

From: Matthew Strebe [mailto:mbs@connetic.net]
Sent: Thursday, December 10, 2009 7:03 PM
To: Laufer, Pinchus; Schor, Kenneth
Subject: Increasing patent quality through public discovery of prior art

RE: Patent and Trademark Office [Docket No.: PTO-P-2009-0054]
Request for Comments on Enhancement in the Quality of Patents

Dear Mr. Schor & Mr. Laufer,

These comments represent my personal opinion. I currently have a patent pending before the patent commissioner.

Novelty is the primary defining characteristic of an invention worthy of patent. Determining novelty through the discovery of prior art is therefore of primary importance to the patent process and is almost certainly the work that patent examiners spend the bulk of their time performing.

Currently, pending patents are held secret by the USPTO. This secrecy can serve the interests of the patent applicant, but does not serve the interests of the public or the USPTO.

The purpose of the patent system is to provide a state-licensed monopoly to an invention to encourage inventors to disclose their inventions so that the invention can eventually be incorporated into the public domain. Should a patent application succeed, initial publicity during the patent-pending period is of no concern because a patent now protects the patent holder. Should a patent application fail, it failed either because the patent failed the obviousness test (in which case secrecy is not necessary) or because it is described by prior art (in which case secrecy is not necessary). There are other cases where the privacy of pending patents service the interests of inventors, but none of those cases are important to the interests of the public or the USPTO.

Speeding the discovery of prior art while reducing the chance that prior art exists but has not been discovered will serve to reduce the pendency time and increase the quality of patents. Faster discovery of prior art will also allow for earlier rejection based on rapid discovery of prior art, thus reducing the number of patents pending examination.

The rapid discovery of prior art can be enabled by incorporating the discovery efforts of the public at large, especially those members of the public with an adverse interest in the issuance of a particular patent.

By establishing a web-site subsection on USPTO.gov where patents pending which have been accepted by the PTO can be published in full, the USPTO will encourage all citizens, businesses, and advocacy organizations to monitor and read pending patents. This site will accept submission of prior art relating to specific patents in the form of links to content on the internet or references to literature describing similar or same inventions.

Using the social aspects of the Internet, patents which are especially broad or which various groups will see as adverse will be publicized organically through advocacy websites and via email, and will create an effort amongst the interested public to find and submit examples of prior art directly to the USPTO. Certainly some of these members of the public will be experts in the field of a given patent and will be able to disclose public sources of prior art should it exist. Submissions of prior art should be open to the public for a defined period, for example six months, directly after the patent has been accepted for submission.

As a routine matter of course, at the close of the public prior art submission period the USPTO can then require that the patent applicant create a submission detailing why all candidate prior art submitted by the public regarding their pending patent should not be considered to be germane to their patent submission before a patent examiner spends any significant time at all reviewing the patent. This places the patent applicant in the position of filtering out and describing poorly crafted prior-art submissions, non-prior-art submissions, and allows them to explain nuances that would differentiate their patent from excellent examples provided by the public.

Given a broad selection of prior art submitted by the public on the USPTO.gov website, the work of patent examiners can then become focused more on determining whether the submitted prior art is described by the patent at hand or not.

With this method, the general public performs much of the prior art discovery work, the patent applicant is routinely required to defend the application against the publicly submitted prior art early in the process, and the patent examiner need only determine the veracity of the defense in order to determine patentability. It is unlikely that an individual patent examiner would produce better examples of prior art from typical sources than the broad public can from all possible sources.

Patents which generate no submitted prior art are either not controversial or are truly novel, and in either case are far more likely to represent a successful patent.

Inventors of truly novel inventions will have no problem defending their patents against public examples of prior art. Furthermore, the submission of trivial, obvious, and clearly existing inventions will be automatically reduced with little to no effort on the part of the USPTO. Complex and novel inventions will not be harmed, and the quality of patents will be substantially improved. Patent litigation will be substantially reduced, and the value of patents will be dramatically enhanced.

Thank you,

Matt

Matthew Strebe
Chief Information Officer
Connetic

Box 634 Cardiff, CA 92007
619.823.7141
mbs@connetic.net
www.itmadeeasy.com