



09 May 2014

**Attn: Nicole Dretar Haines**

**Commissioner of Patents**

United States Patent & Trademark Office

Mail Stop: Comments—Patents,

Post Office Box 1450

Alexandria, VA 22313-1450

**VIA eMail:** [CrowdsourcingRoundtable2014@uspto.gov](mailto:CrowdsourcingRoundtable2014@uspto.gov)

**RE:** *Request for Comments and Notice of Roundtable Event on the Use of Crowdsourcing and Third-Party Pre-issuance Submissions To Identify Relevant Prior Art* [Docket No. PTO-P-2014-0013]

**May it Please the Commissioner of Patents:**

**The Open Source Election Technology Foundation** ([www.usetfoundation.org](http://www.usetfoundation.org)) (hereinafter, "OSET") is a tax-exempt 501(c)(3) non-profit California public benefit corporation chartered with research, development and education on election technology innovation. Our flagship effort is the **TrustTheVote™ Project** ([www.trustthevote.org](http://www.trustthevote.org)), whose objective is to develop freely available, more verifiable, accurate, secure and transparent election technology. For more background, please see our web sites.

OSET appreciates the opportunity to comment on the use of crowdsourcing to help the USPTO's patent examiners identify relevant prior art during examination and thereby improve the quality of issued patents. OSET strongly supports this initiative and encourages the USPTO to make the use of crowdsourcing as convenient as possible for both examiners and the public. We offer a point of view from the standpoint of innovation opportunity in election technology—that which is tantamount to critical democracy infrastructure.

Perhaps no other technology is more important to democracy than the technology used to ensure each citizen's ballot is counted as cast. If patents are improvidently granted on

voting technology previously known or used by others, then America's very elections are at risk of unwarranted enjoinder. At the same time, the promise of patent protection should be available across all fields of technology as a means of promoting the advancement of all useful arts, regardless of field, as TRIPS requires.

Accordingly, OSET believes that the USPTO has a special responsibility when issuing patents on voting technology to ensure its examiners have the best available prior art before them. OSET stands ready to assist the USPTO facilitate crowdsourcing of prior art in a field that we believe merits special attention and focus. For example, if one result of the subject request for comment is a decision by the USPTO to test crowdsourcing as a pilot in a certain field, then that field should be digital voting technology. To this extent, OSET regularly participates in several national and international technical communities focused on the many aspects of election technology. We believe we could marshal a considerable crowdsourcing exercise for this purpose.

Another reason why election technology deserves the USPTO's special attention is that much of the prior art in this particular field resides in non-patent literature (NPL) and non-printed public uses. Both of these sources of prior art are difficult, if not impossible, for examiners to find. Industry participants are in a better position than the USPTO to locate the most relevant prior art for a given invention.

Regarding the USPTO's specific questions, OSET offers the following suggestions:

1. The biggest challenge that prevents third parties like us from filing pre-issuance submissions is the tight statutory deadlines imposed by 35 U.S.C. 122(e)(1), coupled with the lack of an automated USPTO system to immediately alert us when a relevant application has published or a first rejection has been mailed. To meet these deadlines today, a third party must check Private PAIR to determine whether the preissuance filing window is even open (much less whether the examiner has located the best prior art). But to do so, a third party must *already* know the application serial number to access the application's file history on Private PAIR, and then must *routinely* check Private PAIR using that serial number to determine whether the application has published or a first rejection has been mailed. There needs to be a better way for third parties to learn if a

potentially important application has published and if the submission window is open, rather than running a search every day.

2. To encourage more third-party submissions, the USPTO should address the problem identified above. Specifically, the USPTO should allow third parties to register to receive automated eMail alerts associated with any pending application having a particular USPC or CPC class number, assignee name, inventor name, application number, or priority claim to a parent application. Relevant actions warranting an eMail notification include:
  - A. Publication of the application,
  - B. Mailing of an Office action,
  - C. Filing of a pre-issuance submission, and
  - D. Mailing of a notice of allowance.
3. The above-described eMail alert system would notify any interested third party that a potentially relevant event has occurred in the file of the subject application. The third party could then immediately review the event on Public PAIR and decide whether to prepare and file a pre-issuance submission.
4. A similar notification system exists in contested case proceedings before the Patent Trial & Appeal Board, ("PTAB") which immediately sends a courtesy eMail to the address of all listed counsel whenever any document is entered in the proceeding.

In conclusion, the OSET Foundation thanks the USPTO for seeking comment on this important initiative and the opportunity to do so. OSET stands ready to assist the USPTO in its efforts and urges a focus on digital voting technology innovation, including the launch of a crowdsourcing pilot in this particular field where we believe informative learning and results from the approach can be gained. Please feel free to contact me regarding this submission.

Respectfully submitted,

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Chair, Board of Directors

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