

How to Improve Patent Quality by Using Crowd Sourcing

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Worldwide filings of patent applications and the ensuing invalidation requests have seen staggering growth over the last decade. The result is increasing patent backlog, deteriorating patent quality and an uncertain economic environment. This article briefly describes the crowdsourcing phenomenon and then details how it can aid patent review.

Patent application review is an integral part of the examination procedures undertaken by patent offices before a patent grant is given. Prior art search is a complex and time consuming part of this process. Crowdsourcing this critical stage is a valuable opportunity to render the traditional patent application review process more efficient by separating the stage of prior art search from the patent grant procedure.

This article briefly describes the crowdsourcing phenomenon and then details how it can aid patent review. The open source review pilot projects of the USPTO and JPO are presented in order to assess the potential of opening prior art search to a wider community of experts and practitioners. Public-private partnerships between patent offices and companies managing online review communities are proposed as an opportunity to leverage the benefits of open review while providing sufficient incentives and quality assurances to yield useful contributions.

INTRODUCTION

Innovation is a major driver of economic growth in modern economies and it is no secret that investment in new technologies occurs when investors believe they can profit from them.¹ Patent protection provides the incentive to invest in this market by permitting a temporary monopoly in return for public disclosure of an invention. This is not news. Yet, as the number of patent applications and patent invalidation requests continues to rise all over the world, patent office backlogs grow, patent quality deteriorates, companies operate under increasing uncertainty and the IP system begins to look stagnant.

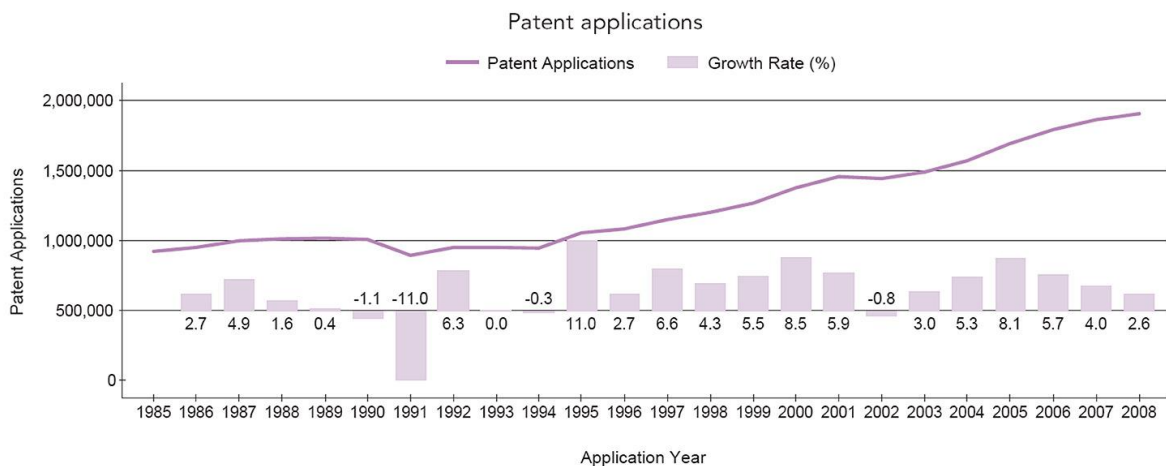


Figure 1. Trend in total patent applications and patent grants

Source: WIPO 2010

Despite fluctuating growth rates, patent applications have seen a steady increase globally (see figure 1) and patent backlog has grown in most major markets (see figure 2 below).

¹ This article is based on 'Driving through Patent Application Review' published in Journal of Intellectual Property Rights Vol 16 (4), p.303-308

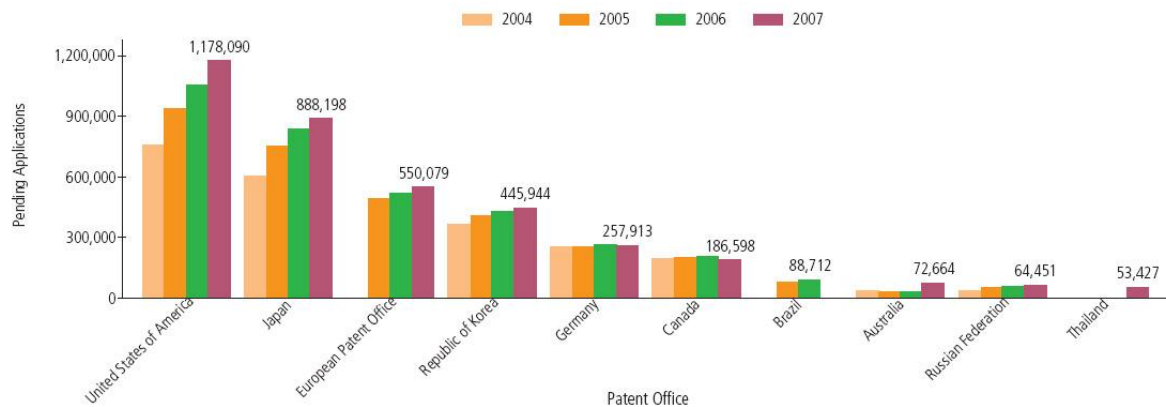


Figure 2. Number of pending applications by patent office: offices with > 50,000 pending applications

Source: WIPO 2009

With this staggering increase in demand for patent application review, can we reasonably expect patent offices to keep up with the pace and conduct the exhaustive prior art search necessary to ensure patent quality? The EPO is concerned about critical public reactions to the growing backlog of patent offices around the world (EPO 2008, 6). Multiple offices have sought to streamline the patent review process in response. Increased harmonization and collaboration across offices has most often been the solution sought. However, increased information-sharing and shortened pendency times resulting from harmonization are not likely to improve the quality of the patents granted. So what could?

Tracing the evolution of business models in response to new technologies, Jeff Howe remarked in an article for *Wired Magazine* in 2006 that the age of the crowd is upon us (Howe 2006). Crowdsourcing presents a new opportunity for organisations to solve complex problems. Communications technologies provide powerful tools to harness the collective intelligence of millions of individuals in online communities. It is time for the patent system to turn to the crowd for help and draw on its deep and diverse knowledge of prior art. Efficiently managed online communities may offer significant advantages over traditional patent application review for both companies and the public. So what is crowdsourcing and how can it help patent application review?

WHY TAP THE CROWD?

Crowdsourcing represents a shift in business models in response to a connected world. With over 1,117,000,000 Internet users and counting around the globe (Albors et al. 2008, 196), it is hardly surprising that businesses are seeking to tap the wisdom and labour potential of this burgeoning crowd. Crowdsourcing, briefly defined, is when an organization outsources a task to a large network of individuals via an open call (Howe 2006; cited in Brabham 2008, 76). Unlike open source, the final product of the collective labour of the group is owned wholly by the organization that initially made the request.

The approach reaps the problem-solving efficiency benefits of open source while simultaneously providing sufficient incentives for participation in the project. It enables a business to harvest the ideas of a large group and reward the best contributions. No contracts (except confidentiality and user agreements in some cases), no employee benefits to be paid, no office overheads. A problem is solved and only the individuals directly contributing to its solution are rewarded. Business 2.0, pure and simple.

But is asking a group of people to solve a problem simply inviting a solution that tends to the average intelligence of the group? Not in the case of crowdsourcing. The solutions provided are not achieved by averaging the intelligence of the group but rather by aggregating the creativity and expertise of each individual participant (Surowiecki 2004). Internet technologies enable online communities to pool ideas among culturally diverse, geographically dispersed individuals in a decentralized manner.

The instant exchange of ideas among an enormous group is aggregated by web technologies into a single output (Terranova 2004). Efficient solutions to highly complex problems can be found because

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computer software is powerful enough to perform a large amount of the tedious tasks associated with organizing and sharing information provided by multiple users. Studies even show that targeting a labour pool by asking them to solve specific problems online increases their skill-sets and may stimulate entrepreneurship (Brabham 2008, 84).

Problems to be addressed

There are a few problems. There must be sufficient community support for the initiative if crowdsourcing is to work. One can't expect to draw from the wisdom of the crowd if the crowd is silent. The issue of desertion from the community can also create obstacles, though facilitating participation and providing adequate incentives can mitigate this. Participation may not always be relevant to the project.

Weeding out productive contributions can be a time-consuming process. However, carefully designed software and effective quality management of the online community can help. Software can also be responsible for making sure that contributions are in the required format (since organizing the information can also be a highly time-consuming and tedious task).

Naturally, there is a level of uncertainty regarding the information provided by a crowd of users. Creating reputation systems and consolidating user identity is likely to improve quality. Moreover, in the case of patent examination, the examiner retains the ultimate decision-making authority and users simply provide material that may be relevant. In this way the quality component that is generally a problem when flooded with contributions from a crowd of users is ensured.

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Crowdsourcing can be more effective than centralized alternatives because it entails free input, a network of open governance, and wide availability of the output in the community. However, it may also exploit the crowd too much. Numerous individuals spend time and effort to contribute, the organization making the call keeps all the information and rewards only those it considers necessary to. The crowd may be giving too much and getting a disproportionately small reward for the benefit accrued by the company.

Many success stories

Crowdsourcing success stories have already occurred in many industries. Major pharmaceutical firm Eli Lilly launched the Innocentive project in 2001 in order to link outsiders to internal research and development departments that were experiencing difficulty solving certain problems. Offering monetary rewards to whoever contributed a valuable solution that was used allowed more than 30% of the problems posted on the website to be solved (Howe 2006, 3). That's 30% more problems solved than there would have been without the open call. Threadless crowdsourced t-shirt design and pays royalties on a sale-by-sale basis. Istockphoto crowdsourced stock photography and undercut an entire

market. Dell's 'ideastorm' and Goldcorp's challenge are further examples of the power of this model when used appropriately. But what can the crowd offer the patent application review process?

CROWDSOURCE PATENT REVIEW

Searching for prior art (material that would invalidate a patent application by undermining its claim to being novel or non-obvious) is a long and difficult process. The open source software movement is a testament to the power of drawing on experienced practitioners and amateur enthusiasts to spot mistakes and make improvements in software code. In the same way, practicing scientists and individuals actively involved in innovative industries are very well placed to tackle the question of prior art search in patent application review.

Patent examiners are well trained but can they really be expected to effectively search all patent and non-patent literature relating to whether an invention is novel or obvious? Even patent office databases cannot compete with the knowledge of all individuals in a given domain. It may take an examiner hours, days, even weeks, to uncover material relevant to a prior art search that could have taken a practicing scientist in the field a few seconds to recognize.

A complex and time consuming process

Patent application review is a complex process but prior art search is a key node where it can be made more efficient (Noveck 2006). The current approach ignores the possibilities offered by web technologies. Organizations with centralized information systems may have possessed stronger resources for making accurate patent review decisions in the past but internet technologies create the ability to instantaneously draw from a whole new pool of expertise.

Submitting an open call for specific prior art search in patent applications allows anyone interested to scan the request. If they have relevant information they can submit it. If not they move on. Social reputation systems (such as those of Ebay and Amazon sellers) incentivize positive contributions while unconstructive users are made irrelevant by their productive counterparts. Because individuals skilled in the art relevant to a patent application request can quickly identify prior art, meaningful input is

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provided with minimal effort to the individual. The power of crowdsourcing is its sheer number of participants.

IN PRACTICE

So how would it work? Participants submit prior art material and commentary in an online forum in response to pending application posts. Reputation in this online community is staked on productive and meaningful contributions. The information gathered by this open call is then transmitted automatically via specially designed software to the patent examiner in question. The examiner remains the ultimate judge for granting a patent but is now able to make their decision on stronger evidence.

More and better information yields more accurate patent application decisions. The result: stronger patent quality, more certainty for operating firms and greater confidence in the intellectual property system. The public, meanwhile, benefits by avoiding the negative affects of private monopoly rights over undeserving products.

Crowdsourcing patent review is not just a fanciful notion fuelled by over-optimism regarding Internet technologies. Businesses are applying it and patent offices have already achieved results. The USPTO initiated the Peer-to-Patent project on June 15, 2007. Of the 40 applications submitted to the pilot project, 173 contributions relating to 36 cases were made by the community (CPI 2008). While participation levels remained low, it still resulted in vital prior art submission that led to the rejection of 9 out of the 36 cases. 8 of these 9 rejections were based on submission of non-patent literature that was not available to the patent office.

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Examiners, in turn, did not feel threatened by this community but actively welcomed their contributions and felt that full implementation of the project would benefit the review process. 21% of examiners said the prior art material submitted was inaccessible to the patent office and 79% wanted to see a full-scale implementation of this project in the office. Importantly, 89% believed the information was submitted in a useful and organized manner. 2000 people from over 140 different countries were registered users by the end of the pilot.

The JPO also established their own open peer review system for patent applications in response. The office experienced similarly positive results (JPO 2010). The table below compares the results:

	USPTO	JPO
Site Access		
Visitors	40,000>	11,950
Participants		
Reviewers	2092	253
Applicants	13 (3 indivis.)	16 ¹
Reviewed applications	40	39
Review Results		
Active reviewers out of registered reviewers (percentage)	365 (17%)	22 (9%)
Submitted prior art documents	173	137
Submitted non-patent prior art documents	96 (55%)	17 (12%)
Submitted comments	395	11
Prior art submission to JPO (Protest)		
Applications against which prior art was submitted to JPO	36	37
Prior art documents submitted to JPO	168	120
Exam Results		
Applications to which 1st O.A. was rendered	36	35
Applications in which O.A. cited submitted prior art	13	13
Cited prior art	14	19
Cited non-patent P.A.	8	0

Figure 3. Comparison of pilot results in US and Japan (JPO 2010)

The methodologies for the pilot projects was different but similar enough to merit comparison. The major problem for both of these pilots, however, was stimulating sufficient participation in the project from the international community of scientists and practitioners. One of the suggested solutions was to create incentives to build up a community and make profiles public to enhance quality. The vital question is how to motivate this vast pool of individuals to participate in order to tap their useful expertise?

PARTNERSHIP POSSIBILITIES

While it is pivotal that decision-making authority in patent application cases rest with public authorities, there is no reason that private resources cannot alleviate the burdens of patent offices. The pilot review projects mentioned above are examples of an open source approach to patent review. An important lesson to draw from their experience is the need for greater participation levels. High-tech software and elaborate organization can only go so far if there is not adequate input from the crowd.

The attempt by the USPTO to integrate elaborate user reputation systems into the community was a positive thing. A system of social rewards builds status incentives into a network of users. It stimulates individuals' motivation to ensure high quality contributions relevant to the call for material. Ebay's trusted buyers and sellers scheme and Amazon's star qualifications are good examples of this. However, crowdsourcing patent review may succeed where open patent review falls short. It can do so by offering material incentives to contributors. Rewards stimulate participation.

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But it is more than just social rewards that are needed. Look at Innocentive, iStockphoto, Threadless and Goldcorp. Goldcorp offered over \$500,000 to the 25 finalists of their ‘GoldCorp Challenge’ (participants were asked to examine geological data and determine potential mining targets). The program quickly attracted over 475,000 hits online with more than 1400 registrations across 51 countries (GoldCorp Challenge Winners! 2001, 6; cited in Brabham 2008, 5). Incentivizing contributions can help attract a greater crowd while the private management of an online community maintains quality control.

Providing material incentives is a critical difference between crowdsourcing and opensourcing. Yet private management has other benefits too. Online communities can be costly to monitor. They must be consistently policed to ensure high quality contributions. A private company whose reputation is staked on the quality of community output can greatly reduce the burden on public authorities of doing this. Since all information shared on the network must comply with relevant IP law, privatization of the management process insulates public authorities from responsibility.

Private systems rely on their integrity to attract customers so they have every reason to enforce high standards of practice. Total privatization of patent application review is obviously not an option. Patents are a private monopoly granted by government authority to ensure the public disclosure of inventions for the benefit of the people. Patent decisions must remain a public responsibility. But why not combine public and private capacities in the case of prior art search if it could improve efficiency?

“Crowdsourcing prior art search could be one of those rare situations where everyone wins.”

TIME TO INNOVATE

The crowd's expertise should be brought to bear on prior art search. Low quality patents are a serious and unnecessary burden on modern economies. Continuous growth in patent applications every year has put enormous strain on the IP system. Prior art search is an integral and complex part of the patent review process. As the workload on patent offices skyrockets, partnering with private actors to crowdsource prior art search may represent an ideal situation for all involved. Public actors retain ultimate decision-making authority. Private actors profit by taking over some management responsibilities. Individuals contributing in the review process reap financial and social rewards. The public benefits from a higher quality of granted patents.

Crowdsourcing prior art search could be one of those rare situations where everyone wins. It is the crucial point where the patent system can be revitalized. There is little to lose and so much to gain.

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