United States District Court,
E.D. Texas, Lufkin Division.

BLACKBOARD, INC,
Plaintiff.
v.
DESIRE2LEARN, INC,
Defendant.

Civil Action No. 9:06-CV-155

Aug. 3, 2007.

J. Thad Heartfield, M. Dru Montgomery, The Heartfield Law Firm, Beaumont, TX, Christopher D. Bright, Daniel R. Foster, Michael R. O'Neill, Mcdermott Will & Emery, Irvine, CA, Claudia R.S. Schwartz, Evan A. Parke, James G. Rizzo, Michael S. Nadel, Rebecca A.H. Watson, McDermott Will & Emery, Matthew H. Small, Blackboard Inc., Washington, D.C., Clayton Edward Dark, Jr., Attorney at Law, Lufkin, TX, Fay E. Morisseau, Mcdermott Will & Emery, Houston, TX, for Plaintiff.

Gregory S. Norrod, James D. Dasso, Jason J. Keener, Jonathan R. Spivey, Michael S. Kramer, Sharon R. Barner, Foley & Lardner, Chicago, IL, Anthony Hyeok Son, Clarence Edward Polk, Jr., Foley & Lardner, Washington, D.C., James J. Zeleskey, James J. Zeleskey, Attorney at Law, Lufkin, TX, Jo Ben Whittenburg, Orgain Bell & Tucker, Beaumont, TX, for Defendant.

ORDER ON AGREED CLAIM TERMS

EARL S. HINES**, United States Magistrate Judge.**

Plaintiff Blackboard, Inc. ("Blackboard") alleges that Defendant Desire2Learn, Inc. ("D2L") infringes U.S. Patent No. 6,988,138 (the '138 patent). FN1 The parties agreed to the proper construction of the following terms. The definitions agreed upon comport with the meaning of the terms as they are used in the claims, the specification, the prosecution history, and any applicable extrinsic evidence. Therefore, these terms will be defined as follows:

FN1. For a background of the patents, a description of the technology involved, and the standard of review, see this court's prior order construing claim terms of these patents.

I. Agreed Claim Terms

1. "Hyperlink." Used in Claims 28 and 35.

"Hyperlink" means "an item in an electronic page that when selected displays information from an

electronic document, from another location on the same electronic page, or from a different electronic page."

2. "**Tool.**" Used in Claims 25, 43, and 44.

"**Tool**" means "hardware and/or software component that enable a function."

3. "**Asynchronous communication.**" Used in Claims 35 and 43.

"**Asynchronous communication**" means a "a communication that is not live or in real time."

4. "**Synchronous communication.**" Used in Claims 35 and 44.

"**Synchronous communication**" means "a communication that is live or in real time."

II. Conclusion

The jury shall be instructed in accordance with these agreed interpretations of the claim terms in the '138 patent.

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Blackboard, Inc. v. Desire2Learn, Inc.

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