



Ed. Note: The U.S. Patent and Trademark Office issued its Office Action on 17 March 2008.

Dear Blackboard Community,

Today, the United States Patent and Trademark Office issued a first Office Action in the reexamination proceeding regarding Blackboard's U.S. Patent 6,988,138 ("the '138 Patent"). This Office Action was expected and is the first step in a reexamination process that often takes years to complete. It has no effect on the validity of the patent, the lawsuit between Blackboard and Desire2Learn or the pending injunction against Desire2Learn that will go into effect on May 10th, 2008, precluding ongoing sale or use of their Learning Environment products and services.

To put today's announcement in its proper perspective and help you answer any questions you may receive, it is important to understand the reexamination process.

With all reexaminations of this type, the Patent Office makes an initial determination as to whether the party that requested the reexamination (in this case, Desire2Learn) has articulated any questions that may need to be resolved with respect to the claims of the patent.

With today's action, the Patent Office accepted some of Desire2Learn's questions, modified some and dismissed others. For questions like these that it accepted or modified, the Patent Office outlines the issues in an Office Action and the patent holder then has a chance to respond and explain its position.

That's where we are now, entering a stage in which the Patent Office and we, the patent holder, explain our respective positions. This process is very similar in nature to the negotiation that takes place with respect to obtaining any patent, with the additional element that Desire2Learn, which requested the reexamination, also has the opportunity to comment. Blackboard will now have two months to respond to each of the Patent Office's questions, all of which were unsuccessfully raised by Desire2Learn in the recent litigation.

With that in mind, and given that more than 90% of patents that undergo reexamination of this kind ultimately are upheld, we remain very confident in the validity of our patent and that the Patent Office will agree with the ruling in Federal Court last month. While the reexamination process moves forward, the issued patent will remain both valid and enforceable.

We will now respond to the Patent Office's questions and will update you as events warrant.

Contact Us

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