

Interference Searches in AIA(FITF) Applications

TIP: It is necessary to conduct an interference search at the time of allowance in accordance with MPEP 1302.08 even in an AIA/First-Inventor-to-File (FITF) application.

The PTAB will consider instituting an interference proceeding under pre-AIA law between two applications or between an application and a patent when pre-AIA 35 U.S.C. 102(g) applied to at least one of them during prosecution.¹

- Pre-AIA § 102(g) applies to all pre-AIA (first-to-invent) applications.
- Pre-AIA § 102(g) also applies to some AIA (first-inventor-to-file) applications. If an AIA(FITF) application:
 - ever contained at least one claim with an effective filing date before March 16, 2013, OR
 - was ever designated as a continuation, divisional, or continuation-in-part of an application that ever contained at least one claim with an effective filing date before March 16, 2013,

then pre-AIA § 102(g) applies to all claims in the application.²

Therefore, it is necessary to conduct an interference search at the time of allowance in accordance with MPEP 1302.08 **even in an AIA(FITF) application.**

- If the AIA(FITF) application to be allowed is subject to pre-AIA § 102(g), then it can potentially be placed into interference with another application or patent regardless of whether the other application or patent was examined under AIA(FITF) or not.
- Even if the AIA(FITF) application to be allowed is not subject to pre-AIA § 102(g) itself, it can still potentially be placed into interference with another application or patent if the other application or patent was subject to pre-AIA § 102(g).

¹ See 77 Fed. Reg. 56068, 56073, cmt 15.

² See AIA sec. 3(n)(2) and MPEP 2151.