The chart that I gave you this morning is based on §102 of the patent statutes.  Those statutes are written to apply directly to patent applications undergoing examination in the PTO.  Thus, their focus is on patentability and not, per se, validity.  However, the same provisions apply in the context of patent litigation, in which case §102 then needs to be interpreted in that context.  In order to make your use of the chart a little easier, I'm providing this addendum that reinterprets the statute so that it is more readily applied in the context of litigation.

Under §102(a), putative prior art is not §102(a) prior art unless before the DOI of the patent-in-suit the putative prior art became public.

Under §102(e), the putative prior art is not §102(e) prior art unless it is based on a patent application that was filed before the DOI for the patent-in-suit and the putative prior art patent application eventually was published, or the putative prior art patent issued.

Under §102(g)(2), if the putative prior art inventor was the first to RTP (as compared to the patent-in-suit inventor), that art constitutes §102(g) prior art unless the patent-in-suit inventor was first to conceive and diligently worked to RTP (in other words, the patent-in-suit inventor had an earlier DOI); on the other hand, if the inventor of the patent-in-suit was the first to RTP, the putative prior art is not §102(g) prior art unless the putative prior art inventor was first to conceive and diligently worked to RTP (in other words, the putative prior art inventor had an earlier DOI).  §102(g)(2) is rather confusingly worded because it attempts to deal with scenarios where the relevant information is incomplete:  if the dates of conception, diligence, and RTP are available for both inventors, then the putative prior art is §102(g) prior art only if it is based on a DOI that is earlier than that for the patent-in-suit.  If, however, complete information on these dates is lacking for the inventor with the later RTP, then the inventor with the earlier RTP prevails:  if the patent-in-suit inventor has the earliest RTP and the putative prior art inventor is unable to establish a DOI earlier than that RTP for the patent-in-suit inventor, then the putative prior art is not §102(g) art; if the putative prior art inventor has the earliest RTP and the patent-in-suit inventor is unable to establish a DOI earlier than that RTP, then the putative prior art constitutes §102(g) art.

Under §102(b), putative prior art is not §102(b) prior art unless more than one year before the filing date of the application on the patent-in-suit the putative prior art was patented anywhere, appeared in a printed publication anywhere, or was used or on sale by anyone in the U.S.

What is “secret art” as that term is used in the §102 chart and by the authors of Patent Law? It can, but need not, be secret. For §102(e), (f), and (g), the statute is indifferent to whether the art has been disclosed to the public. This is in contrast to §102(a), whose focus is on public disclosure.

§102(g)(2)’s focus is on who invented first as between the inventor on the patent-in-suit and the inventor of the potentially invalidating prior art. The battle between them is over who had the earliest date of invention (DOI). The form of disclosure, or even whether there was a public disclosure, isn’t important except in terms of satisfying the corroboration requirement. The key is who can prove the earliest DOI.

§102(f) arises in litigation where defendant says the patent-in-suit is invalid because another person, not the inventor named on the patent-in-suit, is the true inventor. If the requirements of 102(f) are met, the result is invalidity of the patent-in-suit.

Hopefully this addendum makes §102 "intuitively obvious to the casual observer." (I'm not serious -- the phrase was taken from a calculus text I used over 50 years ago and the answer to which the author attached this phrase was anything but "intuitively obvious.")