

### **35 U.S.C. 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; 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.

(Amended July 28, 1972, Public Law 92-358, sec. 2, 86 Stat. 501; Nov. 14, 1975, Public Law 94-131, sec. 5, 89 Stat. 691.) (Subsection (e) amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-565 (S. 1948 sec. 4505).) (Subsection (g) amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-590 (S. 1948 sec. 4806).) (Subsection (e) amended Nov. 2, 2002, Public Law 107-273, sec. 13205, 116 Stat. 1903.)

### **35 U.S.C. 103 Conditions for patentability; non-obvious subject matter.**

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
- (b)
- (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if-
    - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
    - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
  - (2) A patent issued on a process under paragraph (1)-
    - (A) shall also contain the claims to the composition of matter used in or made by that process, or
    - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
  - (3) For purposes of paragraph (1), the term "biotechnological process means-
    - (A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to-(i) express an exogenous nucleotide sequence, (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or (iii) express a specific physiological characteristic not naturally associated with said organism;
    - (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
    - (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c)
- (1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.
  - (2) For purposes of this subsection, subject matter developed by another person 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 if
    - (A) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;
    - (B) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and
    - (C) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.
  - (3) For purposes of paragraph (2), the term "joint research agreement means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(Amended Nov. 8, 1984, Public Law 98-622, sec. 103, 98 Stat. 3384; Nov. 1, 1995, Public Law 104-41, sec.1, 109 Stat. 3511.) (Subsection (c) amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-591 (S. 1948 sec. 4807).) (Subsection (c) amended Dec. 10, 2004, Public Law 108-453, sec. 2, 118 Stat. 3596.)