

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO-P-2014-0013]

**Request for Comments and Notice of Roundtable on USPTO Use of Crowdsourcing to
Identify Relevant Prior Art**

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is announcing a December 2, 2014 roundtable and requesting written comments on USPTO use of crowdsourcing to identify relevant prior art. Members of the public are invited to participate at the roundtable. On February 20, 2014, the White House issued a series of executive actions including crowdsourcing prior art as a means to strengthen patent quality. The roundtable will address the executive action by exploring: (1) how the USPTO can utilize crowdsourcing tools to obtain relevant prior art in order to enhance the quality of examination and issued patents; and (2) ways the USPTO can leverage existing private sector solutions for the electronic receipt and hosting of crowdsourced materials as a means to provide prior art to examiners.

DATES: Event Date: The roundtable will be held on December 2, 2014, beginning at 1 pm Eastern Standard Time (EST), and ending at 5 pm EST.

Roundtable Registration Deadline: Registration to attend the roundtable in person or via webcast is required by November 25, 2014. Additionally, requests to participate in the roundtable as a speaker must be submitted in writing no later than November 18, 2014. See the “Event Registration Information” section of this notice for additional details on how to register and how to request to present as a speaker.

Written Comment Submission Deadline: Any member of the public, whether attending the roundtable or not, may submit written comments on any of the issues identified in part II of the “Supplementary Information” section of this notice for consideration by the USPTO. Written comments must be received on or before December 9, 2014, to ensure consideration.

ADDRESSES: Event Address: The roundtable will be held in the Moot Court Room, Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, NY 10003.

Addresses for Written Comments: Written comments should be sent by electronic mail addressed to CrowdsourcingRoundtableNY@uspto.gov. Comments also may be submitted by postal mail addressed to: Mail Stop Comments – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Jack Harvey, Director, Technology

Center 2800. Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail.

Comments will be available for public inspection via the USPTO's Internet Web site at http://www.uspto.gov/patents/init_events/crowdsourcing_roundtable_20141202.jsp, and at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, VA 22314, upon request. Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

Event Registration Information: To register to attend or request to present as a speaker, please send an e-mail message to CrowdsourcingRoundtableNY@uspto.gov and provide the following information: (1) your name, title, company or organization (if applicable), address, phone number, and e-mail address; (2) whether you wish to attend in person or via webcast; and (3) whether you wish to make an oral presentation at the roundtable and, if so, which topics identified in part II of the "Supplementary Information" section of this notice will be addressed and the approximate desired length of your presentation. Each attendee, even if from the same organization, must register separately.

Due to time constraints, the USPTO may not be able to accommodate all persons who wish to make a presentation. However, the USPTO will attempt to accommodate as many persons as possible who wish to make a presentation within the time constraints. After reviewing the speaker requests and the information regarding the presentations provided in the requests, the

USPTO will contact each speaker prior to the event with the amount of time available and the approximate time that the speaker's presentation is scheduled to begin. The amount of time available for each presentation may be limited to ensure that all persons selected to speak will have a meaningful opportunity to do so. Speakers who opt to employ slides as part of their presentation must send final electronic copies of the slides in Microsoft PowerPoint to CrowdsourcingRoundtableNY@uspto.gov by November 25, 2014, so that the slides can be displayed at the roundtable. Additionally, the USPTO will provide an opportunity for persons in the audience not previously selected as speakers to speak at the roundtable without a formal presentation.

For more information on the roundtable, including webcast access instructions, agenda and a list of speakers, please visit http://www.uspto.gov/patents/init_events/crowdsourcing_roundtable_20141202.jsp.

If special accommodations due to a disability are needed, please inform the contact person(s) identified below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Jack Harvey, Director, Technology Center 2800, by telephone at 571-272-8004, or by e-mail to jack.harvey@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Background: On February 20, 2014, the White House issued a series of executive actions including crowdsourcing prior art as a means to strengthen patent quality. Information on the White House executive actions is available at http://www.uspto.gov/patents/init_events/executive_actions.jsp. In response to the executive actions and feedback received in the context of the Software Partnership, the USPTO hosted a roundtable on April 10, 2014, focused on the use of crowdsourcing and third-party preissuance submissions to identify relevant prior art. See Request for Comments and Notice of Roundtable Event on the Use of Crowdsourcing and Third-Party Preissuance Submissions To Identify Relevant Prior Art, 79 FR 15319 (March 19, 2014).

The roundtable featured both USPTO and public presentations, along with a question and answer session to solicit public input on the current third-party submission process and ways the USPTO can use crowdsourcing to enhance the quality of examination and issued patents. The USPTO also received written comments on the topics that were identified in the March 19, 2014 notice and discussed at the April 10, 2014 roundtable. Details about the roundtable, as well as the webcast recording and written comments received are available at http://www.uspto.gov/patents/init_events/crowdsourcing_roundtable_04-2014.jsp.

II. USPTO Use of Crowdsourcing Tools to Identify Relevant Prior Art

Based on the feedback the USPTO received responsive to the March 19, 2014 notice and April 10, 2014 roundtable, the USPTO has decided to further explore the use of crowdsourcing tools to enhance the quality of patent examination and issued patents. To that end, the USPTO is seeking

public input on the extent to which it can utilize crowdsourcing tools to obtain relevant prior art. Crowdsourcing involves leveraging the knowledge of a large group of people, such as from an online community, to obtain needed information.

The USPTO recognizes that any use of crowdsourcing tools must comply with applicable patent laws, regulations and procedures. For example, any USPTO crowdsourcing activities would need to preserve the ex parte nature of patent examination and be in accordance with the provisions of 35 U.S.C. 122(c). That statutory provision provides that “[t]he Director shall establish appropriate procedures to ensure that no protest or other form of pre-issuance opposition to the grant of a patent on an application may be initiated after publication of the application without the express written consent of the applicant.”

The USPTO seeks input from the public at the roundtable and/or via written comments on the following issues:

1. In what ways can the USPTO utilize crowdsourcing to identify relevant prior art that would be available for use in the examination of published applications while maintaining the ex parte nature of patent examination? Some examples of how the public traditionally uses crowdsourcing include: passively monitoring discussions (thread) between parties on crowdsourcing Web sites, and posting a question on a crowdsourcing Web site and viewing responses to the posted question.

2. If the USPTO were to post a question relating to the technology of a published application on a crowdsourcing Web site, what follow-up communications, if any, could someone from the USPTO have with parties on the Web site? Some examples of how the public traditionally engages in follow-up communications on crowdsourcing Web sites include: a conversation on the thread with a particular party who responded to the posted question to clarify information the party provided, and a conversation on the thread with a particular party who responded to the initial posting to request additional information.

3. What appropriate precautions, if any, could the USPTO employ to ensure that the use of crowdsourcing tools does not encourage a protest or other form of preissuance opposition to the grant of a patent? (See 35 U.S.C. 122(c).)

4. If the USPTO cites in an application prior art obtained via crowdsourcing tools, to what extent, if any, should the USPTO document the crowdsourcing activities used to identify the prior art?

5. For each published patent application, if the USPTO gave the patent applicant the option to opt-in or opt-out of the USPTO's use of crowdsourcing, would applicants choose to participate in the crowdsourcing program? What considerations would inform the applicant's decision?

III. Request for Information on Electronic Receipt and Hosting of Crowdsourced Prior Art

The USPTO wants to ensure that the best prior art is available to the examiner during examination. Because this information often resides with the technical and scientific community, crowdsourcing may be a promising way to uncover hard-to-find prior art, especially non-patent literature. A growing number of organizations from a wide range of industries have expressed a willingness to help the USPTO with its crowdsourcing efforts by pledging to provide public product documentation, educational materials, and other forms of non-patent literature.

Accordingly, the USPTO issued a Request for Information (RFI) titled "Crowdsourced Non-Patent Literature Hosting" (Solicitation Number: PTOHMB201501), on October 9, 2014, seeking information from qualified firms capable of electronically receiving and potentially hosting the materials that have been pledged to the USPTO through the above-described crowdsourcing effort. Detailed information on the RFI is available at http://www.uspto.gov/about/vendor_info/current_acquisitions/index.jsp.

At the roundtable, the USPTO seeks to build on information received in response to the RFI to further explore ways the USPTO can leverage existing private sector solutions for the electronic receipt and hosting of crowdsourced materials as a means to provide prior art to examiners. Any formal responses to the RFI must be submitted in writing in accordance with the instructions set forth therein and not as written comments in response to this notice. After the close of the RFI

comment period, information about the roundtable discussion on the RFI will be made available at http://www.uspto.gov/patents/init_events/crowdsourcing_roundtable_20141202.jsp.

Date: 11/6/14

Michelle K. Lee

Michelle K. Lee
Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the United States Patent and Trademark Office