

US: PATENTS



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less of reason. You may add non-joined inventors only if the error arose without deceptive intention on their part. Where inventors cannot be found or are uncooperative, assignees can benefit from the reissue process and correct inventorship.

How to determine and correct inventorship

You file and are granted a US patent. In a subsequent infringement suit, patent validity is challenged based on failure to name the correct inventors.

That should never happen.

US patent law requires that inventors be correctly named in patents. A good faith error (no deceptive intent) in naming inventors will not render a patent invalid. To establish good faith, patent attorneys and clients must work together to understand how to determine inventorship. If despite good faith efforts inventorship errors do arise, there are procedures for correcting inventorship during the application process and after patent issuance.

Inventorship errors arise when:

- an actual inventor is not named among co-inventors (nonjoinder);
- a listed inventor is incorrectly named among inventors (misjoinder); or

To determine qualified inventors:

- identify all individuals who assisted with the invention;
- evaluate each individual's contribution and apply the test of conception;
- confirm each inventor conceived some of the subject matter of at least one claim in the patent application; if you amend the application to cancel or add a claim, you may need to amend inventorship; and
- maintain all relevant corroborating evidence of conception

To correct inventorship errors:

- While the patent application is pending: assuming no deceptive intent, petition the Patent Office to amend inventorship. Provide acknowledgements from newly added and/or newly removed inventors that they acted without deceptive intent.
- After the patent issues: request a certificate of correction or file an application for a reissue patent. You may remove misjoined inventors regard-