

AIA Section 102 now being seen in litigated cases

STEVEN J. POLLINGER

RAMZI R. KHAZEN

21ST ANNUAL ADVANCED PATENT LAW INSTITUTE

Austin, Texas

November 4, 2016

The ideas expressed do not necessarily reflect the views or positions of the author, McKool Smith, P.C. or their clients

©2016 Steven J. Pollinger and Ramzi R. Khazen. All Rights Reserved.

Roadmap

- 1 Overview of AIA § 102
- 2 102(a): prior art
- 3 102(b): exceptions
- 4 Emerging trends

1

Overview of AIA § 102

Applies to effective filing dates on or after **March 16, 2013**.

- Pub. L. 112–29, 112th Congress
125 STAT. 293 (Sept. 16, 2011)

1

Overview of AIA § 102

Apply AIA § 102 when application contains
– *or contained at any time* –
a claim with an effective filing date on or
after **March 16, 2013**.

Mixed: Both pre- and post-AIA claims

Apply:

- AIA to all claims, but also
- pre-AIA § 102(g) to all claims

App. never included anything other than pre-AIA claims		Pre-AIA
<i>e.g.</i> , (i) application filed before <i>March 16, 2013</i> , or (ii) continuation or divisional (or priority chain of only continuations/divisionals) of application filed before March 16, 2013		
App. never included anything other than post-AIA claims		AIA
<i>e.g.</i> , new application filed on or after March 16, 2013; no priority claim		
App. at any time included at least one pre-AIA claim, and at any time at least one post AIA claim		AIA <u>but also</u> Pre-AIA 102(g)
<i>e.g.</i> , CIP filed on or after March 16, 2013, with claims based on both pre-March 16 matter and post March 16 matter		
<u>Pre AIA claims:</u>	The claims have full written description support in the filings before March 16, 2013.	
<u>Post AIA claims:</u>	The claims rely at least in part on subject matter in the written description filed on or after March 16, 2013	

1 Overview of AIA § 102

- Simplification
- “Global” harmonization
- Trade secret harmonization?

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: AIA Section 102 Now Being Seen in Litigated Cases

Also available as part of the eCourse

[2016 Advanced Patent Law eConference - Austin](#)

First appeared as part of the conference materials for the
21st Annual Advanced Patent Law Institute session

"AIA Section 102 Now Being Seen in Litigated Cases"