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# FINNEGAN

## United States: Good Record-Keeping: More Important Than Ever Under The AIA

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Post-AIA, no longer can inventors overcome certain types of prior art by proving an earlier date of invention, and interferences will eventually become a proceeding of the past. As a result, many may ask: has the **need for laboratory notebooks** in patent proceedings become obsolete? The easy answer: no!

**The AIA may have thrown out first-to-invent, but good record-keeping practices should not be discarded.** The AIA raises many situations where good record-keeping remains a necessity. For example, the USPTO recently issued [regulations for Rule 130 declarations](#) used to disqualify grace period prior art.

Records, including laboratory notebooks, can be particularly useful when submitting Rule 130 Declarations under those regulations. The regulations allow an applicant to submit a declaration to **disqualify a disclosure as prior art** by, first and foremost, **establishing** that the disclosure was somehow **publicly disclosed by the inventor**, either directly or indirectly. Thus, the **starting point for any Rule 130 declaration is showing that the inventor is the rightful inventive entity**. Here, laboratory notebooks and other records carefully kept, timely signed, and witnessed will establish inventorship.

Good records can also assist the declarant in identifying the subject matter and date that information was publicly disclosed. While easy for a publication, establishing the date and content of a prior public disclosure, such as a talk, a poster presentation, an offer for sale, or a public use, may be difficult. In those cases, the USPTO requires that the Rule 130 declaration **include "sufficient detail and particularity" to identify the subject matter publicly disclosed**. This is where the AIA **may demand even more rigorous record keeping than companies previously employed**.

Specifically, an applicant needs to be able to establish who, what, where, and when. Those facts may appear easy on their face to establish, but without a printed publication may be hard to corroborate. Consequently, **researchers should carefully record when and with whom they discuss their work**. **Sales and purchasing departments should document any sale or offer for sale**. And marketing departments may want to **monitor the distribution of samples or prototypes**. All of this information, meticulously documented, could later support Rule 130 declarations.

So **don't throw away those notebooks**. Now is a good time to revisit record-keeping practices in view of the AIA's changes.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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