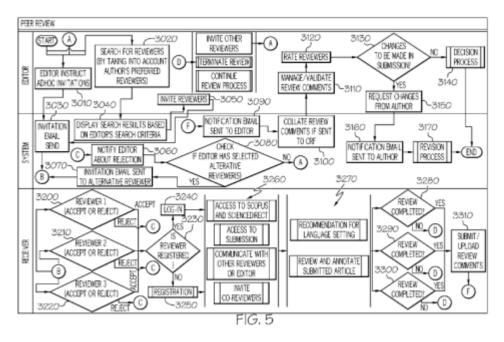# Sauropod Vertebra Picture of the Week

SV-POW! … All sauropod vertebrae, except when we're talking about Open Access

Another day, another Elsevier power-grab

August 31, 2016

As explained in careful detail over at Stupid Patent of the Month (https://www.sec.uno/2016/08/31/stupid-patent-of-the-month-elsevier-patents-online-peer-review/), Elsevier has applied for, and been granted, a patent for online peer-review. The special sauce that persuaded the US Patent Office that this is a new invention is cascading peer review (https://svpow.com/2013/03/19/the-only-winning-move-is-not-to-play/) — an idea so obvious and so well-established that even The Scholarly Kitchen was writing about it as a commonplace in 2010 (https://scholarlykitchen.sspnet.org/2010/10/12/cascading-peer-review-future-of-open-access/).

(https://svpow.files.wordpress.com/2016/08/elsevier-peer-review-patent.png)
Apparently this is from the actual patent. I can't verify that at the moment, as the site hosting it seems to be down.

Well. What can this mean?

A cynic might think that this is the first step an untrustworthy company would take preparatory to filing a lot of time-wasting and resource-sapping nuisance lawsuits on its smaller, faster-moving competitors. They certainly have previous in the courts: remember that they have brought legal action their own customers (https://svpow.com/2012/01/27/publishers-invent-a-whole-new-form-

of-evil-suing-their-customers/) as well as threatening Academia.edu (https://svpow.com/2013/12/06/elsevier-is-taking-down-papers-from-academia-edu/) and of course trying to take Sci-Hub down (https://svpow.com/2016/02/17/barbra-streisand-elsevier-and-sci-hub/).

Elsevier representatives are talking this down: Tom Reller has tweeted (https://twitter.com/TomReller/status/771004401406345217) "There is no need for concern regarding the patent. It's simply meant to protect our own proprietary waterfall system from being copied" — which would be fine, had their proprietary waterfall system not been itself copied from the ample prior art. Similarly, Alicia Wise has said on a public mailing list (https://groups.google.com/d/msg/osi2016-25/4REh5gD5Zko/JlhBdHbmAQAJ) "People appear to be suggesting that we patented online peer review in an attempt to own it. No, we just patented our own novel systems." Well. Let's hope.

But Cathy Wojewodzki, on the same list, asked the key question (https://groups.google.com/d/msg/osi2016-25/4REh5gD5Zko/nckuX1rnAQAJ):

> I guess our real question is Why did you patent this? What is it you hope to market or control?

We await a meaningful answer.

Posted by Mike Taylor
Filed in moral dimensions, Peer review, Shiny digital future, stinkin' lawyers, stinkin' publishers
9 Comments »

9 Responses to "Another day, another Elsevier power-grab"

Richard Forrest Says:

September 1, 2016 at 7:23 am
I guess this means that Elsevier will sue me for the on-line review system I created for the SVPCA in 2001.

Stuart Taylor Says:

September 1, 2016 at 9:04 am
Once in a while something happens which really tests the bounds of credibility. How can intelligent people do something so astonishingly stupid? They surely can't *really* believe they invented cascading peer review? But more importantly, what can they possibly hope to gain by

this? Are they really going to use it to take cascade journals to court? You'd think that when you are in a PR hole as deep as Elsevier that you'd at least *consider* cessation of further excavation.

Elsevier successfully patents a common peer review process | Jeff Ollerton's Biodiversity Blog Says:

September 1, 2016 at 10:10 am
[…] reported yesterday on Mike Taylor's Sauropod Vertebra blog, who in turn picked up the story from the sec.uno site, at the end of August the giant publisher […]

jeffollerton Says:

September 1, 2016 at 10:15 am
Rather worrying. I've posted about it on my blog and linked through to this; it deserves to be widely discussed.

ScientistSeesSquirrel Says:

September 1, 2016 at 11:20 am
I read the patent. I'm not a patent lawyer, but it seems fairly obvious that they are not trying to patent cascading peer review (which they, and you, and all of us, know is not novel). They are trying to patent a combined hardware/software system for administering cascading peer review. Whether their system is novel enough to merit patent protection is something that could be addressed by a legal challenge; but that's a totally different issue from "they're trying to patent cascading peer review"! At least, as I read the patent.

Mike Taylor Says:

September 1, 2016 at 11:25 am
I'm not a patent lawyer either, and I hope you're right. But overly broad patents have a long and dishonourable history. Ultimately, a patent amounts to the right to sue someone for doing something vaguely similar to what your patent describes. After that, the rest is up to lawyers. Ultimately, holding a patent of this kind provides endless opportunities for a bad actor to impede the legitimate activities of their competitors. As to whether Elsevier becomes such a bad actor: we'll just have to wait and see.

Mark C. Wilson Says:

September 1, 2016 at 10:22 pm
"As to whether Elsevier becomes such a bad actor: we'll just have to wait and see."

This is surely a joke – they have been almost the definition of bad actor in scholarly publishing for so long, I don't think we have to wait and see. Whether they are particularly bad on this particular issue will be revealed eventually, but I think it is a pretty safe bet.

Andrew Stuck Says:

September 2, 2016 at 5:06 am
I don't suppose there's any hope of some class-action attempt to strike down the patent?

Mike Taylor Says:

September 2, 2016 at 7:57 am
Andrew, I wouldn't rule it out: but who has the time, the expertise and the money to make it

happen? (Certainly not me, on all three counts.)

Blog at WordPress.com.