FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed

Chart 1: For U.S. patent or U.S. patent application publication under 35 U.S.C. §122(b) (includes publications of § 371 applications)

Is the reference a U.S. patent or U.S. application publication of an International Application (IA)?
(look for “35 U.S.C. § 371” on the reference, which would indicate National Stage was entered)

Yes

Was the IA filed on or after Nov. 29, 2000? - look at the international filing date

No

Is there an IA in the continuity chain for which a benefit is properly sought via §§ 120 or 365(c)?

Yes

No

The reference was filed under § 111(a) and only claims benefit to other U.S. applications filed under § 111(a) or (b) or does not make any benefit claims.
The § 102(e) date of the reference is the earliest U.S. filing date for which a benefit is properly sought via §§ 119(e) and/or 120 (do not consider foreign priority claims under §§ 119(a)-(d)). Form Paragraph 7.12

No

Was the IA filed on or after Nov. 29, 2000? - look at the international filing date

Yes

No

The reference was filed under § 111(a) and only claims benefit to other U.S. applications filed under § 111(a) or (b) or does not make any benefit claims.
The § 102(e) date of the reference is the earliest U.S. filing date for which a benefit is properly sought via §§ 119(e) and/or 120 (do not consider foreign priority claims under §§ 119(a)-(d)). Form Paragraph 7.12

Yes

No

Was the WIPO publication of the IA in English and did the IA designate the U.S.?

Yes

For a patent: § 102(e) date is the § 371(c)(1), (2) and (4) date Form Paragraph 7.12.01
For a U.S. appl. publication: no § 102(e) date Reference is prior art as of its publication date under § 102(a) or (b) Form Paragraph 7.08 or 7.09

No

Benefit claim to an IA (§§ 120 or 365(c))

Was the IA filed on or after Nov. 29, 2000? - look at the international filing date

Yes

No

Was the WIPO publication of the IA in English and did the IA designate the U.S.?

Yes

For a patent and a U.S. application publication: § 102(e) date is the international filing date or an earlier filing date for which a benefit is properly sought* Form Paragraph 7.12

For a patent and a U.S. application publication: no § 102(e) date Reference is prior art as of its publication or grant date under § 102(a) or (b) Form Paragraph 7.08 or 7.09

No

For a patent and an application publication: § 102(e) date is the international filing date or an earlier date for which a benefit is properly sought* Form Paragraph 7.12

For a patent and an application publication: § 102(e) date is the filing date of the U.S. application that claimed benefit to the IA Form Paragraph 7.12

* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.
FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed
Chart II: For WIPO publication of International Applications (IAs)

Was the IA filed on or after Nov. 29, 2000?
- look at the international filing date

- Yes
  Was the WIPO publication of the IA in English and did the IA designate the U.S.?
  - Yes
    § 102(e) date is the international filing date or an earlier filing date for which a benefit is properly sought* Form Paragraph 7.12
  - No
    no § 102(e) date Reference is prior art as of its publication date under § 102(a) or (b) no matter what the language of publication was. Form Paragraph 7.08 or 7.09

- No
  no § 102(e) date Reference is prior art as of its publication date under § 102(a) or (b) no matter what the language of publication was. Form Paragraph 7.08 or 7.09

* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

Glossary of Terms:
U.S. patent application publication = pre-grant publication by the USPTO under 35 U.S.C. § 122(b)
International application (IA) = an application filed under the Patent Cooperation Treaty (PCT)
§ 371 application = an IA that has entered the national stage in the U.S. (35 U.S.C. § 371(c)(1), (2), and (4))
November 29, 2000 = the effective date for the amendments to §§ 102(e) and 374
WIPO = World Intellectual Property Organization
WIPO Publication = a publication of an IA under PCT Article 21(2) (e.g., Publication No. WO 99/12345)
§ 111(a) = provision of the patent code that states the filing requirements for nonprovisional applications
§ 111(b) = provision of the patent code that states the filing requirements for provisional applications
§ 119(e) = provision of the patent code that allows for priority claims to provisional applications
§ 119(a)-(d) = provision of the patent code that allows for priority claims to foreign applications
§ 120 = provision of the patent code that allows for benefit claims to nonprovisional applications
§ 365(c) = provision of the patent code that allows for benefit claims to international applications