



PUND-IT, INC.

Weekly Review

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Community Patent Review Pilot Project Debuts

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The Community Patent Initiative at New York Law School presented an overview of the Community Patent Review pilot project currently under review by the U.S. Patent and Trademark Office (USPTO). Designed by dozens of experts in consultative workshops at Harvard, Stanford, New York Law School, University of Michigan and elsewhere, the pilot project would provide an online peer review system for patent applications. Reviewers would receive notification of patents in areas of their expertise, would collaboratively identify the patent application's most important claims, and then submit relevant information online. Peer reviewers would rank these submissions so that patent examiners can review the prior art that is deemed most relevant by the community.

The goal of the Project is to help patent examiners find the right references and have access to those who can advise on how to combine them. According to Professor Beth Noveck, Director of the Institute for Information Law & Policy at New York Law School, "The current system tries to correct the problem of inappropriate patent applications after the fact through litigation. Like preventative health care, the peer system may discourage flawed applications from even getting to the filing point." The pilot project is an initiative of the USPTO with support from the private sector, including the Community Patent Initiative at New York Law School and IBM.

The Pitch

Patent community, heal thy self.

Mission Accomplished?

The critical role of Intellectual Property (IP) in the IT industry is indisputable. Developers from the smallest ISV to the largest systems vendor live and/or die on their ability to stretch new ideas into innovative products and solutions that benefit customers, the market, and, eventually, the developers themselves. The Open Source movement thrives on the dynamic sharing of IP, as do a range of other collaborative industry efforts. In addition, IBM and a handful of other vendors are proactively leveraging IP well beyond their own corporate borders by opening or providing for free company patents to specific communities and industries.

At the same time, the U.S. patent process itself is deeply flawed. The overwhelming success of IT during the past three decades has driven up both the complexity and the sheer volume of patent applications to the point where the USPTO is over-

whelmed. According to some experts, the average patent application currently receives only 18- 20 hours of review by a USPTO examiner, entirely too short a when granting a patent essentially provides two decades of monopoly control to the successful applicant. The notion of what is patentable has also evolved to include a range of questionable concepts including amorphous business processes, and has spawned a culture of patent “trolls”; companies or individuals who obtain patents that they do not develop, then demand payment from or file suit against infringing companies.

While some critics claim that patents and the USPTO are irrevocably broken, many others are attempting to incrementally repair the process. The Community Patent Review pilot is a notable example of what can happen when good ideas meet good will. In essence, the pilot project borrows a couple of pages from the Open Source model, assembling communities of interested or concerned peers willing to share their time and expertise, and creating an online mechanism that supports their collaborative efforts. The real question is whether or not such a concept has a snowball’s chance of success in the occasionally hellish recesses of IP law.

We believe so. For one thing, it appears that the time may be right politically to tackle the problem. A growing number of high profile/high stakes patent suits is crowding the news and the Supreme Court’s recent ruling in the EBay/MercExchange case suggests that the Justices are far more willing to consider a much broader range of issues and remedies in patent cases than they have in the past. In addition, the notable synergies between collaboration and innovation have proven their worth repeatedly in IT, suggesting that the model should be successful elsewhere. To doubters or cynics who might dismiss the aims of the Community Patent Review we would ask; who is better qualified to repair and restore the patent process than qualified and concerned members of that community?

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About Pund-IT, Inc.

Insightful industry analysis and balanced guidance have never been more important for IT vendors and their partners and customers. Pund-IT’s emphasis is on understanding product and technology evolution and interpreting the effects these changes will have on business customers and the greater IT marketplace.

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