

From: ngeorgalis [e-mail address redacted]
Sent: Sunday, September 25, 2011 8:20 AM
To: aia_implementation
Subject: Reference patent or published application filing date - 102(d)

AIA modifies § 102 in part as follows:

§ 102. Conditions for patentability; novelty

...

(d) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

(1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or
(2) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), or 365(b), or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.

Does this mean that a reference patent's or published application's earliest filing date under 119, 365(a), 365(b), 120, 121, or 365(c), is used to reject the claims of an application? If not then please clarify what 102(d) means and how the effective date of reference patents and published applications is determined.

Nick Georgalis
[phone redacted]