



[NOTE: Since early November 2006, EDUCAUSE has been engaged in ongoing discussions with Blackboard regarding their assertion of patent rights and the concerns raised in a [letter to the Blackboard leadership](#) from EDUCAUSE President Brian L. Hawkins on behalf of the EDUCAUSE Board of Directors. It should be noted that other groups, including The Sakai Foundation, have also been engaged in discussions on this matter. Today, February 1, 2007, Blackboard announced a [non-assertion pledge](#) that directly emanates from these discussions. The boards of directors of EDUCAUSE and The Sakai Foundation have agreed to and have issued the following statement about this pledge.]

A Statement from the Boards of Directors of EDUCAUSE and The Sakai Foundation

February 1, 2007

The boards of directors of the Sakai Foundation and of EDUCAUSE recognize the patent pledge announced on February 1, 2007, by Blackboard as a step in a more positive direction for the community, to the extent that it offers some comfort to a portion of the academic community that uses open source or homegrown systems. In the pledge, Blackboard states that it will not assert certain patents against open source or home grown systems bundled with no proprietary software. We particularly welcome the inclusion of pending patents, the clarification on the commercial support, customization, hosting or maintenance of open source systems, and the worldwide nature of Blackboard's pledge. We also appreciate the willingness of Blackboard to continue with frank and direct dialogue with our two organizations and with other higher education representatives and groups to work toward addressing these problems of community concern.

Although Blackboard has included in the pledge many named open source initiatives, regardless of whether they incorporate proprietary elements in their applications, Blackboard has also reserved rights to assert its patents against other providers of such systems that are "bundled" with proprietary code. We remain concerned that this bundling language introduces legal and technical complexity and uncertainty which will be inhibitive in this arena of development.

As a result, the Sakai Foundation and EDUCAUSE find it difficult to give the wholehearted endorsement we had hoped might be possible. Some of Sakai's commercial partners and valued members of the open source community will not be protected under this pledge. Furthermore, EDUCAUSE and Sakai worked to gain a pledge that Blackboard would never take legal action for infringement against a college or university using another competing product. While Blackboard ultimately agrees that such actions are not in its best interest from a customer relations viewpoint, it could not agree for reasons related to its existing legal case. Our organizations will remain vigilant on this point as protecting our member institutions is of top priority.

While this pledge offers a formalization of Blackboard's past claims about the intent of its patents, it does not speak to the quality or validity of the patents themselves. Sakai and EDUCAUSE maintain the position that Blackboard's U.S. patent number 6,988,138 is overly broad, and that the U.S. Patent and Trademark Office (USPTO) erred in granting it to Blackboard. Furthermore, we believe that this conclusion will ultimately be decided by the re-examination of this patent through the USPTO and in the current litigation.

We hope that all of the organizations and individuals interested in educational technology will continue to focus our collective energies on improving software, and system and data interoperability with the ultimate goal of delivering truly innovative solutions to all teachers and learners.