

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

BLACKBOARD INC.,

*Plaintiff,*

v.

DESIRE2LEARN INC.,

*Defendant.*

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Civil Action No. 9:06CV155

JUDGE RON CLARK

**JUDGMENT AND PERMANENT INJUNCTION**

This patent infringement case was tried to a jury, which found for Plaintiff Blackboard Inc. and against Defendant Desire2Learn Inc. on the issues of literal infringement, infringement by equivalents, induced infringement, and contributory infringement of claims 36, 37, and 38 of U.S. Patent 6,988,138. The jury did not find that any of these claims was invalid. Prior to verdict, for the reasons stated on the record, the Court granted judgment as a matter of law to Plaintiff on Defendant’s defenses of license and lack of subject matter jurisdiction, and granted judgment as a matter of law to Defendant on Plaintiff’s claim of willfulness. After a separate bench trial, for the reasons stated on the record, the Court denied Defendant’s claim for inequitable conduct. After the jury returned its verdict, the Court denied all of Defendant’s remaining motions for judgment as a matter of law, and found that this was not an exceptional case that merited an award of attorney fees. This Judgment and Permanent Injunction is entered in accordance with the Court’s prior rulings, the jury verdict, and the Court’s oral findings and conclusions entered on the record on March 10, 2008.

**IT IS THEREFORE ORDERED** that Plaintiff Blackboard Inc. recover from Defendant Desire2Learn Inc. the sum of Three Million One Hundred Thirty Thousand Dollars

(\$3,130,000.00), the amount of actual damages found by the jury, plus the additional amount of One Hundred Thirty-Five Thousand Six Hundred Thirty-Three Dollars (\$135,633.00), as pre-judgment interest, for a total amount of Three Million Two Hundred Sixty-Five Thousand Six Hundred Thirty-Three Dollars (\$3,265,633.00). The judgment shall bear interest at the rate agreed upon by the parties, namely 6.00% per annum.

**IT IS FURTHER ORDERED THAT** judgment is entered for Blackboard Inc. and against Desire2Learn Inc. on Desire2Learn's counterclaims for declarations of invalidity and unenforceability of the '138 patent and on Desire2Learn's defenses of license and lack of subject matter jurisdiction.

**IT IS FURTHER ORDERED THAT** judgment is entered for Desire2Learn Inc. and against Blackboard Inc. on Blackboard's claim of willfulness and claim for attorney fees.

**IT IS FURTHER ORDERED THAT:**

1. Defendant Desire2Learn Inc., its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice (collectively hereafter, "Desire2Learn"), are hereby restrained and enjoined, pursuant to Federal Rule of Civil Procedure 65(d) and 35 U.S.C. § 283, from using in the United States, offering to sell for use in the United States, or selling for use in the United States, either alone or in combination with any products, services or systems: 1. the method of providing online education implemented in accordance with the Desire2Learn Learning Environment (version 8.2.2 and earlier versions) heretofore marketed by Defendant; and 2. all other methods for providing online education that are not more than colorably different therefrom;

2. Desire2Learn is further restrained and enjoined from inducing infringement of

claims 36, 37 and 38 of the '138 patent by encouraging, supporting, aiding, or abetting the use in the United States of: 1. the method of providing online education implemented in accordance with the Desire2Learn Learning Environment (version 8.2.2 and earlier versions) heretofore marketed by Defendant; and 2. all other methods for providing online education not more than colorably different therefrom; and

3. Desire2Learn is further restrained and enjoined from contributing to the infringement of claims 36, 37 and 38 by selling or offering for sale in the United States, or importing into the United States: 1. Desire2Learn Learning Environment (version 8.2.2 and earlier versions); and 2. all other software that is not more than colorably different than Desire2Learn Learning Environment (version 8.2.2 and earlier versions).

**IT IS FURTHER ORDERED THAT** this injunction shall be in force until the expiration of the '138 patent; however the requirements set out in the preceding paragraphs of this order of permanent injunction are stayed for sixty (60) days from the date of this judgment.

**IT IS FURTHER ORDERED THAT** Desire2Learn shall give actual notice of this injunction: 1. Within 15 days of the date of this judgment, to the legal counsel for each customer, entity, and institution with any operations or facilities in the United States, which uses the Desire2Learn Learning Environment (version 8.2.2 or earlier versions); 2. Within 15 days of the date of this judgment, to all persons designated to receive notice of any change or amendment in any contract or agreement between Desire2Learn and any such client, entity, and institution; and 3. to the general counsel or attorney for any entity, institution, or other potential customer to which Desire2Learn submits a bid or a response to request for proposal concerning any on-line education or course management system, or with which Desire2Learn is negotiating an agreement

or contract for any on-line education or course management system. The notice in this section 3 shall be given within seven calendar days of this judgment in the case of an ongoing negotiation or where a bid or response has already been submitted. In the case of future submission of bids or responses or future entry into negotiations, the required notice shall be given at the time the bid or response is submitted or the negotiations begin.

**IT IS FURTHER ORDERED THAT** Defendant, Desire2Learn, Inc., shall forthwith provide written notice of this judgment and order of injunction to its officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with them in providing or selling within the United States the Desire2Learn Learning Environment (version 8.2.2 or earlier versions) or associated services or products. Desire2Learn shall take whatever steps are necessary or appropriate to ensure compliance with this order of injunction.

Because a decision as to a royalty rate remains pending, this is not a final judgment, and this Court retains jurisdiction over Defendant to enforce any and all aspects of this Judgment and Permanent Injunction.

So **ORDERED** and **SIGNED** this **11** day of **March, 2008**.



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Ron Clark, United States District Judge