

35 U.S.C. § 102(e), as amended by the American Inventors Protection Act of 1999, and further amended by the Intellectual Property and High Technology Technical Amendments Act of 2002 (H.R. 2215)

The following are paraphrased sections from the PTO website. (Feb 2003)

Amended 35 U.S.C. § 102(e) has two significant differences, which may be summarized as:

- (1) in addition to U.S. patents, now certain **publications** of U.S. and international applications may be applied as of their filing dates in a prior art rejection; and
- (2) **certain international filing dates** are now U.S. filing dates for prior art purposes under § 102(e), and U.S. patents and certain application publications may now be applied as of these international filing dates in a prior art rejection.

Specifically, this notice provides guidance that prior art, as defined by § 102(e) of the patent code in effect on November 29, 2000, includes U.S. patents, publications of U.S. patent applications and World Intellectual Property Organization's (WIPO) publications of international applications, provided such references do not directly or indirectly result from an international application filed before November 29, 2000. If a U.S. patent resulted from an international application filed before November 29, 2000, the U.S. patent will have a prior art date per § 102(e) in effect prior to November 29, 2000, which is the earlier of the date of compliance with § 371(c)(1), (2) and (4) of the patent code (e.g. National Stage entry) or the filing date of the later-filed U.S. application that claimed the benefit of the international application. A U.S. or WIPO publication of an international application filed prior to November 29, 2000 will have no prior art effect under § 102(e). Such publications do, however, have prior art effect under § 102(a) or (b) as of their publication dates.

Furthermore, all pending U.S. patent applications being examined, and all U.S. patents being reexamined, or otherwise being contested, whenever filed, are subject to the amended version of § 102(e).

For More information see the USPTO Website at:

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/102eog121102.pdf>