

HowTo search for Prior Art in the Internet

aus PriorArt, der freien Wissensdatenbank

<< back

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Contents

- 1 Goal
- 2 HowTo
 - 2.1 Basic Steps Before You Start
 - 2.1.1 Identify the patent priority
 - 2.1.2 Try to understand the patent - point out the novelty
 - 2.2 Identify Related Projects
 - 2.2.1 Create a list
 - 2.3 Verify selected Projects
 - 2.3.1 Verify that the implementation / description is older than the Priority-Date
 - 2.3.2 Verify that it really implemented or described the patent
 - 2.3.3 Don't forget to ..
 - 2.4 What to do with a specific file that shall be used as Prior Art
- 3 Tools to aid your search
 - 3.1 Patent Searching
 - 3.1.1 Free
 - 3.1.2 Fee Based
- 4 What's next?
- 5 Weblinks
- 6 fun facts
- 7 changelog
 - 7.1 31-MAR-2006
 - 7.2 19-MAR-2006

Goal

This HowTo is a step-by-step guide on how you could perform a coordinated search for Prior Art in the Internet.

Patents contain several claims. **You have to invalidate each Claim on its own!** Just invalidating Claim 1 does not invalidate Claim 2 (but it might still help you there).

We also verified this HowTo ourself with examples on real patents. If you are not sure how some step could be achieved then take a look at our Example Prior Art search

HowTo

Schecter IBM 03/15/2006 (cited (<http://lists.osdl.org/pipermail/priorart-discuss/2006-March/000148.html>)):

I suggest the focus be on finding the closest prior art, including each and every feature of a claim, preferably in a single reference.

Basic Steps Before You Start

Identify the patent priority

Each patent as a Priority-Date. This is the day at which the patent was first applied. Only Publications **prior to this date** can be used against this patent. (**One year prior to the filing date is much better.**) So first step will always be identifying this date. The Priority-Date can be found on each Patent-Publication.

Try to understand the patent - point out the novelty

This (obvious) step is most easily done by summarizing the first patent claim with your own words. To make it even easier you can:

- Replace unnecessary complex terms with easier ones (e.g. 'client data processing unit' with 'client').
- Replace complex mathematical descriptions with just a function (e.g. replace ' $a = 5*7 + 14 / b^e$ ' with $f()$).
- Remove descriptions that do not describe the invention itself but only scientific basics, commercial applications, use-cases or benefits of the invention with nothing (e.g. 'This method is based upon $E = mc^2$ ' can be replaced with '-'). This step does not change the invention itself.
- structure the patent as you understand it.
- If the invention contains software, try to replace these parts with pseudo-code.
- Now you should be able to point out the novelty with just one or two short sentences.

Identify Related Projects

Try to find out which kinds of systems might use similar methods

- This step is really very generally, e.g. if you have a method describing some specific way of copying files from servers to clients, every application doing this can be put into this list (ftp-clients, http-clients, gopher-clients, ways-clients, mail-clients, irc-clients, version control systems, instant-messengers like icq, aim and msn, but also each application that can just copy files in combination with network-file systems like MS-Explorer, cp, copy, mv, move, xcopy, and also systems that can open files from network-drives like cat, Gimp, Word, OpenOffice, type, etc. could be Prior-Art in this case)
- We also give you some starting points, depending on the USPTO classification of the patent here: Publication Categorization

Create a list

..with all Programs/Projects that might use similar methods

This actually needs knowledge about the specific programs. You might just try some of the programs (if freely available) to check if they can do what you are looking for. FAQs, Docs or Manuals are also helpful here.

- Select those that you expect to fit best (maybe assign marks from 1-10) to the described method and write down their download-url / homepages
- Determine in a first step from which date those (best rated) programs are (e.g. by visiting their Homepages) and mark those that are prior to the Priority Date **bold**.
- Eliminate all Projects that are definitely newer than the Priority-Date (and only come back here if you can't find evidence using one of the remaining ones)

Verify selected Projects

Now, that you have a short list of Projects (maybe only one), we need to:

Verify that the implementation / description is older than the Priority-Date

Hint

You don't need to seek for evidential proof here yet, just write down whichever sources you trust yourself.

- Take a look to the Documentation-Archive and read about the last Release prior to the Priority-Date
- Look into the Changelog and try to find the appropriate change.
- Search the Usenet for this program combined with year-numbers (e.g. 'sendmail 1990', 'sendmail 1989', etc. if the program was sendmail and the priority-date was 1990)
- Search the mailinglist-archive and find appropriate mails. Try to get the complete mbox including all Headers of the mails)

Verify that it really implemented or described the patent

.. or parts of it, everything is good here!

- Take a look to the FAQ, Documentation, etc.
- Ask publicly on the mailinglist of that project

Don't forget to ..

While doing the above you might find other projects on which this project is based upon.

Verify if one of those (even older) Projects already implemented the patented method. If that is the case add it to your list. This is a very normal step, e.g. if you are looking for some graphical methods, you might start with Gimp, and then see that ImageMagick is a program that is havily used by Gimp. Don't forget to checkout ImageMagic as well.

What to do with a specific file that shall be used as Prior Art

If you identified a specific version of a program that holds the Priority-Date and contains parts of the patented method you still need to proof that this file was already publicly accessible at that date:

Hint

It's not that important that you find *hard* evidence here. Don't surrender just because you can't find any *hard*-evidence (as e.g. printed Publications). This will only become important if the patent applicant really questions the publication date. If you e.g. found some electronic timestamps, then mostly **the applicant will have to proof** that those are bogus.

- try to find a cvs-archive that contains those files
- identify complete archives that contain those files (ISO-Images, Linux-Distros, .deb, .rpm, .src.tar.gz, .src.Z, -i386-bin.tar.gz, ..)
- search for this specific files and try to find proofs for their existance to that date by notating as many download-urls as you can find (according with their local timestamps if available like on ftp-servers)
- search for (completely different) projects that base upon those files (e.g. cvsgui uses cvs and has a copy of cvs-1.10 in their own version-control cvsgui/cvs-1.10 (<http://cvs.sourceforge.net/viewcvs.py/cvsgui/cvsgui/cvs-1.10>))

Tools to aid your search

<http://google.com>

for just about everything, also has a usenet search (google groups)

<http://wikipedia.org>

Wikipedia - the free encyclopedia. Articles are very valuable, especially because many of them contain a

History-Section and Links to similar projects. Don't forget to **check articles in different languages**, they often differ very much (use translation-sites). I noticed that german wiki-pages much more often have history-sections than their english equivalents. Look for a translation in 'Deutsch' and checkout if there is a section named 'Geschichte'.

<http://technorati.com>

Technorati - search 31 million blogs

Software Repositories

All Software Repositories have search-functions and most also have categorization of software. Just browse through equivalent categories and read the abstracts of the programs.

<http://sourceforge.net> - can sort projects by registration date

<http://kernel.org>

<http://savanah.gnu.org>

<http://cpan.org>

<http://tigris.org>

<http://apache.org>

<http://mozilla.org>

<http://berlios.de>

<http://gforge.org>

<http://alioth.debian.org>

<http://freshmeat.net>

<http://www.ietf.org>

The Internet Engineering Task Force - lots of RFCs (all the Internet Standards)

<http://priorartdatabase.com>

PriorArtDatabase.com is the free Web-index of documents published to IP.com's Prior Art Database

<http://amazon.com>

search for books

<http://citeseer.ist.psu.edu/>

CiteSeer.IST - Scientific Literature Digital Library. **Offers a search by year!**

Citations are very useful to find derivated work from sth. you know. So if you found sth. that contains nearly everything of a patent (as SCCS in the example), then use CiteSeer to find other publications that refer to this one, and look if there is one that mentions the missing part (client/server in the example).

<http://liinwww.ira.uka.de/bibliography/Misc/CiteSeer/>

CiteSeer - The Collection of Computer Science Bibliographie. **Offers a search by year!**

<http://www.archive.org/web/web.php>

waybackmachine - Archives some websites and you can give evidence that sth. was stated on some website at some given date. It has also been reported that this has already been used and holded up on court.

<http://babelfish.altavista.com/>

Helps you to translate web-sites on the fly. This will help to read e.g. wiki-sites in foreign languages

Publication Categorization

If you have no idea, what kind of software might be used as Prior Art for a specific patent, then look here

Request for Prior Art Mailinglist

This might become a mailinglist where you can ask for assoziations to specific patents. So more people might help you to find appropriate starting-points for your Prior Art research.

<http://krugle.com>

Still only beta, but seems to become a very good way of finding Prior Art Source-Code.

Patent Searching

If you are looking for a patent, or want to find a patent that might be used as Prior Art, then you have a good chance here.

Free

<http://www.espacenet.com/>

Esp@cenet - Search engine covering over 60 countries, more than 30 million patents, full text documents along with images (150 million pages)

<http://www.uspto.gov/patft/index.html>

USPTO - Patent search engine, search about 240 million pages of text

<http://www.wipo.int/ipdl/en>

PCT Patents Search

<http://www19.ipdl.ncipi.go.jp/PA1/cgi-bin/PA1INIT>

Searching PAJ (Japanese Patent Office)

<http://patentrakker.com>

Automatically generates Prior Art reports for patents, offers basic reports for free

<http://www.freepatentsonline.com>

FreePatentsOnline.com provides free access to all US patents and partial European data

Fee Based

<https://www.delphion.com/research>

Delphion - Searchable full-text patent US, European Patent Office and World Intellectual Property Organization.

<http://patentsearch.patentcafe.com>

PatentCafe IPSearchEngine™ for IP Professionals

<http://www.micropat.com/static/index.htm>

MicroPatent - Over 50 million records for full text or front-page searching.

http://qwebprd.questel.fr/imag2000/en/logon_index.html

QPAT Questel-Orbit - Interfaces tools (QPAT and Qweb) give you access to all its patent databases, either for professional or end-user searchers.

<http://www.dialogweb.com>

DIALOGWEB Powerful IP search Tool

<http://www.piug.org/vendor.html>

Patent Info Users Group (PIUG) link has more vendors . . .

Anyway, if you are looking for any Prior Art, then above tools will help you much more. Taking into account that only google itself returns for the letter 'a' 20.470.000.000 results, then the 150 million pages from espacenet and the 240 million pages from the USPTO look like a drop in the ocean.

You might say that USPTO has selected documents and the internet has lots of shit, well, then just say only every 10th internet-page contains some real information, then there are still more then five times as many good documents you can search with google compared to patent search engines ($20.470.000.000 / 10 / (150.000.000 + 240.000.000) > 5$).

What's next?

Well, if you found some Prior Art, the following options can be considered:

The patent is already granted

1. ask the owner to void the patent himself
2. ignore the patent and all license fees, if your Prior Art is good, then you don't need to fear beeing sued
3. try to void the patent by force - sue the owner

The patent is not yet granted

1. send your Prior Art to the inventor, then he has to pass this knowledge on to the USPTO, resulting in a lesser chance that the patent will be granted (for submissions to IBM you can use this form (<https://www-306.ibm.com/contact/submissions/extsub.nsf/BusinessProposal?OpenForm>)).

It's your own patent

1. don't file it

Weblinks

PUBPAT Releases Free Finding Prior Art for an Issued Patent Program, May 11, 2005

Announcement: http://www.pubpat.org/Finding_Prior_Art.htm

Slides: http://www.pubpat.org/Finding_Prior_Art/PUBPAT%20Finding%20Prior%20Art%20Slides.pdf

Audio Portion of Finding Prior Art for an Issued Patent Program - ca. 60 minutes OGG

(http://www.pubpat.org/Finding_Prior_Art/Finding%20Prior%20Art%20-%20PUBPAT.ogg) 39MB / MP3

(http://www.pubpat.org/Finding_Prior_Art/Finding%20Prior%20Art%20-%20PUBPAT.mp3) 44MB

HOWTO invalidate a patent application with prior art, January 4, 2005

<http://taint.org/2005/01/04/193552a.html>

When is something prior art against a patent?

<http://www.iusmentis.com/patents/priorart/>

Disclosing Prior Art to the U.S. Patent and Trademark Office, 1997

<http://www.tms.org/pubs/journals/JOM/matters/matters-9707.html>

Considering What Constitutes Prior Art in the United States, 1991

<http://tms.org/pubs/journals/JOM/matters/matters-9106.html>

Internet Sources for Intellectual Property Case Law

http://www.wipo.int/enforcement/en/case_law.html

fun facts

The Patent-Office claims to do all of this for less than 1,000 US\$. Assuming that this takes in average about 2 weeks, which are like 60 hours of work, their engineers work for less than 16\$ per hour ;-) Kechel 08:54, 14 March 2006 (PST)

changelog

31-MAR-2006

- Author: Jan O. Kechel
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- License: GNU Free Documentation License (<http://www.gnu.org/copyleft/fdl.html>)
- <http://prevalent.de/priorart/howto-search-for-prior-art-in-the-internet-060331.ps>
- <http://prevalent.de/priorart/howto-search-for-prior-art-in-the-internet-060331.pdf>

19-MAR-2006

- Author: Jan O. Kechel
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<< back

Von "http://developer.osdl.org/dev/priorart/wiki/index.php/HowTo_search_for_Prior_Art_in_the_Internet"

Seitenkategorien: Use already existing publications as Prior Art

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