

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN COURSE MANAGEMENT SYSTEM  
SOFTWARE PRODUCTS**

**Investigation No. 337-TA-677**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW  
AN INITIAL DETERMINATION STAYING THE INVESTIGATION PENDING  
COMPLETION OF APPEAL BEFORE THE U.S. COURT OF APPEALS FOR THE  
FEDERAL CIRCUIT**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 5) staying the investigation pending completion of an appeal before the U.S. Court of Appeals for the Federal Circuit.

**FOR FURTHER INFORMATION CONTACT:** James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** This investigation was instituted on June 9, 2009, based upon a complaint filed on behalf of Blackboard, Inc. of Washington, D.C. (“Blackboard”) on January 28, 2009, and supplemented on May 6 and May 14, 2009. *74 Fed. Reg.* 27345 (June 9, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain course management systems software products that infringe certain claims of United States Patent No. 6,988,138 (“the ‘138 patent”). The

Commission instituted an investigation with respect to claims 36-44 of the '138 patent. The notice of investigation named as respondent Desire2Learn Inc. of Ontario, Canada ("Desire2Learn").

Prior to this investigation, Blackboard had filed a civil action in federal district court against Desire2Learn alleging infringement of the '138 patent in *Blackboard Inc. v. Desire2Learn Inc.*, No. 9:06-cv-155 (E.D. Tex. July 26, 2006). On February 22, 2008, a jury found that Desire2Learn had directly and indirectly infringed claims 36-38 of the '138 patent and that claims 36-38 were not invalid by reason of anticipation or obviousness. The case has been appealed to the U.S. Court of Appeals for the Federal Circuit.

There is also a pending PTO re-examination, Control Nos. 95/000,199 and 90/008,330.

On June 23, 2009, Desire2Learn filed a motion to stay the investigation pending resolution of the PTO reexamination, or in the alternative, pending resolution of the Federal Circuit appeal. On June 22, 2009, Blackboard filed an opposition. On June 23, 2009, the Commission investigative attorney filed a response, supporting a stay pending appeal but not reexamination.

On July 24, 2009, the ALJ issued Order No. 5, staying the investigation pending the resolution of the Federal Circuit appeal but not reexamination. No petitions for review were filed.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42).

By order of the Commission.  
Marilyn R. Abbott, Secretary to the Commission

William R. Bishop  
Acting Secretary to the Commission

Issued: August 24, 2009