

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436**

In the Matter of

**CERTAIN COURSE MANAGEMENT
SYSTEM SOFTWARE PRODUCTS**

Inv. No. 337-TA-677

NOTICE OF INVESTIGATION

AGENCY: U.S. International Trade Commission

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 17, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Blackboard Inc. of Washington, D.C. Supplements to the complaint were filed on May 6 and May 14, 2009. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain course management system software products that infringe certain claims of U.S. Patent No. 6,988,138. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue exclusion orders and cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are 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., Room 112, Washington, D.C. 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <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>.

FOR FURTHER INFORMATION CONTACT: Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2055.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (2008).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 3, 2009, ORDERED THAT –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain course management system software products that infringe one or more of claims 36-44 of U.S. Patent No. 6,988,138, and whether an industry in the United States exists as required by subsection (a)(2) of section 337¹;

(2) For the purpose of the investigation so instituted, the following is hereby named as a party upon which this notice of investigation shall be served:

(a) The complainant is –

Blackboard Inc.
650 Massachusetts Avenue, N.W.
Washington, DC 20001

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Desire2Learn Incorporated
305 King Street West, Suite 200
Kitchener, Ontario, Canada N2G 1B9

(c) The Commission investigative attorney, party to this investigation, is Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401, Washington, D.C. 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

¹ The Commission has determined not to institute an investigation with respect to claims 1-35 as these claims are the subject of a valid and final judgment of invalidity issued by the district court for the Eastern District of Texas.

The Commission notes that the asserted patent is currently involved in a reexamination proceeding at the U.S. Patent and Trademark Office and an appellate proceeding before the Court of Appeals for the Federal Circuit. In instituting this investigation the Commission has not made any determination as to whether a stay is warranted. However, the presiding administrative law judge may wish to consider whether a stay is warranted at an early date in this proceeding. Any such decision regarding the motion to stay the investigation should be issued in the form of an initial determination (ID). The ID will become the Commission's final determination 45 days after the date of service of the ID unless the Commission determines to review the ID. Any petitions for review of the ID must be filed within ten (10) days after service thereof. Any review will be conducted in accordance with Commission Rules 210.43, 210.44 and 210.45, 19 C.F.R. §§ 210.43, 210.44, and 210.45.

The instant complaint also raises questions relating to, *inter alia*, (1) the scope of coverage under Section 337, and (2) possible claim preclusion with respect to claims 36-44 of the asserted '138 patent in light of prior district court contempt proceeding and a pending appeal before the Federal Circuit. As with other investigations commenced pursuant to Section 337, the institution of the requested investigation by the Commission does not constitute a determination on the merits of these or other issues that may arise in the investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

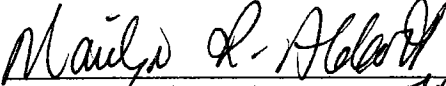
Issued: June 3, 2009

CERTAIN COURSE MANAGEMENT SYSTEM SOFTWARE PRODUCTS

337-TA-677

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF INVESTIGATION** has been served by hand upon the Commission Investigative Attorney, Esq., Mareesa A. Frederick and the following parties as indicated, on
June 4, 2009


Marilyn R. Abbott, Secretary *me*
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

COMPLAINANT:

BLACKBOARD, INC.
650 Massachusetts Avenue, NW
Washington, DC 20001
P-202-463-4860

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

COUNSEL FOR COMPLAINANT:

Joel M. Freed, Esq.
MCDERMOTT WILL & EMERY LLP
600 Thirteenth Street, NW
Washington, DC 20005
P-202-756-8000

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Fay E. Morisseau, Esq.
MCDERMOTT WILL & EMERY LLP
18191 Von Karman Avenue, Suite 500
Irvine, CA 92612
P-949-851-0633

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

PROPOSED RESPONDENT:

DESIRE2LEARN INCORPORATED

305 King Street West, Suite 200
Kitchener, Ontario, Canada N2G 1B9
P-519-772-0325

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

EMBASSY:

Embassy of Canada
501 Pennsylvania Avenue, NW
Washington, DC 20001

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

GOVERNMENT AGENCIES:

Edward T. Hand, Chief
Foreign Commerce Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW – Room 11000
Washington, DC 20530
P-202-514-2464

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

George F. McCray
U.S. Bureau of Customs and Border Protection
Intellectual Property Rights Branch
Mint Annex Building
799 9th Street, NW
Washington, DC 20001
P-202-325-0082

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Elizabeth Kraus, Deputy Director
International Antitrust, Office of
International Affairs
Federal Trade Commission
600 Pennsylvania Avenue, Room 498
Washington, DC 20580
P-202-326-2649

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Page 3 – Certificate of Service

Richard Lambert, Esq.
Office of Technology Development Services
Dept. of Health & Human Services
National Institutes of Health
6610 Rockledge Drive – Room 2800
MSC 6606
Bethesda, MD 20892
P-301-496-2644

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

Fay E. Morisseau
McDermott, Will, & Emery LLP
18191 Von Karman Ave, Suite 500
Irvine, California 92612

**Re: Certain Course Management System Software Products
Inv. No. 337-TA-677.**

Dear Ms. Morisseau:

This letter is to advise you that the U.S. International Trade Commission has instituted an investigation pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Commission's notice of investigation is enclosed.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn R. Abbott" with "JRC" written in the bottom right corner.

Marilyn R. Abbott
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

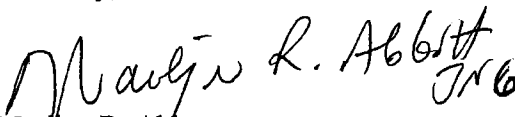
Joel M. Freed
McDermott, Will, & Emery LLP
600 Thirteenth Street, NW
Washington, DC 20005

**Re: Certain Course Management System Software Products
Inv. No. 337-TA-677**

Dear Mr. Freed:

This letter is to advise you that the U.S. International Trade Commission has instituted an investigation pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Commission's notice of investigation is enclosed.

Sincerely,


Marilyn R. Abbott
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

Blackboard Inc.
650 Massachusetts Ave, NW
Washington, D.C. 20001

**Re: Certain Course Management System Software Products
Inv. No. 337-TA-677**

Dear Sir/Madam:

This letter is to advise you that the U.S. International Trade Commission has instituted an investigation pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). A copy of the Commission's notice of investigation is enclosed.

Sincerely,

A handwritten signature in black ink that reads "Marilyn R. Abbott" with a stylized flourish at the end.

Marilyn R. Abbott
Secretary

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

Elizabeth Kraus, Deputy Director
International Antitrust
Office of International Affairs
Federal Trade Commission
600 Pennsylvania Avenue, Room 498
Washington, DC 20580


**Re: Certain Course Management System Software Products
Inv. No. 337-TA-667**

Dear Ms. Kraus:

The Commission has instituted an investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. '337). A copy of the notice of investigation is enclosed. Non-confidential copies of the complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Marilyn R. Abbott, Secretary at (202) 205-1802.

If you have questions concerning this investigation, please contact the Commission investigative attorney whose name and telephone number appear in the enclosed notice.

Sincerely,


Marilyn R. Abbott
Secretary



Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

Desire2Learn Incorporated
305 King Street West, Suite 200
Kitchener, Ontario, Canada N2G 1B9

**Re: Certain Course Management System Software Products
Inv. No. 337-TA-677**


Dear Sir/Madam:

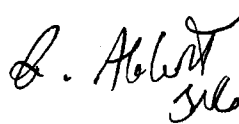
This letter is to advise you that the United States International Trade Commission has instituted an investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). **Desire2Learn Incorporated** is a named respondent in this investigation.

We are hereby serving you with a copy of the complaint filed and the notice of investigation issued in this matter. Enclosed is a copy of the Code of Federal Regulations.

Please note that the notice requires a response to the allegations in the complaint and the response must be received not later than twenty (20) days after the date of service of the complaint. Failure to file a response may result in inferences being drawn against your interests.

Sincerely,


Marilyn R. Abbott
Secretary



Enclosures:

1. Complaint
2. Notice of Investigation
3. Code of Federal Regulations



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

Embassy of Canada
501 Pennsylvania Avenue, NW
Washington, DC 20001

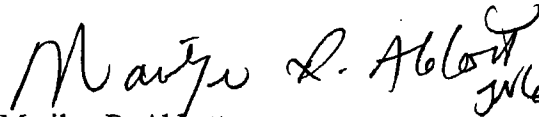
**Re: Certain Course Management System Software Products
Inv. No. 337-TA-677**

Dear Sir/Madam:

This letter is to advise you that the U.S. International Trade Commission has instituted an investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). One or more of the parties named in the investigation is located in **Canada**.

Pursuant to Commission rule 210.11(a)(3), we are hereby serving you with a copy of the complaint filed in this investigation together with a copy of the Commission's notice of investigation.

Sincerely,


Marilyn R. Abbott
Secretary

Enclosure:

1. Complaint
2. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

Edward T. Hand, Chief
Foreign Commerce Section
Antitrust Division
U.S. Department of Justice
450 5th Street, NW-Room 11000
Washington, DC 20530

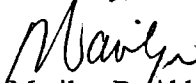
**Re: Certain Course Management System Software Products
Inv. No. 337-TA-677**

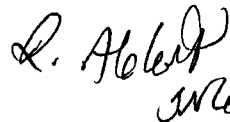
Dear Mr. Hand:

The Commission has instituted an investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. '337). A copy of the notice of investigation is enclosed. Non-confidential copies of the complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Marilyn R. Abbott, Secretary at (202) 205-1802.

If you have questions concerning this investigation, please contact the Commission investigative attorney whose name and telephone number appear in the enclosed notice.

Sincerely,


Marilyn R. Abbott
Secretary


R. Abbott
me

Enclosure:

1. Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

Richard Lambert
Office of Technology Development Services
Department of Health & Human Services
National Institute of Health
6610 Rockledge Drive-Room 2800
MSC 6606
Bethesda, MD 20892

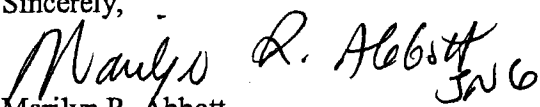
**Re: Certain Course Management System Software Products
Inv. No. 337-TA-667**

Dear Mr. Lambert:

The Commission has instituted an investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. '337). A copy of the notice of investigation is enclosed. Non-confidential copies of the complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Marilyn R. Abbott, Secretary at (202) 205-1802.

If you have questions concerning this investigation, please contact the Commission investigative attorney whose name and telephone number appear in the enclosed notice.

Sincerely,


Marilyn R. Abbott
Secretary

Enclosure:

1 . Notice of Investigation



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 4, 2009

George F. McCray
U.S. Bureau of Customs and Border Protection
Intellectual Property Rights Branch
Mint Annex Building
799 9th Street, N.W.
Washington, DC 20001

**Re: Certain Course Management System Software Products
Inv. No. 337-TA-667**

Dear Mr. McCray:

The Commission has instituted an investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. '337). A copy of the notice of investigation is enclosed. Non-confidential copies of the complaint and any supplements filed in the investigation will be provided upon request. Requests should be directed to Marilyn R. Abbott, Secretary at (202) 205-1802.

If you have questions concerning this investigation, please contact the Commission investigative attorney whose name and telephone number appear in the enclosed notice.

Sincerely,

Marilyn R. Abbott
Secretary

Enclosure:

1. Notice of Investigation