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BECTA issues guidance about Blackboard Patent

(Monday, 14 August 2006) - Written by Administrator - Last Updated (Monday, 14 August 2006)

BECTA has issued guidance to all companies involved in the UK Schools Sector Learning Platform Tender.

Becta confirm that they have commissioned specialist research into the subject of the Blackboard Inc. (BBI) patent (pending in Europe).

The document goes on to outline three bullet points with regard to the BECTA procurement process:

1) Patents are valid only in the jurisdictions in which they are granted. The US patent granted to BBI will not have any direct/immediate impact on the Becta procurement process. There is currently no restriction on the supply of products within the United Kingdom which fall within the scope of the US patent.

2) BBI has made four European patent applications. The European Patent Office (EPO) procedure is complex and lengthy. The process can take at least 5 years. The process includes an international search for "prior art". This has revealed two documents (Lee and Cook) on the basis of which the international examination report considers that the BBI claims could not be considered novel.

3) If the BBI applications are granted at the EPO, European Patents (UK) will be granted which will have the same effect as regular UK patents. BBI could seek to enforce its patents against potential infringers of the patents who are providing e-learning facilities in the UK. The patents will only be enforceable if they are valid. Any infringer sued by BBI would be entitled to counterclaim to invalidate the patents. The UK courts will analyse the validity of the BBI patents from first principles – the patents are afforded no 'presumption of validity' merely because they have survived examination in the EPO.

The document ends with the advice:

"Becta considers that the Framework Agreement should proceed as planned. Suppliers should seek their own legal advice in this issue. Becta has in place a process by which we remain updated with the latest situation on this patent application and we shall continue to keep the ITT community informed.

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We will be following developments closely - a case for contacting your euro MP right now I should think...