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http://www.peertopatent.org.au
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Forward

We at the Queensland University of Technology are proud to have run Australia’s first Peer-to-Patent pilot in collaboration with IP Australia and New York Law School. Peer-to-Patent Australia was established to determine whether volunteer citizen experts could work collaboratively to review patent applications filed in Australia and identify relevant prior art references to assist the patent examination process.

The project ran as a six-month pilot between 9 December 2009 and 8 June 2010. It focussed on some of the emerging technology areas that patent examiners have found challenging, namely business methods, computer software and related applications.

We are pleased that the project achieved a significant degree of success. A number of patent applicants voluntarily put forward their applications to be peer reviewed, an enthusiastic community of peer reviewers were willing to devote time and effort to the cause, and IP Australia’s patent examiners cited a significant number of the prior art references identified in their examination reports.

A great deal of effort and planning has gone into making the project both a reality and a success. Special thanks must go to Professor Beth Noveck, of New York Law School, and currently Deputy Chief Technology Officer for Open Government within the Obama administration, who, along with Manny Schecter, Chief Patent Counsel at IBM, conceived of the idea that the knowledge and experience of experts within the community could be harnessed to assist the patent examination process. Thanks also must go to Professor Mark Webbin, Executive Director of the Center for Patent Innovations at New York Law School, who provided tremendous operational support to help us establish and run the project.

The support and collaboration of IP Australia, which houses the Australian Patent Office, was also critical in this regard and is gratefully acknowledged. Our project team worked closely with Geoff Sadlier and Paulette Paterson to manage the collaborative aspects of the pilot. Their superiors Philip Noonan, Director General of IP Australia, and Ian Goss, of the Business Development & Strategy Group, were very positive supporters from the start of the project.

IP Australia also provided us with initial funding to undertake the project. The Commonwealth of Australia’s Department of Innovation, Industry, Science and Research (DIISR) provided our core funding, for which we are extremely thankful. Without this financial support we could not have even contemplated starting the project. The Queensland University of Technology (QUT) also showed willingness and foresight in promoting innovative projects by generously hosting and supporting this endeavour.

Heartfelt thanks go to the applicants that agreed to their patent applications being put forward for peer review and the peer reviewers who generously gave their time and shared their experience and expertise. Without their involvement, the project could not have achieved the results it did.

Finally, special acknowledgement must go to the project team, Dr Ben McEniery, who served as Project Manager, Jimmy Ti, the project’s Technical Consultant, and Niall Collins, who served until December 2009, for their excellent work.
We as a team are very proud of the results the inaugural Peer-to-Patent Australia pilot achieved and look forward to the Peer-to-Patent concept playing a continuing role in the patent system in the future.

Professor Brian Fitzgerald  
Peer-to-Patent Australia Project Leader  
Faculty of Law  
Queensland University of Technology
Introduction

This report is structured in the following way.

- Part I sets out the background, rationale and key components of Peer-to-Patent;
- Part II summarises the Peer-to-Patent Australia project’s highlights, provides a project overview, and explains how the project was implemented in Australia;
- Part III reveals the Peer-to-Patent Australia project’s results; and
- Part IV considers Peer-to-Patent’s future, both in Australia and internationally.

Part I: Peer-to-Patent – A Response to the Difficulties of Patent Examination

The Difficulties of Patent Examination

The patent system exists to serve two main aims: to encourage invention and investment in innovation; and to encourage the disclosure of new technological information. It represents a bargain between the State and inventors. In exchange for the State bestowing the exclusive right to exploit an invention for a period of 20 years, the inventor must disclose the workings of the invention to the public at the time a patent application is filed. Thus, the patent system serves to create a publicly accessible knowledge base of useful technological information.

The large number of patent applications filed each year, the limited time allocated to examine each patent, and the expanding scope of patentable subject matter have led to the patent system being the subject of some criticism. Some have questioned the reliability of the examination process and the quality of issued patents. The most concerning criticism is that many undeserving patents, business method patents in particular, are awarded in respect of methods that are already in use or obvious technologies.

Peer-to-Patent is a response to criticisms such as these that have been levelled at the patent system and an acknowledgement that things can be done to make the system more reliable and more responsive to the challenges confronting it. The public only benefits when patents are granted in respect of inventions that are truly novel and actually involve an inventive step. When patents are granted for known technologies, or technologies, that if not known, would in any event be obvious to those skilled in the art, then the patent system is rightfully criticised.

This is not a criticism of patent examiners, but a consequence of the complexities of the patent system and the difficulties inherent in patent examination. Patent law is a complex area to understand and apply and patent examination is a difficult task. Patent examiners are tasked with the responsibility of searching for and finding the relevant technological antecedents against which patent applications are measured to determine whether they are in fact novel and involve an inventive step. These antecedents, known as “prior art,” are the basis against which examiners compare and assess the claimed invention. Many undeserving patents are not rejected because examiners are not able, with the limited time and resources at their disposal, to discover the prior art documents that justify their rejection. While these criticisms are most fervently levelled at the United States patent system, they are equally applicable to Australia’s and patent systems in other jurisdictions.
Due to the large number of patent applications filed each year, patent offices encourage examiners to examine quickly and efficiently, especially where a patent has been granted for the invention in another jurisdiction. In the limited time they have available, examiners are expected to read and understand the patent specification, research the prior art and common general knowledge in the field, draft an examination report, and determine whether an invention satisfies the requirements for patentability.

Patent applications are often long, wordy and written in complicated technical language. The relevant prior art may be difficult to locate, obscure, hard to comprehend, or written in a foreign language. Although patent offices maintain detailed databases of patent and non-patent literature, these sources do not always contain the information needed to determine whether an invention meets the legal requirements necessary to warrant the grant of monopoly rights. At present, inventors are not required to notify the patent office of the existence of prior art other than that they are immediately aware of.

Furthermore, it is simply unrealistic to expect each and every patent examiner to be an expert in every field of technology that comes across his or her desk, or that he or she will know of, or be able to locate, each and every piece of relevant prior art. Given these considerable difficulties, it is of little wonder that the patent system is susceptible to criticism.

One of the things I really like about Peer to Patent is that it is a constructive, practical response to the overwhelming challenges in finding prior art which modern patent offices face. Peer to Patent is not satisfied with complaining about “bad patents” or deficiencies in the system. It does not say “not my problem”. It does not merely wait for new legislation or a change in circumstances. Instead, it seeks to make a positive contribution – today – one patent application at a time. It does so by introducing collaboration into the process and by exploiting the amazing connectedness we enjoy in our modern computing environment to foster that collaboration.

Susan Murray, Esq.
Intellectual Property Law

**Peer-to-Patent: Involving Citizen-Experts in Patent Examination**

Peer-to-Patent is a means by which an open community of citizen-experts, through the use of an online forum, can identify relevant prior art documents to assist those who undertake the difficult task of determining whether a claimed invention satisfies the legal requirements that must be met for a patent to be granted. At the outset, what is sought is not to abolish the patent system, but rather to reinvigorate it by using Web-based technologies to improve the knowledge inputs it relies on.

The origins of Peer-to-Patent lie with Professor Beth Noveck of New York Law School, and currently Deputy Chief Technology Officer for Open Government within the Obama administration, who, along with Manny Schecter, Chief Patent Counsel at IBM, conceived of the idea that the knowledge and experience of experts within the community could be harnessed to improve patent examination and the quality of issued patents.

Peer-to-Patent’s aim is to encourage experts and others within the community to pool their knowledge to bring to light prior art, particularly non-patent prior art, that might not otherwise be available to the patent office. The advantage is that getting better prior art before patent examiners ideally leads to stronger, higher quality, and more robust patents. The better the prior art resources a patent examiner has at his or her disposal, the more likely a patent application
will be assessed correctly in terms of novelty and inventive step. By integrating such a system into the prior art search process, the burden is no longer solely on a patent examiner to identify the information needed to determine whether a patent ought to be granted. In this sense, the project aims to produce tangible outcomes that improve the reliability of the system incrementally – one patent at a time.

Participating applications are selected from a pool of applications that satisfy certain eligibility criteria. At this point in time, the involvement of patent applicants in Peer-to-Patent is strictly voluntary and requires consent.

Each participating application is displayed on a publicly available web site for 90 days. During that time, the public is invited to review the applications and submit relevant prior art references. Peer reviewers, working in teams or individually, research the prior art, submit prior art references, upload discussion comments or annotations to the prior art submitted, and vote on the quality of prior art references. Each team has a shared space to discuss the application in question, decide what research needs to be done, discuss where prior art may be found, and discuss approaches to take. Individuals upload prior art references, but the group decides collectively which submissions are the most relevant, if necessary. Peer-to-Patent is neither a blog nor a wiki. It does not solicit any and all commentary. Rather, it encourages the submission of prior art references, along with explanations as to how the prior art identified is relevant to assessing the novelty and inventive step of the applications in question.

To prevent the patent office being flooded with prior art references, only the top 10 items of prior art, as voted by the community of reviewers, are forwarded to the patent office, along with annotations explaining the relevance of the prior art references selected. The patent examiner responsible for the application in question then considers those prior art references when examining the invention.

It is important to note that Peer-to-Patent in no way abrogates the examiner’s responsibility to assess a patent application. The patent examiner still conducts a routine examination and has all the same information available as before. The only difference is that the examiner is given a report that contains prior art documents and comments that he or she would not otherwise have had access to. Thus, the examiner can consider the prior art submitted by the community of reviewers in addition to the results of his or her own searches in making a determination.

Peer-to-Patent is designed to facilitate the provision of focused and targeted information from citizen-experts to government. It represents the first means by which the views of the scientific and technical public, and others, as to the validity of a wide array of pending patent applications, are corralled in a systematic fashion to be used in the patent examination process. Peer-to-Patent is an example of the growing Government 2.0 initiative, which Beth Noveck describes in her book, *Wiki Government* (2009). The idea behind Government 2.0 is that involving citizens can enhance government decision making through the use of Web 2.0 technologies.

Peer-to-Patent is not just of benefit to the public, but also benefits participating applicants. Participating applications undergo a more rigorous examination against the strictures of novelty and inventive step than they otherwise might, and are likely to be more robust as a consequence. The more robust a patent, the more valuable it is and the less likely it is to be challenged in the courts or licensing negotiations. In addition, the identification and elimination of weak claims early in the examination process ultimately saves the applicant money by avoiding the expensive process of pursuing or enforcing non-meritorious patent claims.
However, it must be noted that, despite the benefits it brings, Peer-to-Patent is not, of itself, a cure for all of the patent system’s woes. It is just one means, which in conjunction with other remedies, has the potential to bring meaningful improvements to the patent system.

**Peer-to-Patent in the United States**

New York Law School publicly launched the first Peer-to-Patent project in collaboration with the United States Patent and Trademark Office (USPTO) in June 2007 and ran a pilot project that concluded in October 2009. The key players in this endeavour have been Beth Noveck and Mark Webbink of New York Law School, and Jack Harvey and his examiners at the USPTO.

Additionally, the Japan Patent Office (JPO) ran a five-month long Peer-to-Patent Community Patent Review pilot.
Part II: Peer-to-Patent Australia – Project Overview

Peer-to-Patent Australia is an initiative of the Queensland University of Technology, run in conjunction with IP Australia and New York Law School, designed to improve the patent examination process and the quality of issued patents in Australia by harnessing the knowledge of citizen-experts.

Peer-to-Patent Australia launched on 9 December 2009 and ran as a six-month pilot that ended on 8 June 2010. The object of the pilot was to test whether an open community of reviewers can effectively locate prior art that might not otherwise be located by the patent office during a typical examination in a jurisdiction such as Australia.

Project Highlights

• 130 people registered as peer reviewers. Of that number, 40 were active participants.

• The project web site attracted more than 5000 visits from people in 69 countries.

• Eight patent applicants volunteered 31 patent applications for peer review.

• The community of reviewers submitted 106 items of prior art in response to the patent applications put forward for review.

• In 11 of the 31 applications, prior art submitted by the community of reviewers was cited in the examiner’s first report to reject one or more claims in the application in question.
  o In eight of these 11 applications, the examiner did not discover the prior art references the community of reviewers submitted.
  o In the remaining three applications, the examiner also discovered the prior art submitted.

• All six patent examiners surveyed indicated that they believe the pilot was helpful in assisting patent examiners locate relevant prior art.

• Five of the six patent examiners surveyed stated that they believe a program like Peer-to-Patent Australia would be useful if incorporated into IP Australia’s regular practice.
Project Team

The Peer-to-Patent Australia project team comprises the following.

**Professor Brian Fitzgerald**
Project Leader

**Dr Ben McEniery**
Project Manager

**Jimmy Ti**
Technical Consultant

Niall Collins worked on the project until December 2009 and was of much assistance in its formative stages.

Advisory Committee

The Peer-to-Patent Australia project team enlisted the support of an advisory committee to provide guidance, support and a sounding board for opinions and direction for the project. The advisory committee is constituted by a number of prominent members of the innovation community who generously gave their time during the formative stages of the pilot.

The advisory committee comprises:

- Manny Schecter, Chief Patent Counsel, IBM;
- Scott Asmus, Patent Counsel, The General Electric Company;
- Curt Rose, Senior Counsel and Patent Development Manager, Hewlett-Packard;
- Kieran Power, Global IP Manager, Aristocrat Technologies Australia Pty Ltd;
- Professor Mark Webbink, Center for Patent Innovations at New York Law School;
- Chris Wong, Center for Patent Innovations at New York Law School;
- Bill Porter, IBM;
- Tadahiko (Tad) Kataoka, IBM Japan; and
- Tadayuki (Tom) Osaki, Institute of Intellectual Property (IIP).

Project Funding

Peer-to-Patent Australia is a non-profit public interest project. The project was made possible as a result of funding provided by IP Australia, and the Commonwealth of Australia’s Department of Innovation, Industry, Science and Research (DIISR) through the Open Access to Knowledge (OAK) Law Project and the Legal Framework for e-Research Project.

Hypotheses

The Peer-to-Patent Australia project was established to measure whether an online public consultation process could be effectively employed to improve the quality of patents issued in a jurisdiction such as Australia which has a small population, internationally recognised patent office and in which foreign patent filings account for the vast majority of applications filed each
year. To this end, we conducted qualitative and quantitative research to address three hypotheses:

Hypothesis 1: An open network of volunteer experts can act to improve the quality of information available to Australian patent examiners over that currently available. Public participation can and will improve examiner searching, both by providing relevant information and guiding examiner searching, thereby improving the quality of examiners’ work product.

Hypothesis 2: The public is capable of self-selecting on the basis of expertise and producing information relevant to the patent examination process.

Hypothesis 3: Citizen-experts’ participation in patent examination produces a better quality and more robust patent.

Methodology

The methodology adopted was deliberately based as closely as possible on the earlier United States and Japanese pilots to ensure that meaningful comparisons could be made between the projects. Naturally, the project was adapted where necessary to suit Australian legal conditions and norms.

The project involved participating patent applications being placed on a publicly available web site (located at http://www.peertopatent.org.au) for members of the public to review, comment upon them, submit prior art references and comment on the relevance of any prior art put forward.

The eligibility criteria for inclusion in the pilot are that applications must:
• be for standard patents;
• be for business methods, computer software and related applications;
• have been laid open to public inspection (OPI); and
• be applications for which an examination request has been made.

Business methods and computer software were chosen because IP Australia’s representatives nominated them as subject matter the Australian Patent Office would most like input in relation to. This subject matter choice roughly reflects the subject matter eligibility criteria used in the United States Peer-to-Patent pilot.

The pool of eligible applications was limited to those that had been laid open to public inspection because the project team could not legitimately communicate applications that had not been published to the public. Patent specifications, along with other relevant documents related to a patent application, are placed on the public record by making them open to public inspection. In Australia, as in most jurisdictions, a patent application is made open to public inspection 18 months after the application is filed. A patent application is made open to public inspection in Australia by advertisement in the Official Journal of Patents, and can subsequently...
be inspected at one of IP Australia’s offices or downloaded from IP Australia’s AUSPAT web site (http://www.ipaustralia.gov.au/auspat/index.htm).

The requirement that only patent applications for which an examination request has been made was imposed for two reasons. The first is to limit participating applications to those likely to proceed to examination. Given that, for one reason or another, not all standard patents proceed to examination, without this limitation the pilot might have resulted in peer reviewers’ time being wasted and inconclusive results being generated if one or more applications did not proceed to examination. The second is to facilitate obtaining results from the pilot in a timely fashion, since, once an examination request has been made, the examination is likely to take place within the following 15 months. To further facilitate the project’s ability to produce timely data, IP Australia took the step of moving all participating applications to the head of the examination queue to ensure that a complete set of results would be available in time for the publication of this report.

As far as the involvement of patent applicants was concerned, the Peer-to-Patent Australia pilot operated on a consent-based model. Applicants wishing to participate were required to complete a consent form prior to applications being included in the pilot. Patent applications were not included in the peer review process without the prior consent of the applicant being obtained. Consent was sought for two reasons. The first was to ensure that all applicants participating in the pilot did so voluntarily and actually wanted to be involved. The second was to obtain the permission of any owner or owners of copyright in the patent specification to reproduce and upload a copy of the applicant’s patent specification to the Peer-to-Patent Australia web site and communicate that specification to the public.

The maximum number of participating applications to have been accepted was set at 40. The project team initially planned to limit the number of applications from a single entity to eight applications, but abandoned that limitation in order to maximise the chance of the pilot generating results from a significant number of patent applications.

Following the process established for the United States pilot, each patent application was left open for peer review for a period of 90 days. Participating applications were uploaded to the web site in two distinct phases. At the end of each application’s 90-day public review phase, the prior art identified was forwarded, as part of a Peer-to-Patent Australia Prior Art and Comments Report, to the patent office to be considered in examination. Each Peer-to-Patent Australia Prior Art and Comments Report was forwarded to the IP Australia in accordance with s 27 of the Patents Act 1990 (Cth). That section allows the Commissioner of Patents to receive information submitted by a third party relevant to the novelty and inventive step of an invention disclosed in an application for a standard patent. Unlike in the United States, where the law otherwise prohibits third-party protest against pending patent applications without the applicant’s consent, the Australian legislative scheme actually promotes the submission of documents by third parties to assist the patent examination process.

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Peer-to-Patent Australia once again demonstrates that citizen-experts are willing to voluntarily contribute their time and expertise to improve the patent system. Of particular interest is the consistency of results as between the Australian and U.S. pilots in terms of degree of participation and effective contribution. We believe this is indicative of a world-wide recognition of the important role of our patent systems and the ability of crowd-sourcing to improve those systems.

Professor Mark H. Webbink
Center for Patent Innovations
New York Law School
Similarly, to prevent the patent office being overburdened with prior art, the community of reviewers was given the opportunity to select, by a voting mechanism, the 10 best prior art documents for each patent application to be forwarded to the patent office. Only the 10 best prior art documents for each patent application, as voted by the community of reviewers, were forwarded to the patent office.

Examiners given participating Peer-to-Patent Australia patent applications were instructed to undertake the examination as they ordinarily would before looking at the Peer-to-Patent Australia Prior Art and Comments Report. Although the Prior Art and Comments Report was placed in the examination file, examiners were instructed to not look at the report or the Peer-to-Patent Australia web site until after completing the examination. Only once the examination had been done, were the examiners invited to review their examination reports (known in Australia as “first reports”) in light of the Peer-to-Patent Australia Prior Art and Comments Report.

Following examination, the project team surveyed participating examiners. The examiners were surveyed to determine their views as to the effectiveness of the Peer-to-Patent Australia project and the prior art references with which they had been provided. The survey also questioned the examiners as to the uses to which they put the prior art references they had been given. Examiners were asked to complete two survey instruments: a survey of their opinions of the Peer-to-Patent Australia project; and a survey of their opinions in relation to the Peer-to-Patent Australia Prior Art and Comments Report generated for each participating application the examiner examined. The examiners’ survey instruments are included at Annexure 1.

Promoting Peer-to-Patent Australia

The Peer-to-Patent Australia project team devoted significant time and effort to promoting the project. These efforts were aided to a large extent through the assistance provided by those involved in the United States Peer-to-Patent pilot, particularly through the introductions, connections and contacts they facilitated for our benefit.

Applicant Outreach

The first step in ensuring the project’s viability was encouraging applicants to consent to their patent applications being included in the pilot. Without a sufficient number of participating patent applicants and patent applications, the project would be incapable of generating sufficient data for evaluation. Given that this is an Australian-based project, the Peer-to-Patent Australia project team actively encouraged patent applicants domiciled in Australia, particularly small and medium-sized enterprises, to put forward applications for review.
Our methods of encouraging patent applicants comprised:

- contacting applicants directly, or indirectly through their patent attorneys, by letter, email or telephone call; and
- visiting patent attorneys in Sydney and Brisbane to encourage them to commend the project to their clients.

IP Australia worked to promote the project, and the need for patent applicants to volunteer applications for inclusion in the pilot, by:

- IP Australia’s Director-General, Philip Noonan, sending a letter supporting and endorsing the project to a selection of patent applicants with eligible patent applications via their patent attorneys;
- issuing various press releases; and
- promoting the pilot on the IP Australia web site and in various emailed mail outs.

In addition, the United States Peer-to-Patent project team at New York Law School did much to facilitate our contact with key people in companies that are large and prominent users of the patent system.

**Reviewer Outreach**

The second step in ensuring the project’s viability was encouraging people to participate as peer reviewers. This included:

- advertising the need for reviewers through the Peer-to-Patent Australia web site;
- working collaboratively with IP Australia and the Department of Innovation, Industry, Science and Research to draft press releases;
- creating and uploading promotional videos seeking peer reviewers to You Tube and the project web site;
- using various online electronic means to advertise the need for reviewers, such as Twitter, a Wikipedia entry, an official Peer-to-Patent Australia blog (located at http://peertopatentaus.wordpress.com/), various news groups;
- posting blog entries to other high-traffic blogs and web sites, such as IP Kat, IP Wars and Spicy IP;
- contacting potential reviewers by email, telephone and letter;
- posting fliers at universities advertising the need for peer reviewers;
- inviting those writing newsletters or other publications dealing with intellectual property or technology issues to mention the project and its need for reviewers; and
- the publication of two journal articles, in the April/May 2010 issue of *Information Age*, a publication of the Australian Computer Society, and the September/October 2010 issue of NCURA Magazine, a publication of the United States based National Council of University Research Administrators.

IP Australia promoted the project and the need for peer reviewers by:

- issuing press releases; and
- promoting the pilot on the IP Australia web site and in various email mail outs.

To encourage the communities of reviewers to maintain their enthusiasm and engagement, the Peer-to-Patent Australia project team emailed various notifications leading up to, and during the course of the pilot. These communications included notifications sent to advertise:

- the launch of the pilot;
- the start of each of the pilot’s two 90-day phases; and
- when there were two weeks of each phase remaining.
Part of the reviewer outreach involved getting the “right” people involved in the project, namely people with significant technical knowledge in the subject matter domains included in the pilot, and people likely to have adequate search skills. Given the technologies at issue, there was no one natural and exclusive “public” to invite. Likewise, it is known that it is difficult to predict which people will contribute the best information. As such, the focus of reviewer outreach was roughly people in technology industries and companies, people in universities, and people involved or interested in the patent system.

Data Gathering

We gathered specific data to evaluate the pilot’s effectiveness. For example, we counted the number of people who registered as peer reviewers and the number who engaged with the process by submitting prior art references or making comments. We also tracked the patent office’s use of the information it received as a result of the project having run. Information was gathered from:

- activity taking place on the project web site;
- surveys completed by participating examiners;
- online profiles created by participating peer reviewers; and
- the first reports issued by IP Australia’s patent examiners.

A decision was made not to survey peer reviewers, since reviewers had been surveyed as part of the United States Peer-to-Patent project and that only a very small number of reviewers responded to that survey (only 35 out of 2,092 reviewers completed the survey). Given that the size of the Australian project’s peer review community was comparatively much smaller, it was agreed that a survey of reviewers would likely not result in useful data being generated.

Data was also gathered on the use of the project web site using Google Analytics (Google’s online means of measuring and analysing web site traffic). Google Analytics was used to analyse the traffic the project web site attracted. It enabled the project team to mine data such as number of visitors, visitor loyalty, depth and duration of visit, and traffic sources.

Project Web Site

Peer-to-Patent Australia project web site runs on the same software platform that was used for the United States Peer-to-Patent pilot that ran between 2007 and 2009. New York Law School kindly allowed the Queensland University of Technology to use the platform under licence. Appendix 1 contains a complete snapshot of the project web site’s home page.

The pilot and software were designed to foster a sense of community and encourage people to work collaboratively. Integral to the design is the objective of making the peer review process simple. The designers sought to break down some of the linguistic barriers preventing those with useful knowledge from contributing. Many patent applications are written in highly technical and sometimes convoluted language that is difficult to understand. Although patent applications filed in Australia are classified according to the International Patent Classification (IPC) system, this broad means of classifying subject matter does not necessarily correspond with the ways in which technical and scientific experts most affected by the patent system classify information.
To remedy this, the software allows peer reviewers to “tag” or label participating applications with more familiar and readily recognisable terms to describe the applications. This tagging, called “folksonomy,” lets users associate a patent application with language that is more intelligible to the average person. For example the Yahoo patent application, ‘Cold row encapsulation for server farm cooling system’, which describes a means of cooling rows of computer servers, was tagged by participants using labels such as “server farm cooling” and “cooling system”. Similarly, the ‘Shared appreciation progressive mortgage’ patent application lodged by Residex Pty Ltd was tagged by participants using labels including, “shared equity”, “lending arrangement” and “finance”. 
The software contains functionality that provides users with a real-time visual overview of web site activity. At a glance, visitors to the site can see, in respect of each participating patent application: the size of each community of reviewers; the number of discussion comments posted; the number of prior art references submitted; the number of annotations to the prior art submissions made; and the amount of time the application will remain open for review.
The system can also display feedback from the patent office. When a patent examiner cites a prior art document identified by the community of reviewers, the software can be used to highlight the reviewer’s contribution by displaying a “Prior Artist” award graphically on the home page and on the reviewer’s profile. All the Prior Artist awards are displayed in the image below.

<table>
<thead>
<tr>
<th>Name</th>
<th>Patent Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steven Pearson</td>
<td>A method of processing a user data card, an interface module and a…</td>
</tr>
<tr>
<td>Mark Webbink</td>
<td>A software management system and method</td>
</tr>
<tr>
<td>Diane Willis</td>
<td>A gaming system and method of playing a game</td>
</tr>
<tr>
<td>Susan Murray</td>
<td>An optical display</td>
</tr>
<tr>
<td>Jimmy Ti</td>
<td>Secure money transfer systems and methods using biometric keys assio…</td>
</tr>
<tr>
<td>Jimmy Ti</td>
<td>Employing mobile location to refine searches</td>
</tr>
<tr>
<td>Steven Pearson</td>
<td>Employing mobile location to refine searches</td>
</tr>
<tr>
<td>Jimmy Ti</td>
<td>Method, system and computer software code for trip optimization wit…</td>
</tr>
<tr>
<td>Abhishek Awasthi</td>
<td>Method, system and computer software code for trip optimization wit…</td>
</tr>
<tr>
<td>Jason DeVeau-Rosen</td>
<td>System and method for providing access to wireless railroad data no…</td>
</tr>
<tr>
<td>Diane Willis</td>
<td>Method and apparatus for runtime incorporation of domain data conf…</td>
</tr>
<tr>
<td>Diane Willis</td>
<td>System and method for managing emissions from mobile vehicles</td>
</tr>
<tr>
<td>Susan Murray</td>
<td>Shared appreciation progressive mortgage</td>
</tr>
</tbody>
</table>

The software platform runs on open source technologies. It is an Internet application implemented using Ruby on Rails with a MySQL database on a Linux operating system. Ruby on Rails is an open source web application framework for the Ruby programming language. The system infrastructure includes hosted web and database servers, as well as interactive features such as threaded discussions, e-mail alerts, RSS feeds, social bookmarks, video clips, tagging, ratings, and more.

The Peer-to-Patent Australia project team adapted the software code to make it compatible with the then latest version of Rails and the web site’s look and feel to suit Australian conditions. Technology-wise, the Australian platform is a web application implemented using Ruby on Rails that utilises a MySQL database and an Apache-Mongrel HTTP server, which is hosted on a server running a Red Hat Linux operating system. The original system, as developed for the United States Peer-to-Patent project, was designed to use two hosting servers: an outsourced content server that hosts all multimedia content on the web site; and a primary server that hosts everything else and runs the web application engine. This configuration allows the primary server to perform faster and more efficiently, especially under heavy load, since servicing bandwidth-intensive content is delegated to the content server. Early in the design phase, we took the view that traffic to the Peer-to-Patent Australia web site would not be as heavy as that directed to the United States site, so we hosted the project web site on one server only.
This adaptation of the software included: creating new text for use on the web site that describes the project and how it relates to Australian law; and creating a new Peer-to-Patent Australia logo along with various other graphical images and a new colour scheme to give the web site a distinctively Australian look and feel. The project team felt it was important to give the site an Australian look and feel, while ensuring the site’s appearance retained a high degree of consistency with the United States Peer-to-Patent project, so it would immediately be clear to the casual observer that the two are independent, but related projects.

One of the difficulties the Peer-to-Patent Australia project team encountered is that IP Australia does not require patent applicants to file patent applications in a text-based electronic form. Instead, the majority of applicants filing in Australia tend to lodge hard copy documents that are then scanned as PDF files when received by IP Australia. The same appears to be the case for international applications filed through the Patent Cooperation Treaty (PCT) international application mechanism that proceed to the national phase and for which Australia is a designated country.

The software created for the United States Peer-to-Patent pilots requires that applications displayed on the web site be in a text-based XML format. Accordingly, all participating applications included in the Peer-to-Patent Australia pilot were converted from their native PDF format into a text-based format using optical character recognition (OCR) technology. In addition, since many of the participating applications have mathematical formulae in their text, we needed to implement a means for the web site to display mathematical formulae in a human-friendly notation. As OCR conversion technologies sometimes introduce errors in the resulting text, all participating applications needed to be proof read before being uploaded to the project web site. This involved a considerable amount of work that could not feasibly be replicated if a larger number of participating applications were involved.

To facilitate the conversion of participating applications to a text-based format, Jimmy Ti developed a Patent Application XML Generator that easily converts bibliographic patent application data into the appropriate XML format that can be imported automatically onto the Peer-to-Patent platform. This bibliographic information would then have the patent specification and claims appended to it before being uploaded to the project web site.

Being someone who writes patent applications, I found going through someone else’s patent to be enlightening and challenging. It has given me some ideas about what to include in a patent application to make life easier for examiners (for example, a list of known prior art, along with an explanation of how the patent differs from it) and a better understanding of how some questionable patents come to be granted. Given the challenge examiners face, I hope the project provides a model for ongoing public involvement in patent examination.

Michael Clarke
Software Engineer
IBM
Part III: Project Results

Patent Applicants and Participating Applications

The starting point for making the project a success was ensuring that a sufficient number of patent applicants volunteered their pending patent applications for inclusion in the peer review process. Without a significant number of participating applicants, the pilot would not have been able to gather sufficient data and would not have stood a chance of succeeding.

The pilot involved the peer review of 31 patent applications filed by eight distinct patent applicants. Consenting applicants were, for the most part, large multinational companies with considerable patent portfolios that had participated in the earlier United States pilot. In this respect the Peer-to-Patent Australia project was able to draw heavily on the good will and contacts established by the United States Peer-to-Patent project. Of the eight participating applicants, three are based in Australia, namely Aristocrat Leisure, Residex Pty Ltd and the Commonwealth Scientific and Industrial Research Organisation (CSIRO). None of the three Australian-based applicants had taken part in the United States Peer-to-Patent pilot.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Number of Applications</th>
</tr>
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<tbody>
<tr>
<td>1. General Electric</td>
<td>11</td>
</tr>
<tr>
<td>2. Aristocrat</td>
<td>10</td>
</tr>
<tr>
<td>3. Hewlett-Packard</td>
<td>3</td>
</tr>
<tr>
<td>4. IBM</td>
<td>2</td>
</tr>
<tr>
<td>5. Yahoo</td>
<td>2</td>
</tr>
<tr>
<td>6. Residex Pty Ltd</td>
<td>1</td>
</tr>
<tr>
<td>7. CSIRO</td>
<td>1</td>
</tr>
<tr>
<td>8. Western Union</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>31</strong></td>
</tr>
</tbody>
</table>

The narrow subject matter focus of the pilot and the consent-based nature of the project made it hard to obtain the consent of patent applicants with eligible patent applications. Although an ample number of applicants consented to their applications being peer reviewed to meet the project’s needs, obtaining the necessary consents was difficult and time-consuming.

Only a small number of the hundreds of applicants approached agreed to participate. Many seemed reluctant to be involved or disinterested in the project. A number of the United States based applicants who had participated in the United States Peer-to-Patent pilots were not willing to outlay the resources necessary to participate in this pilot in addition to the commitments they had made to the United States pilot.
As Peer-to-Patent Australia is an Australian-based project, it was hoped that a greater number of domestic applicants would have agreed to be involved. As noted above, the Peer-to-Patent Australia project team actively encouraged small and medium-sized enterprises, particularly those domiciled in Australia, to put forward their applications for review. Many of the smaller domestic applicants approached stated that they did not wish to be involved in the project, not because they disagreed with its aims or feared that the prior art uncovered would defeat their claims, but because they saw a strategic advantage in not drawing their patent applications to the attention of competitors by publicising them through the pilot. Even though patent applications are made public when they are laid open to public inspection, an individual application is not necessarily noticed amongst all the other published specifications. Thus, it appears these applicants wished to maintain a competitive advantage by having the lead-time in bringing a new product to market that relative secrecy brings in addition to a patent monopoly.

Despite these difficulties, a sufficient number of patent applicants did agree to volunteer a number of their patent applications for inclusion in the peer review process. In this regard, we acknowledge our gratitude to the applicants that did commit the time and resources needed to make the project a viable concern and a success.

**Prior Art References**

During the six months the pilot ran, the community of peer reviewers generated 106 prior art references and submitted 117 discussion comments in response to the 31 patent applications lodged for peer review. This equates to an average of 3.4 prior art references and 3.8 discussion comments per application.

The largest number of prior art references generated in response to a single patent application was eight, while the smallest was zero. The community that submitted the greatest number of prior art references was that surrounding the General Electric application entitled, “Rail car tracking system”. In response to three other participating applications, the community submitted seven prior art references. While the rules governing the project allowed for the submission of up to 10 prior art references per patent application to IP Australia, in no cases were 10 submissions received. Consequently, the community of reviewers was at no point required to decide upon the 10 best prior art references to forward to the patent office.

Participating applications were uploaded to the project web site in two phases. In response to the 15 patent applications uploaded for review during the first phase of the pilot, the community of reviewers nominated 48 prior art references and posted 68 discussion comments. In response to the 16 applications uploaded during phase two, the community nominated 58 prior art references and posted 49 discussion comments.

The rate at which reviewers annotated the prior art submitted was much lower. The majority of prior art submitted was not annotated. Prior art submissions that were annotated received only
one or two annotations. The functionality that allowed suggestions for further research was utilised even less.

Many factors influence the number of prior art references submitted by the community of reviewers. The relative size of a particular field of technology, the extent to which certain subject matter permeates the mainstream, and the degree of difficulty involved in reading a particular application all contribute to the number of prior art references that may be uncovered. Furthermore, because the pilot depends upon the applicant’s consent, it is possible that those participating may be putting forward only their best applications. Indeed, a number of the patents put forward for peer review had already been considered, and in many cases granted, by foreign patent offices.

**Community of Reviewers**

Since its launch, Peer-to-Patent Australia has cultivated a small base of committed peer reviewers who use the site regularly.

130 people registered as peer reviewers. Of this number, 40 were active participants, meaning they contributed an item of prior art, a comment to the discussion, a research suggestion, or an annotation to a prior art reference. 20 members of the peer review community submitted prior art references. The number of reviewers who subscribed to particular patent applications ranged

<table>
<thead>
<tr>
<th>Prior Art References Submitted by Project Phase</th>
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<tbody>
<tr>
<td>Phase 1: 58</td>
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<table>
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<tr>
<th>Discussion Comments Posted by Project Phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1: 49</td>
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</table>
from three to 10 reviewers, with there being an average of 5.2 reviewers subscribed to each given community.

Despite this many people having registered as peer reviewers and taking an active interest in developments on the site, fewer than half of those who did register logged into the site at a later date after initially registering.

![Peer Reviewer Logins](image)

The community with the highest participation was that surrounding the Hewlett-Packard application entitled, “Binary representation of number based on processor word size”. That community uploaded 16 discussion items, submitted four prior art references and made one prior art annotation.

One observation to be made is that as the Peer-to-Patent Australia pilot ran while the United States pilot was not in operation, it is not clear whether an Australian Peer-to-Patent project could run simultaneously with the United States project and attract sufficient participation from a community of peer reviewers.

**Organisational Affiliation**

Peer reviewers came from many different organisations. IBM was one of the primary sources of reviewers. Of the 130 registered peer reviewers, 42 (or almost one third) registered with an IBM email address. 10 of the IBM-affiliated reviewers were active reviewers. 27 of these IBM employees indicated that they are from Australia, with 11 from the United States, two from Japan and one from each of Canada and Germany.

11 members of the peer review community were students and staff of the Queensland University of Technology, all located in Australia. Four reviewers claimed to hold an affiliation with the Australian National University (ANU).

**Reviewer Location by Country**

The project attracted peer reviewers from all around the world.
- 72 identified as being Australian or located in Australia;
- 15 identified as being American or located in the United States of America;
- 12 identified as being Indian or located in India;
• 8 were from other countries; while
• 19 did not identify their location or nationality.

![Reviewer Location by Country](image)

### Years of Experience

59 members of the peer review community reported the number of years of experience they had accumulated in their current professional roles, ranging from 1 year to as many as 46 years. The median number of years of experience reported was 14 years.

![Years of Experience](image)

### Professional Role

In terms of the reviewers’ professional roles, approximately one quarter of reviewers described themselves as “Computer Professional/Technologist”, approximately 10% described themselves as “Lawyer/Legal Professional”, and another 10% described themselves as “Patent Professional/Searcher”.

Peer-to-Patent Australia 1st Anniversary Report December 2010
Fewer than one quarter of peer reviewers chose to record their academic qualifications. According to the profiles of those that did, while the majority of registered reviewers held engineering or computer sciences degrees, others reported holding degrees in arts, law, science and pharmacy from bachelor through to doctoral level.

**Gaming the System or Disruptive Behaviour**

The Peer-to-Patent Australia project team did not witness any attempts to game the system, or any disruptive, inflammatory, or otherwise anti-social behaviour among the community of reviewers.

**Examiner Feedback**

After the completion of the pilot, all 31 participating applications had been examined by one of six of IP Australia’s patent examiners.

Examiners were asked to complete two survey instruments: a survey of their opinions of the Peer-to-Patent Australia project; and a survey of their opinions in relation to the Peer-to-Patent Australia Prior Art and Comments Report generated for each participating application the examiner examined. Those survey instruments are included at Appendix 2 to this report.

The patent examiners surveyed were positive about the project and its potential to assist the examination process.
• All six patent examiners surveyed indicated that they believe the Peer-to-Patent Australia pilot was helpful in assisting patent examiners locate relevant prior art.

• Five of the six examiners surveyed stated that they believe that a program like Peer-to-Patent Australia would be useful if it were incorporated into IP Australia’s regular practice.

• Half the examiners surveyed would welcome examining another Peer-to-Patent Australia application, while the other half were indifferent.

One examiner responded by saying:

“I think [Peer-to-Patent Australia] has the potential to be very useful, especially in regards to applications that are difficult to search (for example, if they are drafted using broad terms), or are in a field of emerging technology, which examiners may not be very familiar with.”

The patent examiners surveyed reported that in 12 applications, prior art references submitted by the community of reviewers that were not turned up during the course of the ordinary examination were of some assistance in determining the validity of the patent claimed.

In 11 of the 31 applications, prior art references submitted by the community of reviewers were cited in the examiner’s first report.

• In eight of those 11 applications, prior art submitted by the community of reviewers that was not turned up during the course of the normal examination was used to reject one or more claims in a patent application. Those examiners reported that, of these prior art references, 62% comprised patent or patent application literature not discovered by the examiner, 13% comprised non-patent literature not discovered by the examiner, while 25% comprised both.

• In the remaining three applications, the examiners reported that prior art submitted by the community of reviewers that was also turned up during the course of the normal examination was used to reject one or more claims in a patent application.

In total, the examiners cited 13 of the 106 prior art references submitted by the community of reviewers in first reports (in two of the 11 applications in which Peer-to-Patent Australia prior art references were cited, two prior art references were cited by the examiner).

It should be noted that, while the examiners cited Peer-to-Patent Australia prior art, a number of the claims were also objected to using prior art discovered using normal methods, and that consequently, in some cases, the Peer-to-Patent submissions did not result in any additional claims being objected to. In cases such as these, it is not clear whether the Peer-to-Patent Australia prior art was of better or lesser quality than that identified by the examiners.
Some of the examiners surveyed noted that they took the view that Peer-to-Patent Australia prior art submissions and comments would be most helpful in applications which require an original search, being those for which foreign search or examination reports were not available to the examiner.

None of the patent examiners surveyed indicated that prior art submitted by Peer-to-Patent Australia was inaccessible to a patent examiner using IP Australia’s search facilities.

The patent examiners surveyed said they found the Peer-to-Patent Australia Prior Art and Comments Reports were very helpful in 12.9% of applications and somewhat helpful in 64.5% of applications. The examiners found that:

- prior art submissions were useful in 74.2% of applications;
- annotations on the prior art were useful in 25.8% of applications;
- research resources were useful in no applications;
- discussion comments were useful in 12.9% of applications; and
- the report was of no use in 16.1% of applications.

By their written survey responses, the examiners acknowledged that the Peer-to-Patent Australia Prior Art and Comments Reports were, in some cases, of assistance when assessing other applications, for example related divisional applications. Some examiners also recognised that, even if they did not cite Peer-to-Patent Australia prior art references in a first report, they might have been influenced by the peer review community’s prior art submissions in their search strategy and understanding of the patent application and prior art base.

The examiners identified some difficulties associated with the Peer-to-Patent Australia peer review process. The examiners’ primary complaint was the time considering Peer-to-Patent Australia prior art submissions added to examination.

Further, several examiners took the view that often the comments explaining the relevance of the prior art citations submitted were too brief to assist with the examination, or not useful or relevant. Understandably, some examiners were reluctant to read the prior art documents submitted by the reviewers closely if they were not satisfied that the comments provided were capable of explaining the relevance of that prior art. One of the examiners made the following points in response to the Peer-to-Patent prior submissions.
“More detailed commentary on the interpretation of features by the researcher would have been welcomed on some of the documents; as examination often hinges on the interpretation of prior art, it is useful to have explanation as to why a researcher considers a prior art document to be relevant. Furthermore, it may be useful to provide a means of denoting whether a researcher considers the document to be relevant for novelty or inventive step.”

In only 38.7% of cases were the examiners surveyed of the view that the Peer-to-Patent Australia Prior Art and Comments Reports were sufficiently clear and well formatted. From the examiners’ written comments, this would appear to be due to the fact that the documents forwarded to IP Australia were scanned by a third party before being given to the examiners, and that pages within those copies were poorly scanned or photocopied, such that much of the information they contained was illegible, omitted, incomplete, or difficult to read.

Finally, clarification was sought regarding the seemingly inconsistent statistics that five of six examiners stated that Peer-to-Patent Australia would be useful if incorporated into IP Australia’s regular practice, but only half the examiners would welcome examining another Peer-to-Patent Australia application. The reason for this disparity is linked to the time taken to review participating applications. The answer given was that while the majority support incorporating Peer-to-Patent into IP Australia’s regular practice, fewer would like to be involved personally in examining participating Peer-to-Patent Australia applications because of the time doing so added to examination.

Case studies describing the uses that the examiners made of the Peer-to-Patent Australia prior art submissions are included at Appendix 3.

**Patent Literature Versus Non-Patent Literature**

The project team had envisaged that reviewers would uncover a significant amount of non-patent literature, however, the vast majority of prior art submitted by the community of peer reviewers consisted of patent and patent application literature. Overall, 81 of the 106 prior art submissions put forward by the reviewers contained patent or patent application literature. Of the eight cases in which examiners cited Peer-to-Patent Australia prior art submissions that were not turned up during normal examination, five of those prior art submissions contained patent or patent application literature, one contained non-patent literature, and two contained both patent and non-patent literature.
It is well established that examiners are proficient at searching patent databases to find patent literature, but that resource and time constraints can hinder the examiner’s ability to search for non-patent literature. Additionally, although examiners are proficient at searching for patent-based prior art, occasionally this art is not found. Therefore, there is value in the peer community locating patent and patent application prior art documents.

**Web Site Traffic Trends**

According to data obtained using Google Analytics, during the six-month pilot period, the web site experienced:
- 5,003 visits (which equates to 27.19 visits per day);
- visits from 69 countries/territories, including 2,969 visits from Australia, 1,065 from the United States, and 247 from India; and
- 2,756 absolute unique visitors, which accounts for 53.73% of all visits.

![Visits by Country](image)

The average time visitors spent on the web site was five and a half minutes.

The web site experienced a 46.73% bounce rate (which indicates the percentage of initial visitors to a site who “bounce” away to view a different web site, rather than continue on to view other pages within the same site).

Traffic sources were separated into three categories: direct traffic (the user typing in the web site’s URL); referring sites (visits originating from clicking a link to the Peer-to-Patent Australia web site on another web site), and search results generated by search engines. Google Analytics recorded that:
- 38% of visits were the result of direct traffic;
- 35% of visits came from referring sites; while
- 27% of visits came from search engines.
The top sources of referring site traffic to the web site were referrals from:
- IP Australia’s web site (286 visits or 5.72% of visits);
- http://www.overclockers.com.au (213 visits or 4.26% of visits); and
- the United States Peer-to-Patent web site (3.94% of visits).

In addition, a number of the law blog sites, such as IP Kat (based in the United Kingdom), Spicy IP (India) and IP Wars (Australia), provided a small volume of referral traffic to the Peer-to-Patent Australia web site and valuable publicity for the project. Members of the Peer-to-Patent Australia project team wrote the blog entries posted to these referring sites.

In terms of visitor loyalty, that 53.73% of all visits were by absolute unique visitors indicates that most visitors viewed the Peer-to-Patent Australia web site only once. The remaining 46.15% were visits from returning visitors. As is to be expected, the majority of visitors to the web site viewed the site quickly and did not involve themselves in the analysis of patent applications or the search for prior art. In many ways, this is similar to Wikipedia, where the visitor count far exceeds the number of editors who actually write encyclopaedia entries.

Nearly all visits to the web site were from computers. Only a very small number of visits (26) were from mobile devices.
Publications

To date, there have been two publications from the project.


Reflections on the Inaugural Peer-to-Patent Australia Pilot

Five issues are addressed in reflecting on the pilot’s results.

The Narrow Subject Matter Focus of the Pilot

It was appropriate that the initial Peer-to-Patent pilots conducted in the United States and Australia were given a limited subject matter focus on business methods, computer software and related applications. However, the project would be of greater value if it allowed for a wider range of eligible subject matter. As described below, this subject matter expansion is now happening in the United States Peer-to-Patent project.

Building and Sustaining a Viable Community of Reviewers

It is clear there is a need to create incentives to attract additional reviewers and encourage greater cooperation and communication within the community, particularly if the project is to involve a considerably larger number of participating applications in the future. What the project has done well to date is encourage individuals to give their time and expertise to the project. However, building reviewer numbers and capacity requires greater institutional buy-in. What is required are incentives, possibly economic, to encourage the key technology companies who employ skilled and knowledgeable technologists to participate in the review process. An ideal outcome would be that participation as a Peer-to-Patent reviewer might move from being a hobby or indulgence for those employed in high technology areas, to a professional expectation.

Applicant Consent

The narrow subject matter focus of the pilot and its consent-based nature made obtaining the consent of patent applicants who hold eligible patent applications a challenge. Although a sufficient number of applicants consented to their applications being peer reviewed, obtaining the necessary consents was difficult and time-consuming. Expanding the eligibility criteria to include patent applications on a wider range of subject matter would help attract a greater number of participating applicants. Alternatively, removing the consent-based nature of the scheme would completely remove this concern.

Time Needed to Examine Participating Applications

Time taken to examine may be less of a concern if the Peer-to-Patent Australia prior art were given to the examiners up front, rather than after ordinary examination (as was the approach taken in this pilot). Otherwise, examination time could be addressed by patent offices making allowances in examiners’ workloads, and performance indicators that recognise and reward
those who consider community input could be introduced, in the knowledge that doing so has the potential to improve patent quality.
Part IV: Peer-to-Patent in the Future

A Second United States Peer-to-Patent Pilot

After wrapping the first pilot at the end of October 2009, and spending the following year evaluating the results with the USPTO, the United States Peer-to-Patent project team launched a second pilot on 25 October 2010. The pilot is once again run by New York Law School in conjunction with the USPTO and is scheduled to run for 12 months.

Introduced with the second pilot is a new software platform that contains a new interface and many new and exciting features designed to improve the efficacy of the project. The first new feature of note is that the site is now designed to handle applications from multiple patent offices. This feature may be used to combine prior art contributions to all Peer-to-Patent programs on one web site interface. Thus, the new software offers an opportunity for greater integration between the Australian, United States and Japanese Peer-to-Patent projects, in addition to any other national project that may come into being.

Second, the new pilot involves an expanded range of eligible subject matter to include matter beyond the business methods, computer software and related applications eligible to participate in the first United States pilot. For the first time, Peer-to-Patent will expand into new technology areas such as biotechnology, bioinformatics, organic compounds, telecommunications and speech recognition. This is a development that will potentially make it easier to attract both patent applications to be reviewed and a wider section of peer reviewers.

Peer-to-Patent Projects in Other Countries

The Korean Intellectual Property Office (KIPO) is currently running a Peer-to-Patent-style Community Patent Review project and the Institute of Intellectual Property (IIP) in Japan has announced that it will launch a second Japanese pilot (P2PJ) in the beginning of 2011 (http://www.iip.or.jp/p2pj/). In addition, the United Kingdom Patent Office is said to be investigating commencing a Peer-to-Patent pilot.

An International Peer-to-Patent

Another possibility for the future is that Peer-to-Patent may run at an international level as part of the processes that allow for international patent applications to be filed in accordance with the Patent Cooperation Treaty (PCT) administered by the World Intellectual Property Organization.

This is arguably a desirable place to position Peer-to-Patent, as it would allow community input to be included early in the patent life cycle and the results of peer review to be made available to all patent offices to which the application is sent for examination. Early notification of the existence of prior art such as this would be helpful to patent applicants filing international patent applications in accordance with the Patent Cooperation Treaty because it would provide information that might not otherwise be available at such a point in time which might cause them to abandon applications unlikely to succeed before they reach the national phase.
International Meeting of Peer-to-Patent Projects and Patent Offices


The meeting was held for the purposes of:
• allowing the three existing Peer-to-Patent project teams to report on recent activities;
• engaging those who are contemplating running Peer-to-Patent projects in the future (whether they be representatives of national patent offices or bodies independent of patent offices); and
• discussing future directions and strategies for the Peer-to-Patent movement, including the possibility of running Peer-to-Patent as part of the international patent application process under the Patent Cooperation Treaty (the WIPO PCT Working Group’s proposed Third Party Observations System).

Those in attendance included patent office officials from the World Intellectual Property Organization, the European Patent Office, the German Patent Office, the UK Intellectual Property Office, the Brazilian Patent Office, the United States Patent and Trademark Office, the Japan Patent Office, the Korean Intellectual Property Office, and IP Australia, as well as corporate and academic participants. Participants shared their experiences with the Peer-to-Patent pilots that have been run in the United States, Japan, Australia, and Korea, learned more about the purpose and utility of the Third Party Observations System, and discussed the future of sharing prior art searches among national patent offices.

The public proceedings of the roundtable may be found at: http://dotank.nyls.edu/community/patent/publicproceedings.pdf.
Conclusion

The inaugural Peer-to-Patent Australia pilot project, like the United States and Japanese pilots that preceded it, generated encouraging results. In many ways, the hypotheses upon which the pilot was predicated were confirmed.

The pilot demonstrated that an open network of volunteer experts can act to improve the quality of information available to Australian patent examiners over that currently available. This was confirmed by the uses to which the examiners put the Peer-to-Patent Australia prior art they were given and the positive comments they made in response to survey questions.

The critical figure that underlies the value of the project is that in 8 of the 31 applications, the examiners cited Peer-to-Patent Australia prior art that was not discovered by the examiners in the course of their ordinary examinations. This indicates that the project was of assistance to the patent examiners.

The formation of an organic peer reviewing community demonstrated that the public is capable of self-selecting on the basis of expertise and producing information relevant to the patent examination process. That community was drawn from many different backgrounds and skill sets and comprised both Australian and international participants.

It is in all probability too early to say whether the citizen-experts’ participation in patent examination produces a better quality and more robust patent.

The view taken on reflection on the results of this pilot is that:

• the narrow subject matter focus should be expanded to include a wider range of technologies beyond the business methods, computer software and related applications eligible in this pilot, which is the case in the second United States pilot which is running at the moment;
• there must be incentives, possibly economic, to encourage the key technology companies who employ skilled and knowledgeable technologists to embrace and participate in the peer review process;
• difficulties in obtaining applicant consent could be alleviated by expanding the narrow subject matter focus of the pilot and removing the consent-based nature of the scheme (arguably, this would be permissible under Australian law); and
• considering Peer-to-Patent prior art submissions should not materially add to the time needed for examination if the additional prior art is given to examiners up front, rather than after ordinary examination (as was the case in this pilot) — otherwise, patent offices might consider making allowances in examiners’ workloads to account for any additional time needed in the knowledge that doing so has the potential to improve patent quality.

Despite the encouraging results, the project is just the start of a larger process. There is much work and research to be done to make Peer-to-Patent a part of standard patent office practice in all jurisdictions. In the future, participants in this space will need to look for ways to:

• improve the process by which Peer-to-Patent is run, which the United States project team has taken steps towards in its second pilot;
• create a reliable means of sustaining viable and productive communities of peer reviewers over long periods of time; and
• incorporate the Peer-to-Patent process and the philosophy it embraces as a part of standard patent office practice in various patent offices.

We as a team are very proud of the results the inaugural Peer-to-Patent Australia pilot achieved and the enthusiasm that the project has generated. We look forward to the Peer-to-Patent concept...
playing a continuing role in the patent system in the future and to seeing the results of pilots currently running, or proposed to run in the near future, particularly in the United States and Japan.
Appendix 1: Project Web Site Snapshot

Peer-to-Patent Australia is part of the international expansion of Peer-to-Patent into jurisdictions outside the United States. It operates with the support of IP Australia and is the result of the collaborative efforts of the Queensland University of Technology Faculty of Law and New York Law School.

Become part of this historic program. Help us locate the information relevant to assessing the claims of pending patent applications. Become a community reviewer and improve the quality of issued patents in Australia.

- Click here to see a list of all applications.
- Click here to be notified of any new applications via RSS.
- Click here to be notified about any new applications via email (requires login).
- Learn more about how Peer-to-Patent Australia works here.
- Download a Peer-to-Patent Australia brochure.

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7 Secure money transfer systems and methods using... | 8 System and method for server-based calculation... | 4 System and method for providing access to... | 9 Method and device for content information sharing...
8 System and method for server-based calculation... | 6 Method and method for providing access to... | 4 System and method for providing access to... | 9 Method and device for content information sharing...
4 System and method for providing access to... | 7 Methods and computer program product for monitoring... | 4 Methods and systems for diagnosing machinery | 9 Method and device for content information sharing...
9 A method of gaming, a gaming system and a game ... | 7 Methods and computer program product for monitoring... | 4 Methods and systems for diagnosing machinery | 9 Method and device for content information sharing...
4 System and method for managing emissions from... | 5 Method, system and computer software code for... | 4 Method and system for performing multijoint... | 9 Method and device for content information sharing...
4 Methods and systems for diagnosing machinery | 7 Methods and computer program product for monitoring... | 4 Methods and systems for diagnosing machinery | 9 Method and device for content information sharing...
7 Methods and computer program product for monitoring... | 5 Method, system and computer software code for... | 4 Method and system for performing multijoint... | 9 Method and device for content information sharing...
5 Method, system and computer software code for... | 4 Method and system for performing multijoint... | 9 Method and device for content information sharing...
9 Method and device for content information sharing...

**Patent Application Prior Artist Awards**

<table>
<thead>
<tr>
<th>Name</th>
<th>Patent Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steven Pearson</td>
<td>A method of processing a user data card, an interface module and a...</td>
</tr>
<tr>
<td>Mark Vokosinski</td>
<td>A software management system and method</td>
</tr>
<tr>
<td>Diane Wilks</td>
<td>A gaming system and method of playing a game</td>
</tr>
<tr>
<td>Sean Murray</td>
<td>An optical display</td>
</tr>
<tr>
<td>Jimmy Ti</td>
<td>Secure money transfer systems and methods using biometric keys...</td>
</tr>
<tr>
<td>Jimmy Ti</td>
<td>Employing mobile location to refine searches</td>
</tr>
<tr>
<td>Steven Pearson</td>
<td>Employing mobile location to refine searches</td>
</tr>
<tr>
<td>Jimmy Ti</td>
<td>Method, system and computer software code for trip optimization...</td>
</tr>
<tr>
<td>Abhishek Awasthi</td>
<td>Method, system and computer software code for trip optimization...</td>
</tr>
<tr>
<td>Jason DeVendrovic</td>
<td>System and method for providing access to wireless railroad data...</td>
</tr>
<tr>
<td>Diane Wilks</td>
<td>Method and apparatus for run-time incorporation of domain data...</td>
</tr>
<tr>
<td>Diane Wilks</td>
<td>System and method for managing emissions from mobile vehicles</td>
</tr>
<tr>
<td>Sean Murray</td>
<td>Shared appreciation progressive mortgage</td>
</tr>
</tbody>
</table>

**This is How Peer-to-Patent Australia Works**

- Review and discuss patent applications
- Research and find prior art
- Upload prior art relevant to claims
- Analyze and evaluate all submitted prior art
- "Top ten" prior art references forwarded

Peer-to-Patent Australia is a joint initiative of the Queensland University of Technology and IP Australia run in conjunction with New York Law School.

International Patents: United States

Peer-to-Patent Australia 1st Anniversary Report December 2010 37
Appendix 2: Survey Instruments

The following survey instruments were given to patent examiners employed by IP Australia who examined one or more patent applications that had been peer reviewed by the community of reviewers.

Peer-to-Patent Australia Application Survey

This survey is APPLICATION-SPECIFIC. Please provide a separate survey response for each participating patent application you examined.

The purpose of this survey is to investigate the effectiveness of Peer-to-Patent Australia platform in helping Patent Examiners throughout their application examination process.

1. Please enter the patent application number and invention title.

   Patent application number
   Invention title

2. Please list details of all the information tools or resources you used to conduct your search.

   Databases
   Search reports from foreign patent offices
   Internet searches
   Other(s)

3. How helpful did you find the Peer-to-Patent Australia Prior Art and Comments Report in the examination of this patent application?

   Very helpful   Somewhat helpful   Not helpful
   Comments

4. Which aspects of the Peer-to-Patent Australia Prior Art and Comments Report did you find helpful? [Check all that apply]

   - Peer-to-Patent Australia prior art submissions
   - Peer-to-Patent Australia annotations on the prior art
   - Peer-to-Patent Australia research resources
   - Peer-to-Patent Australia discussion
   - None of the above

   Comments:

5. Did the Peer-to-Patent Australia Prior Art and Comments Report contain any information that you used that was not turned up during the course of your normal examination and was of assistance in determining the validity of this patent application?

   Yes   No
   Comments

6. Did you apply any Peer-to-Patent Australia prior art submissions that were not turned up during the course of your normal examination to reject any claims in this patent application?

   Yes   No
   Comments
7. Did the Peer-to-Patent Australia prior art submissions referred to in previous question contain:

<table>
<thead>
<tr>
<th>Patent or patent application literature</th>
<th>Non-patent literature</th>
<th>Both</th>
<th>Not applicable</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

8. Did you apply any Peer-to-Patent Australia prior art submissions that were also turned up during the course of your normal examination to reject any claims in this patent application?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

9. Which prior art references were used to reject claims in this patent application? Please list them all.


10. Were any of the Peer-to-Patent Australia prior art submissions inaccessible to a patent examiner using IP Australia's search facilities?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>I don't know</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

11. Were any of the Peer-to-Patent Australia prior art submissions referred to in previous question used to reject any claims in this patent application?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
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<td></td>
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<td></td>
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</tbody>
</table>

12. Was the Peer-to-Patent Australia Prior Art and Comments Report sufficiently clear and well formatted?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>
Peer-to-Patent Australia Examiner Survey

The purpose of this survey is to investigate the effectiveness of Peer-to-Patent Australia platform in helping Patent Examiners throughout their application examination process.

Only ONE response of this survey is required from each participating patent examiner.

1. Which examination section(s) do you work in?

2. How helpful do you believe the Peer-to-Patent Australia pilot program has been in assisting patent examiners locate relevant prior art?

   - Very helpful
   - Somewhat helpful
   - Not helpful
   - Comments

3. Would you welcome examining another Peer-to-Patent Australia application?

   - Yes
   - No
   - Indifferent
   - Comments

4. Do you think a program like Peer-to-Patent Australia would be useful if it were incorporated into IP Australia’s regular practice?

   - Yes
   - No
   - Comments

5. What changes would you suggest to improve the Peer-to-Patent Australia project?

SUBMIT
Appendix 3: Case Studies – Use of Peer-to-Patent Australia Prior Art Submissions

Title: Shared appreciation progressive mortgage  
Patent Application No: 2005201844  
Filing Date: May 02, 2005

According to this patent application filed on behalf of Residex Pty Limited:

“This invention concerns a Shared Appreciation Mortgage (SAM), that is an arrangement where a customer enters into an agreement with a lender to share the equity in a real estate property.”

Reviewer Activity

Four peer reviewers subscribed to this application and three prior art references were submitted. All of these prior art references were non-patent literature.

Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference titled, “Housing Partnerships: A New System of Housing Finance” (by Andrew Caplin), submitted by Susan Murray, was cited as grounds for rejection of claims 1-28 on the basis that they lack novelty and do not involve an inventive step.

Survey results indicate that the Peer-to-Patent Australia prior art cited was not found during normal examination.

The examiner also noted that, “The application is not for a manner of manufacture within the meaning of paragraph 18(1)(a) of the Patents Act because it is directed to a mere business scheme.”
Title: System and method for managing emissions from mobile vehicles
Patent Application No: 2005267004
Filing Date: July 21, 2005

According to this General Electric Company patent application:

“This invention relates generally to control of emissions from a mobile vehicle."

Reviewer Activity

Four peer reviewers subscribed to this application and three prior art references were submitted. All three prior art references were patent or patent application literature.

Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference, a United States patent titled, “Adaptive emission control with communication network”, submitted by Diane Willis was cited as grounds for rejection of claims 1, 5, 9 and 17 on the basis that they are not novel, and claims 1-17 on the basis that they lack an inventive step.

Survey results indicate that the Peer-to-Patent Australia prior art cited was not found during normal examination.
Title: Method and apparatus for run-time incorporation of domain data configuration changes  
Patent Application No: 2005326766  
Filing Date: June 29, 2005

According to this General Electric Company patent application, what is claimed is:

“A method and apparatus for implementing a runtime configuration change for domain data in a database for an information systems [sic] where the domain data defines entities which are acted upon by the information system and where the reconfiguration of the domain data can take place without taking the information system offline and making it inaccessible to users.”

Reviewer Activity

Four peer reviewers subscribed to this application and three prior art references were submitted. All three these prior art references were patent or patent application literature.

Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference, United States Patent 6,704,933, titled, “Program configuration management apparatus”, was submitted by Diane Willis. This prior art reference was cited as grounds for rejection on the basis that claims 12 and 23 are not novel and do not involve an inventive step, and claims 1, 12, 13, 23 and 24 do not involve an inventive step.

The examiner also noted that claims 2, 3, 15, 16, 20, 21, and 26-29 lack an inventive step in light of the combination of this prior art and additional piece prior art the examiner located independently.

Survey results indicate that the Peer-to-Patent Australia prior art cited was not found during normal examination.
Title: System and method for providing access to wireless railroad data network
Patent Application No: 2006203756
Filing Date: August 29, 2006

According to this General Electric Company patent application, what is claimed is:

“A method for accessing a wireless railroad data network (25) comprising: sensing presence of a rail vehicle on a rail track (12); authenticating the rail vehicle to gain temporary access to the wireless railroad data network (25) based on sensed presence of the rail vehicle on the rail track (12) and permitting temporary access by the rail vehicle to the wireless railroad data network (25) based on sensed presence and authentication of the rail vehicle.”

Reviewer Activity

Four peer reviewers subscribed to this application and three prior art references were submitted. All three prior art references were patent or patent application literature.

Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference, United States Patent 4,711,418 titled, “Radio based railway signaling and traffic control system”, submitted by Jason DeVeau-Rosen, was cited as grounds for rejection of claims 1-13 on the basis that they lack novelty and do not involve an inventive step.

Survey results indicate that the Peer-to-Patent Australia prior art cited was not found during normal examination.
Title: Method, system and computer software code for trip optimization with train/track database augmentation
Patent Application No: 2007333518
Filing Date: September 11, 2007

According to this General Electric Company patent application:

“The field of invention relates to a system and method for optimizing train operations, and more particularly to a system and method for augmenting and updating a train/track database associated with the system, method, and/or computer software code for optimizing train operations.”

Reviewer Activity

Five peer reviewers subscribed to this application and three prior art references were submitted. Two of these prior art references were patent or patent application literature, while one comprised non-patent literature.

Examiner Action

The patent examiner cited two of the prior art references submitted by the community of reviewers as grounds for rejection of claims 1-17, 19-21, 23-27, 29 and 30 for lack of novelty and claims 1-30 on the basis that they do not involve an inventive step.

The first of these prior art references, titled, “Integrated Railroad System”, was submitted by Jimmy Ti.

The second of these prior art references, titled, “Control system for operating long vehicles”, was submitted by Abhishek Awasthi.

Survey results indicate that the Peer-to-Patent Australia prior art cited was not found during normal examination.
Title: Employing mobile location to refine searches  
Patent Application No: 2007342244  
Filing Date: December 06, 2007

According to this Yahoo! Inc. patent application:

“The present invention relates generally to search queries over a network and, more particularly, but not exclusively to refining a search using a mobile device by employing location information to modify a primary search query term.”

Reviewer Activity

Six peer reviewers subscribed to this application and three prior art references were submitted. All three of these prior art references were patent or patent application literature.

Examiner Action

The patent examiner cited two of the prior art references submitted by the community of reviewers as grounds for rejection on the basis that claims 1-5, 7-10 and 12-19 lack novelty and do not involve an inventive step.

The first of these prior art references, titled, “Method of and apparatus for topologically based retrieval of information”, was submitted by Jimmy Ti.

The second of these prior art references, titled, “Location-based services”, was submitted by Steven Pearson.

Survey results indicate that the Peer-to-Patent Australia prior art cited was not found during normal examination.
Title: Secure money transfer systems and methods using biometric keys associated therewith
Patent Application No: 2008206397
Filing Date: January 11, 2008

This Western Union patent application claimed a method for transferring funds using a biometric sample analysis to determine whether the funds are to be provided to a recipient.

Reviewer Activity

Seven peer reviewers subscribed to this application and seven prior art references were submitted. Four of these prior art references were patent or patent application literature, while one was non-patent literature.

Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference titled, “Tokenless Biometric Electronic Stored Value Transactions”, submitted by Jimmy Ti, was cited as grounds for rejection on the basis that, when considered with other prior art, it reveals that the invention defined in claims 3 and 6-18 do not involve an inventive step.

Survey results indicate that the examiner also found the Peer-to-Patent Australia prior art cited during normal examination.
Title: An optical display  
Patent Application No: 2008243167  
Filing Date: November 07, 2008

According to this patent application filed on behalf of Aristocrat Technologies Australia Pty Ltd, what is claimed is:

“An optical display comprising: a plurality of strands arranged in spaced apart relationship; each strand having a plurality of waveguides with each guide having an output at a different position along the length of the respective strand; each waveguide having an input end; and a light driver supplying light to the input end of each waveguide so light can propagate along the waveguide and exit at the outputs.”

Reviewer Activity

Six peer reviewers subscribed to this application and five prior art references were submitted. All five prior art references were patent literature.

Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference, United States Patent 6,628,885 titled, “Fiber-Optic Assembly with Sheathed Light-Transmitting Core”, submitted by Susan Murray, was cited as grounds for rejection of claims 1-23 on the basis that, when read with another piece of prior art, they do not involve an inventive step.

Survey results indicate that the examiner also found the Peer-to-Patent Australia prior art cited during normal examination.
Title: A gaming system and method of playing a game
Patent Application No: 2008249172
Filing Date: November 21, 2008

According to this patent application filed on behalf of Aristocrat Technologies Australia Pty Ltd, what is claimed is:

“A method of gaming comprising: providing at least one set of player selectable symbols; receiving at least one player selection of a symbol from the at least one set of symbols; forming at least one reel strip including the at least one selected symbol; generating a game outcome from a set of reels including the at least one reel strip; and evaluating the game outcome to determine whether to make an award.”

Reviewer Activity

Four peer reviewers subscribed to this application and four prior art references were submitted. Two of these prior art references were patent literature, while two were non-patent literature.

Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference titled, “A gaming machine”, submitted by Diane Willis, was cited as grounds for rejection of claims 1-39 on the basis that they lack novelty and do not involve an inventive step.

Survey results indicate that the examiner also found the Peer-to-Patent Australia prior art cited during normal examination.
Title: A software management system and method  
Patent Application No: 2009200584  
Filing Date: February 13, 2009

According to this patent application filed on behalf of Aristocrat Technologies Australia Pty Ltd, what is claimed is:

“A software maintenance system for managing a software distribution system for distributing a software package to one or more target machines is described. The software distribution system comprises a plurality of software distribution parts. At least one of the software distribution parts is provided at each target machine for receiving the software package. The software management system comprises a software maintenance server for receiving a software package for updating one or more target machines and at least one software maintenance unit for each software distribution part.”

Reviewer Activity

Nine peer reviewers subscribed to this application and six prior art references were submitted. Four of these prior art references were patent or patent application literature, while two were non-patent literature.

 Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference titled, “Server system and online software update method”, submitted by Mark Webbink, was cited as grounds for rejection of claims 1-18 on the basis that they lack novelty and do not involve an inventive step.

Survey results indicate that the Peer-to-Patent Australia prior art cited was not found during normal examination.
Title: A method of processing a user data card, an interface module and a gaming system
Patent Application No: 2009200139
Filing Date: January 14, 2009

According to this patent application filed on behalf of Aristocrat Technologies Australia Pty Ltd, what is claimed is:

“A method of processing a user data card comprising: determining that a user data card comprising a non-compatible smart card has been entered into a card reader; obtaining a user identifier from a magnetic stripe of the user data card; and processing the user identifier to obtain data from a user record to enable further processing in respect of the user data card.”

Reviewer Activity

Seven peer reviewers subscribed to this application and seven prior art references were submitted. Six of these prior art references were patent or patent application literature, while one was non-patent literature.

Examiner Action

The patent examiner cited one of the prior art references submitted by the community of reviewers. That prior art reference titled, “Electronic terminal and method for encoding magnetic strip and IC data cards” (EP0492358A1), submitted by Steven Pearson, was cited as grounds for rejection of claims 1-15 on the basis that they do not involve an inventive step.

Survey results indicate that the Peer-to-Patent Australia prior art cited was not found during normal examination.
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