

**Notes of conference call held at 14.00 UK time on 16/8/2006 between Desire2Learn's Director of Marketing, John McLeod, and its Internal Legal Counsel, Diane Lank, and Seb Schmoller, Executive Secretary of ALT.**

**1. ALT's current position**

ALT has as yet no policy on software patents. It has both Blackboard and Desire2Learn as corporate/sponsoring members. ALT has several other companies in membership who are potentially directly affected by the Blackboard patent, and several organisations in membership on whom the patent has an actual or potential bearing.

**2. ALT dialogue with Blackboard**

Seb confirmed that ALT will be having a conference call with Blackboard with a similar (but not identical) focus to this one.

**3. ALT Conference - 4-6 September 2006**

3.1 John Baker, Founder and CEO of Desire2Learn will be presenting at the ALT conference. Simone Moreau-Rodgers will also be attending. Desire2Learn is exhibiting, as is Blackboard, with booths not adjacent to one another.

3.2. Discussion at ALT-C about the patent issue

i) Desire2Learn is unlikely to have filed its response to BB's patent infringement claim until after the ALT conference, which inevitably means that Desire2Learn will be constrained from making public statements about the case at the ALT conference, or itself engaging in debate on the patent issue with BB or anyone else.

ii) Desire2Learn would have no objection, and would in fact welcome it, if there is debate at ALT-C on the general issue of patenting business methods and software and on the impact of patents on innovation in the e-learning domain, vendor lock-in etc.

3.3. Information to delegates, and to ALT's members generally

ALT will write to Desire2Learn summarising its options as a corporate member of ALT.

**4. The patent infringement case**

4.1. Desire2Learn's response to the patent infringement claim is likely to be made public once its initial response has been filed. Desire2Learn's approach is to provide as much information as it possibly can regarding the litigation. To that end Desire2Learn has established a URL where interested parties can obtain publicly available information related to this matter. The address is: <http://www.Desire2Learn.com/PatentInfo>. Desire2Learn stressed that it is taking the patent case in its stride, and not letting the case deviate it from the normal process of building the Desire2Learn business.

4.2. Desire2Learn is concentrating on collecting "prior art" via this email address: [PriorArt@Desire2Learn.com](mailto:PriorArt@Desire2Learn.com). From time to time, Desire2Learn may issue further guidance on what sorts of prior art will be of most value to it.

## **5. BB's application for a European Patent**

5.1. We noted Becta's recent missive on the subject - extract:

"BBI has made four European patent applications. The European Patent Office (EPO) procedure is complex and lengthy. The process can take at least 5 years. The process includes an international search for "prior art". This has revealed two documents (Lee and Cook) on the basis of which the international examination report considers that the BBI claims could not be considered novel."

5.2. We touched upon the possibility that European organisations might choose to make representations to the EPO concerning the application. If this happens, then Desire2Learn would be keen to be kept informed.

Seb Schmoller  
ALT Executive Secretary, 16 August 2006

### **Update: 5 September 2006**

Since the above teleconference, Desire2Learn provided ALT of the following additional information.

1. Desire2Learn has retained Foley and Lardner LLC as their outside U.S. counsel to represent them in the matter of Blackboard v. Desire2Learn.
2. Desire2Learn will take the position that the claims asserted in the patent suit launched by Blackboard are not valid, and even if certain patent claims survive, Desire2Learn does not infringe. Desire2Learn will defend itself vigorously against Blackboard's patent suit.
3. Desire2Learn has the motivation and means to address this matter head-on and will do so. In keeping with Desire2Learn's open and collaborative approach, the company will continue to make information available to the public to the greatest extent possible.
4. Desire2Learn would like to extend its gratitude to members of the academic community world-wide, and the many others for their interest and support to date. We are pleased to see so many people willing to provide their time and expertise for the benefit of teaching and learning worldwide.