

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

Blackboard Inc.,)	
)	
Plaintiff,)	C.A. No. 9:09-cv-129
)	
v.)	
)	JURY TRIAL DEMANDED
Desire2Learn Inc.)	
)	
Defendant.)	

COMPLAINT

The Parties

1. Plaintiff Blackboard Inc. (‘Blackboard’) is a corporation organized under the laws of the State of Delaware, having its principal place of business at 650 Massachusetts Avenue, N.W., in Washington, D.C.

2. Upon information and belief, Defendant Desire2Learn Inc. (‘Desire2Learn’) is and has been a corporation organized under the laws of the Province of Ontario, Canada, having its principal place of business at 305 King Street, Suite 200, in Kitchener, Ontario, Canada.

Jurisdiction and Venue

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Desire2Learn because Desire2Learn conducts business and has committed acts of patent infringement and/or has contributed to or induced acts of patent infringement by others in Texas and elsewhere in the United States.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

Blackboard's Patent-in-Suit

6. On July 7, 2009, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,558,853, entitled "Internet-Based Education Support System and Methods" (the "853 patent"). A true and correct copy of the 853 patent is attached hereto as Exhibit A. The 853 patent is related to U.S. Patent 7,493,396, which is the subject of *Blackboard Inc. v. Desire2Learn Inc.*, No. 9:09-cv-40 (E.D. Tex.), currently pending before this Court. The two patents share a common application.

7. Blackboard is the owner of all right, title, and interest in and to the 853 patent by assignment, with full and exclusive right to bring suit to enforce the 853 patent, including the right to recover for past infringement.

Related Pending Litigation

8. On March 16, 2009, Blackboard sued Desire2Learn in this Court, alleging infringement of U.S. Patent No. 7,493,396, which is related to the 853 patent. *See Blackboard Inc. v. Desire2Learn Inc.*, No. 9:09-cv-40 (E.D. Tex.). Desire2Learn has denied infringing a valid patent. The case management conference is set for August 24, 2009. Trial is set for November 8, 2010.

9. On July 6, 2009, Desire2Learn and its U.S. subsidiary D2L Ltd. sued Blackboard in the U.S. District Court for the District of Maryland seeking a declaratory judgment of non-infringement and invalidity of the 853 patent. *See D2L Ltd. et al. v. Blackboard Inc.*, No. 1:09-cv-1753 (D. Md.). The Maryland court lacks subject matter jurisdiction over the complaint in that case. Accordingly, this complaint represents the first-filed action regarding the 853 patent.

Count One

Desire2Learn's Infringement of the '853 Patent

10. Blackboard realleges and incorporates herein the allegations of paragraphs 1 through 9 as if fully set forth herein.

11. The '853 patent is valid and enforceable.

12. Upon information and belief, in violation of 35 U.S.C. § 271, Desire2Learn makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products and services that infringe the '853 patent, and the use of which infringes the '853 patent, including, but not limited to, the Desire2Learn eLearning Enterprise Suite, Desire2Learn Learning Environment, Learning Repository, ePortfolio, LiveRoom, Essentials, To Go, Competencies, the Holding Tank, Web Services and all services supporting these Desire2Learn products, such as upgrade services, hosting services, training services, support services, installation and configuration services, SIS and LDAP services, implementation and customization professional services, product management services, content services, web services, and the Desire2Learn Community product and services.

13. Upon information and belief, in violation of 35 U.S.C. § 271, Desire2Learn has directly infringed the '853 patent, both individually and jointly with others. Upon information and belief, in violation of 35 U.S.C. § 271, Desire2Learn also indirectly infringes by contributing to and/or inducing infringement of the '853 patent.

14. Upon information and belief, Desire2Learn has willfully infringed the '853 patent.

15. Upon information and belief, Desire2Learn's acts of infringement of the '853 patent will continue after service of this complaint unless enjoined by the Court.

16. As a result of Desire2Learn's infringement, Blackboard has suffered and will suffer damages.

17. Blackboard is entitled to recover from Desire2Learn the damages sustained by Blackboard as a result of Desire2Learn's wrongful acts in an amount subject to proof at trial.

18. Unless Desire2Learn is enjoined by this Court from continuing its infringement of the '53 patent, Blackboard will suffer additional irreparable harm and impairment of the value of its patent rights. Thus, Blackboard is entitled to an injunction against further infringement.

Prayer for Relief

WHEREFORE Blackboard prays for judgment and relief as follows:

- (a) That Desire2Learn has infringed the '53 patent under 35 U.S.C. § 271;
- (b) That Desire2Learn's infringement of the '53 patent has been willful;
- (c) That Desire2Learn be ordered to pay damages to compensate Blackboard for Desire2Learn's infringement of the '53 patent pursuant to 35 U.S.C. § 284, including an accounting;
- (d) That Desire2Learn be ordered to pay treble damages pursuant to 35 U.S.C. § 284;
- (e) That Desire2Learn be ordered to pay Blackboard's attorney's fees pursuant to 35 U.S.C. § 285;
- (f) That Desire2Learn, its subsidiaries, officers, agents, and employees, and those persons acting in active concern or participation with Desire2Learn and its successors and assigns be preliminarily and permanently enjoined from further infringement of the '53 patent pursuant to 35 U.S.C. § 283;
- (g) That Desire2Learn be ordered to pay prejudgment interest;

(h) That Desire2Learn be ordered to pay all of Blackboard's costs associated with this action; and

(i) That Blackboard be granted such other relief as the Court deems just and proper.

Demand for Jury Trial

Blackboard demands a trial by jury on all issues so triable.

August 10, 2009

Respectfully submitted,

/s/ J. Thad Heartfield

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