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Patent Lawsuit Against U. of Phoenix Is Dismissed

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By Ben Wieder

A patent infringement case brought against the University of Phoenix and its parent company, Apollo Group, was dismissed this month by the U.S. District Court in Norfolk, Va.

Digital-Vending Services International asserted in a March 2008 [<http://chronicle.com/article/3-For-Profit-Colleges-Hit-With/583/>] suit that the underlying design of courseware management software at Phoenix and two other for-profit online colleges, Walden University and Capella Education Company, violated three patents held by members of the nonprofit Community and Learning Information Network, represented by Digital-Vending Services.

Walden and its parent company, Laureate Education Inc., and Capella earlier settled separately with Digital-Vending Services, which is based in Washington and whose member network includes patent holders with ties to the education, defense, aerospace, and software industries.

The court said in dismissing the suit against Phoenix that Digital-Vending Services “failed to point to admissible evidence that could support a finding of infringement.”

March 12, 2008

3 For-Profit Colleges Hit With Courseware-Patent Lawsuit

By Andrea L. Foster

Digital-Vending Services International, a company linked to a nonprofit educational group with ties to the U.S. military, has filed a patent-infringement lawsuit against three for-profit online higher-education institutions.

The suit, filed last week in the U.S. District Court in Marshall, Tex., alleges that the online colleges are infringing three patents underlying the online delivery, management, and security of course materials. The defendants are the University of Phoenix and its parent company, the Apollo Group Inc.; Walden University and its parent company, Laureate Education Inc.; and the Capella Education Company.

Digital-Vending Services, based in Washington, accuses the online institutions of inflicting "irreparable harm" on its business. The company is seeking unspecified damages and an injunction barring the institutions from "further infringement," according to the suit.

Digital-Vending was established in 2003 to protect educational-software patents held by members of the Community Learning and Information Network, a nonprofit group that develops distance-learning applications. Members affiliated with Digital-Vending have ties to the education, defense, software, and aerospace industries.

Among other products, the network created a videoconferencing and computer-based learning system for training members of the National Guard. Mac McKnight, a retired Army lieutenant general, served as the group's chairman of the board.

Pursuing For-Profit Institutions Only

William M. Parrish, a lawyer in Austin, Tex., who represents Digital-Vending, said the group would go after for-profit institutions only. But he said it was possible that nonprofit colleges were infringing Digital-Vending's courseware patents as well.

"Nonprofits don't need to worry about us chasing them," he said. "We're an ally of theirs."

Digital-Vending chose to sue in the Texas court because it is known for siding with patent holders.

Only two weeks ago, a jury in the same district of Texas awarded Blackboard, a learning-services company, \$3.1-million in a courseware patent-infringement suit it brought against a much smaller Canadian rival. But Mr. Parrish said he had no knowledge of that litigation.

Spokesmen for Capella and Laureate declined to comment on the litigation. Terri Bishop, a spokeswoman for Apollo, said the company was reviewing the allegations but doubted they were valid.