

Patent Law & Policy

Session 18

9/28/08

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Alexander Milburn (S. Ct. 1926)

	Whitford	Clifford
Subj Matt?	Claimed	Described
Filed?	March 1911*	Jan 1911
Issued?	June 1912	Feb 1912

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Alexander Milburn cont'd

- Holding now codified in § 102(e)
- “A person shall be entitled to a patent unless ... the invention was described in (1) an application for patent ... or (2) a patent granted on an application for patent[,] by another filed in the United States before the invention by the applicant for patent ...”

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Derivation

- 35 U.S.C. § 102(f)
- “A person shall be entitled to a patent unless ... he did not himself invent the subject matter sought to be patented”

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Campbell v. Spectrum (6th Cir 1975)

- Flexible feed track
- Campbell is named inventor on `600 patent
- Campbell Machines Co. - Campbell
- Spectrum Automation - Zimmerman
- Trial court credits Zimmerman's story
- Why?

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Derivation

- *Gambro Lundia* (Fed Cir 1997)
- “To show derivation, the party asserting invalidity must prove both prior conception of the invention by another and communication of that conception to the patentee.”

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Priority

- Rival inventors, each arguably first
- 35 U.S.C. § 102(g)
- Formal contest - “interference,” sub (g)(1)
- Prior art dispute, sub (g)(2)
- [Same method for § 102(a)]

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Invention

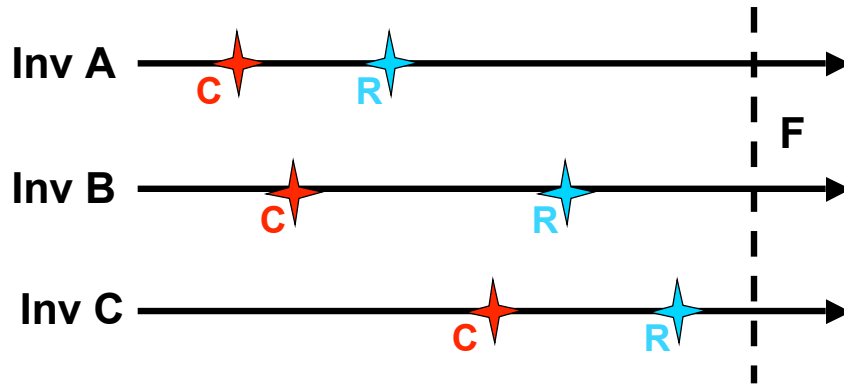
- Two aspects, one mental and one physical
- Mental - “conception”
 - forming idea of invention
- Physical - “reduction to practice”
 - actual = making a working version
 - constructive = filing § 112-compliant application

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Scenario 1

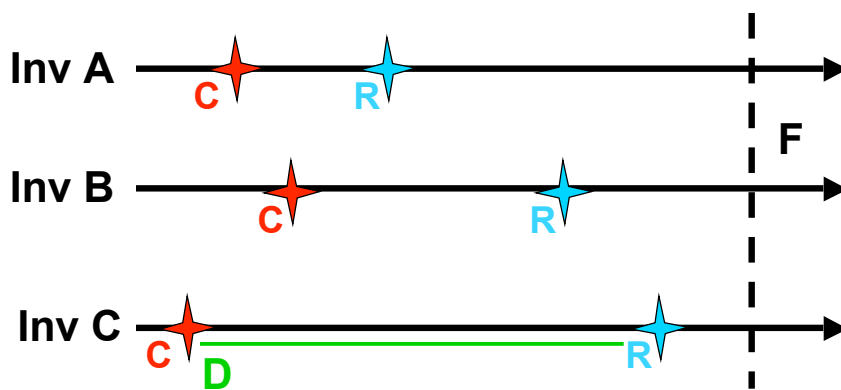


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Scenario 2



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