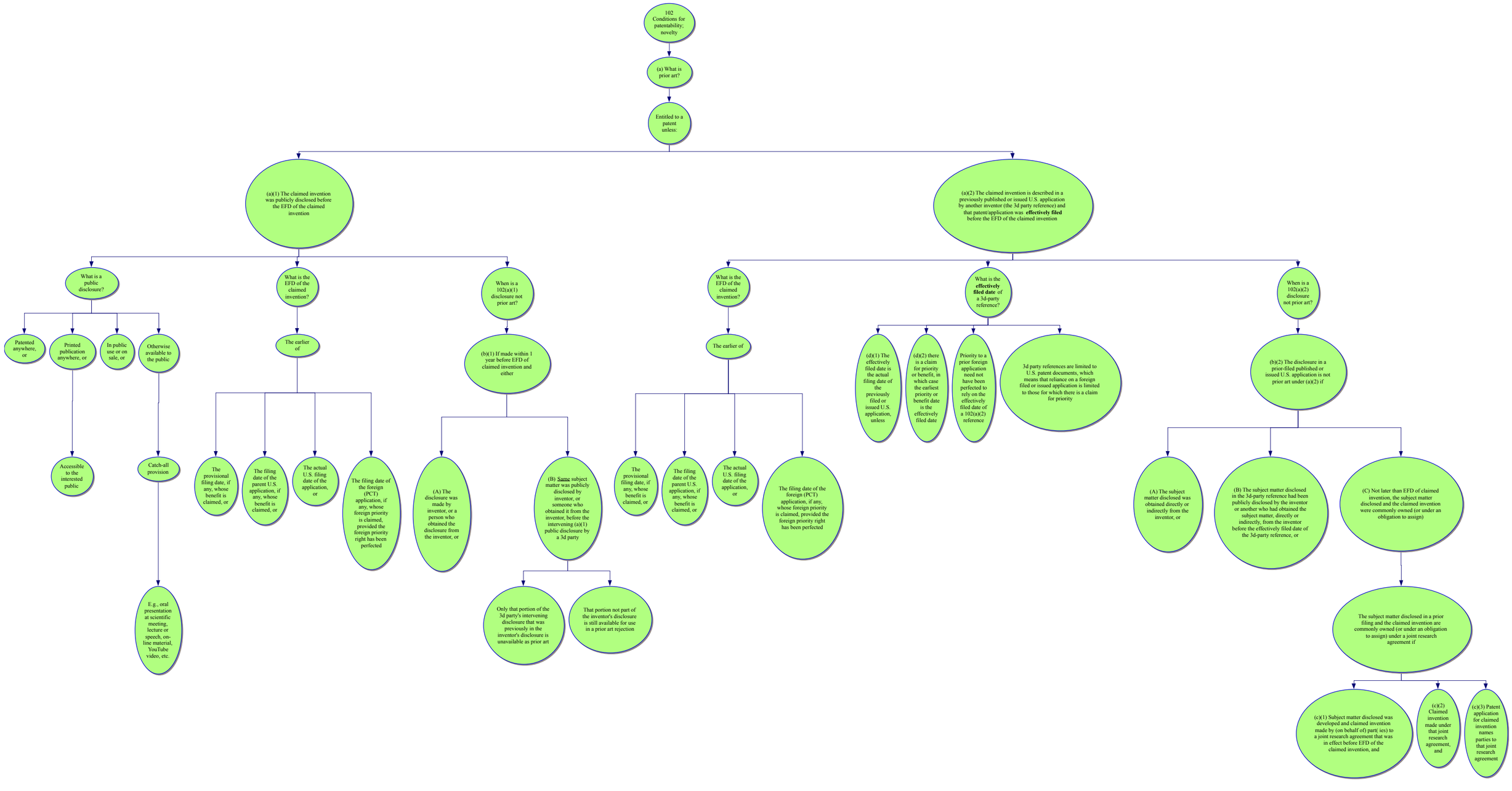
102 Conditions for patentability; novelty
(a) What is prior art?
Entitled to a patent unless:
(a)(1) The claimed invention was publicly disclosed before the EFD of the claimed invention
What is a public disclosure?
Patented anywhere, or
Printed publication anywhere, or
In public use or on sale, or
Otherwise available to the public
Accessible to the interested public
Catch-all provision
E.g., oral presentation at scientific meeting, lecture or speech, on-line material, YouTube video, etc.
What is the EFD of the claimed invention?
The earlier of
The provisional filing date, if any, whose benefit is claimed, or
The filing date of the parent U.S. application, if any, whose benefit is claimed, or
The actual U.S. filing date of the application, or
The filing date of the foreign (PCT) application, if any, whose foreign priority is claimed, provided the foreign priority right has been perfected
When is a 102(a)(1) disclosure not prior art?
(b)(1) If made within 1 year before EFD of claimed invention and either
(A) The disclosure was made by inventor, or a person who obtained the disclosure from the inventor, or
(B) Same subject matter was publicly disclosed by inventor, or someone who obtained it from the inventor, before the intervening (a)(1) public disclosure by a 3d party
Only that portion of the 3d party's intervening disclosure that was previously in the inventor's disclosure is unavailable as prior art
That portion not part of the inventor's disclosure is still available for use in a prior art rejection
(a)(2) The claimed invention is described in a previously published or issued U.S. application by another inventor (the 3d party reference) and that patent/application was effectively filed before the EFD of the claimed invention
What is the EFD of the claimed invention?
The earlier of
The provisional filing date, if any, whose benefit is claimed, or
The filing date of the parent U.S. application, if any, whose benefit is claimed, or
The actual U.S. filing date of the application, or
The filing date of the foreign (PCT) application, if any, whose foreign priority is claimed, provided the foreign priority right has been perfected
What is the effectively filed date of a 3d-party reference?
(d)(1) The effectively filed date is the actual filing date of the previously filed or issued U.S. application, unless
(d)(2) there is a claim for priority or benefit, in which case the earliest priority or benefit date is the effectively filed date
Priority to a prior foreign application need not have been perfected to rely on the effectively filed date of a 102(a)(2) reference
3d party references are limited to U.S. patent documents, which means that reliance on a foreign filed or issued application is limited to those for which there is a claim for priority
When is a 102(a)(2) disclosure not prior art?
(b)(2) The disclosure in a prior-filed published or issued U.S. application is not prior art under (a)(2) if
(A) The subject matter disclosed was obtained directly or indirectly from the inventor, or
(B) The subject matter disclosed in the 3d-party reference had been publicly disclosed by the inventor or another who had obtained the subject matter, directly or indirectly, from the inventor before the effectively filed date of the 3d-party reference, or
(C) Not later than EFD of claimed invention, the subject matter disclosed and the claimed invention were commonly owned (or under an obligation to assign)
The subject matter disclosed in a prior filing and the claimed invention are commonly owned (or under an obligation to assign) under a joint research agreement if
(c)(1) Subject matter disclosed was developed and claimed invention made by (on behalf of) part( ies) to a joint research agreement that was in effect before EFD of the claimed invention, and
(c)(2) Claimed invention made under that joint research agreement, and
(c)(3) Patent application for claimed invention names parties to that joint research agreement