

as of the earlier of the date of completion of the requirements of [35 U.S.C. 371\(c\)\(1\), \(2\) and \(4\)](#) or the filing date of the later-filed U.S. application that claimed the benefit of the international application;

(2) For U.S. application publications and WIPO publications directly resulting from international applications under [PCT Article 21\(2\)](#), never apply these references under 35 U.S.C. 102(e) as in force on November 28, 2000. These references may be applied as of their publication dates under [pre-AIA 35 U.S.C. 102\(a\) or \(b\)](#);

(3) For U.S. application publications of applications that claim the benefit under 35 U.S.C. 120 or 365(c) of an international application filed prior to November 29, 2000, apply the reference under 35 U.S.C. 102(e) as in force on November 28, 2000 as of the actual filing date of the later-filed U.S. application that claimed the benefit of the international application.

Examiners should be aware that although a publication of, or a U.S. patent issued from, an international application may not be available as prior art under former 35 U.S.C. 102(e) as in force on November 28, 2000 or under [pre-AIA 35 U.S.C. 102\(e\)](#), the corresponding WIPO publication of an international application may have an earlier [pre-AIA 35 U.S.C. 102\(a\) or \(b\)](#) date.

### III. BENEFIT OF PROVISIONAL APPLICATION UNDER 35 U.S.C. 119(e)

The [pre-AIA 35 U.S.C. 102\(e\)](#) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under [35 U.S.C. 119\(e\)](#) is the filing date of the provisional application with certain exceptions if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with [35 U.S.C. 112\(a\)](#)/[pre-AIA 35 U.S.C. 112](#), first paragraph. See [MPEP § 706.02\(f\)\(1\)](#), examples 5 to 9. Note that international applications which (1) were filed prior to November 29, 2000, or (2) did not designate the U.S., or (3) were not published in English under [PCT Article 21\(2\)](#) by WIPO, may not be used to reach back (bridge) to an earlier filing date through a priority or benefit claim for prior art purposes under [pre-AIA 35 U.S.C. 102\(e\)](#). In addition, the reference date

under [pre-AIA 35 U.S.C. 102\(e\)](#) of a U.S. patent may be the filing date of a relied upon provisional application only if at least one of the claims in the patent is supported by the written description of the provisional application in compliance with [pre-AIA 35 U.S.C. 112](#), first paragraph. See *Dynamic Drinkware, LLC, v. National Graphics, Inc.*, 800 F.3d 1375, 116 USPQ2d 1045 (Fed. Cir. 2015).

### IV. BENEFIT OF NONPROVISIONAL APPLICATION UNDER 35 U.S.C. 120

#### *Filing Date of U.S. Parent Application Can Only Be Used as the Pre-AIA 35 U.S.C. 102(e) Date If It Supports the Subject Matter Relied Upon in the Continuing Application*

For prior art purposes, a U.S. patent or patent application publication that claims the benefit of an earlier filing date under [35 U.S.C. 120](#) of a prior nonprovisional application (i.e., a continuation, divisional, or continuation-in-part application) would be accorded the earlier filing date as its prior art date under [pre-AIA 35 U.S.C. 102\(e\)](#), provided the earlier-filed application properly supports the subject matter relied upon in any rejection in compliance with [35 U.S.C. 112\(a\)](#) or [pre-AIA 35 U.S.C. 112](#), first paragraph. In other words, the subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with [35 U.S.C. 112\(a\)](#) or [pre-AIA 35 U.S.C. 112](#), first paragraph, in order for that subject matter to be entitled to the earlier filing date under [pre-AIA 35 U.S.C. 102\(e\)](#).

See also [MPEP § 706.02\(f\)\(1\)](#), examples 2 and 5 to 9.

### V. DATE OF CONCEPTION OR REDUCTION TO PRACTICE

#### *Pre-AIA 35 U.S.C. 102(e) Reference Date Is the Filing Date, Not Date of Inventor's Conception or Reduction to Practice*

If a reference available under [pre-AIA 35 U.S.C. 102\(e\)](#) discloses, but does not claim the subject matter of the claims being examined or an obvious variant, the reference is not prior art under [pre-AIA 35 U.S.C. 102\(g\)](#). Furthermore, the reference does not qualify as "prior art" under [35 U.S.C. 102](#) as of