Under certain circumstances, a poster presentation or even an oral presentation relating to an invention may prevent an inventor from later being able to patent the invention in the United States (Note: Foreign patents are governed by laws of the relevant countries; consultation with experienced foreign counsel is strongly recommended in these situations.) The most prudent way to avoid the loss of patenting rights is to file a provisional patent application before making any type of disclosure. As a safety precaution, in case of doubt, you should file a patent application no later than one year after making a public oral or poster presentation. However, if you are unable to file a provisional patent application, the information included in this brochure will help you to avoid jeopardizing your patent rights.

35 U.S.C. 102(b) CREATES A STATUTORY BAR TO PATENTABILITY

If a poster or oral presentation meets the requirements of a “printed publication” under the patent statute, the date of the oral presentation starts a one-year clock within which a patent on the invention must be sought. This statutory deadline cannot be extended. Even if a good-faith delay was caused by circumstances outside the control of the researcher, non-compliance with the one-year deadline constitutes an absolute bar to patentability. In re Foster, 343 F.2d 980, 984 (CCPA 1965). This is true whether the oral or poster presentation takes place in the United States or in a foreign country. Once an inventor has decided to publicize his or her work, a choice must be made between the protection of a federal patent or the dedication of the invention to the public. Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 148 (1989).
WHAT IS A “PRINTED PUBLICATION”?  

The determination of whether an oral or poster presentation is a “printed publication” is highly factual. Intuitively, we tend to consider that a “printed publication” is something that has been published in paper form either as part of a journal, magazine, or book. However, the United States Patent and Trademarks Office uses a much broader definition of the term which—depending on the individual facts of the case—includes temporary printed displays such as posters, handouts, and even oral presentations. There is no bright line. Even though actual “printing” appears to be secondary, case law indicates that public disclosure and public accessibility are the determining criteria.

A POSTER PRESENTATION CAN BE A “PRINTED PUBLICATION”  

A publicly displayed document such a poster, where others can see it and are not precluded from copying, can constitute a “printed publication.” This is true even if the contents of the poster are not disseminated through printed copies. Indexing in the proceedings of a professional meeting, a library, or a database might also be considered publication. Scientists should refrain from making copies of their poster presentations and allowing the public unfiltered access to those printed handouts since there is little doubt that those handouts are “printed publications.”

The key element to determine whether information has been “published” is the degree of public accessibility. In re Klopfenstein, 380 F.3d 1345 (Fed. Cir. 2004). Courts have considered the following factors to resolve whether or not a temporarily displayed reference that was neither distributed nor indexed was a “printed publication”:

(a) “length of time the display was exhibited,”
(b) “expertise of the target audience,”
(c) “existence or lack of reasonable expectations that the mate-rial displayed would not be copied,” and
(d) “the simplicity or ease with which the material displayed could have been copied.” 380 F.3d at 1350.

AN ORALLY PRESENTED PAPER CAN BE A “PRINTED PUBLICATION”  

An entirely oral presentation that includes neither slides nor copies of the presentation is without question NOT a “printed publication.” In re Klopfenstein, 380 F.3d at 1349 n.4, 72 USPQ2d at 1122 n.4. However, if a paper is orally presented in a forum open to all interested persons, then it constitutes a “printed publication” if written copies are disseminated without restriction. MIT v. AB Fortia, 774 F.2d 1104, 1109 (Fed. Cir. 1985). Thus, oral presentations should be structured such that they will not be considered “printed publications” under the patent statute. Inventors who want to preserve the patentability of their inventions should limit “public accessibility” to the subject matter of the invention.

PROTECT YOUR RIGHTS, WHEN IN DOUBT, FILE A PROVISIONAL PATENT APPLICATION  

RESTRICTING “PUBLIC ACCESSIBILITY”  

Public accessibility” is limited when the inventor takes the following precautions:

- The inventor expresses and intends to prevent public distribution of the subject matter of the invention.
- The disclosure of the invention made by the inventor is limited such that all details of the invention are not revealed.
- The disclosure of the subject matter is made under confidential circumstance (after non-disclosure confidentiality agreement, or express expectation of confidentiality).
- The portion of the public that is exposed to the matter of the invention is limited.

SCENARIOS AND OUTCOMES  

An oral presentation with a 14-slide presentation was delivered to a large audience of scientists. The slides were printed and pasted onto poster boards, which were displayed continuously with no confidentiality restriction or two and a half days at two different events. Bar. Invention could not be patented because the information was clearly disseminated without restriction. In re Klopfenstein, 380 F.3d 1345 (Fed. Cir. 2004).

After delivering his Ph.D. dissertation a graduate student’s thesis is cataloged in the university library. There is no evidence that the anyone accessed the thesis after that. Bar. Invention could not be patented because even though nobody accessed the information, the dissertation was “accessible” to the public. In re Hall, 380 F.2d 1345 (Fed. Cir. 1986).

A graduate student delivers an oral presentation describing his invention at a conference. No slides or posters are presented to the audience. No invention could be patented because an entirely oral presentation is “without question” not a “printed publication.” In re Klopfenstein, 380 F.3d 1345 (Fed. Cir. 2004).

After delivering his Ph.D. dissertation a graduate student deposits his thesis in the university library, but the thesis is not cataloged. No bar. Invention could be patentable because an entirely oral presentation is “without question” not a “printed publication.” In re Klopfenstein, 380 F.3d 1345 (Fed. Cir. 2004).

Paper orally presented to between 50 and 500 persons at a scientific meeting open to all persons interested in the invention. Written copies were distributed without restriction to all who requested. Six persons requested and obtained copies. Bar. Invention could not be patented because a paper orally presented in a forum open to all interested persons is a “printed publication” if written copies are disseminated without restriction. MIT v. AB Fortia, 774 F.2d 1104 (Fed. Cir. 1985).

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