

**From:** Alan Heimlich  
**Sent:** Tuesday, December 09, 2014 2:46 PM  
**To:** CrowdsourcingRoundtableNY  
**Subject:** [Docket No. PTO-P-2014-0013]

Re:  
[Docket No. PTO-P-2014-0013]  
Request for Comments and Notice of  
Roundtable on USPTO Use of  
Crowdsourcing To Identify Relevant  
Prior Art

USPTO,

Here are my responses.

Q1. In what ways can the USPTO utilize crowdsourcing to identify relevant prior art that would be available for use in the examination of published applications while maintaining the ex parte nature of patent examination? Some examples of how the public traditionally uses crowdsourcing include: passively monitoring discussions (thread) between parties on crowdsourcing Web sites, and posting a question on a crowdsourcing Web site and viewing responses to the posted question.

A1. Posting questions on a forum makes sense however, the poster needs to interact with the responses to filed in order to narrow down and clarify the issues. Additionally, like most forums a BEST answer should be selected so that the BEST answer posted person can be compensated by the USPTO for doing the work.

Q2. If the USPTO were to post a question relating to the technology of a published application on a crowdsourcing Web site, what follow-up communications, if any, could someone from the USPTO have with parties on the Web site? Some examples of how the public traditionally engages in follow-up communications on crowdsourcing Web sites include: A conversation on the thread with a particular party who responded to the posted question to clarify information the party provided, and a conversation on the thread with a particular party who responded to the initial posting to request additional information.

A2. Full interactive communication would be best to narrow down or clarify any issues. Additionally, the actual name of the USPTO person doing the posting should be used so that the public has transparency and can see that the examiner is actually assigned to and examining that patent application.

Q3. What appropriate precautions, if any, could the USPTO employ to ensure that the use of crowdsourcing tools does not encourage a protest or other form of preissuance opposition to the grant of a patent? (See 35 U.S.C. 122(c).)

A3. The best precaution is the selecting of the BEST answer as noted above.

Q4. If the USPTO cites in an application prior art obtained via crowdsourcing tools, to what extent, if any, should the USPTO document the crowdsourcing activities used to identify the prior art?

A4. Cite the ENTIRE forum communications. If the USPTO selectively cites then transparency is lost and the USPTO could be accused of selective non-diligent prosecution.

Q5. For each published patent application, if the USPTO gave the patent applicant the option to opt-in or opt-out of the USPTO's use of crowdsourcing, would applicants choose to participate in the crowdsourcing program? What considerations would inform the applicant's decision?

A5. Applicants would choose to participate if the process is transparent and the USPTO is above board and lists the actual USPTO person posting on the forum. Absent full transparency and compensation for the BEST art answer it is unlikely an applicant would participate. As both an inventor and patent attorney I would not be willing to or recommend any sort of hidden secret process.

Regards,

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