

**Date:** Mon, 21 Aug 2006 17:15:55 -0400  
**From:** Charles Severance <csev@umich.edu>  
**Subject:** Fwd: Sakai and BB Patent  
**To:** advocacy <advocacy@collab.sakaiproject.org>

I am forwarding this message which Joseph shared with the Sakai partners August 8.

Joseph sent this message to make sure that our members who are paying the Sakai Foundation bills understood the need for the SFLC and had a chance to give the the Executive Director and Board any guidance going forward.

We felt that we needed input from our stake-holders before we retained the SFLC and made the press release. Now we have retained the SFLC - it is appropriate to share this more broadly.

/Chuck

Begin forwarded message:

> From: "Joseph Hardin" <joseph.hardin@gmail.com>  
> Date: August 8, 2006 1:25:51 PM GMT-04:00  
> To: partners@collab.sakaiproject.org, "Charles Severance"  
> <csev@umich.edu>  
> Subject: Sakai and BB Patent  
> Reply-To: hardin@umich.edu  
>  
> Dear Sakai Partners,  
>  
> Last week you received a note about the recent patent BlackBoard  
> Inc. announced it had been granted. Chuck Severance, the Sakai  
> Foundation Executive Director, sent that note and will supplement  
> it as time goes on. I wanted here to give you a quick report from  
> the Sakai Foundation Board.  
>  
> The BB patent is a very broad one, purporting to cover basic  
> technology in the online learning software area. The claims here  
> even extend to the use of roles for teachers and students in a  
> client/server computer system. The Sakai Foundation Board has been  
> discussing this patent and its potential for negative impact on the  
> current Sakai Community and prospective adopters. These sorts of  
> patents, and the danger of litigation that they represent, can make  
> some hesitate in their adoption of any similar systems, including  
> open source systems. This is the familiar FUD that we have come to  
> know in other software contexts. The fact that BB has quickly  
> launched a suit against Desire2Learn makes this even more of a  
> concern. So we take this sort of thing very seriously.  
>  
> We have sought expert legal help and have had a long conversation  
> with Eben Moglen of the Software Freedom Legal Center (SFLC -  
> <http://www.softwarefreedom.org/>). Eben is very experienced in  
> patent cases concerning open source and free software and is  
> interested in working with us. This is a very good development.  
>  
> The SFLC counsel had analyzed the BB patent at our request before  
> our conversation, focusing on clarifying the language of the patent

> and determining its validity. They advised us that they felt the  
> patent is very weak in its dealing with prior art, which is work  
> done in the field before the filing of the patent. We feel the  
> same. We are following up this conversation and will be working  
> with the SFLC to identify the best of the prior art that could be  
> used to invalidate the patent.  
>  
> We will continue to make relatively few public comments on this  
> patent. We feel that the best way to deal with such situations is  
> a combination of strong legal advice and a prudent approach. At  
> the same time, we are encouraging people to contribute to the  
> wikipedia entry on the history of virtual learning environments  
> ([http://en.wikipedia.org/wiki/  
History\\_of\\_virtual\\_learning\\_environments](http://en.wikipedia.org/wiki/History_of_virtual_learning_environments)), and to investigate the  
> new <http://noedupatents.org/> which is set up to track and discuss  
> patent issues in the education community.  
>  
> We consider this and similar attempts to restrict the use of basic  
> technologies in the online education community as deeply  
> misguided. They show, once again, the value of a free and open  
> source approach where the community builds the value of the  
> commons, and does not try to enclose it. One value that is arising  
> from this whole chain of events is the increased awareness and  
> understanding within the higher ed community of the danger of such  
> overly broad patents. If, at any time, you would like to discuss  
> any of this with me, feel free to call me at xxx-xxx-xxxx.  
>  
> Joseph Hardin  
>  
> Sakai Foundation Board Chair  
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>  
>  
> --  
> Joseph Hardin  
> School of Information  
> University of Michigan  
> Sakai Foundation  
> 734-763-3266

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