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Blackboard Sues Rival Provider of Course-Management Software, Alleging Patent Infringement

By DAN CARNEVALE

Washington

Blackboard Inc. has sued a rival in the business of e-learning software, Desire2Learn Inc., accusing it of infringing a patent recently awarded to Blackboard.

Blackboard is seeking an undisclosed amount of damages and royalty payments. But some education observers fear that Blackboard's patent may be so broad that it could stifle competition.

The patent, for which Blackboard filed in 1999, was granted in January. Matthew Small, senior vice president and general counsel for Blackboard, said the patent was not too broad and covered only certain functions of course-management systems.

"This is not a patent that covers all of e-learning," Mr. Small said. "It doesn't cover all course-management systems."

One example of what the patent does cover, Mr. Small said, is the method for giving a single user predefined roles in multiple online courses. That's one of 44 functions described in the patent, which can be found on the Web site of the U.S. Patent and Trademark Office.

"Those features may be obvious today, but they weren't obvious at the time they were invented," Mr. Small said. "They were really transformative for the industry and took it to the next level."

John Baker, president and chief executive of Desire2Learn, said it was unfortunate Blackboard had decided to go to court before trying to negotiate the dispute.

"We were very disappointed in the course of action Blackboard has taken in this matter," Mr. Baker said. "We will be defending ourselves vigorously."

Because Desire2Learn was just recently served with the lawsuit, he said, officials have not been able to determine whether to argue that the patent is invalid, to contend that his

company's technology is significantly different from Blackboard's, or to offer some other defense.

"This is a little too early of a stage for us to properly characterize this patent," Mr. Baker said. "The whole action has been surprising for us."

Mr. Small said Blackboard was still willing to negotiate with Desire2Learn over royalties that would be paid, in lieu of proceeding with the lawsuit. But Mr. Baker said he had made no decision on that matter.

"This is not about limiting competition or innovation. This is not an acquisition," said Mr. Small, Blackboard's general counsel. "We are seeking a reasonable royalty."

The lawsuit comes at a time when Blackboard has become the dominant provider of e-learning software in the online-education market, after acquiring two other education-technology companies, Prometheus and WebCT (*The Chronicle*, October 13, 2005).

Michael L. Chasen, president and chief executive officer of Blackboard, said the company had no plans at this time to sue colleges that may infringe on Blackboard's patent. "Our focus is on the commercial providers," he said. "We are certainly not interested in going after any of our clients."

But Michael Feldstein, who runs a technology blog called e-Literate, said the patent at the heart of the dispute appeared overly broad and could prevent other companies from selling course-management software if they did not pay royalties to Blackboard.

"It appears every learning-management system that is in production infringes on this patent," said Mr. Feldstein. "There are certainly lots of people who have reason to be concerned about this." (Mr. Feldstein is also assistant director of blended learning at the SUNY Learning Network, the online program of the State University of New York; he stressed that he was not speaking for the university.)

Peter Schilling, director of information technology at Amherst College, said the patent read as though it could inhibit how officials deploy online education at their colleges. He said he also feared that open-source software, such as Moodle and Sakai, could be harmed by the patent.

"It looks like it covers wikis and blogs when used in education," Mr. Schilling said. "Are we no longer allowed to do content management?"

The patent appears so broad, he said, that he does not think it will hold up to legal scrutiny. Other colleges and companies had been providing the same technology years before Blackboard filed for its patent, he said.

The patent is one of many overly broad patents awarded recently by the Patent Office, Mr. Schilling said. Others include patents, held respectively by the Acacia Research

Corporation and by Test.com, that describe methods of online video streaming and online testing (*The Chronicle*, June 2).

"The Patent Office has given up and just gives out patents and waits for others to litigate because they don't have the staff anymore," Mr. Schilling said. "In some ways, I'm relieved that it already started."

But Mr. Small said fears like those expressed by Mr. Schilling were overblown. It would make no sense for Blackboard to go after open-source programs like Moodle and Sakai, he said, because they are not commercial providers. And Blackboard's patent is not at all like Acacia's or Test.com's, he said, because both of those companies have sent letters to colleges demanding royalties.

"We practice what we invent," Mr. Small said. "We're not a troll sending out letters."

He said many e-learning companies could operate without infringing on the patent, though he declined to provide any examples. However, he also said that had Blackboard not merged with WebCT, then WebCT would have been infringing the patent.

"We pay royalties to lots of third parties," Mr. Small said. "It's not a level playing field if someone can copy your product and the next day market it."