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# HRO Alert

## COMMUNITY PATENT REVIEW PILOT PROJECT

This Spring, the USPTO, in cooperation with the New York Law School, will launch a pilot patent examination project called the “Community Patent Review” or “Peer to Patent” project.

The project will consist of a web portal allowing outside volunteer reviewers to comment on newly filed applications and provide prior art citations before the formal examination process begins. The pilot program will include only applications for software patents. If the applicant agrees to participate in the program, the application will be posted on the web portal and made available to the reviewers. So far, IBM, Intel, Microsoft, Oracle, RedHat, and Computer Associates are among the companies that have signed up to have some of their patent applications examined under the pilot.

The community review process will begin when the applicant requests a review at any point after filing of the application but before substantive examination begins. The application will then be made available for the next four months to community reviewers who may submit prior art and comment on the application and the claims. Once the community review period is over, the application will continue through the normal patent examination process, except that the examiner will have available all the prior art and commentary generated by the community.

The stated goal of the pilot project is to improve the quality of the issued software patents and to winnow out bad patents before they are granted. The understaffing and under-funding of the USPTO is a well-documented problem leading to over 90% of applications being allowed, even though the information available to the examiners in the software arena is highly limited. It is inevitable that the current system results in many poor quality patents leading to unnecessary and costly litigation down the road. The Peer to Patent project seeks to complement the examination process by providing the examiner with the known art and its effects on the pending applications.

Additionally, the Peer to Patent project hopes to create the incentives for patent applicants to file better-constructed, clearer, and narrower applications. The end result, it is hoped, will be better quality, more litigation-proof patents.

While we would be happy to discuss with our clients whether participation in the Peer to Patent project is appropriate on the examination side, we are even more keenly interested in testing the “litigation avoidance” aspect of the community review concept. Specifically, can an early intervention into the examination process of an application of interest – e.g., by providing relevant prior art, or pointing out problems with an application – prevent a potentially troublesome patent from issuing, thereby eliminating the need to expend money and effort on reexaminations or litigation in the future?

For more information on the Community Patent Review project, visit <http://dotank.nyls.edu/communitypatent>, or contact any of us here at Holme Roberts & Owen.

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