§ 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor’s certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor’s certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in

(1) an application for patent, published under section 122 (b), by another filed in the United States before the invention by the applicant for patent or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351 (a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; 1 or

(f) he did not himself invent the subject matter sought to be patented, or

(g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person’s invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or

(2) before such person’s invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Footnotes

1 So in original. The semicolon probably should be a comma.

(a) Novelty; Prior Art.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122 (b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

(b) Exceptions.—

(1) Disclosures made 1 year or less before the effective filing date of the claimed invention.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

(2) Disclosures appearing in applications and patents.—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

(A) the subject matter disclosed was obtained directly or indirectly from the inventor or a joint inventor;

(B) the subject matter disclosed had, before such subject matter was effectively filed under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(C) the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

(c) Common Ownership Under Joint Research Agreements.—Subject matter disclosed and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of subsection (b)(2)(C) if—

(1) the subject matter disclosed was developed and the claimed invention was made by, or on behalf of, 1 or more parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention; and

(2) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

(3) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

(d) Patents and Published Applications Effective as Prior Art.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

(1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or

(2) if the patent or application for patent is entitled to claim a right of priority under section 119, 365 (a), or 365 (b), or to claim the benefit of an earlier filing date under section 120, 121, or 365 (c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.

See 2011 Amendment note below.

**Historical and Revision Notes**


No change is made in these paragraphs other than that due to division into lettered paragraphs. The interpretation by the courts of paragraph (a) as being more restricted than the actual language would suggest (for example, “known” has been held to mean “publicly known”) is recognized but no change in the language is made at this time. Paragraph (a) together with section 104 contains the substance of Title 35, U.S.C., 1946 ed., § 72 (R.S. 4923).

The section has been changed so that the prior foreign patent is not a bar unless it was granted before the filing of the application in the United States.

Paragraph (e) is new and enacts the rule of Milburn v. Davis-Bournonville, 270 U.S. 390, by reason of which a United States patent disclosing an invention dates from the date of filing the application for the purpose of anticipating a subsequent inventor.

Paragraph (f) indicates the necessity for the inventor as the party applying for patent. Subsequent sections permit certain persons to apply in place of the inventor under special circumstances.

Paragraph (g) is derived from Title 35, U.S.C., 1946 ed., § 69 (R.S. 4920, amended (1) Mar. 3, 1897, ch. 391, § 2, 29 Stat. 692, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212), the second defense recited in this section. This paragraph retains the present rules of law governing the determination of priority of invention.

Language relating specifically to designs is omitted for inclusion in subsequent sections.

**Amendments**


“(1) an application for patent, published under section 122 (b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351 (a) shall have the effect under this subsection of a national application published under section 122 (b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

“(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351 (a); or”.

1999—Subsec. (e). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4505], as amended by Pub. L. 107–273, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent, or”.

Subsec. (g). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4806], amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “before the applicant’s invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.”

1975—Par. (e). Pub. L. 94–131 inserted provision for nonentitlement to a patent where the invention was described in a patent granted on an international application by another who has fulfilled the requirements of pars. (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.

1972—Subsec. (d). Pub. L. 92–358 inserted reference to inventions that were the subject of an inventors’ certificate.

**Effective Date of 2011 Amendment**

Amendment by Pub. L. 112–29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

**Effective Date of 1999 Amendment**

Amendment by section 1000 (a)(9) [title IV, § 4505] of Pub. L. 106–113 effective Nov. 29, 2000 and applicable to all patents and all applications for patents pending on or filed after Nov. 29, 2000, see section 1000 (a)(9) [title IV, § 4508] of Pub. L. 106–113, as amended, set out as a note under section 10 of this title.

**Effective Date of 1975 Amendment**

Amendment by Pub. L. 94–131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94–131, set out as an Effective Date note under section 351 of this title.
### Effective Date of 1972 Amendment

Section 3(b) of Pub. L. 92–358 provided that: “Section 2 of this Act [amending this section] shall take effect six months from the date when Articles 1 to 12 of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967, come into force with respect to the United States [Aug. 25, 1973] and shall apply to applications thereafter filed in the United States.”

### Savings Provisions

Provisions of subsec. (g) of this section as in effect on the day before the expiration of the 18-month period beginning on Sept. 16, 2011, apply to each claim of certain applications for patent, and certain patents issued thereon, for which the amendments made by section 3 of Pub. L. 112–29 also apply, see section 3(n)(2) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

Section 4 of act July 19, 1952, ch. 950, 66 Stat. 815, provided that subsec. (d) of this section should not apply to existing patents and pending applications, but that the law previously in effect, namely the first paragraph of R.S. 4887 [first paragraph of section 32 of former Title 35], should apply to such patents and applications. Said paragraph of section 32 provided that:

“No person otherwise entitled thereto shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, unless the application for said foreign patent was filed more than twelve months, in cases within the provisions of section 31 of this title, and six months in cases of designs, prior to the filing of the application in this country, in which case no patent shall be granted in this country.”

### Continuity of Intent Under the CREATE Act

Pub. L. 112–29, § 3(b)(2), Sept. 16, 2011, 125 Stat. 287, provided that: “The enactment of section 102 (c) of title 35, United States Code, under paragraph (1) of this subsection is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108–453; the ‘CREATE Act’) [see Short Title of 2004 Amendment note set out under section 1 of this title], the amendments of which are stricken by subsection (c) of this section [amending section 103 of this title]. The United States Patent and Trademark Office shall administer section 102 (c) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the United States Patent and Trademark Office.”

### Tax Strategies Deemed Within the Prior Art

Pub. L. 112–29, § 14, Sept. 16, 2011, 125 Stat. 327, provided that:

“(a) In General.—For purposes of evaluating an invention under section 102 or 103 of title 35, United States Code, any strategy for reducing, avoiding, or deferring tax liability, whether known or unknown at the time of the invention or application for patent, shall be deemed insufficient to differentiate a claimed invention from the prior art.

“(b) Definition.—For purposes of this section, the term ‘tax liability’ refers to any liability for a tax under any Federal, State, or local law, or the law of any foreign jurisdiction, including any statute, rule, regulation, or ordinance that levies, imposes, or assesses such tax liability.

“(c) Exclusions.—This section does not apply to that part of an invention that—

“(1) is a method, apparatus, technology, computer program product, or system, that is used solely for preparing a tax or information return or other tax filing, including one that records, transmits, transfers, or organizes data related to such filing; or

“(2) is a method, apparatus, technology, computer program product, or system used solely for financial management, to the extent that it is severable from any tax strategy or does not limit the use of any tax strategy by any taxpayer or tax advisor.

“(d) Rule of Construction.—Nothing in this section shall be construed to imply that other business methods are patentable or that other business method patents are valid.

“(e) Effective Date; Applicability.—This section shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any patent application that is pending on, or filed on or after, that date, and to any patent that is issued on or after that date.”

### Emergency Relief From Postal Situation Affecting Patent Cases

Relief as to filing date of patent application or patent affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, but patents issued with earlier filing dates not effective as prior art under subsec.
(e) of this section as of such earlier filing dates, see section 1(a) of Pub. L. 92–34, formerly set out in a note under section 111 of this title.