

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

FILED

M. FEBRUARY 22 20 08
DAVID J. MALAND, CLERK
U.S. DISTRICT COURT
By [Signature]
DEPUTY

BLACKBOARD INC.,

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Plaintiff,

Civil Action No. 9:06-CV-155

DESIRE2LEARN INC.,

Defendant.

JUDGE RON CLARK

VERDICT FORM

QUESTION NO. 1 (DIRECT INFRINGEMENT):

a) Do you find by a preponderance of evidence that Desire2Learn Inc. directly infringes any of the following method claims of the '138 patent before November 21, 2007? Answer "YES" or "NO" as to each claim. If you answer "NO" as to claim 36 for both literal infringement and infringement under the doctrine of equivalents, then do not answer this question as to claims 37 and 38. If for any claim you answer "YES" for literal infringement, you should not answer the question under the doctrine of equivalents for that same claim.

Literal Infringement

Claim 36 Yes
 Claim 37 Yes
 Claim 38 Yes

Infringement Under Doctrine of Equivalents

Claim 36 _____
 Claim 37 _____
 Claim 38 _____

b) Do you find by a preponderance of evidence that Desire2Learn Inc. directly infringes any of the following claims of the '138 patent after November 21, 2007? Answer "YES" or "NO" as to each claim. If you answer "NO" as to claim 36 for both literal infringement and infringement under the doctrine of equivalents, then do not answer this question as to claims 37 and 38. If for any claim you answer "YES" for literal infringement, you should not answer the question under the doctrine of equivalents for that same claim.

Literal Infringement

Claim 36 Yes
 Claim 37 Yes
 Claim 38 Yes

Infringement Under Doctrine of Equivalents

Claim 36 _____
 Claim 37 _____
 Claim 38 _____

QUESTION NO. 2 (INDIRECT INFRINGEMENT - INDUCED):

a) Do you find by a preponderance of evidence that Desire2Learn Inc. has induced the infringement of any of the following claims of the '138 patent before November 21, 2007?
Answer "YES" or "NO" as to each claim. If you answer "NO" as to claim 36 for both literal infringement and infringement under the doctrine of equivalents, then do not answer this question as to claims 37 and 38. If for any claim you answer "YES" for literal infringement, you should not answer the question under the doctrine of equivalents for that same claim.

Literal Infringement	Infringement Under Doctrine of Equivalents
Claim 36 <u>Yes</u>	Claim 36 _____
Claim 37 <u>Yes</u>	Claim 37 _____
Claim 38 <u>Yes</u>	Claim 38 _____

b) Do you find by a preponderance of evidence that Desire2Learn Inc. has induced the infringement of any of the following claims of the '138 patent after November 21, 2007?
Answer "YES" or "NO" as to each claim. If you answer "NO" as to claim 36 for both literal infringement and infringement under the doctrine of equivalents, then do not answer this question as to claims 37 and 38. If for any claim you answer "YES" for literal infringement, you should not answer the question under the doctrine of equivalents for that same claim.

Literal Infringement	Infringement Under Doctrine of Equivalents
Claim 36 <u>Yes</u>	Claim 36 _____
Claim 37 <u>Yes</u>	Claim 37 _____
Claim 38 <u>Yes</u>	Claim 38 _____

QUESTION NO. 3 (INDIRECT INFRINGEMENT - CONTRIBUTORY):

a) Do you find by a preponderance of evidence that Desire2Learn Inc. has contributed to the infringement of any of the following claims of the '138 patent before November 21, 2007?

Answer "YES" or "NO" as to each claim. If you answer "NO" as to claim 36 for both literal infringement and infringement under the doctrine of equivalents, then do not answer this question as to claims 37 and 38. If for any claim you answer "YES" for literal infringement, you should not answer the question under the doctrine of equivalents for that same claim.

Literal Infringement	Infringement Under Doctrine of Equivalents
Claim 36 <u>yes</u>	Claim 36 _____
Claim 37 <u>yes</u>	Claim 37 _____
Claim 38 <u>yes</u>	Claim 38 _____

b) Do you find by a preponderance of evidence that Desire2Learn Inc. has contributed to the infringement of any of the following claims of the '138 patent after November 21, 2007?

Answer "YES" or "NO" as to each claim. If you answer "NO" as to claim 36 for both literal infringement and infringement under the doctrine of equivalents, then do not answer this question as to claims 37 and 38. If for any claim you answer "YES" for literal infringement, you should not answer the question under the doctrine of equivalents for that same claim.

Literal Infringement	Infringement Under Doctrine of Equivalents
Claim 36 <u>yes</u>	Claim 36 _____
Claim 37 <u>yes</u>	Claim 37 _____
Claim 38 <u>yes</u>	Claim 38 _____

QUESTION NO. 4 (ANTICIPATION):

Do you find by clear and convincing evidence that any of the following claims of the patent are anticipated? Answer "YES" or "NO" as to each claim.

Claim 36 NO

Claim 37 NO

Claim 38 NO

QUESTION NO. 5 (OBVIOUSNESS):

Do you find by clear and convincing evidence that any of the following claims of the patent are invalid as obvious? Answer "YES" or "NO" as to each claim.

Claim 36 NO

Claim 37 NO

Claim 38 NO

If you answered "YES" to any claim in Question No. 1, 2, or 3 and "NO" to that same claim in Questions No. 4 and 5, then answer Question No. 6. Otherwise, do not answer Question No. 6, and go on to initial and date the verdict form.

QUESTION NO. 6 (DAMAGES): What sum of money, if any, do you find is adequate to compensate Blackboard, Inc. for the conduct you found to infringe from the commencement of infringement through today?

State your answer in format (A) OR format (B) (but not both) AND/OR format (C), in dollars and cents:

(A) A reasonable one-time lump sum royalty of
\$ _____

OR

(B) A reasonable royalty from the commencement of infringement through today:
\$ 630,000.⁰⁰

AND/OR

(C) Lost profits of
\$ 2.5 million
\$ 2,500,000.⁰⁰

Date: 2/22/08

Initials of Foreperson: BAO