

Community Patent Review Project Summary

**New York Law School
Institute for Information Law & Policy**

February 2007

Table of Contents

INTRODUCTION.....	1
WHY COMMUNITY PATENT REVIEW: THE PROBLEM.....	2
WHY COMMUNITY PATENT REVIEW: THE SOLUTION.....	3
FOR USPTO/PATENT EXAMINERS	3
FOR INVENTORS/APPLICANTS.....	4
FOR PATENT SERVICE COMPANIES	5
FOR THE PUBLIC.....	5
THE CORE BELIEFS	6
PILOT PROJECT DESIGN AND FEATURES: HOW IT WILL WORK	7
KEY FEATURES.....	10
ORGANIZATION AND PARTICIPANTS	13
PROJECT GOVERNANCE	15
SCOPE OF THE PHASE I PILOT	18
COMPANIES PARTICIPATING IN THE PILOT (AS OF SEPTEMBER 1, 2006):	19
PILOT TIMELINE.....	19
KEY METRICS	20
PROJECT ROLL-OUT: BEYOND THE PILOT.....	21
PROJECT PHASING AND ITERATION PLANS	22

This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 2.5 License. To view a copy of this license, visit <http://www.creativecommons.org>.



Community Patent Review Executive Summary

Introduction

The Community Patent Review project is an initiative of the New York Law School Institute for Information Law & Policy in collaboration with the United States Patent and Trademark Office (USPTO). Community Patent Review aims to improve the quality of issued patents by giving the patent examiner access to better information by means of an open network for community peer review of patent applications. Community Patent Review will create a web-based system that exploits network technology to connect innovation experts to patent examiners and the patent examination process. While the project is known as Community Patent Review, we refer to the software system itself as “p2patent” (said “Peer to Patent”). The process has come to be referred to as “community patent,” “open examination” or “open review.” The Community Patent Review pilot project focuses on integrating an open peer review process with the USPTO, creating and amalgamating a vetted database of prior art references that, over time, produces better patent grants, and developing a deliberation methodology and technology to allow community rating, ranking and processing of the data collected and feedback from patent examiners. Community Patent Review is the first social software project to be directly connected to and have an impact on the legal decision-making process.

The USPTO aims to pilot this new open examination system in 2007. Computer Associates, General Electric, Hewlett-Packard, IBM, Intel, International Characters, Microsoft, Oracle, Out of the Box Computing, and Red Hat have already agreed to have their patents examined under this new model. Community Patent Review aims to create a blueprint for democratizing policymaking that can be applied, not only to patents, but also to agency decision-making across government.

Why Community Patent Review: The Problem

While the first patent examiner, Thomas Jefferson, consulted Joseph Hutchinson, Professor of Chemistry at the University of Pennsylvania, on March 12, 1791 to seek his advice in connection with a patent on an alchemical process, this consultative and open practice of patent review subsequently gave way to our modern system of closed patent examination. Today 4,000 patent examiners labor independently under a backlog approaching 1 million applications with no more than 18-20 hours to review each one. Until recently, even though software applications were pouring in, the Patent Office did

"While examiners at the Patent Office have a duty to grant patents on only inventive technologies, they often have trouble finding references demonstrating that the subject matter of a patent application was already known, especially in the software field. For this reason, erroneously issued patents have become quite common in software, posing obstacles to those who innovate by building on past knowledge. We look forward to joining this effort to provide the Patent Office with the information they need to make better decisions during the patent-approval process."
--Adam Avrunin, Chief Patent Counsel *Red Hat*

not recognize training in computer science as a legitimate qualification. Patent examiners are required to have some technical training, but no advanced degrees are required. Whereas once the Patent Office possessed a preeminent repository of scientific information, it has

understandably not been able to keep pace with the explosion of available information. Today examiners lack the requisite information to examine patents adequately: examiners search an internal database. The backlog creates time-pressure and examiners may not consult the public. To prevent tracking and security breaches, many departments forbid use of Internet sources. There is either too little information about prior inventions on file - as in the case of computer software patents - or too much information - as in the case of biotechnology - without the means to sort it. There is no continuing science education at the USPTO and little dialogue with the scientific community. These problems are compounded by the fact that, by law, applicants are not required to do a complete search of the "prior art" (earlier inventions) and hence the burden falls to the patent office exclusively. As Jaffe and Lerner write in *Innovation and its Discontents*: "Until the process is changed so that other parties that know something

about the technology surrounding a given application have the opportunity and incentive to bring that knowledge forward, there will be no cost-effective way to fix the problem of low quality patents." Yet despite these problems, over 90% of applications are allowed, resulting in low quality patents and excessive lawsuits. This is harmful to efficient business markets, detrimental to scientific innovation and creates barriers to participation for small companies and entrepreneurs.

Why Community Patent Review: The Solution

Developing an open model for patent examination directly attacks this information deficit at the USPTO. If successful, a pilot of open examination would offer advantages for and address the needs of all the stakeholders in the system including the patent office, examiners, inventors, peer reviewers, patent service companies and the public at large.

For USPTO/Patent Examiners

The United States Patent Office is centrally concerned with ensuring that patents are of the highest quality and meet all statutory standards. The urgent and crucial problem impeding that goal is backlog. Examiners are overwhelmed. There is a fear that public participation will create more rather than less work. The USPTO is also under political fire and does not want to expend any social capital on reforms that do not work. The proposal is sensitive to and addresses these needs:

- Open review takes place before substantive examination begins thereby providing prior art and shaping the examiner's search. This makes the examiner's job easier.
- The community of experts will inform the patent examination process with useful information.
- Open examination provides much-needed information without sacrificing efficiency.

- Prior art and commentary will be ranked and searchable so as not to overload the examiner: feedback will be manageable.
- Open review will create an incentive to inventors to file better-constructed, clearer applications and lower the incentive for those wanting to file low-quality applications.
- Examiner gets help finding the right prior art and commentary to understand how to apply it.
- Patent Office generates hard data about the open examination process to refine it and drive reform.
- No rule changes are required to implement the pilot with applicant consent.

For Inventors/Applicants

For inventors, the critical need is to get at better information to strengthen the patent application. Applicants want to know about prior art before the patent issues in order to avoid the cost of unnecessary litigation later. Any improvements to the examination process must not come at the cost of efficiency.

- Community assists inventors to uncover relevant prior art.
- A community-vetted application is a stronger application.
- Community review could produce higher-revenue, more litigation proof patents. With more examination, there is greater certainty as to the scope of a patent's coverage.
- The pilot generates more information about new innovations in the marketplace, potentially generating higher financial rewards.
- The discussion may reveal particularly knowledgeable professionals, creating an opportunity for networking, collaboration and greater innovation. It might even create job opportunities.
- The USPTO will jump participating applicants to the front of the queue for review, drastically shortening waiting times.

For Patent Service Companies

The project addresses the needs of patent service companies, those businesses who seek to profit from information relating to patents, such as prior art searching or patent commentary. These stakeholders want a way to do business by aggregating information and commentary and having it be considered by the Patent Office. They want to serve patent applicants and, at the same time, communicate effectively with the USPTO .

- The Community Patent Review software (p2patent) will accept data feeds from other, commercial websites.
- P2Patent will provide a gateway to the USPTO, managing participation to ensure that all stakeholders are served, including the needs of examiners.
- The initiative provides a neutral, non-profit clearinghouse for prior art submissions, working with not against corporate stakeholders.
- Offers a searchable database of prior art.
- Community Patent Review will eventually develop standards for channeling data to the USPTO from third parties.

For the Public

There is a crisis of patent quality. We are expending millions on unnecessary litigation and unjustified settlements of bad patents that never should have issued. Reform proposals abound but the public has no way to choose effectively among them without evidence as to what really works.

- Bad patent claims are winnowed out, producing better patents.
- Reduces the chilling effect that bad patents have on innovation by scaring away those who would otherwise enter the marketplace.
- The risk of poor quality patents is reduced thereby decreasing litigation.

- Community feedback is directly relevant to the legal decision-making process.
- The constitutional mandate to promote the useful arts is served by enabling this open conversation within the scientific community.
- Empirical data about open review is generated to continuously improve the process and promote data-driven legal reform.

The Core Beliefs

The Community Patent Review project stems from a core belief in democratic values. Governmental decision-making will improve with the benefit of greater information. Citizens have the desire, right and obligation to deliberate about questions of public importance, such as the future of patents. Hence we are committed to create collaborative, open practices enabled by technology that facilitate citizen and expert participation that is useful. Technology is revolutionizing our capacity for purposive collective action: together we can accomplish what we cannot do alone. We want to engineer the practices and the systems that will allow us to act in concert and to develop the models by which we can govern more openly and collaboratively.

The design of the project and the pilot will adhere to key principles:

- Participatory Practices
 - Fostering citizen engagement and governmental accountability
- Transparency
 - Using processes and technologies that are open
- Independence
 - Maintaining legitimacy and incorruptibility
- Expertise in its Broadest Sense
 - Opening the process to all who want to participate well
- Collaborative Decision-making
 - Creating open governance
- Deliberative and Reasoned Dialogue

- Promoting thoughtful contributions
- Public Private Partnership
 - Creating a collaborative ecology that works with all stakeholders
- Rough Consensus, Running Code
 - Making it happen while responding to feedback and improving the institutions we create
- Constitutional Values
 - Furthering freedom of speech and association as well as the democratic values of participation and deliberation

Pilot Project Design and Features: How It Will Work

The following is an overview of how the first phase of the Community Patent Review project will operate and how the p2patent software system will function.

For a longer explanation of how the system will work and the theory behind the design, please see the *Extended Project Description – “Peer to Patent”: Collective Intelligence, Open Review and Patent Reform* attached and feel free to browse the online resources available at: <http://dotank.nyls.edu/communitypatent>.

We have witnessed how the combination of open technology and well-defined process has enabled Wikipedia to elicit the wisdom of the crowd and led to the creation

“The community patent project takes advantage of today’s community-based technology to improve the quality of U.S. patents in a manner that is aligned with the basic tenets of the patent system. This initiative does precisely what Thomas Jefferson intended the patent system to do by reaching out to the scientific community for information and access to prior art, and HP is pleased to be a partner in this effort.”

*--Jeff Fromm, Vice President,
Deputy General Counsel & Director of
Intellectual Property for HP*

of an encyclopedia with over 1,000,000 entries of quality comparable to that of traditional encyclopedias with centralized editors. New technology has enabled Amazon to create a marketplace, not just for the sale of goods and services, but also for the aggregation of expertise and

recommendations about those goods and services. CNet offers a platform to broker expertise about electronics and technology. The Internet Movie Database, the largest repository of information about cinema, is created by volunteers submitting data about films and movie stars. Public Library of Science, the pioneering open access publisher of scientific journals, is launching PLoS One, a distributed knowledge network to enable scholars of biology and medicine to discuss published research literature. We are learning as a result of these experiences with online collaboration that often “ordinary” people possess extraordinary knowledge they are willing to share when it is easy to do. This peer-production of content works well online. By making participation open and subject to self-selection, we can leverage, not only the wisdom, but also the enthusiasm of the crowd. Experience with the tools now available is changing traditional assumptions about how expertise must be organized and pointing the way toward open models of scientific review, not only to create encyclopedias or book reviews but also – and this is the radical proposal – to inform legal decision making.

Here is how the project proposes to, metaphorically-speaking, transform “wikipedia into wikilaw” by means of the Community Patent Review process. This describes Phase 1 of Community Patent Review, the USPTO 2007 Pilot:

Patent applicant requests review of a specific patent application under the Community Patent Review process at any point after filing and before substantive examination begins. Application is queued for review.

Patent application data is transferred from USPTO to the p2patent system. Application is published on the p2patent web site and available for comments for a 4 month time period. This time period is designed to inform rather than compete with or delay substantive examination.

Electronic notifications of the new application’s availability go out to the peer review community by means of electronic subscription.

Peer reviewers invite more experts to subscribe and participate.

Peer reviewers can search and find applications of interest.

Peer reviewers can associate tags or keywords with applications or prior art, so that they are easier for the community to find in the future.

Visualization aids reveal web site activity and make the Community Patent peer review community visible to itself. Such aids might include visualizations of the number of applications and which applications have the most comments.

Once registered, peer reviewers can: 1) rate claims, 2) submit prior art examples, 3) comment on the patent or on specific prior art submissions, 4) rate prior art submissions, 5) rate prior art, 6) rate peer reviewers.

Prior art submissions are added to a community knowledge base and are available for use in future application reviews.

Peer reviewers can view and rate the comments and prior art examples created by others, or add follow up comments in a discussion thread.

Alerts are generated, notifying subscribers about new postings (e.g. prior art and/or comments) that are added to a specific application as well as the posting of new applications in areas of interest.

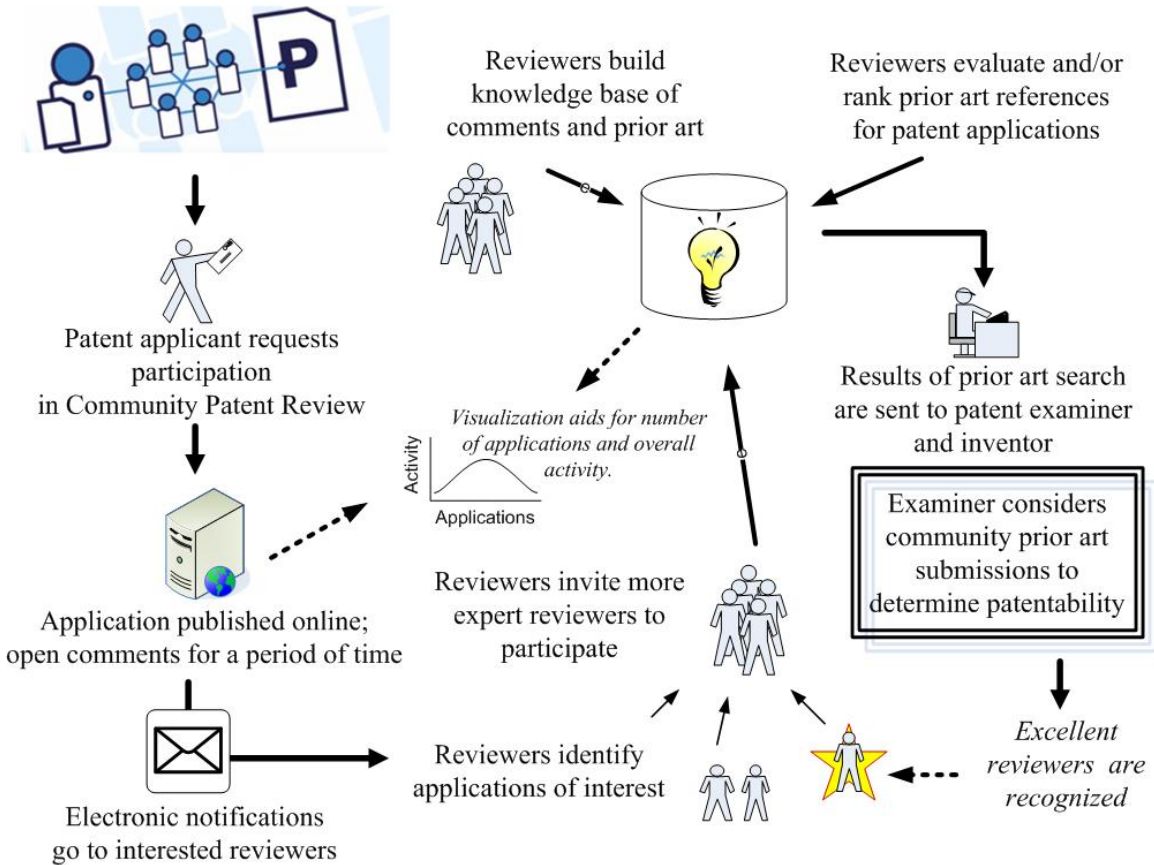
Rank ordered results of prior art submissions are sent to the patent examiner and inventor at the close of the peer review period.

Examiner can use as few or as many prior art submissions as desired in making the patentability determination.

Members of the community receive “karma effects,” status points for submitting prior art that is deemed relevant by the community and used by examiners.

The application continues through the normal patent examination process on an accelerated schedule.

Community Patent Review Process Diagram



Key Features

Impacts Decision-Making: Community Patent Review is directly tied into the Patent Office’s examination process.

Published not Granted Applications: The process attempts to winnow out bad patents before they are granted.

Easy Tracking: P2Patent web site enables members of expert communities of practice to receive notice of new patents and submissions of prior art and comments on those patents. Subscriptions will deliver information via email, RSS, and these can be accessed online or via mobile telephones. Subscriptions can be customized based on areas of interest.

Invite-An-Expert: Subscribers can invite others to subscribe, facilitating those in-the-know to identify other experts.

Searching: The system allows searching for relevant prior art examples and provides a federated search to external prior art databases.

Tagging: Community can tag applications with keywords to render them more searchable.

Manageable Participation: Online participation will take place over a 4-month window of time to make participation both manageable and relevant to actual decision-making.

Education: Online tutorials (video, audio and text) explain how to participate effectively.

Claim Ranking Tools: Community ranks claims by relevance in order to guide itself to the claims for which prior art should be sought.

No Rule Changes Required: The P2Patent software is designed to make patent examination better informed and more effective. Applicants will consent to participate; no statutory or regulatory amendments are required for the pilot.

Anonymity/Accountability: P2Patent system enables open collaboration while using security protections to prevent abuses. Maintaining an open peer review system lets anyone who knows and has prior art submit it.

Labeling and Annotation: Prior art submissions are clearly labeled, annotated and commented in order to explain their relevance to the patent and its claims.

Commentary: Patent applicants consent for the USPTO to receive comments on prior art submissions, avoiding the need to change current rules while making information in the system more useful.

Prior Art Library: All submitted prior art is published to the website to avoid duplication of submissions. Peer reviewers can maintain personal prior art libraries.

Targeted Information: Peer reviewers rank the prior art for relevance so that examiner has a manageable, targeted, ordered list.

Ranking: P2Patent provides rating and ranking tools to make participation manageable. There are tools to rank the claims of a patent application in order to focus community attention where it is most needed. It provides a mechanism to rank submitted prior art in order to create manageable output for the patent examiner as well as participant rating to encourage useful contributions.

Objective Rating: Peer reviewers receive positive ratings when the patent examiner cites their prior art and commentary in his patent determination.

Automated Reports: Examiner receives rank-ordered list of prior art at the end of the community patent review. This automated search report reflects the wisdom of the community.

Building a Knowledge and Learning Environment: Prior art submissions added to database to increase USPTO knowledge-base.

Organization and Participants

Community Patent Review is an initiative of the Institute for Information Law & Policy at New York Law School in collaboration with the United States Patent and Trademark Office. The principal investigator is Prof. Beth Simone Noveck. The Technical Project Leader is Mr. Eric Hestenes. The project is run by the Steering Committee, comprising leading patent professionals from companies participating in the pilot, and a Project Advisory Board, comprising independent academics, activists, scientists, journalists and representatives of diverse intellectual property interests.

Consultative Workshops: Beginning in January 2006, CPR began running consultative workshops to solicit the expertise of a wide range of experts to develop the project. These included such diverse participants from “*Cmdr Taco*,” Founder of Slashdot, *Brian Behlendorf*, co-founder of Apache and *Colin Rule*, Head of Dispute Resolution for EBay to *Doug Luftman* and *Joe Fitzgerald*, Chief Patent Counsel for Palm and Symantec, respectively. In addition to the workshop at New York Law School, workshops were hosted by:

Harvard:

William (Terry) Fisher, Hale and Dorr Professor of Intellectual Property Law at Harvard Law School

John Palfrey, Clinical Professor of Law and Executive Director of the Berkman Center for Internet & Society at at Harvard Law School

Michigan:

Paul Resnick, Professor of Information, Univ. of Michigan

Stanford:

Community Patent Review

Mark Lemley, William H. Neukom. Prof of Law, Stanford University
Lauren Gelman, Associate Dir., Stanford Center for Internet & Society
David Olson, Fellow

New York Law School:

Beth Noveck, Assoc. Prof. & Director, Institute for Information Law & Policy

Rudolph J.R. Peritz, Professor of Law, New York Law School

London:

The Institute for Public Policy Research, London

Yale:

Jack Balkin, Knight Prof of Constitutional Law, Yale Law School

Eddan Katz, Exec. Director, Information Society Project, Yale Law School

Presentations: Presentations of the project provided another opportunity for feedback and collaboration. These have included: Stanford Accelerating Change, Harvard Law School, University of Michigan School of Information, New York Law School, Omidyar Network, United States Patent and Trademark Office, European Patent Office, SuperNova, Berkeley Intellectual Property Scholars Conference, Dominican University, Intellectual Property Organization, Licensing Executives Society, Association of Intellectual Property Attorneys, Yale Law School.

There is an active project listserv with 85+ participants. We expect to launch a second listserv for those interested in technical development on September 10, 2006.

Project Governance

Community Patent Review has a two-tier governance structure comprising a Steering Committee, made up of lead patent counsel for major technology patent holders participating in the pilot, and an Advisory Board, comprising independent voices representing a wide range of patent stakeholders and the public interest.

All CPR project documents and deliberations are open and transparent and will be made available on the World Wide Web for public comment and participation.

Steering Committee

The Steering Committee sets strategic direction for the Community Patent Review project. Its members comprise the board responsible for overseeing development of the p2patent software and the rollout of the open

“High-quality patents increase certainty around intellectual property rights, reducing contention and freeing resources to focus on innovation. Our work with Professor Noveck and the USPTO strives to increase patent quality by bringing to bear the entire community of technology experts to help bring the most relevant information to the attention of the patent office for its use in evaluating applications.”

--David Kappos, Vice President, Intellectual Property Law, IBM.

examination pilot. Because these are among the nation’s top patent lawyers with extensive experience with and investment in the patent process, they are in the best position to understand how the patent system currently works and how it might be improved. Steering Committee members represent those companies who are Lead Sponsors of the Community Patent Review initiative, having committed to have their own patents put through open examination and to support financially the building of the project.

Industry Steering Committee:

Adam Avrunin, Red Hat

Todd Dickinson, GE (former Under Secretary of Commerce for
Intellectual Property and Director, USPTO)

Kaz Kazenske, Microsoft (former Deputy Commissioner, USPTO)

Steve Klocinski, CA

Curt Rose, HP

Jim Saliba, CA

Manny Schechter, IBM

Additional companies have expressed their interest and will be added to the roster during the course of September 2006.

Advisory Board

The Advisory Board comprises independent voices representing a wide range of patent stakeholders and the public interest. It includes leading academics, members of the United States and European Patent Offices, foundation and association representatives, intellectual property activists and patent lawyers. Members are invited, in part, based on their enthusiastic willingness to criticize as well as to support the project. The role of the Advisory Board is to provide input on the design and rollout of the project, to advise on the design of project metrics and evaluation and to oversee the running of the pilot, including the selection of patents to be examined.

Advisory Board members are:

Tilo Bachmann

Administrator, European Patent Office

Robert Barr

Executive Director, Berkeley Center for Law and Technology, Berkeley Law School
Former Vice President for Intellectual Property and Worldwide Patent Counsel, Cisco

Community Patent Review

John Bracken

Program Officer, MacArthur Foundation

Dennis Crouch

Patently-O

Visiting Assistant, Professor Boston University Law School

Associate, McDonnell Boehnen Hulbert & Berghoff LLP

John Duffy

Professor of Law, George Washington University Law School

Will Fitzpatrick

Corporate Counsel, Omidyar Network

Alan Kasper

Vice President of the Board of Directors, American Intellectual Property Law Association

Partner, Sughrue Mion, PLLC

Stephen Kunin

Special Counsel, Oblon Spivak

Former Deputy Commissioner for Patent Examination Policy, USPTO

Mark Lemley

Director, Stanford Program in Law, Science and Technology

William H. Neukom Professor of Law, Stanford Law School

Stephen Merrill

National Academies

Mike Messinger

Director, Sterne, Kessler Goldstein, & Fox P.L.L.C.

Marcus Mueller

European Patent Office, EPO Scenarios for the Future Project

Gideon Parchomovsky

Professor of Law, University of Pennsylvania Law School

Arti Rai

Professor of Law, Duke University Law School

Steven Weiner

Partner, Davis Polk & Wardwell

Terry Winograd

Professor of Computer Science, Stanford University

Maintaining Independence and Legitimacy

We have taken numerous steps ensure the incorruptibility and independence of the project. First, New York Law School has lent its credibility and longstanding reputation in the legal community (we were founded in 1891) and financial support to the endeavor. New York Law School is a neutral convening force and organized workshops with Harvard, Yale, Stanford, the Institute for Public Policy Research and forthcoming workshops in Washington and Europe to inform the project. Second, we are setting up an Advisory Board in order to bring more of those neutral voices from academia, from the foundation world, from the media together. Third, we are presenting the project to the membership of all the major IP-related organizations, including the American Intellectual Property Law Association, the Intellectual Property Owners and the Licensing Executives Society at their annual meetings. We are inviting representatives from each of these institutions and from the Association of University Technology Transfer Attorneys to participate in the Advisory Group as well. Fourth, the entire project will be open: the software will be open source as the project will be open to community participation as well as enabling greater openness in governance. We plan to maintain a “glass pipeline,” full transparency about all our efforts in order to ensure maximum legitimacy and accountability as well as to benefit from the input of a wider array of stakeholders.

Scope of the Phase I Pilot

Under the current plan, which is subject to revision in consultation with the Steering Committee, Advisory Board and the United States Patent and Trademark Office, the plan is to launch a one-year pilot of Community Patent Review and to follow up with an extensive evaluation and analysis of the experiment over the course of 2007-8. The Pilot will include 250-400 patents in software and technology arena. The patents will be spread across several companies, including large and small, public and private in order to have a sufficiently diverse pool from which to generate empirical data. The reason for focusing on computer related inventions is that this department of the Patent Office (known as a “technology center”) faces the most significant backlog (an average of over 4 years). It is one of the areas of innovation where the Patent Office lacks access

to adequate prior art resources and there is a ready and willing software community with a strong spirit of voluntarism. There is discussion of expanding the initial pilot to include semi-conductor patents and, subsequently, other areas of innovation. The p2psystem will be designed to handle an expanded pilot with more patents across a broader range of inventions.

Companies Participating in the Pilot (as of September 1, 2006):

The following companies have agreed to allow some of their patents to be examined with open peer review. Additional participants are being sought:

CA
GE
HP
IBM
Intel
International Characters
Microsoft
Oracle
Out of the Box Computing
Red Hat

Pilot Timeline

Phase I:

July 2005	Idea for open patent peer review conceived, blogged and featured by Wired.news.
Sept 2005	First presentation of patent peer review at Accelerating Change Conference, Stanford University.

Community Patent Review

Dec 2005	Project first proposed to USPTO; IBM sponsors project design workshops and consents to have its own patents peer reviewed.
Jan - May 2006	Consultative workshops launched.
May 2006	USPTO holds public briefing on Community Patent Review and agrees to pilot.
July 2006	Participating companies sign on to have patents peer reviewed; Eric Hestenes joins as Technical Project Leader
Aug 2006	Fortune Magazine article; USPTO Strategic Initiative 2007-2012 announced with patent peer review; Steering Committee convened; Omidyar Network awards seed grant.
September 2006	Public launch of design process; Slashdot interview about project; public solicitation of participating companies; advisory board convened.
Oct 2006-Jan 2007	p2patent system engineered and built.
Fall 2006	Outreach campaign to science and engineering and law schools to foster participation.
October 2006	Metrics and Evaluation Subcommittee convenes.
Jan 2007	p2patent system tested and soft launched on published patents.
April 2007	Community Patent Review launches.
April 2007-Mar 2008	Community Patent review Pilot on 250-400 patents.
July 2007	Interim Pilot Project Update and Report
Summer 2007	Possible foreign pilot launches.
April 2008	Final Pilot Update and Report; Peer participation prize awarded.
Apr 2007 - Apr 2008	Metrics and Evaluation of US pilot.

Key Metrics

In order to evaluate the success of the Community Patent Review pilot and prepare to expand its scope to other areas of patentable subject matter, we will establish a Metrics Sub-Committee with members of the Steering Committee, Advisory Board and

outside experts during Fall 2006. We hope to fund a fellowship to hire a graduate student to assemble data for evaluation. Among the measures of success, we anticipate such criteria as the following:

- A. Number of inventors/applicants to participate in the pilot
- B. Number of visitors to the site
- C. The rate of community member signups
- D. Percent of members that become reviewers or quantity of reviewers
- E. Attrition rate for reviewers
- F. Success rate for reviewers
- G. Size of reviewer pool by category and subcategory
- H. Demographics of reviewer pool
- I. Comparison to third-party websites that collect prior art (e.g. does being connected to USPTO make a difference and how?)
- J. The utility of prior art examples provided to patent examiners.
- K. The number of claims amended as a result of CPR process
- L. The number of applications rejected as a result of CPR process
- M. Measures of equity in participation
- N. Examiner time expended on an open-reviewed application
- O. The number of pieces of Community Patent Review prior art cited on the file wrapper
- P. Measures of inventor, examiner, peer review and visitor satisfaction with the system
- Q. System availability
- R. Usage of online education resources

Project Roll-Out: Beyond the Pilot

Community Patent Review and the USPTO's willingness to participate in this important trial of open and consultative government represent a unique opportunity to tie public input and feedback to actual government decision-making and to test its viability. The lessons we learn here are applicable to all forms of agency policymaking

at every level of government. Hence we are designing the technology for scalability and extensibility as we want to invest now in a technical architecture that can be adapted for broad, global adoption. We anticipate expanding beyond the first pilot with additional patent pilots in other areas of patenting and innovation. We want to run a pilot at the European Patent Office and, if possible with other national patent offices. We plan to lay the groundwork and invest in the infrastructure to experiment with open peer review in other areas of administrative policymaking and to set the standards to drive development of effective consultation sites by third parties.

Project Phasing and Iteration Plans

This expanded scope of work will require additional staff to develop and maintain the technology and to run and manage these public-participation-in-decision-making projects. The technology will need to continue to evolve to support additional projects. Time will need to be invested with governmental decision-makers to enable the implementation of these projects and develop on-the-ground experience with these new practices of open policymaking.

We anticipate the rollout to come in 4 phases:

Phase 1: Launch. To demonstrate the viability of the model, we run Community Patent Review for one category of patent art (Technology Center 2100). The Steering Committee and Advisory Board govern the project. We build and deploy the first working version of the code with an associated workflow process. During this phase, we have an open development with a “glass exterior.” In other words, we maintain complete transparency while deploying a working version by spring 2007. The full community governance model will be in place by the end of the phase.

At the same time, we need to prepare to build on this success through the next phases of growth to account for an expanded pilot for other types of patents, with different patent offices and then with other areas of policymaking.

Phase 2: Scale Up. The core development would still be closely managed, but we would begin adding a wider circle of participants to the team and an increased number of patents to the pilot. For example, scope would be increased to include semiconductor patents and other categories of patent applications. The role of phase 2 is to establish the long-term operational architecture that will be the basis for expansion to all USPTO classification areas. We will prototype all relevant standards in a community-based environment, and we expect community members to carry part of the project load. This phase will be characterized by development of fully functional examples of proposed standards and specifications governing data interchange between participating entities, including commercial patent service companies wanting to integrate their data flow into Community Patent Review.

Phase 3: Transition. This phase represents migration to a standards-based implementation in a wider ecology. In this mode, we would fully transfer responsibility for the core system to the community-based entity and/or USPTO. Also in this phase we would expect introduction of a third party component marketplace for supporting this solution. For example, if we have specifications for prior art database developed in phase 2, phase 3 could involve establishing an entity for certification of solutions created by third parties.

Phase 4. Forking. This phase, which can begin after phase 1 or phase 2, consists of creating a new project thread for a new legal environment or community, such as a European Patent Office pilot or open review for environmental or transportation policymaking. Fundamentally, this phase represents iteration on the first three phases.

In Phase 1, the Community Patent Review project team will run the pilot, evaluate its success and use that experience to prepare to scale up to the next phase. We will conduct outreach activities to inform the scientific community about the pilot and encourage participation. We also would lay the groundwork to launch an open development community.

Community Patent Review

In Phase 2, our role shifts to assuring that the solution is robust and scalable, and facilitating a shift to more substantial community engagement, both in terms of technology and in terms of evangelizing for participation. Steering groups will assume additional project execution responsibility.

We expect to define the standards by which data from commercial prior art services is utilized. Also, we expect multiple rating systems to emerge as well.

In Phase 3, the role of the Community Patent Review project is to create a sustainable solution with enough support to enable new pilots and projects to be launched while, at the same time, expanding governance to a wider community.

In Phase 4, we will build off the existing infrastructure to launch additional citizen and expert consultation projects. Our role, once again, will be that of independent convenor, working with governmental authorities to implement an open governance process and adapt their decision-making processes to open review.