

INFORMATION DISCLOSURE STATEMENTS

**BASIC INFORMATION
ABOUT
INFORMATION DISCLOSURE
STATEMENTS**

What is an IDS?

- An Information Disclosure Statement (IDS) is a formal written disclosure to the USPTO (U. S. Patent and Trademark Office) of all documents/things (prior art) that you know about which may be relevant in determining the patentability of your claim.
- Prior Art typically includes other issued patents, published patent applications, articles/books or any other published material.
- IDS forms have strict formatting and filing requirements prescribed by USPTO rules.

Is Filing an IDS Necessary?

- Likely, yes.
- If you are aware of any prior art (documents/things that existed prior to the filing date of your application) then that information must be disclosed to the patent office to avoid penalties
- Penalties can include stripping of patent rights (patent invalidity).
- Merely listing information in an IDS is not automatically taken as an admission against the patent.
- Moreover, the declaration you signed at the time of filing obligates you to turn over this material.

Do I Have to Search?

- No.
- The USPTO rules only require that you disclose what you know about.
- You are not required to perform any kind of search.
- Deliberate ignorance is allowed. For example, if someone starts to tell you about a possible prior art, you may stop them. As long as you have not received enough information so that you now know where to find the prior art, you are not required to go in search of it.

How Will the USPTO Know, if I Just Don't Tell Them?

- The answer is that they may not know, but if your attorneys/agents know, they are under a legal obligation to disclose.
- You may instruct your attorney/agent not to disclose the information. However if you do so, the attorney/agent will have to withdraw from representing you to avoid violation of their ethical duty and protect his/her license.
- Finally, this is just a BAD IDEA. Even if you patent issues under those circumstances, it could be later canceled/invalidated based upon your actions.

When Does an IDS Have to be Filed?

- The answer is simple, but complex.
- The applicant/inventor and attorney/agent are required to file an IDS any time they learn of new prior art that may impact patentability. This obligation only exists while the patent application is pending. Once the patent issues, the obligation no longer exists.
- To avoid a fee, IDSs should be filed (whichever is later):
 - 1) within 90 days of the date you learn of the prior art
 - or
 - 2) Before the USPTO first acts upon the merits of the patent.
- IDSs can be filed after these deadlines, but they typically require payment of a small administrative fee.