

Receipt # 1-1-2561  
9:06 CV 155

JS 44 (Rev. 11/04)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

#### I. (a) PLAINTIFFS

Blackboard Inc.

#### DEFENDANTS

Desire2Learn Inc.

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

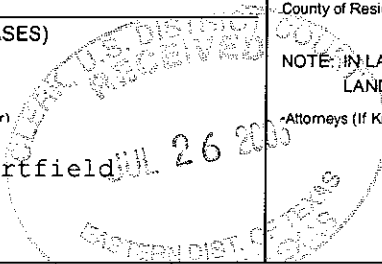
County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

J. Thad Heartfield  
Law Offices of J. Thad Heartfield  
2195 Dowlen Road  
Beaumont, TX 77706  
Tel: 409.866.3318

Attorneys (If Known)



#### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

#### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

#### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motion to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

#### V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

#### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 U.S.C. §§ 1 et seq. for patent infringement

Brief description of cause:

#### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 0.00

CHECK YES only if demanded in complaint: JURY DEMAND:  YES  NO

#### VIII. RELATED CASE(S) IF ANY

(See Instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 7/26/06 SIGNATURE OF ATTORNEY OF RECORD *[Signature]*

FOR OFFICE USE ONLY RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFR \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

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

JUL 26 2006

DAVID J. MALAND, CLERK

DEPUTY *Debra Colby*

Blackboard Inc., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Desire2Learn Inc., )  
 )  
 Defendant. )

Case No. 9:06 CV 155

Jury Trial Demanded

Judge Clark

**PLAINTIFF BLACKBOARD INC.'S COMPLAINT FOR PATENT INFRINGEMENT**

**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 1899 L Street NW, Washington, District of Columbia 20036.

2. Upon information and belief, defendant Desire2Learn Inc. ("D2L") is and has been a corporation organized under the laws of Canada, having its principal place of business at 72 Victoria Street South, Suite 401, Kitchener-Waterloo, Ontario, Canada N2G 4Y9.

**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 D2L because D2L conducts business and has committed acts of patent infringement and/or has contributed to or induced acts of patent infringement by others in the State of Texas (as well as 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 January 17, 2006, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,988,138 B1 entitled "Internet-Based Education Support System and Methods" (the "'138 patent"). A true and correct copy of the '138 patent is attached hereto as Exhibit A.

7. Blackboard is the owner of all right, title, and interest in and to the '138 patent by assignment, with full and exclusive right to bring suit to enforce the '138 patent, including the right to recover for past infringement.

**COUNT ONE**

**D2L's INFRINGEMENT OF THE '138 PATENT**

8. Blackboard realleges and incorporates herein the allegations of paragraphs 1 through 7 as if fully set forth herein.

9. The '138 patent is valid and enforceable.

10. Upon information and belief, in violation of 35 U.S.C. § 271, D2L uses, offers to sell, and sells within the United States, and/or imports into the United States, products and services that infringe the '138 patent, including, but not limited to all D2L products based on the D2L learning system or platform, such as the D2L eLearning Technology Suite, which includes the D2L Learning Environment, Learning Repository and LiveRoom, and all services supporting these D2L products, such as hosting services, training services, help desk support services, implementation and customization professional services, and content services.

11. Upon information and belief, in violation of 35 U.S.C. § 271, D2L also contributes to and/or induces infringement of the '138 patent.

12. Upon information and belief, D2L has willfully infringed the '138 patent.

13. Upon information and belief, D2L's acts of infringement of the '138 patent will continue after service of this complaint unless enjoined by the Court.

14. As a result of D2L's infringement, Blackboard has suffered and will suffer damages.

15. Blackboard is entitled to recover from D2L the damages sustained by Blackboard as a result of D2L's wrongful acts in an amount subject to proof at trial.

16. Unless D2L is enjoined by this Court from continuing its infringement of the '138 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 D2L has infringed the '138 patent under 35 U.S.C. § 271;
- (b) That D2L's infringement of the '138 patent has been willful;
- (c) That D2L be ordered to pay damages adequate to compensate Blackboard for D2L's infringement of the '138 patent pursuant to 35 U.S.C. § 284, including an accounting;
- (d) That D2L be ordered to pay treble damages pursuant to 35 U.S.C. § 284;
- (e) That D2L be ordered to pay Blackboard's attorney fees pursuant to 35 U.S.C. § 285;
- (f) That D2L, its officers, agents, and employees, and those persons acting in active concert or in participation with D2L, and its successors and assigns, be enjoined from further infringement of the '138 patent pursuant to 35 U.S.C. § 283;
- (g) That D2L be ordered to pay prejudgment interest;

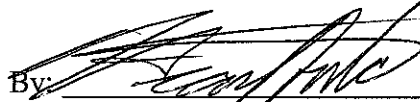
(h) That D2L be ordered to pay all of Blackboard's costs associated with this action; and

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

**DEMAND FOR JURY TRIAL**

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

Dated: July 26, 2006

By: 

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Attorneys for plaintiff Blackboard Inc.

AO 120 (Rev. 3/04)

TO: <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE                  FILING OR DETERMINATION OF AN                  ACTION REGARDING A PATENT OR                  TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court \_\_\_\_\_ on the following  Patents or  Trademarks:

DOCKET NO. 9:06cv155	DATE FILED 7/26/06	U.S. DISTRICT COURT Eastern District of Texas; Lufkin Division
PLAINTIFF Blackboard Inc		DEFENDANT Desire2Learn Inc
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK David J Maland	(BY) DEPUTY CLERK <i>D Haschke</i>	DATE 7/26/06
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy