

# *PATENT INTERFERENCE PRACTICE*

## *A PRIMER*

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# What's a Patent Interference?

**United States** – Patent granted to the first inventor

**Europe** – Patent granted to the first to file an application



If...

Two or more applications,

*or*

- one or more applications and a patent

Claim the same invention...

- they **interfere**



# Patent Interference Terms

INVENTION – conception plus reduction to practice

CONCEPTION – the mental part

- idea (the result) *and*
- means for putting it into practice

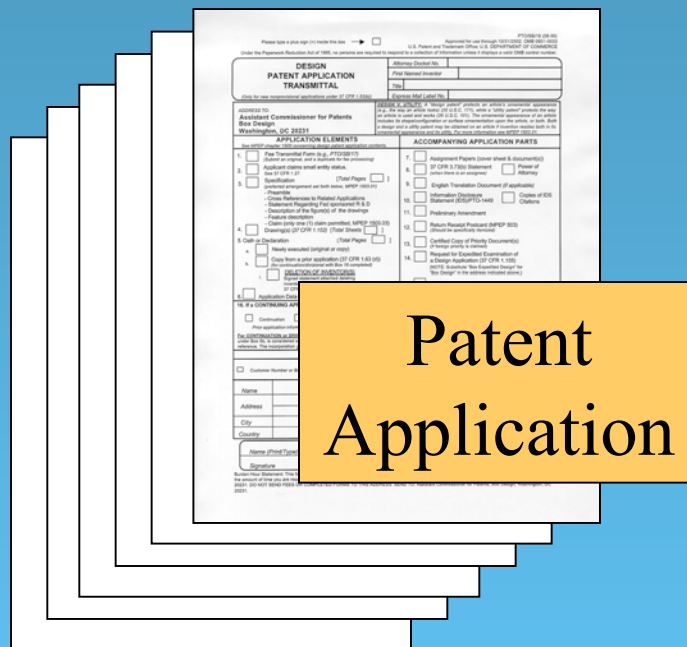


# Reduction To Practice (Two kinds)

- Actual



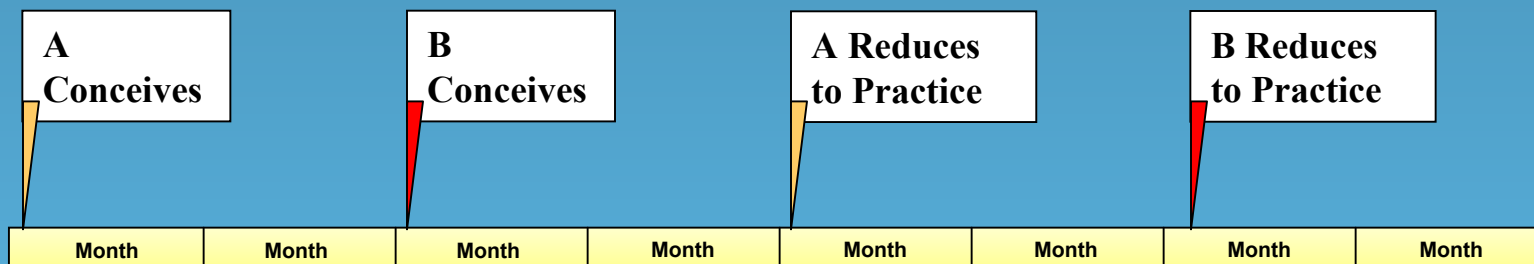
- Constructive



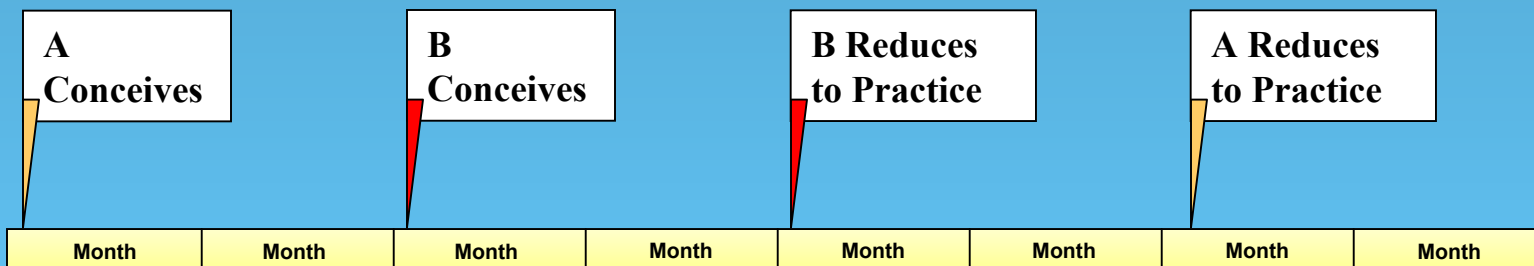
# Diligence

*Inventor A v. Inventor B*

*How can Inventor A win?*



- or -



A's Diligence

# Part One - Non-Adversary

## *Before the Patent Examiner*

- **One year rule**
- **How many inventions?**
- **Patentability**
  - **Described?**
  - **Prior Art?**



# Part One - Non-Adversary

## *Before the Patent Examiner*

- **“Same Patentable Invention”**
- **“Count”**



# Part Two – Adversary

*Before the  
Board of Patent Appeals and Interferences*

**How long does it take?**

**How much does it cost?**



# Declaration

## *The Initiation of a Patent Interference*

- **“Junior Party” and “Senior Party”**
- **“Involved” Patents and Applications**
- **What is at risk?**



# Phase One

## *“Preliminary Motions” Phase*

- **Theoretical Time of Pendency – Nine Months**
- **Preliminary Statements**
  - **Non- U.S. activity before January, 1996**
- **“Preliminary” Motions**
- **“Discovery” in Interferences**

# Phase One

## *“Preliminary Motions” Phase*

- **Issues for Motions:**
  - **Count(s)**
  - **Claims – “Corresponding”**
  - **Claims – Patentable?**
  - **“Derivation”**
  - **Other Patents and/or Applications**

# Phase One

## *“Preliminary Motions” Phase*

- **Procedures:**
  - **Motion Papers**
  - **Supporting Affidavits**
  - **Cross-Examination by Deposition**



# Phase One

## *“Preliminary Motions” Phase*

- **Motions Record**
- **Motions to Suppress Evidence**
- **Oral Hearing on Motions**



- **Decisions on Motions**

# Phase Two

## *Priority Phase*

- **Special Rules for Testimony**
- **Relevance**
  - **Corroboration**
- **“Testimony”**



# Phase Two

## *Priority Phase*

- **Documentary Evidence and Record-keeping**
- **Cross-Examination by Deposition**
- **Priority Record**
- **Motions to Suppress Evidence**
- **Oral Hearing on Motions**



# Phase Two

## *Priority Phase*



- **Judgment**
- **Appeals**