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Monday, September 24, 2007

Opening Up the Patent Process

The United States Patent and Trademark Office is testing a new website designed to harness the collaborative power of the Internet to vet patents.

By Andrew Schrock

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“Daring ideas are like chessmen moved forward; they may be beaten, but they may start a winning game.”

— GOETHE



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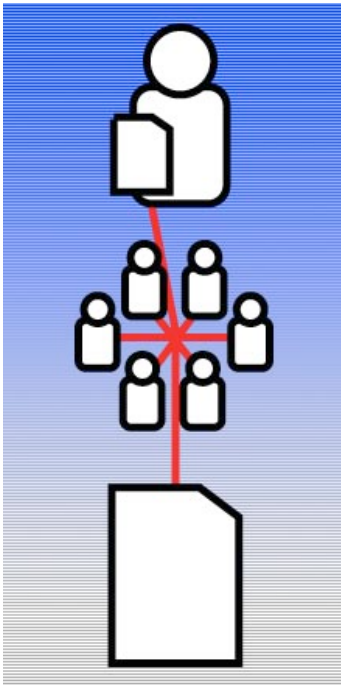
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Credit: Peertopatent.org

A new website called [Peer-to-Patent](#) intends to harness the power of online collaboration to streamline patent review. By creating a community around each application, the site facilitates public discussion and lets people upload relevant information. The [United States Patent and Trademark Office](#) (USPTO) is currently involved in a limited trial of Peer-to-Patent, with the hope that it will bring openness and transparency to a review process that was previously limited to communication between the applicant and the examiner vetting the patent.

"There's never been a bridge built between the information available in these expert communities and the government institutions that make these important policy decisions," says Peer-to-Patent founder [Beth Noveck](#). Noveck is a professor at [New York Law School](#) and the director of the school's [Institute for Information Law and Policy](#). She is also the director of the Democracy Design Workshop, which is running an experiment, called [Do Tank](#), to encourage research into projects that foster community and encourage citizens to take action.

Peer-to-Patent could benefit an overloaded government organization. The USPTO faces mounting difficulties stemming from large numbers of patent applications of increasing complexity. According to the USPTO, 173,771 patent applications were approved in 2006. The government agency claims that it is currently backlogged with more than 800,000 patents. This means that new submissions have a pendency, or time from filing to first action, of up to 52 months.

Currently, the process to grant patents begins when an application, describing the invention in painstaking detail, is submitted to the USPTO examiner, who conducts a search for prior art. Prior art can be any previous evidence of an invention: an academic article, schematic, photograph, data set, or nearly anything that demonstrates a similar concept. Searches for prior art must be as exhaustive as possible. If prior art is missed, the USPTO risks approving spurious patents, leading to lawsuits and requests for post-grant examinations.

Peggy Focarino, the deputy commissioner for patent operations at the USPTO, says, "The U.S. patent system is based on disclosure, and the earlier we can get our examiners the best prior art in front of them to help make that patentability determination, the better." The USPTO is working with Noveck on a limited trial of the Peer-to-Patent system involving 250 patent applications. While Focarino doesn't believe that considering the Peer-to-Patent site is an admission that the patent system, particularly the search for prior art, is too large or complex, she says she believes that

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"giving the public an opportunity to participate in that process ... is going to further improve our quality."




Patent examiners must use prior art to demonstrate that an invention is both novel and nonobvious. For a patent to be novel, it must have at least one new component above previous innovations. Obviousness, by comparison, implies that the claim lacks sufficient innovation and is self-evident to professionals in the field.

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[It's about time!](#)

[fiberman](#) on 09/24/2007 at 1:34 AM

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Anybody in the tech biz knows how badly broken the current patent process really is. While I was a manufacturer, I spent more money fighting patents issued without proper review than protecting my own IP, including one that covered a product we had been making for a decade before the company holding the patent was even incorporated! Since selling that company, I have made good money providing documentation on prior art to get patents rescinded. Two instances involved the same examiner who appeared to have no knowledge in the relevant fields.

Putting patent applications into the public domain when submitted to allow review by knowledgeable parties is the correct way to handle them.

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[Patent Search](#)

[Henry1951](#) on 09/24/2007 at 7:04 AM

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Just checking to see if your "brainchild" is unique is a nightmare at the Patent Office's site: <http://www.uspto.gov/patft/index.html>

I found the patent covering my idea (alas) thru a quick Google Patents check. Why are government sites always so difficult to navigate??

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[Amending the Application's Claims](#)

[jrcrossan](#) on 09/24/2007 at 11:24 AM

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Patent and patent application claims can be amended after filing and during examination in response to objections and prior art citations, whether in the initial examination toward issuing a patent and in any re-examination, re-issue, or interference after a patent is issued. The proposed Peer Review comments can certainly prompt the applicant or patentee to amend claims to narrow (or even broaden) them to claim improvements over the prior art, if possible: it's not all or nothing!

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[USPTO Peer-To-Patent Program Is A Start](#)

[anthonydalekuhn](#) on 09/24/2007 at 4:59 PM

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Andrew: Thanks for bringing this new, exciting program to my attention. The patent process is broken, and it shouldn't be in this country at the forefront of technology innovation and intellectual property development. I hope that the USPTO embraces this program and can get on with the business of facilitating new ideas and protection of IP. I cross-posted on your piece to <http://blog.innovators-network.org> The Innovators Network is a non-profit dedicated to bringing technology to startups, small businesses, non-profits, venture capitalists and intellectual property experts. Please visit us and help grown our community! Best wishes for continued success, Anthony Kuhn
Innovators Network

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[Re: USPTO Peer-To-Patent Program Is A Start](#)

[frankShook](#) on 10/24/2007 at 10:24 PM

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I wouldn't say that the system is 'broken' as much as it is overwhelmed. Examiners are probably asked to evaluate inventions from such varied disciplines that the nuances that seem so important to the inventor are lost on the examiner.

Albert Einstein worked for the Patent Office. I wonder how he would interpret submissions from Silicon Valley?

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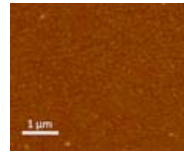
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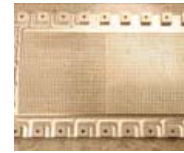
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