

THE POST-AIA SECTION 102

- **Basic framework**
 - First-inventor-to-file wins unless second filer:
 - Was first to publicly disclose during one-year grace period; or
 - Shows “derivation” or “abandonment”
 - Certain prior art disclosures result in bar (loss of right)
 - Immediately; or
 - After one-year grace period
- **Prior art — new § 102(a)**
 - Includes all publicly available material before filing date — § 102(a)(1)
 - Patented
 - Described in a printed publication
 - Public use
 - On sale
 - Otherwise available to the public
 - Another inventor’s patent application that is published or results in issued patent — § 102(a)(2)
 - Grace period **not applicable**
 - Excluded from prior art if derived from or previously disclosed by inventor, or co-owned — § 102(b)(2))
 - Excludes third-party secret public use/on-sale events
 - No geographic restrictions
 - No Rule 131 affidavits (“swearing behind”)
- **One year grace period — new § 102(b)(1)**
 - Applies to:
 - The inventor’s own “disclosures” (“public disclosures” in **bold**)
 - **Printed publications/otherwise made available**
 - **Informing public use/on-sale events**
 - Non-informing and secret public use/on-sale events
 - Third-party “disclosures” that occur after “**public disclosure**” by the inventor
 - Printed publications/otherwise made available
 - Third party non-secret public use/on-sale events
 - “Disclosing behind”
 - Legislative history: “New section 102(b) preserves the grace period, ensuring that during the year prior to filing, an invention will not be rendered unpatentable based on
 - any of the inventor’s own disclosures, or
 - any disclosure made by any party after the inventor has disclosed his invention to the public.” — Committee Report 112-98, at 73