"What You Must Know About Record-Keeping to Protect Your Invention": Attributes of Credible Invention Records

Written Proof Preferable to Oral Proof

Proof of conception, reduction to practice, and diligence can be in the form of the testimony, i.e., oral statements, of the inventor, but preferably others working with him who have knowledge of his inventive activities. However, it is preferable that the evidence be in tangible form, i.e., documentation, models, and so on. There is always the danger, when you are relying on the testimony of a witness to prove conception, reduction to practice, or diligence, that when you need the proof the witness will be unavailable or uncooperative due to death, illness, hostility, or disappearance. In addition with the passage of time, memories fade and a witness's testimony becomes less credible. Written records, on the other hand, endure although care must be taken to protect them against loss or destruction as well as alteration.

Attributes of Credible Invention Records

1. Invention records should be sufficiently complete so that any other person skilled in the field to which the invention relates can understand exactly what was in the inventor's mind, in the case of conception, and exactly what physical acts were done in the case of reduction to practice. Where appropriate, invention records should emphasize critical aspects of the invention such as specific frequency, pressures, temperatures, voltage, power level and current ranges, and the like. Where possible, invention records should include blueprints, sketches, models, tabulations of experimental data, photographs of prototypes, laboratory set-ups, oscilloscope traces and the like, strip charts, computer printouts, etc.

2. Invention records, like any writing, should be definite, precise, clear, and organized. This permits others to completely and fully comprehend what the inventor invented.

3. Record should be made contemporaneously with the activities being recorded. In this way, important facts are likely not to be omitted. Contemporaneous records also tend to be more credible.

4. Record entries should be made in a bound book with numbered pages. This is in contrast to a loose leaf binder, which permits pages to be removed and is hence less credible. In making invention records, use a pen and not a pencil which can be easily erased or altered. If an error is made, draw a line through it rather than erase it. When invention records have erasures in them it is often difficult to convince the U.S. Patent Office or court that the erasure was made at the time the record was created rather than months or years later. A cardinal rule of invention record keeping is that you never alter a record at a later date. Also, do not leave blank pages or spaces since these can be argued to have been filled in at a later date.

Your invention record book should be kept intact by not removing pages. If blueprints, photographs, oscillograms, and the like originally recorded on another medium are incorporated into an invention record book, they should be securely fastened by taping or the like. In addition to securely fastening photographs, oscillograms, and so on in your book, you should sign and date each and refer to such items in your record notes. Record enough facts to justify any conclusions you make.

5. When making an entry in your record book, explain inconsistencies (real or apparent) vis-a-vis earlier record entries. This helps clarify the record.

6. Record what does not work as well as what does work. This is helpful in explaining delay in proving diligence as well as in proving that the invention is not "obvious" but rather was an invention made only with great difficulty and after a great deal of effort.

7. When in doubt, explain; and where possible, demonstrate to others. Then have your invention record entry read by others, preferably two persons who are capable of understanding it, and have them sign and date your entry at the end, noting that they have "read and understood" the invention. Those witnessing your record entries should not be persons who could conceivably be considered coinventors. Due to rules of the U.S. Patent Office, records witnessed by a coinventor are not admissible to prove conception, reduction to practice, or diligence. Such records have little, if any, real value in a U.S. Patent Office proceed l

8. Where you witness conception or reduction to practice of an important invention of another, make reference to such fact in your own record book.

9. Record the problem or objective, its origination and your proposal, conceptualized solution, or invention. Also record your probable method of implementation, other uses of the invention, and its advantages. Such is particularly useful in proving conception.

10. The following items, useful in proving reduction to practice, should be included in notebook entries:

a. Equipment used: its manufacturer, model, and photographs of set-up;

b. Results: samples, models, oscillograms, strip chart records, and so on;

c. Conclusions to be drawn, difficulties encountered, proposed changes or modifications;

d. When and where acts were done;

e. Names of those who did the actual work, and identification of those who authorized the work; and,

f. Test data sufficient to show that the invention will work in the environment for which it is intended

11. To establish diligence, notebook entries should include all acts which show the progress of the invention between conception and reduction to practice. Useful entries include:

a. Explanations of delays, if any, in reducing the invention to practice;

b. Equipment ordered: what, when, how, and from whom; proposed use;

c. Unsuccessful attempts to reduce the invention to practice; and,

d. Work plans, time records

As alluded to earlier, because of peculiarities in the law dealing with proof of conception, reduction to practice, and diligence, oral or written evidence generated by the inventor (or a coinventor) requires corroboration, i.e., it must be supplemented, supported, and authenticated by independent evidence of a non inventor who is capable of understanding the technology involved. For this reason alone, all facts necessary to prove conception, reduction to practice, and diligence should be immediately reduced to writing or other documentary form or other media and promptly signed by a noninventor capable of understanding the technology after he/she has reviewed and understands the invention record.

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