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More Blackboard Spin Control

Two new things appear on the **Blackboard Patent Info page**. The first is a **second page of FAQs** where they clearly are speaking to some of the information (they say it is misinformation of course) from the blogosphere. The second item is a **transcript and comments** from an interview between BB counsel Matthew Small and Paul Bacsich, Member of the ALT Board of Trustees (Association for Learning Technology) in the UK.

On the BB page, they talk down to the audience rather severely and often.

- "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."
- "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."
- "The inherent complexity of patent law is no doubt a leading cause of confusion about the Blackboard patent. ... 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."

See, they're just a bunch of educators trying to help out the uneducated masses.

In the interview, Small states:

- "While falling outside a patent only involves falling outside of the independent claims, invalidating a patent is much more difficult. It involves a showing that the patent is invalid "by clear and convincing evidence" (a very high standard of proof), rather than merely "by the preponderance of the evidence" (a lower standard of proof)."
- "Blackboard believes that, in the case of Patent 6988138, the architecture of Blackboard's products is irrelevant (i.e., the patent is technology neutral). Thus if alleged prior art existed in a different paradigm, Blackboard would want to know

about it. That said, Blackboard has not taken its action lightly, having spent months doing due diligence and infringement analysis prior to instigating court action against Desire2Learn. It sees the Wikipedia History of VLEs as a great compendium, but not as a threat. Certainly, if there is prior art out there relating to the independent claims in the patent, then Blackboard is keen to know of it."

- "Desire2Learn is a commercial competitor of ours in the US. We believe Desire2Learn infringed our patent. We believe that discovery and the legal process will show clearly what transpired. We believe that in such circumstances a company like Blackboard should be able to do something to protect itself."

They are quickly on their way to becoming the most hated vendor in high ed. Not that they care.

posted by Barry Dahl | 12:00 PM