and order requiring Defendants to pay Walker Digital its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the Asserted Patents;

(f) A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding Walker Digital its reasonable attorneys' fees; and

(g) Any and all such other relief as the Court deems just and proper.

April 11, 2011

BAYARD, P.A.

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