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**From:** James White

**Sent:** Monday, May 08, 2006 11:49 PM

**To:** DDP.Comments

**Subject:** Disclosure Document Program

To whom it may concern:

I am strongly in favor of continuation of the USPTO Disclosure Document Program for the following reasons:

1. It is a good "get the feet wet" learning tool for budding inventors or those who finally think "now is the time to do something with one of my ideas." I strongly encourage new inventors to sit down and do the writing because I know that just the act of putting something onto paper will help them see whether they actually have an invention or not. The lack of "formal" requirements makes it possible for them to do (though I have heard patent practitioners WARN of all the possible pitfalls of "amateur" legal document writing).

2. A reasonably well prepared DDP filing will beat the stuffings out of the average budding inventor "notebook" for documentation that would be considered useful "evidence" in court. Most of the "notebooks" that I have seen are so haphazardly done--often even by more experienced inventors--that even a half-decent DDP filing will be a better record.

3. The DDP with its two year timeframe (though it's actually only 1 when you insert the PAP 1 year before non-provisional filing) gives budding inventors a tremendously beneficial "cooling off period" without the pressure of a "patent pending." It does not surprise me that the vast majority of DDs never get referenced in a full application--they are and should be wisely abandoned after a little research. If inventors are forced to go the PAP route there will be at least two additional forces that lead too many of them to waste more money on a full filing, A) they've committed \$100, "real money," (instead of \$10 "pocket change") which they are more loath to "lose" by not following up and B) there is a prideful tendency to "announce" the "patent pending" status of a PAP and thus a real psychological barrier to overcome to decide to abandon the PAP (and the potential "glory" of an issued patent). Virtually all of the new inventors I meet will give up the \$10 without a second thought while only a few will have the fortitude to abandon a \$100 "patent pending" PAP.

4. I hear too many budding inventors complain that they got "rushed" into the PAP filing by a practitioner---who, of course, and accurately, said the PAP for only \$90 more is "safest" for "protecting" an invention idea---then got the thumb screws put to them---by the highly moral practitioner---some 9-10 months later to get that PAP followed up by a "legal language t-crossing-i-dotting" practitioner-written full application. The reality is the \$100 DOES NOT usually constitute the "safest" route. The risk is losing out on the invention idea to someone else---pretty much always very near 0---is generally very small versus losing out on the \$100 and subsequently \$3,000 to \$10,000 (plus or minus) to get a

ridiculously weak and worthless patent on something for which the basic idea was had long ago.

I have heard (and I'm not privy to the inner minds of the DDP creators) that the sole benefit the DDP was created for is as proof of a date near the date of conception. Further that a filed DD cannot be or become evidence of "reduction to practice." I don't buy either of those. See above points 1, 2, and 3 to refute the "sole" benefit argument. What the creators might, or might not, have intended seems irrelevant to what the actual benefits are. As to the latter argument while it is true that filing a PAP or a full application---in black letter law---give one constructive "reduction to practice" there is always far more to the law than just the statute books. For various purposes other documents, actions, etc. have over the years by the courts been used to decide that an inventor was in full "possession" of the invention or had "completed" it without either actual or black-letter-law-constructive reduction to practice (See *Mahurkar v. C.R. Bard, Inc.* as an introduction to the topic). I have no doubt that, when fairness demands it, some DD will meet that test too. Not all, of course could or should count as more than evidence of conception but there is no bright line that says a DD never can count for more.

Sincerely,

James E. White