



Pilot Concerning Public Submission of Peer Reviewed Prior Art

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Peer Reviewed Prior Art

USPTO Perspective

- Public Criticism of Patents, Software
- Current Rules Permit Rule 1.99 Submissions and Rule 1.291 protest with consent
- Current legislation expands ability of third party submissions
- Proof of Concept Pilot



Peer Reviewed Prior Art

USPTO Goals

- Improve patent quality
- Get the best art before the examiner
- Quell negative public perception
- Foster public involvement using Internet collaboration techniques



Peer Reviewed Prior Art

Pilot Short History

- Coordination with Community Patent Review Project (CPRP), Dec 2005
- Public meetings in Feb and May 2006
- CPRP developed the Peer-to-Patent website as a vehicle to peer review prior art for submission to the USPTO



Peer Reviewed Prior Art

Volunteer Applicants

- File Consent form with USPTO
- USPTO will notify applicants and Community Patent Review Project of acceptance
- USPTO will assist applicants with identifying possible applications for pilot



Peer Reviewed Prior Art

Pilot Overview

- For up to 250 applications in TC 2100
- USPTO to waive portions of 37 CFR 1.99 and 1.291 for volunteer pilot participants
- Participants consent to allow commentary with submission
- USPTO to accept 1 submission from the Peer-to-Patent website



Peer Reviewed Prior Art

Related Requirements

(to be described in detail later)

- Existing § 1.99 permits third-party submissions that satisfy rule requirements including fees, service, timing and format requirements.
- Existing § 1.291 permits public protests that satisfy rule requirements including service, timing, written consent and format requirements.



Peer Reviewed Prior Art

USPTO to waive:

- (1) payment of the fee set forth in 37 CFR § 1.17(p) (§ 1.99(b)(1));
- (2) service of the submission upon the applicant (§ 1.99(c)); and
- (3) filing of the submission within two months from the date of publication of the application or prior to the mailing of a notice of allowance, whichever is earlier (§ 1.99(e)); and
- (4) the prohibition on the inclusion of any commentary of the patents or publications, or any other information if the submission of comments describes the relevance of the document to the disclosed invention as defined by the claims.



Peer Reviewed Prior Art

Submission

- Peer-to-Patent to submit to the USPTO up to 10 peer selected pieces of prior art with commentary within 4 months and 2 weeks from the pre-grant publication of volunteered U.S. patent application assigned to Technology Center 2100.



Peer Reviewed Prior Art

For every application submitted and accepted for the Pilot the USPTO will:

- Accept one submission from the Peer-to-Patent website
- The application will be advanced to the front of the line to expedite the business of the Office
- The prior art submitted by the Peer-to-Patent website will be considered in the determination of patentability



Peer Reviewed Prior Art

Data to be collected by USPTO:

- Did the prior art submitted by Peer-to-Patent materially affect the patentability determination for any claim?
- Was the prior art submitted available to the examiner during normal examination?
- Did the commentary have any affect on the examination process?
- What was the general perception of the examiners with the pilot and process?
- Etc.



Peer Reviewed Prior Art

End of Pilot

- Evaluation of the Results
- Expectations
- Next steps?



Peer Reviewed Prior Art

Thank you!

Questions!