Blackboard: Bully or Misunderstood?

Al Gore has yet to live down reports that he claimed to have invented the Internet. Now Blackboard is facing criticism from those who say the giant of the course management industry claims to have invented chat rooms. (If you are wondering, Blackboard says it never made such a claim.)

On Thursday, leading advocates for open source systems of course management announced that they were linking up with the Software Freedom Law Center to try to prepare legal and other defenses for attacks they fear will be coming from Blackboard.

“The recent announcement by Blackboard that it is attempting to assert patent rights over simple and longstanding online technologies as applied to the area of course management systems and e-learning technologies, and its subsequent litigation against a smaller commercial competitor constitutes a threat to the effective and open development of software for higher education and the values underlying such open activities,” said the announcement from the Sakai Foundation, which helps dozens of colleges and universities run open source course management systems.

Blackboard’s general counsel, Matthew Small, said in an interview Thursday that he was glad that the Sakai Foundation was getting legal advice because it might find out that Blackboard was in no way threatening the open source movement. “There’s a lot of misinformation out there,” Small said. “There’s a fundamental misunderstanding of what [the patent] represents and what it doesn’t represent.”

In the interview, Small said repeatedly that Blackboard has no plans to challenge open source projects on patent issues, and he said that such challenges “wouldn’t make good business sense” for the company. At the same time, Small declined to directly answer whether Blackboard believes that open source projects are infringing on the company’s patent rights. “No patent holder is under obligation to go out and find infringement wherever it may be,” he said. “We are not focusing on the open source community or the education community.”
The patent rights that open source advocates fear Blackboard will use against them were awarded to the company by the U.S. Patent and Trademark Office in January, after years of review. This month Blackboard sued Desire2Learn, a Canadian-based competitor, asking for royalties on technologies covered by the patent (and that Desire2Learn says are not covered). Blackboard — especially since its merger with WebCT — is by far the dominant player in the course management market, and many experts have predicted that open source would prove more of a competitor to the company than would other corporations. At the same time, Blackboard officials have repeatedly said that they want to work with open source programs, and many colleges mix Blackboard and open source services.

Since the suit against Desire2Learn, blogs dealing with course management systems — many of which are advocates for or sympathetic to open source — have been harshly critical of Blackboard, suggesting it was overstepping its rights. Some bloggers in this community, not known to be particularly fond of software companies, are going so far as to declare Desire2Learn “a hero” to educators who work with open source. By refusing to settle with Blackboard and pay a royalty, they argue, the company is taking a stand for the idea that some key technologies in education shouldn’t be patented.

In a related effort, open source advocates are building on Wikipedia a chronology of the development of online learning tools, designed to show the developments in which Blackboard did not have a hand.

Charles Severance, executive director of the Sakai Foundation, said that the suit against Desire2Learn was a clear signal of Blackboard’s intentions — and not just to Desire2Learn. Severance said that many companies seek patents for “defensive reasons” — to prevent themselves from being sued. Blackboard’s suit against Desire2Learn, he said, was “offensive.” Further, he noted that Blackboard is seeking other patents and that open source advocates need to fight this battle now, before the company gains the rights to control more technology.

Blackboard’s Small, however, said that much of the online anger is based on a misreading of Blackboard’s patent. The patent has 44 parts, he said, independent parts and dependent parts. The former are the central claims and the latter parts only are relevant when applied to the central claims. So a reference to chat rooms does not mean that Blackboard claims to have invented them or has a right to royalties on their use — unless they are part of a larger system that makes use of Blackboard’s patented technologies, Small said. Much of the criticism of Blackboard is based on reading the dependent patent clauses as if they were independent.

“In reality, the patent covers only specific functionality that was invented by Blackboard,” he said.

“This is not a patent on e-learning,” Small said. “We are not bullying anyone. We are not looking to put anyone out of business. We are looking to obtain a reasonable royalty for use of our intellectual property.”

Small also noted that protecting patent rights is hardly a novel idea for academe, and that among the entities that regularly sue or threaten to sue over royalties are colleges and universities.

— Scott Jaschik

Comments

Will there be competition?
Yes. Because what BB does isn’t rocket science. For example (and, anyone else, post other URLs):

http://www.lon-capa.org/

Less functional:

http://groups.yahoo.com

http://groups.google.com/

I hope the owners of BB aren’t vain enough to believe they can pull off another Windows. The public is a heck of lot smarter than that.

L.L., at 6:55 am EDT on August 18, 2006

A day late and a dollar short

It is a shame that Inside Higher Ed, which has been lagged badly behind its peers in covering this story, also did such a poor job of gathering facts. It is also a shame that the only person interviewed for your article was Blackboard’s General Counsel. That’s not exactly balanced reporting. Had you interviewed any of the many people (including but certainly not limited to Open Source-advocating bloggers), you might have discovered that Mr. Small’s assertions about the scope and implications of Blackboard’s patents are open to challenge, to say the least. For example, had you spoken with a university CFO, you might have heard that there is now justifiable concern among universities that adopting any non-Blackboard platform—whether Open Source or proprietary—could expose the institution to legal liability. Mr. Small is well aware of the impact that this threat could have on all of Blackboard’s competitors, regardless of whether the company chooses to litigate against them.

Your article also could have benefited from reading the blogs you reference a little more carefully. For example, when you implicitly paraphrase me by linking to my blog, you note that “some bloggers” who are “not known to be particularly fond of software companies” have hailed D2L being a hero “to educators who work with Open Source.” To begin with, I wrote no such thing. I argued that D2L is a hero to anyone who supports platform choice. If your university uses ANGEL—a proprietary platform—you have just as much reason to fear Blackboard’s anti-competitive litigation of a weak patent as users of Open Source platforms do. This issue has nothing whatsoever to do with Open Source, other than the fact that some Open Source projects are threatened by it. Even the most staunch defenders of intellectual property acknowledge shortcomings with the current U.S. patent system that have lead to specious and anti-competitive litigation that harms consumers.

Furthermore, given that I used to be a software vendor myself, I find it amusing to be characterised as somebody who is not fond of software vendors. Although I have been known to question specific business practices of specific vendors in my industry, I would simply call that good consumerism.

While I am disappointed in this particular article, I hold out hope that you will raise the quality of your coverage on this issue to the same high level as that of the rest of your publication or, alternatively, to that of your competitors. (After all, I wouldn’t want you to think that I’m not fond of journalists.) If you want a blogger’s perspective, feel free to call me or any of my colleagues. You apparently know where to find us.