

PRIOR ART

All information and any disclosure that is accessible or available to the public before the filing of a patent application is termed "prior art." A patent may not be obtained on anything that is already available to the public. The United States provides a one year cushion from the date of publication. This means you have one year to file a patent application from the date of publication. Many foreign countries do not provide this benefit. You automatically lose your right to a patent upon publication. This means, in both the U.S. and in foreign countries, that your own publication becomes the "prior art" that will negate your opportunity to obtain a patent. It is presumed that this publication is now public knowledge, or in the public domain, and no longer able to be patented.

EXAMPLES OF PUBLICATIONS THAT CAN NEGATE PATENTABILITY OR PRIOR ART:

- Abstracts
- Articles
- Electronic information
- Grant and contract proposals
- Manuscripts
- Posters
- Slides
- Theses

HOW DO YOU KNOW IF SOMETHING IS A PUBLICATION OR PRIOR ART THAT CAN AFFECT YOUR RIGHTS TO A PATENT?

In order for something to be considered a printed publication, and thus prior art, it first must be publicly available and accessible, at least to those skilled in the art to which the invention relates. The degree of public accessibility and dissemination required to qualify as a publication or prior art depends on the type of disclosure in question and the circumstances of its disclosure. Placing a thesis or abstract in the library can be considered a publication that can set the clock in motion for filing in the U.S. and also instantly eliminate foreign rights. An e-mail can do the same thing. Abstracts required for NIH and NSF grants can also accomplish the same end.

HOW CAN YOU AS A SCIENTIST PROTECT YOURSELF?

- If you believe, however small the belief may be, that you have something that may be patentable material, please contact Anne Jarrett before releasing any information.
- A report or thesis put on the shelves or available electronically in the library loses your international rights and sets the clock in motion on U.S. rights in regards to patentability.
- An e-mail can set the patent clock in motion against you in the U.S. and eliminate your international rights.
- Publication, by any means, of work that may lead to or contain patentable material before you have filed for a patent is never a good thing.

- Exception 4 of the Freedom of Information Act permits scientists to withhold "trade secrets and commercial or financial information." This means you may withhold information in grant reports. The NIH, NSF, and other grant organizations may place parameters around what you can withhold. Before publishing these grant reports or updates, contact the Director of IPL&RA.
- It is better to be safe than sorry. So when in doubt, do not be afraid to ask.
- Patent rights can be very valuable to you, as well as the Pennington Center, and are therefore worth pursuing.
- The problem with prior art is one that can be avoided by simply planning ahead and asking questions when in doubt.