

Software firm faces patent suit

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Another local technology company is facing a patent-infringement lawsuit in the United States.

Blackboard Inc. is suing Kitchener software company Desire2Learn Inc., claiming Desire2Learn's educational software infringes on a patent Blackboard received in January.

The allegations have not been proven in court.

Both companies make software that allows teachers to create class websites, communicate with students and run classes over the Internet.

Blackboard, of Washington, D.C., is asking a judge to ban U.S. sales of Desire2Learn's software and award Blackboard unspecified damages.

Blackboard is the dominant player in course-management software. The company expects revenues of about \$175 million US this year.

Desire2Learn, a privately held company, claims to be the second-largest company in the industry. It has revenues of \$9 million to \$10 million, analyst Trace Urdan of Robert W. Baird & Co. Inc. said earlier this year.

Blackboard is not trying to drive Desire2Learn out of business, said Matthew Small, Blackboard's general counsel.

"This is not about reducing competition, it's not about hindering innovation, and it is something we think is in line with our duty to our clients to protect their investment in us as well as to protect the investment we've made in our technology," Small said.

John Baker, chief executive officer of Desire2Learn, said it is too early to speak on the merits of Blackboard's patent, but added Desire2Learn will fight the lawsuit.

"We are going to be defending ourselves extremely vigorously, and we are confident of our ability to defend ourselves," Baker said.

Blackboard did not warn Desire2Learn about its patent before filing the lawsuit.

"We thought it was important to not mince words and to file the suit and then engage in a discussion," Small said.

Blackboard has offered Desire2Learn the opportunity to discuss buying a licence to use its technology, although the companies are not in negotiations at the moment, Small said.

The uncertainty generated by the lawsuit may limit Desire2Learn's inroads against Blackboard, which already enjoys a huge advantage due to its size, said analyst Rick Summer of Morningstar Inc. in Chicago.

"The hand is tilted toward Blackboard already," Summer said.

"This does make that tilt even stronger."

But Desire2Learn may be able to rely on a groundswell of support from professors and system administrators concerned about Blackboard's intellectual-property strategy.

Users of software from Desire2Learn and other Blackboard competitors are worried their software might be banned, said Michael Feldstein, who operates e-Literate, an educational-software weblog.

"There are many of us in the field who think this patent is bad for innovation in education technology and are interested in doing something about that, whether it's participating in the lawsuit or working co-operatively with Blackboard to resolve this peacefully or appealing to the U.S. Patent and Trademark Office to have them reconsider the patent," said Feldstein, who is also an administrator at a university distance-learning program.

Blackboard filed the lawsuit in Lufkin, Texas, in a judicial district known for processing patent lawsuits quickly and for juries friendly to patent owners.

Visto Inc. sued Research In Motion Ltd. of Waterloo for patent infringement in the same district in April.

"The Texas courts are very sophisticated on patent issues, and (with) the faster docket, it's an easier process for both sides," Small said.

Research In Motion has already felt the sting of U.S. patent litigation. Earlier this year, it agreed to pay \$612 million US to NTP Inc. of Richmond, Va., to settle a protracted patent lawsuit there.

Meanwhile, Desire2Learn's clients are remaining supportive of the Kitchener company, said Baker, who started his business in 1999 while still a student at the University of Waterloo.

"Deals are still getting done," he said. "We're still growing. We're still focused on client success. We're not changing any of our day-to-day activities."

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