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## Prior to Filing Your Patent Application...

Although the patent filing date is generally determinative in obtaining a patent, in certain instances, the date of conception is critical. Under current US patent law, the first to conceive and diligently reduce to practice is entitled to a patent even if another party files their patent application first. While this is not a common event, it can occur, and proving both your date of conception, and that you worked diligently to reduce your invention to practice, may be critical in obtaining a patent.

Further, you are not entitled to a patent if your invention was publically known prior to your conception. Prior art may be introduced either in Patent and Trademark Office during patent prosecution, or in court when a patent is enforced against an infringer. If the prior art which came into being before your filing date, it may be used to reject your patent application in the Patent and Trademark Office or to invalidate your patent in court. However, if the prior art came into being less than a year before your filing date, such rejection or invalidation may be overcome if you can prove a conception date before the date of the prior art.

Although other proof of conception may be accepted, the preferred proof is a witnessed inventor's notebook. Such notebook is a permanently bound book with descriptions of your work, signed and dated by two individuals following each entry, which individuals are not related to you, and do not have a business interest on your invention. At each significant step of conception and reduction to practice, you should enter a description and obtain new signatures. Such signatures are merely establishing the date of the entry, and do not require that the signatories understand the nature of the work.

**UPDATE NOTICE:** The American Invents Act of 2011 may change the US to a "first to file" system. The act is presently working its way through the Federal government. While there is support for a "first to file" system, many small inventors believe that such a system favors large corporations. Additionally, some believe that the Constitution gives the right to a patent to the first to invent.