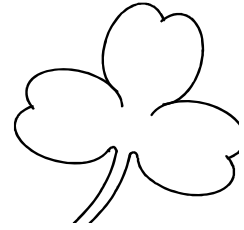




Happy St. Patrick's Day

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"Tip of the Month"

Defensive Publications and IP Protection

A defensive publication, or defensive disclosure, is an intellectual property strategy used to prevent another party from obtaining a patent. The strategy consists in disclosing an enabling description and/or drawing of the product, apparatus or method so that it enters the public domain and becomes prior art. The defensive publication of something that might otherwise be patentable makes it no longer "novel and non-obvious" and can help defeat a patent application filed later by a competitor.

The basis for this is found in US Patent Law. It states that a person shall be entitled to a patent unless:

- A. 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
- B. the claimed invention was described in an issued patent, or in an application for patent that is published or deemed published, 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.

A printed document is considered a defensive publication if the document has been disseminated or otherwise made available so that it can be located using reasonable diligence and is sufficiently accessible by the public. The publication must enable one having ordinary skill in the described technology to practice the invention. Defensive publications include product literature, white papers, and press releases, which may be in hardcopy form or published on a firm's website.

Documents published on the Internet or online databases are also considered to be printed publications under US Patent Law provided that the publication is accessible to persons concerned with the technology the document describes. Of course, timing is important. A defensive publication occurring after the filing date of a competitor's patent application will not be considered prior art and will not prevent the competitor from obtaining a patent.

A defensive publication is an attractive option because it often has little or no cost, unlike patent protection. Thus, a defensive publication is especially useful for innovations that do not warrant the high costs of a patent application. A defensive publication is also useful when innovators want to retain access to an invention while also preventing competitors from patenting the same invention.

Should defensive publication become an option in a company's IP strategy? This depends on the goals of the company, its marketing and development plans with respect to an invention, and the potential for licensing the invention.

If you have any questions about defensive publications or any other IP-related matter, the intellectual property attorneys at Mesmer & Deleault, PLLC are available to help you. Please give us a call at (603) 668-1971 or contact us by e-mail at *mailbox @ biz-patlaw.com* to schedule an appointment.

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