

# 35 U.S.C. §120

**An application** for patent for an invention disclosed in the manner by section 112(a) (other than the requirement to disclose the best mode) **application previously filed** in the United States, or as provided in section 363, which is filed by an inventor or inventors named in the **previous application** shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment or termination of proceedings on the **first application** or on any **application similarly entitled** to the benefit of the filing date of the **first application** and if it contains or is amended to contain a specific reference to the **earlier filed application**. No application shall be entitled to the benefit of an **earlier filed application** under this section unless an amendment containing the specific reference to the **earlier filed application** is filed at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within the time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to account for unintentionally delayed submission of an amendment under this section.

# 37 C.F.R. §1.78(a)(2)(C)

Except for a continued prosecution application filed under § 1.53(d) nonprovisional application or international application designating the United States of America claiming the benefit of one or more **prior-filed nonprovisional applications** or international applications designating the United States of America must contain or be amended to contain a **each such prior-filed application**, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship between the applications. Cross references to other related applications may be included if appropriate (see § 1.14).

# 37 C.F.R. §1.78(c)(2)

“[e]xcept for a continued prosecution application filed under any nonprovisional application, or international application of the United States of America, that claims the benefit of one or more **prior-filed** nonprovisional applications or international applications designating the United States of America must contain or be required to contain a reference to **each such prior-filed application** identifying it by application number (consisting of the series number and serial number) or international application number and international filing date. If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included on the application data sheet (§ 1.76(b)(5)). The reference also must identify the relationship of the applications, namely, whether the later-filed application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application or international application.”  
C.F.R. §1.78(c)(2) (emphasis added).

# Specific Reference

...establish copendency *throughout* the entire chain of prior applications.

Paper 19 (Petitioner Reply) at 7

# Copendency Has Been Established

...“copendency” is not the element missing from Patent Owner’s  
priority claim...

Paper 19 (Petitioner Reply) at 19

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