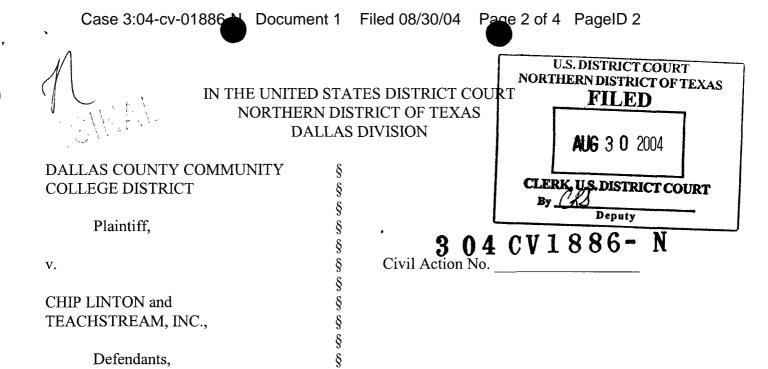
# Case 3:04-cv-01886-N Document 1 Filed 08/30/04 Page 1 of 4 PageID 1

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Dallas County Community College District				DEFENDANTS Chip Linton and Teachstream, Inc.						
(b) County of Residence of First (EXCEPT IN U.S. PLAINTIFF CASES)  3 04 CV 1886-N				NOTE: IN LA	County of Residence of First Listed  (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  LAND INVOLVED FOR THE LOCATION OF THE					
(c) Attorney's (Firm Name, Address, and Telephone Number) Michael A. O'Neil, P.C. 5949 Sherry Lane, Suite 820 Dallas, Texas 75225 214-739-0088				Attornays (If K	ANC 3 0 5		<del>,</del>			
II. BASIS OF JURISD	OICTION (Place an "X" in C	One Box Only)	III. CI	TIZENSHIP OF Diversity Cases NOBY	KRU KOLARIA HERN DISTRIA	LOPARTIES	Place an "X" in One	Box for l	Plaintiff	
☐ 1 U.S. Government x 3 Federal Question Plaintiff (U.S. Government Not a Party)				zen of This State	F DEF	Incorporated or I of Business In	Principal Place	PTF  4	DEF	
☐ 2 U.S. Government Defendant				Citizen of Another 2 2 Incorporated and Principal Place 5 of Business In Another State						
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IV. NATURE OF SUI	T (Place an "X" in One TORT		FOI	RFEITURE/PENALT	DAN	KRUPTCY	OTHER S	TATUT	TEC	
□ 110 Insurance □ 120 Marine □ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment Æ Enforcement of Judgment □ 151 Medicare Act □ 152 Recovery of Defaulted Student Loans (Excl. Veterans) □ 153 Recovery of Overpayment of Veteran's Benefits □ 160 Stockholders' Suits □ 190 Other Contract □ 195 Contract Product Liability  REAL PROPERTY □ 210 Land Condemnation □ 220 Foreclosure □ 230 Rent Lease & Ejectment □ 240 Torts to Land □ 245 Tort Product Liability □ 290 All Other Real Property	PERSONAL INJURY  310 Airplane   315 Airplane Product Liability   320 Assault, Libel & Slander   330 Federal Employers' Liability   340 Marine   P   345 Marine Product Liability   350 Motor Vehicle   355 Motor Vehicle   360 Other Personal Injury   CIVIL RIGHTS   PF   441 Voting   442 Employment   443 Housing/ Accommodations   444 Welfare   440 Other Civil Rights	PERSONAL INJUR 362 Personal Injury— Med. Malpractice 365 Personal Injury— Product Liability 368 Asbestos Personal Injury Product Liability ERSONAL PROPER 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability RISONER PETITIC 510 Motions to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Oth 550 Civil Rights 555 Prison Condition	e	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other  LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	422 Appeal   423 Withdr	aval C 158  awal C 157  RTY RIGHTS  ghts  phase  L SECURITY  395ff)  ADIWW (405(g))  Citle XVI  05(g))  AL TAX SUITS  U.S. Plaintiff  mdant)  Third Party	□400 State Rear □410 Antitrust □430 Banks and □450 Commerce □460 Deportatic □470 Racketeer Corrupt O □810 Selectives Exchange □875 Customer 12 USC 3 □891 Agricultur □892 Economic □893 Environm □894 Energy Al □895 Freedom of Informatic □900 Appeal of Determina Access to . □950 Constituties State Stat	portionm  Banking  ACC Ration  Influence reganization  Service  Commodit  Challenge  410  al Acts  Stabilization A  of  nn Act  Fee  tion Unde  Justice  mality of  utes	ent  des/etc.  ded and ons  ities/ e  tion Act ters Act  er Equal	
x 1 Original 2 R		ONLY)  nanded from  ellate Court			sferred from er district ify)	□ 6 Multidistri Litigation	Jud ct □ 7 Ma	peal to D ge from gistrate gment		
VI. CAUSE OF ACTION This is an action for declaratory jud	ON (Cite the U.S. Civil Statute to Do not cite jurisdictional stagment, brought under the Federal D	tatutes unless diversity.	.)					_ <del>-</del>		
VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTIO UNDER F.R.C.P. 23			ON DI	N DEMAND \$		CHECK YES only if demanded in complaint:  JURY DEMAND: ☐ Yes ☐ No				
VIII. RELATED CAS IF ANY	msu ucuons).	JDGE			DOCKET	NUMBER	/276			
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### **DECLARATORY JUDGMENT COMPLAINT**

Plaintiff Dallas County Community College, alleges:

1. This is an action for declaratory judgment, brought under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. § 271 *et seq*.

#### **PARTIES**

- 2. Plaintiff, Dallas County Community College ("DCCCD"), is a political subdivision of the State of Texas. DCCCD provides educational services at the community college level at numerous venues all located within Dallas County, Texas.
- 3. Defendant, Chip Linton ("Linton"), is a resident of the State of Utah, residing at 94 Lone Hollow, Sandy, Utah 84092.
- 4. Defendant, Teachstream, Inc. ("Teachstream"), is a corporation organized under the laws of the State of Utah, having a principle place of business at 8686 S. 1300 E, Sandy, Utah 84094. Teachstream can be served by serving is registered agent for receiving service, Travis L.

Bowen, P.C., at 175 S. West Temple, Suite 710, Salt Lake City, Utah, 84147-0637.

### JURISDICTION AND VENUE

- 5. Jurisdiction is proper in this Court under 28 U.S.C. §§ 2201, 2202, 1331, and 1338. Further, the Court has personal jurisdiction over the Defendants as the Defendants have, on information and belief, actively and purposely availed themselves of the privilege of doing business within the State of Texas, and therefore subjected themselves to suit in the State of Texas.
- 6. Venue is proper in this district under 28 U.S.C. § 1391(b) in that a substantial part of the events or omissions giving rise to this claim occurred in this district, and a substantial part of the property that is the subject of the action is situated in this district.

## STATEMENT OF FACTS

- 7. DCCCD is a publicly-funded community college located in Dallas County, Texas. One of the many things offered by DCCCD is distance-learning education, which is offered from its LeCroy Center for Educational Telecommunications.
- 8. On or about June 7, 2004, DCCCD received a letter at its LeCroy Center from counsel for Teachstream, claiming that Teachstream is the inventor and owner of the inventions claimed in U.S. Patent No. 6,496,681 ("the '681 patent")<sup>1</sup>, and further claiming that DCCCD was practicing the inventions claimed therein. On or about July 26, 2004, counsel for Teachstream sent a second letter to DCCCD's counsel, again claiming that DCCCD was infringing and that

However, Linton is shown as the inventor of the '681 patent, and no assignment of the patent to Teachstream is indicated or has been found by DCCCD.

Teachstream was prepared to sue DCCCD for patent infringement.<sup>2</sup>

### **COUNT ONE - DECLARATORY JUDGMENT**

- 9. An actual controversy has arisen and now exists between the parties relating to the infringement of the '681 patent. DCCCD contends that no such infringement has occured.
- 10. A declaratory judgment is necessary in order that DCCCD can continue to offer its distance education services without fear of being unjustly accused of and sued for patent infringement by the Defendants.

### JURY DEMAND

11. DCCCD requests a jury trial of all issues in this action so triable.

WHEREFORE, DCCCD prays for a declaratory judgment against the Defendants:

- That DCCCD has not infringed U.S. patent number 6,496,681; a.
- Awarding DCCCD its costs, expenses, and attorneys' fees; and b.
- For such other and further relief as the Court deems just and proper. c.

Respectfully submitted,

Michael A. O'Neil Justin B. Kimble Michael A. O'Neil, P.C.

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It is unclear what standing Teachstream would have to enforce the '681 patent, as Linton is still the owner thereof.