

Patents

FAQ on Understanding the Blackboard Patent

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This guide is the result of numerous discussions with those interested in better understanding the Blackboard patent. In the course of those discussions, many of the same questions have been asked so we thought it would be helpful to make this information available more broadly for the whole client community.

Why has Blackboard obtained patents on its technology?

Blackboard has invested well over \$100 million in the development of its educational products and relies on intellectual property laws to protect its technology investments. Patents help to ensure that companies that do not make comparable investments cannot simply misappropriate the technology of others to develop their own products.

How do you read a patent?

Patents are comprised of several sections, including the abstract, drawings, written specification, and the claims at the end of the patent. The claims are considered the most important part of the patent because they define the scope of what the patent covers. The abstract, drawings, and specification are used to help provide the context to understand what is in the claims.

A common misunderstanding is that the description in the abstract or specification governs what the patent covers. Focusing on the wrong section of the patent can be misleading and has caused some people to think that the Blackboard patent covers all of e-learning. To properly understand any patent, you must do a careful phrase-by-phrase reading of the claims.

What is the difference between dependent and independent claims?

Each claim in a patent is either an independent or dependent claim. Independent claims stand alone while dependent claims are used to narrow the scope of the independent claims. A product that does not infringe on the independent claims by definition does not infringe on the dependent claims. Because the dependent claims rely on the independent claims, it is important to focus on the independent claims because if they are not infringed then the patent is not infringed. Blackboard's patent has 44 claims, two of which are independent (#1 and #36).

Is Blackboard suggesting that all course management systems are covered by the Blackboard patent?

Absolutely not. Blackboard is not claiming to have invented or to have received a patent on all e-Learning or on all course management systems ever created. Blackboard didn't

invent just any course management system, but the system claimed in the patent, which has achieved great commercial success. Another common misperception is that Blackboard is claiming to have invented or has claims over a broad range of standard e-learning tools standing alone, like discussion boards and chat rooms, which is also not the case.

What functionality is covered by the patent?

The key to understanding what a patent covers is to consider its claims, which is where the inventions covered by the patent are described. In Blackboard's patent, claim 1, a system claim, is independent. Claim 36, a method claim, is also independent. The other claims are dependent claims because they depend on either claim 1 or claim 36. They cannot be infringed if claim 1 and 36 are not infringed.

In order for a claim (whether independent or dependent) to be infringed, each and every element of the claim in question (or an equivalent) must be present in a product.

For example, claim 1 in the Blackboard patent describes a course based-system with user computers where each user is "capable of having predefined characteristics indicative of multiple predetermined roles in the system." Consequently, a system must provide for "multiple predetermined roles" for each user according to the claim and, likewise, every other element (or its equivalent) of claim 1 must be embodied in the system in question for claim 1 to be infringed. This detailed element-by-element analysis is necessary to evaluate the scope of the patent. Be wary of any analysis of this or any other patent which does not involve an element-by-element discussion of the claims as each element is a limitation on the scope of a patent.

Is every e-learning application covered by the patent?

No. The patent covers only the specific systems and methods claimed in the patent (and their equivalents). As described above, the patent covers only those applications that contain every element (or the equivalent of the element) in the claims in the patent.

Is the patent valid?

Yes. A patent issued by the U.S. Patent and Trademark Office is presumed valid by the courts. Just as not every course management system ever created would infringe the patent, not just any course management system would invalidate the patent. It is not enough to point to the fact that many course management systems existed prior to the filing date of Blackboard's patent in order to invalidate the patent. To be invalidating prior art, it must describe each and every element of each and every claim of the Blackboard patent.

How can I gain a better understanding about the Blackboard patent or other patents?

The inherent complexity of patent law is no doubt a leading cause of confusion about the Blackboard patent. A few organizations have recently announced that they will be consulting with patent advisors which we believe is a good development and certainly encourage others to consult with their professional advisors. We welcome the dialogue about the implications of intellectual property rights on the e-learning industry generally. We believe that an important first step is for all participants to have a common understanding of the Blackboard patent and patent law in general.