

A Survey of the Peer to Patent Pilot Project

With the Peer to Patent project set to begin a third pilot period in October and to expand in scope,¹ the time is right to review the status of this program and to introduce our clients and readers to the Peer to Patent process, its history and its future, and its advantages, and to encourage others to get involved with this promising project. During our research for this article, we interviewed many of the people that were involved in getting the project off the ground in mid-2007,² and many of the people that guided the project through its second pilot period from 2008-2009.³ Included within this elite set of patent professionals is Manny Schecter, Chief Patent Counsel at IBM,⁴ Curt Rose, Director of Patents at Hewlett-Packard,⁵ Scott Asmus, Patent Counsel at General Electric,⁶ Matt Rainey, Vice President and Patent Counsel at Intellectual Ventures,⁷ Adam Avrunin, Chief Patent Counsel at Red Hat,⁸ and Mark Webbink, ex-Senior Vice President and Deputy General Counsel at Red Hat and now Executive Director at the Center for Patent Innovations at New York Law School (NYLS).⁹ We hope you find this information useful and enlightening, and hope it convinces at least some to get involved with the project, and, as Thomas Jefferson put it, help “contribute[e] to a public good.”¹⁰

Background and Current Status of the Peer to Patent Project

There has been an enormous amount of debate over the last several years about a perceived decrease in the quality of patents issuing from the U.S. Patent & Trademark Office (USPTO), and consequently whether or not the agency is fulfilling its mandate under the Constitution of promoting the progress of science and the useful arts.¹¹ Currently, the USPTO is struggling to deal with an overwhelming backlog of over 1.2 million pending patent applications.¹² For the patents the USPTO does issue, there is a perceived decrease in quality caused, at least in part, by the number of undeservedly broad claims and by the number of findings of invalidity during patent reexamination and litigation. In patent cases that went to trial in 2009, nearly half of the challenges to patent validity, approximately 43%, were successful¹³ and over half of the validity challenges based on obviousness grounds were successful.¹⁴ The expense of litigating suspect patents, according to IBM’s Manny Schecter, “drains our economy of at least hundreds of millions of dollars per year.”¹⁵ USPTO Director David Kappos has also recently commented on how the growing patent backlog stifles job growth and the development of new businesses and products.¹⁶ Any effort to examine more applications and trim the backlog, however, needs to be balanced with initiatives to ensure the issuance of higher-quality patents.

The Peer to Patent program was developed to address both of these seemingly countervailing problems, by improving both the quality and efficiency of patent examination by sourcing the shared knowledge of the global technical community,¹⁷ or “crowdsourcing.”¹⁸ Specifically, the Peer to Patent program’s aim is to involve third party experts residing outside of the USPTO in the search for, and submission of, prior art references.

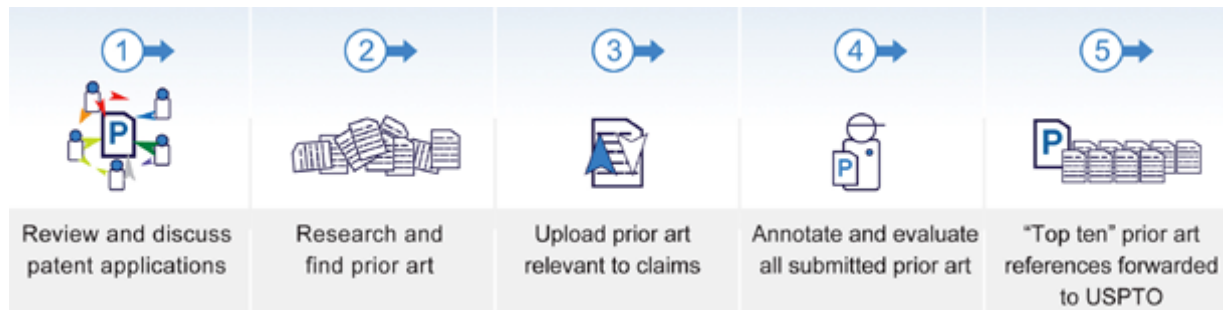
Examiners at the USPTO typically have around 20 hours to examine patent applications.¹⁹ In this limited time the examiners must digest the new material in the application, research the prior art, and draft an office action on the merits of the application. This short time frame makes

it difficult to perform a thorough search for relevant prior art. Examiners are further constrained in that their research, for reasons outside the scope of this paper, is generally limited to internal databases that focus primarily on patents and patent applications, at the expense of non-patent literature (NPL). Furthermore, and as noted by Mark Webbink, even NPL literature that examiners do somehow find and cite is not indexed, subjected to optical character recognition (OCR'd), or tagged in any meaningful way so as to allow future searchers or other examiners to find the previously-located NPL art.²⁰ Additionally, for new technologies, such as software and business methods, there is not a significant amount of patent prior art in the internal databases, and as a result, the resources that the examiner can rely upon to reject an improperly broad claim are sparse, even if the claim is drawn to something well-known in the industry.

The Peer to Patent project was set up to address this lack of prior art resources by using the Internet and social networking tools to provide those in the relevant technical community an opportunity to examine the application and offer not only what they think is relevant prior art, but also their commentary on how the relevant art could be applied to the claims, what elements of the claims are known in the art, and what elements of the claims are potentially new, all before the USPTO examiner even begins reviewing the application.²¹ This allows the public to recommend NPL such as articles, conference presentations, web pages, products sold in the marketplace, newsgroup (e.g. Usenet) postings, or even publicly available or open source software code that the examiner would likely be unable to find in his or her own limited search.²²

Although many solely attribute Beth Noveck of New York Law School with developing the Peer to Patent project, the project actually originated as a close collaboration between Noveck, IBM, and the USPTO, directed to improving the quality of examination of software patents filed with the USPTO.²³ Schechter²⁴ drove the corporate involvement and sponsorship for the project. Corporate involvement was critical in the early stages of the Peer to Patent project as the project was entirely funded by corporate sponsorship and foundation grants during the first two pilot periods from 2007-2009.²⁵ Noveck provided leadership for the project and also provided law students to help in their spare time,²⁶ and USPTO Technology Center Director Jack Harvey offered up his technology center (2100 - Computer Architecture, Software, & Information Security) and his time for the project.²⁷ Schechter stated that one reason Technology Center 2100 was chosen was because the open source software community is more skeptical about patents than are inventors in other technology areas, and thus the Peer to Patent project provided the open source community with an opportunity to get involved and do something about the perceived lack of patent quality in the software arts.²⁸ Additionally, Schechter stated that the open source community was already quite familiar with using collaborative online tools, and thus were a natural starting point for a project that relied heavily on collaborative tools.²⁹

At the time of that initial collaboration between Noveck, IBM, and the USPTO, and as it remains today, the only avenue for a third party to submit art against a pending United States Patent Application (outside of the Peer to Patent project) was to comply with the rules set forth in 37 C.F.R. § 1.99 governing third-party submissions.



In short, § 1.99 requires that a third-party submitter wishing to submit art to the USPTO include “(1) the fee set forth in § 1.17(p),³⁰ (2) a list of the patents or publications submitted for consideration by the Office, including the date of publication of each patent or publication, (3) a copy of each listed patent or publication in written form or at least the pertinent portions, and (4) an English language translation of all the necessary and pertinent parts of any non-English language patent or publication in written form relied upon.”³¹ Furthermore, the submission must be “served upon the applicant in accordance with § 1.248,” “shall not include any explanation of the patents or publications, or any other information,” and must be filed “within two months from the date of publication of the application (§ 1.215(a)) or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier.”³² A submission that “does not comply with the requirements of this section will not be entered.”³³

As an alternative to the burdensome requirements of 37 C.F.R. § 1.99, the Peer to Patent project, launched in 2007, provided a platform by which any member of the public could submit relevant art along with commentary and analysis, free of charge, and without serving the applicant as required by the § 1.99. After the June 15, 2007 launch date, the project actively began soliciting public participation in the project.³⁴ During the first and second pilot programs, only applications falling within Technology Centers 2100 (Computer Architecture, Software, & Information Security) and 3600 (Business Methods) could participate in the program.³⁵ During the third pilot period, starting in October 2010, the program is expected to start accepting applications in the telecommunications, bioinformatics, and biotechnology fields.³⁶

Applicants volunteering to participate in the program must file a consent form with the USPTO, after which their application is published on the Peer to Patent website for four months.³⁷ As an incentive for applicants to participate in the Peer to Patent program, applications submitted to the program are allowed to jump to the front of the USPTO queue.³⁸ Advantageously, this can be done without meeting the requirements for expediting prosecution of applications under 37 C.F.R. § 1.102,³⁹ and without conducting a pre-examination search or providing an accelerated examination support document, as required by the Accelerated Examination program.⁴⁰ While Schecter stated that the “make special” designation was not a factor in IBM’s decision to participate in the project, he indicated his belief that universities, startups, and small inventors would find this incentive particularly attractive.⁴¹ Scott Asmus of GE, on the other hand, stated that he felt the current 2-3 year cycle to a first office action was a serious hindrance, and jumping to the front of the queue was a great way to speed up the prosecution of important cases.⁴² As noted by Webbink, the ability to jump to the front of the queue is expected to be retained in the third pilot period.⁴³

The figure above⁴⁴ illustrates the general process that an application goes through in the Peer to Patent project after publication on the Peer to Patent website. First, registered peer reviewers review and discuss the disclosure and claims of the submitted application. Second, the reviewers can research and find prior art on their own, including art they may already have on hand. Third, the reviewers can upload art they believe may be relevant to the pending claims. Fourth, the reviewers can annotate the claims relative to the uploaded prior art, rank the quality of their own uploaded art relative to the claims, and rank the quality of art uploaded by others. Fifth and finally, the top ten rated prior art references are forwarded to the USPTO in an IDS drafted and submitted by the Peer to Patent program itself.⁴⁵

The Peer to Patent platform utilizes several features borrowed from social networking architectures to solicit third party experts to find, submit, and rate prior art references during the review period. While any interested party is capable of signing up and reviewing applications, each individual can also share any application with his or her colleagues by entering one or more email addresses into a form provided on the website.⁴⁶ Reviewers can also “tag” applications with relevant claim terms (that perhaps are relevant or related to the application, but may not exist in the drafter’s technical description of the invention) in order to improve future reviewers’ ability to find relevant documents and to provide alternative key words for other reviewers (and perhaps the examiner) to use when conducting future searches.⁴⁷ Once a piece of prior art is uploaded, all other users can rank the submission for relevance and quality.⁴⁸ This method of “crowdsourcing” ensures that the submitted prior art is appropriate by relying on the collective intelligence and experience of a plurality of interested parties having expertise in the particular technology field, mitigating the effects of improper submissions resulting from those who do not understand the scope of the application’s claims or the scope of the submitted prior art.

Importantly, reviewers can also describe *why* they feel a particular prior art reference is relevant to the application, by marking up the reference and/or the claims of the application. This method of mark-up ensures that the examiner spends his or her time on the most relevant portions of the submitted prior art, and does not waste his or her time on those portions of the claims shown to disclose no useful advance in the art.

All of these above-noted features stand in stark contrast to the current statutory basis for third-party art submissions, in which parties are allocated a small window in which to submit art, are required to pay a fee, and cannot provide any annotations regarding the claims or the prior art, thus forcing the examiner to spend additional time reviewing the reference and comparing it to the pending claims of the application.⁴⁹

The second pilot program ended in July 2009, and the USPTO has since been in a review period during which the agency’s newly appointed chief economist is analyzing groups of applications to gain insight into the effects of the third-party contributions of prior art references and commentary.⁵⁰ Preliminary results, however, indicate some clear benefits of Peer to Patent.

Most importantly, the third-party reviewers were able to assist the examiners by providing relevant art and, presumably, ensuring that a higher quality patent would result from the

examination process. Near the end of the two-year pilot program, sixty-six applications that had undergone Peer to Patent review had received their first office action.⁵¹ Of these office actions, nearly 30% included a rejection that used prior art submitted and reviewed by the Peer to Patent reviewers as a primary reference for the rejections.⁵² These numbers show a noteworthy contribution to the examination process and the quality of the reviewed prior art. The Peer to Patent reviewers made especially salient contributions when submitting NPL. About 36% of the art submitted by Peer to Patent reviewers was NPL, and over 60% of the reviewer-submitted prior art that was cited by examiners was NPL.⁵³ As noted by Curt Rose of HP, examiners can use the NPL provided by reviewers itself as the basis for a future rejection, or as a springboard to new NPL, perhaps via citations in the submitted NPL or via the discovery of new and/or related search terms from the NPL.⁵⁴ Schechter, Rose, and Asmus each indicated that applications they submitted to the Peer to Patent website received one or more office actions in which the examiner relied upon art cited from the Peer to Patent project as a primary reference.⁵⁵ This data illustrates that peer reviewers can contribute to both the quality and efficiency of the patent examination process.

The Future of Peer to Patent

As mentioned above, the Peer to Patent project will continue in the U.S. with a third pilot program starting in October 2010 and continuing into 2011.⁵⁶ Schechter, Rose, and Asmus, based on their positive experiences in the first and second pilots, have already indicated that they will continue to participate in the third pilot by submitting additional applications for their respective organizations.⁵⁷ During the third pilot program, the USPTO has indicated that they will, for the first time, begin providing a significant portion of the operating expenses for the project.⁵⁸

Similar projects are being considered in Australia and Japan after successful pilot projects in these countries.⁵⁹ The UK continues to be interested in starting its own version of the Peer to Patent project as soon as financial resources become available.⁶⁰

Webbink, meanwhile, has stated that work has recently been completed on reconfiguring the Peer to Patent website to support multiple platforms.⁶¹ This multi-platform capability will allow the Peer to Patent website to be viewed in various jurisdictions across the globe in a user's native language, and will allow a user in a particular jurisdiction to limit application search results to that jurisdiction, or to expand the scope of any search across multiple jurisdictions.⁶² Assuming that related- application information is loaded into the Peer to Patent platform, this capability should provide for additional "work-sharing" opportunities across multiple patent-granting jurisdictions. For example, art submitted by a scientist at IBM against a U.S. application could be used by the U.S. examiner during prosecution in the U.S. and also shared with a corresponding European examiner at the European Patent Office reviewing a European counterpart application to the U.S. application. The localization capability should also help extend what Rose describes as an "interesting result" of non-U.S.-based scientists submitting art against pending U.S. applications in the U.S. Peer to Patent system (and non-AU-based scientists submitting art against pending AU applications in the AU Peer to Patent System) despite the limited geographic reach of any issuing U.S. or AU patent.⁶³

Taking a longer view, Schecter, Rose, Asmus, Webbink, and Adam Avrunin of Red Hat all indicated a desire to eventually extend the Peer to Patent system into an international platform that every patent-granting entity can hook into, and that would become an integral part of the PCT patent application process, open to third-party prior-art submitters from around the globe.⁶⁴

Room to Grow – Additional Features for Peer to Patent

Most people involved in the Peer to Patent project have viewed it, thus far, as a success. As with any project, however, there are a number of ways in which it can be further improved. For example, scaling the system up to accepting hundreds, if not thousands, of applications raises a problem of how to efficiently locate applications that are of importance to a particular organization or researcher. While the Peer to Patent project already provides a search capability, a “save search” capability would be useful, and could help in scaling up the project to a larger number of applications. For example, a researcher or organization particularly interested in patents related to magnetoresistive non-volatile random access memories could set up a “saved search,” that would send a notice to the respective researcher or organization every time an application is submitted to the Peer to Patent project that matches these key words. In response to receiving the notice, the researcher or organization could review the application to see if it is related to, or of interest with respect to, the technology with which the researcher or organization is involved.

Additionally, increasing the number of annotations provided by reviewers that link each element in the submitted art to each claim element of the application could be useful. The Peer to Patent system already permits reviewers to annotate claims respective to submitted prior art, but doesn't currently require it. In fact, in surveying examiners involved in reviewing applications that were subjected to Peer to Patent review, Webbink stated that the examiners appreciated any annotations provided by submitters, and found them extremely valuable and useful in reviewing the art submitted and in conducting their own additional searches.⁶⁵ In light of this, Matt Rainey of Intellectual Ventures has suggested taking the project one step further by requiring prior art submitters to map a passage and/or figure in the submitted art to each claim element in the application in order to demonstrate specifically how the references anticipate or make the claims obvious before the submission is accepted by the Peer to Patent system, which would ensure that every examiner is similarly aided with these useful claim annotations.⁶⁶ Doing so would provide improved information and utility to the examiner while at the same time minimizing the potential for bad faith “dumping” of prior art on pending patent applications submitted for peer review.⁶⁷

Ideas for increasing expert participation in the project include providing small monetary remuneration to reviewers, increasing marketing to and/or solicitation of expert reviewers, soliciting law firm involvement in the project, and taking the project out of its self-imposed pilot status.

Providing additional incentives to reviewers may be one way to increase participation. Schecter, Asmus, and Rose all stated that it was sometimes difficult to get their organization's engineers and scientists to spend time reviewing and submitting art for the project in their spare time.⁶⁸

Schecter stated that he would entertain any idea for increasing participation in the project and improving patent examination in the process, including providing additional incentives (although not necessarily monetary incentives).⁶⁹ For example, IBM already provides some nonmonetary incentives for its scientists, such as featuring successful prior art submissions on its internal website.⁷⁰

Providing monetary incentives, though, may be one way to tilt the equation in favor of the project and get scientists and engineers that are already quite busy with their day jobs, and life outside of work, to become more involved in the project. If the patent community is truly interested in patent quality, perhaps now is the time for the community to put its money where its collective mouth is, and provide a financial incentive for those that are in the best position to have access to the most material and most relevant art, and to provide them a persuasive incentive to involve themselves in the patent granting process.

Rose isn't so sure that providing financial remuneration is a good idea, and in any case, doesn't believe that tangible awards are necessary.⁷¹ Rose pointed to the amount of content already on the Internet that was generated without any tangible award; he believes that adding a tangible remuneration to the process would only complicate matters.⁷²

On the topic of increasing participation, both Schecter and Asmus lamented the lack of law firm participation in the project, either via submission of applications to the project or via prior art submissions against pending applications. Both stated that law firm participation is one area where they would like to see improvement in the third pilot. Although Asmus recognized the difficulty in getting traditionally conservative engineers and attorneys to adapt to the changes in the prosecution process required by the Peer to Patent project, he argued that we are all harmed by a weak patent system, and that it is our duty make the United States patent system the best that we can, and thus he encouraged outside counsel to participate in the project.⁷³ To the extent that law firms avoid participation in the project for fears of imparting any willfulness charges against their client, the Peer to Patent steering committee published a memorandum regarding willfulness on their website.⁷⁴ The memorandum concludes that a peer-reviewer is unlikely to be held liable for willful infringement merely by participating in the Peer to Patent project.⁷⁵

Asmus also noted that the mere designation of the Peer to Patent project as a pilot program may be harming the level of participation.⁷⁶ The USPTO, by picking up a portion of the cost of the Peer to Patent pilot during the forthcoming third pilot period, has taken an important first step in exiting pilot status, and may be indicating that it is nearing a point at which it will integrate the peer review program as a standard (although perhaps voluntary) application process for one or more technology centers, such as software. Asmus believes that once the project exits pilot status, and patent software vendors such as Computer Packages, Inc. integrate the administrative details of the project into their products, participation in the project will increase.⁷⁷ Asmus compared the beginnings of the Peer to Patent project to the beginnings of the electronic filing system (EFS) at the USPTO.⁷⁸ Although the thought of not using EFS now seems a distant memory to most practicing patent attorneys, the adoption rate at the time the EFS was first introduced was quite low. There is no reason to believe that the Peer to Patent system won't go through a similar growth expansion once it exits pilot status.

Another useful feature that could be added is a synonym database of related technical terms. As noted earlier, the Peer to Patent project website already allows users to “tag” applications with relevant technical terms or synonyms relative to terms used in the application, in order to improve the ability to conduct better searches on the technology and improve the ability to find the application being tagged in a future search. However, this process is not automatic and relies upon manual human review.⁷⁹ Rainey has pushed for the inclusion of a database of related technical terms (e.g., a “technology thesaurus”) that automatically tags an application with related terms.⁸⁰ Such a database would allow for particular applications drafted by, for example, a non-technical attorney (or perhaps using alternative and/or non-standard language) to show up in searches for a particular technology for which the applications would not otherwise appear. For example, an application directed to an “emissive display” may be automatically tagged with the terms “plasma,” “SED,” “LED,” “polymeric,” and/or “electroluminescence.” In this way, even though the application never uses the term “plasma,” a search by a scientist for the term “plasma” may turn up the application within its search results whereas, without the automatic tagging, it would not have. Reviewers would then still have the ability to manually add or subtract tags, or to edit the automatically added tags, when reviewing the application in more detail.

This tagging process would be particularly beneficial for international or foreign patent applications filed in the U.S. after translation from a non-English language. The descriptions of the technology in these applications are likely to use terms substantially different than those in general use in the U.S. and other English-speaking nations. Automatic tagging of those applications with alternate word-forms could substantially increase the reviewers’ ability to find the application and to search for relevant prior art. Furthermore, if the tags are retained in the electronic file history of the patent, the tags could help to increase the pool of available prior art for future applications and for future searches by third parties and by examiners.

Additionally, and especially relevant to classes of patents such as software and business methods where prior art is not as well documented, the Peer to Patent system should provide customized links to allow a reviewer to submit what he or she views as an important patent to popular technical community websites such as (at least in the software realm) acm.org and slashdot.org. These types of technical community websites have shown a particular acumen for finding relevant and material prior art for software patents.⁸¹ Additional community based websites could be identified for business methods, biotechnology, telecommunications, and other classes of patents, and an appropriate list of links provided based on the detected or tagged underlying technology in the application. In this manner, if a reviewer identifies a particularly important or broad patent application on Peer to Patent, the reviewer could submit the application for enhanced review by a larger pool of experts via the linked technical community websites. Additionally, if a particular patent application bridges two or more technologies, an expert in one of the technologies who is reviewing the application could request the involvement of experts in the other technologies to aid in the identification of prior art or common knowledge. via the linked technical community websites. Additionally, if a particular patent application bridges two or more technologies, an expert in one of the technologies who is reviewing the application could request the involvement of experts in the other technologies to aid in the identification of prior art or common knowledge.

Finally, the Peer to Patent project could be expanded beyond initial examination. More specifically, and in order to continue the work of preventing the assertion of improper patents, the Peer to Patent system could be expanded into the realm of post-issuance review and re-examination. While this has been somewhat implemented via the NYLS's post-issue.org website,⁸² post-issue.org does not post all issued patents and does not allow third-party reviewers to submit prior art against any issued patent. Rather, the website currently requires reviewers to "request" that a particular issued patent be added to the website, and after which time third-party users are allowed to submit art against it.

The Peer to Patent project would be more useful if, after an application issues as a patent, the webpage for that application was updated to show the issued claims and the prosecution history and allowed posting of prior art on that now-issued patent. Any member of the public should then be allowed to submit prior art under the same terms as during the Peer to Patent examination process. Under this proposal, however, no action is taken, and no submitted prior art is officially considered, until the patent is litigated or a re-examination ordered. In the case of re-examination, the law could be further changed to require that the examiner review not only art submitted in a traditional re-examination request under 37 C.F.R. § 1.501, but also any citations made on the corresponding post-issuance Peer to Patent website. Of course, the same submission rules as before could be applied, such that if more than 10 references have been posted, only the top 10 are forwarded to the examiner during re-examination.

Providing for such a post-issuance continuous review process would further advance the goals of the Peer to Patent project. That is, it would improve the public's perception of patent quality, reduce the tax on the public caused by non-inventive patents, and reduce litigation costs. Even if no litigation or re-examination is initiated, if material prior art is already posted on a particular patent's Peer to Patent webpage, the patent owner may be more cautious in asserting the patent.

Some of these changes will require a change in the law. However, as Congress is currently interested in reviewing the patent process and is considering instituting various forms of post-grant review, now may be the best time to achieve such changes. These changes to post-examination review arguably solve many of the problems that Congress is looking to address, without substantially limiting the rights of inventors under the Constitution, and without substantially impeding the strong knowledge-based economy that has developed in the United States.

Conclusion

As the Peer to Patent project begins its third pilot period, it enjoys a limited record of success in the software and business method classes, during which it has been shown that community review can bring valuable prior art to light that otherwise would have been unknown to the examiner during examination of the application.⁸³ Beginning in October 2010, we will discover whether the same successes can be applied to the more traditional classes of telecommunications and biotechnology. Indeed, this third pilot program may determine whether the Peer to Patent program becomes a permanent part of prosecution practice before the

USPTO, or whether it fades away and will be remembered for its idealistic attempt to integrate the scientific and engineering communities in the patent review and granting process.

Author's Note: The authors would like to thank Tim Peterson, a summer law clerk at MBHB, for his help in researching material for this article and obtaining citations to support data and assertions throughout this text. The authors would also like to thank Manny Schecter at IBM, Curt Rose at HP, Scott Asmus at GE, Adam Avrunin at Red Hat, Matt Rainey at Intellectual Ventures, and Mark Webbink at the NYLS for taking the time to speak about their experiences with, and future vision for, the Peer to Patent project.

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Endnotes

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42. Asmus, *supra* note 6.
43. Webbink, *supra* note 1.
44. This image appears on the Peer to Patent website, Peer to Patent, <http://www.peertopatent.org/> (last visited Aug. 24, 2010). Use of this image is governed by the Creative Commons AttributionNonCommercial-ShareAlike 3.0 license. See <http://creativecommons.org/licenses/by-nc-sa/3.0/us> (last visited Aug. 24, 2010). This image has been reproduced with the permission of Peer to Patent.
45. U.S. Patent & Trademark Office, Applicant's Consent to Third-Party Comments in Published Applications and Consent to Pilot Participation, <http://www.uspto.gov/web/patents/peerpriorartpilot/consent.pdf> (last visited July 30, 2010).
46. See Peer to Patent, *supra* note 45.
47. Noveck, *supra* note 22, at 146.
48. See Peer to Patent, *supra* note 45.
49. 37 C.F.R. § 1.99 (2009).
50. Kappos, *supra* note 17.
51. Anniversary Report, *supra* note 2, at 23.
52. *Id.*
53. *Id.* at 24.
54. Rose, *supra* note 5.
55. Schecter, *supra* note 4; Rose, *supra* note 5; Asmus, *supra* note 6.
56. Webbink, Asmus, *supra* note 1.
57. Schecter, *supra* note 4; Rose, *supra* note 5; Asmus, *supra* note 6.
58. Webbink, *supra* note 1.
59. Anniversary Report, *supra* note 2, at 28. See generally Peer-to-Patent Australia, <http://www.peertopatent.org.au/> (last visited Aug. 24, 2010).
60. Webbink, *supra* note 1.
61. *Id.*
62. *Id.*
63. Rose, *supra* note 5.
64. Schecter, *supra* note 4; Rose, *supra* note 5; Asmus, *supra* note 6; Webbink, *supra* note 1; Avrunin, *supra* note 8.
65. Webbink, *supra* note 1.
66. Rainey, *supra* note 7.
67. *Id.*
68. Schecter, *supra* note 4; Rose, *supra* note 5; Asmus, *supra* note 6.
69. Schecter, *supra* note 4.
70. *Id.*
71. Rose, *supra* note 5.
72. *Id.*
73. Asmus, *supra* note 6.
74. Memorandum from Yeen C. Tham, Student Research Fellow, N.Y. Law Sch., Willful Infringement (Sept. 11, 2006), <http://dotank.nyls.edu/communitypatent/willfulinfringement.pdf>.



75. *Id.*
76. Asmus, *supra* note 6.
77. *Id.*
78. *Id.*
79. Noveck, *supra* note 22, at 146.
80. Rainey, *supra* note 7.
81. See, for example, the discussion of Creative patent number 6,928,433, asserted against Apple in 2006. Slashdot, Creative Sues Apple (May 16, 2006), <http://apple.slashdot.org/story/06/05/16/0414226/Creative-Sues-Apple>.
82. See Post Issue Peer to Patent, <http://www.post-issue.org/> (last visited July 30, 2010).
83. Avrunin, *supra* note 8.