

New USPTO Peer to Patent Pilot Program May Offer Significant Benefits to Patent Applicants

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On October 19, 2010, the United States Patent and Trademark Office (USPTO) announced the launch of a new Peer to Patent pilot program. The Peer to Patent pilot program will begin on October 25, 2010 and run through September 30, 2011. The new pilot expands previous Peer to Patent programs, which included software and business methods patent applications, to further include patent applications in biotechnology, data processing, and telecommunications.

Under Peer to Patent, the patent application examination process is open to public participation. Applicants must agree to have their patent applications publications posted for review. The public, including technical experts in the field of the patent application, then discusses the patent application and submit prior art regarded as relevant in determining whether the claimed invention is novel and non-obvious. After the review period, the prior art is sent to the USPTO patent examiner for consideration during the official examination process.

The new pilot program will be an extension of the first pilot, which ran from June 2007 to June 2009. In the original program, more than 600 prior art references were submitted for 189 patent applications. More than 2,700 registered peer reviewers from over 140 countries participated. The prior art submitted as a result of the first pilot program was used by USPTO examiners in approximately 20% of the cases that volunteered for peer review.

Changes in the new pilot include:

- the number of eligible subject matter classes has been increased
- the number of eligible participating applications has been expanded to 1,000
- peer review time to search for prior art has been reduced to three months
- the number of items of prior art forwarded to the USPTO has been reduced to six items

For patent applicants, Peer to Patent offers many potential benefits.

The program is a potential mechanism for bolstering the strength of patents. A patent issuing from a patent application that was volunteered to participate in the rigorous Peer to Patent review process would presumably be considered a stronger patent that would be more likely to survive potential challenges to its validity.

The Peer to Patent program also offers applicants the opportunity to accelerate examination. Applications that are part of the program are advanced out of turn for initial examination on the

merits. This could be a significant advantage in reducing the time for getting a patent, especially in fields where patent application pendency at the USPTO is lengthy.

The Peer to Patent pilot is a cooperation between the USPTO and New York Law School. The program is funded with corporate contributions.

There is no fee for participation in the Peer to Patent pilot. To participate in the pilot, applicants must volunteer their patent applications for review. Applicants must file a consent to participate in the pilot program with the USPTO before 30 days from publication of the patent application. Eligible applications must be published between September 23, 2010 and September 30, 2011. Once the peer review begins, it will continue for a three-month period before the patent application moves to examination. The program is limited to the first 1,000 applications volunteered for review.

Additional Information

For more information regarding participation in the Peer to Patent pilot program, please contact:

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