



06 Aug 2006

06 »An Example of How the Blackboard Patent Could Chill Innovation

Aug
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Blackboard's General Counsel Matthew Small has said that their patent and lawsuit is "not about hindering innovation." It's important that we not allow this claim to go unchallenged. I'd like to start gathering concrete examples of initiatives that are beneficial to the educational community and could be directly harmed by Blackboard's actions. I'll start. The first example I can think of is the developing IMS Common Cartridge standard.

Common Cartridge is important because it reduces vendor lock-in in several ways. First of all, anyone who has ever had to go through the pain of migrating from one LMS to another knows that there is a huge amount of manual labor involved because content migration tools generally don't work very well--they leave some things out, they put things in the wrong place, they break internal links, etc. In fact, it's a big enough problem that it acts as a very substantial deterrent to institutions that otherwise might be inclined to migrate off of their current system. Common Cartridge has the potential to greatly reduce that problem by providing a rich standard for mapping content and functionality types. Second, it helps ensure that educational publishers' materials will be available for multiple platforms. Currently, they have to author one course cartridge for just about every platform they officially support because of the lack of a standardized format. As you might imagine, this means that specialized or up-and-coming platforms simply don't get textbook cartridge support. It's too expensive for the publishers. Since support for textbook cartridges is often institutional purchasing criterion, these smaller players don't get considered.

Up until now, Blackboard has actually been one of the good guys in the Common Cartridge effort. Their CTO, Chris Vento, has been one of the primary drivers of the standard. And they have succeeded in getting widespread cooperation from their competitors. ANGEL, for example, recently pledged to contribute Open Source code to the Common Cartridge initiative. But this lawsuit threatens to undo all of his good work because the smaller players no longer have an incentive to play. Why should they make it easy for their user base to migrate to another platform at exactly the moment when the threat of legal liability makes moving to Blackboard the only safe legal option for institutions? I would not be at all surprised to see this initiative get bogged down or even fail altogether as a direct result of the lawsuit.

Can you think of other examples of innovation that will be directly harmed by this patent?

Comment

Hi All-

As the guy that is responsible for managing the IMS Global Learning Consortium I'd like to clarify a couple of things about IMS and Common Cartridge.

First, don't underestimate the influence over these events that you have as buyers of software. With respect to Common Cartridge I am absolutely certain that several publishers, CMS's, and interactive learning environments will be incorporating it, beginning the ramp up in 2007. Blackboard may be one - that is for Blackboard management to decide. However, if they don't, several others will. Look for announcements from IMS in the next several months as vendors clarify their positions. But it is up to the buyers to "vote with their dollars" for the advantages that Common Cartridge provides and that Michael so astutely points out (there are more advantages but that is material for another post).

Second, most of the major standards organizations, like OASIS, W3C, IETF, and IMS have policies and procedures regarding intellectual property to prevent a situation where one organization owns patents that the others must use to implement the standard. As you can imagine, most technology companies have lots of patents and IP - so this is the norm, not the exception. The Common Cartridge project has been conducted under this policy, which requires disclosure so that the other participants can adjust the route of the group accordingly. Therefore, if Blackboard wishes to make a patent claim they must do so explicitly and, the workgroup can in fact change course. Participants are asked about patents that could impact the work of a group literally at every meeting. The CC group has been going for over a year and has not been encumbered by any IP claims to date. Note that it is possible that some other participant other than Blackboard could bring an IP claim. So, this is something that we live with every day.

So, to summarize:

1. You can have a lot of impact on the future of developments like Common Cartridge by demanding it in your products, rewarding vendors that put it there, and, better yet, getting involved in IMS to help shape the standard (we are in the first version of what promises to have many more innovations added).

2. It's difficult for Blackboard or any other vendor to "game" the standards process in IMS due to our IP policies. So, in fact the standards organizations are a great way to bring issues like this out so they can be known - and, in the case of standards, potentially go in a different direction if one organization's IP is encumbering. The standards become the known ground that vendors must share without claims.

Thanks for stimulating an interesting discussion - time to catch my plane!

Best regards,
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