Patent Public Advisory Committee

Peer Reviewed Prior Art Pilot

April 29, 2010
Background

- The Open Source Community along with NYLS approached USPTO in 2005 with Peer Review concept
- USPTO in cooperation with NYLS launched peertopatent.org website in June 2007
- One year pilot in the computer hardware and software technologies was extended for a second year to include Business Method applications
- Funding for pilot came from donations from major corporations as well as non-profit organizations
Results

- Of the 428 consents filed, 226 applications were originally eligible and were posted on the website, 189 were ultimately examined (37 applications did not receive a prior art submission)
- 603 pieces of prior art were posted to the website over half of which was NPL
- Average of just over 3 pieces of prior art per application were submitted by peers
- In 15 applications, the examiners changed their rejection from art that they had found to art that was found and submitted by the peer reviewers – 7.9%
- In 15 other applications, the examiners used prior art submitted by peer reviewers that examiners had also found – 7.9%
In total, 30 applications of the 189 contained a rejection using prior art submitted by the peer reviewers – 15.9%

Participation in the pilot clearly depended on significant publicity by USPTO (USPTO mailed 33,000 letters which elicited over 100 eligible applications) as well as from NYLS

Surveyed participating examiners as to their experiences

Survey of external stakeholders (practitioners, patent applicants and patent peer reviewers)
Other Considerations

- USPTO gained considerable positive media attention – (Washington Post)
- White House.gov highlighted the pilot on the Open Government Initiative website
- Foreign offices have followed USPTO lead:
  - JPO now in contract negotiations after running their own version;
  - IP Australia currently running a pilot and;
  - UK Patent Office intended to run pilot but had financial issues
- Pending legislation S 515 encourages submission of prior art with annotation
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