

IDEA

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Inventor's Notebook

An inventor's notebook--when properly witnessed--can be the most important piece of documentation you have to support your "first to invent" claim. It also, unfortunately, can and often is the most damning piece of evidence against you! How can it work against you? Easy, the dates you have recorded and witnessed are all dates later than the equally well documented and witnessed dates of another inventor who you get into an interference case with. Further, assuming you were in fact "first to invent," then your notebook can be used to provide absolute proof that your pursuit was not diligent or that it's been 3 years since you completed "reduction to practice" and you've made no effort to get your invention to market or patented so it "looks" like you've abandoned the invention.

Despite the fact that an inventor's notebook can damn you just as easy as make your case it's still a good idea to keep one--or more. More prolific inventors often keep one notebook in which to jot their ideas as they have them and then create separate notebooks for each invention they actually start to work on seriously. The advantage of keeping one just for ideas is that you always know where your idea list is. The advantage of keeping a separate one for each invention is that you don't confuse yourself--or a judge or a jury with a lot of extraneous stuff for a particular interference case should it get to that.

Way less than 1% of all patents result in interference cases anyway and, unless you are working in a cutting edge, rapidly advancing technology, where the odds of the possibility of an interference are probably closer to 1 in 300 or 400 applications, the reality is that in 3,151,901 applications filed from 1983-2000 there were only 2,858 declared interferences decided by PTO Administrative Patent Judges.

There are also other reasons to keep a good notebook. The first is that you can, if your notebook shows a date for something before the date of that thing in some prior art reference that an examiner tries to use to disqualify your patent application, "swear behind" the prior art--meaning you invented whatever it was before the reference the examiner found proves it was public knowledge. You will likely also find it a good reminder of what you have done, things you need to follow up on, and what didn't work or how you did something should you need to repeat it or revise it.

Notebook Format

What should an inventor's notebook be? It should be permanently bound (sewing or glue are

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preferred, spiral bound is very questionable and loose leaf is completely out) and come with consecutively numbered pages. You can consecutively number the pages yourself and most any judge or jury will find that acceptable as long as it doesn't appear there is any way you could have tampered and inserted or removed pages later. Cheaper yet acceptable notebooks can be found in most office supply stores. For a couple extra dollars engineering or lab supply stores will have the notebooks the pros use complete with lines at the bottom of each page for witness signatures and date and a pre-printed line that says something like "Read and understood" or "This confidential information is witnessed and understood by."

The following info is very important:

WRITE NOTHING BUT THE TRUTH IN THE NOTEBOOK AND NEVER FIX ANYTHING YOU HAVE DRAWN OR WRITTEN.

ALSO, WRITE NOTHING BUT THE TRUTH IN THE NOTEBOOK AND NEVER FIX ANYTHING YOU HAVE DRAWN OR WRITTEN.

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Why is that so important? Because you are assumed to be a cheat and a liar by any self respecting judge or jury in a civil case. Your documentation, demeanor, and answers must **PROVE** to them otherwise. If you were a juror sitting in a multiple million dollar infringement case would you believe the documentation that showed no evidence of ever having been corrected---except by clear notes on subsequent pages appropriate to the date of the discovery of the error stating what it is and its correction entry---or that with many scribble overs, white outs, and erasures---some or many of which **COULD** be **FRESH**, i.e., made well after the date of the notebook page, perhaps even just before presentation during discovery? You want your documentation to look like the former, **NOT** the latter.

Entering Information

How to enter your information in the notebook? It's really pretty easy but you need to be consistent and careful about it. First, and always using a permanent ink, record your idea and the date you have (or had, see later instructions to do this correctly) it. You can first put this in your idea book then when you decide to commit to working on it copy it into your invention specific notebook for that idea and, in your invention specific notebook where you copied the info, reference the idea book and page you copied it from. Start writing, in permanent ink, on the first page and either first or second line of the page in your notebook then on every page thereafter start always on that same line consistently. Never leave more than a single line gap between paragraphs or headings or drawings or whatever in your notebook except at the bottom of the space on the page. Always consistently leave a single line gap between paragraphs or headings or drawings or whatever.

Is this tedious and exact enough for you yet? When you reach the end of a page or are near enough to the end that to have space for something you need to start it on the next page **STOP NOW AND SIGN AND DATE** (in permanent ink, remember) **THE BOTTOM OF THE PAGE AS INVENTOR** (or co-inventors if more than one of you are working on it) then go on to the very next page, **NEVER** leave a blank page. If you leave more than one blank line at the bottom of a page then draw a large x that covers all the extra blank lines so that there are no longer any extra blank lines.

Labeling

Start numbering your drawings "Fig. 1", "Fig. 2", etc. making certain to use sequential numbers never skipping or double using a number. Also give a brief (preferably) unique title to each figure. Also on each figure use letters or names (or numbers) to identify each part and use lines leading from the identifier to the part when appropriate to keep things clear. If you use letters or numbers use them consecutively within each drawing (preferably and easier to keep straight) or use them **ABSOLUTELY** consistently for the same part across drawings. In your text always refer to the figures by their full designation such as "Fig. 2, Cat food dispenser" and refer to parts you discuss by their identifier and, if not using names as identifiers in the figures, a clarifying name. Be consistent in your use of names.

Yes, you can make up your own labeling rules. They are not governed by law. But you must use them consistently and whatever you do they must be comprehensible to a judge or jury and not look like they could be (or were) manipulated to hide the truth or falsely provide evidence.

It is best if each page starts with the title of the invention so that when looking at a copy of the page it will be clear that page belongs to the invention, but the title is not mandatory. In fact, no rules for the notebook are mandatory except the rule that says this documentation must be believable in court.

If you do drawings on the computer or on copies you've made of prior notebook pages or you have photographs or printouts or other actual inventive development documentation you need to include it in the notebook too. A pocket in the front of the notebook and a reference on a page to the document **WILL NOT** do. You must tape or glue in the document in some obviously permanent fashion that would likely make it obvious if the document were later removed or replaced (staples are suspect). It is also a good plan to record something about the document on the same or prior or next page in your inventor's notebook and even to draw lines from notes on the notebook pages to sections on the permanently inserted document.

What to Include

Do you need to include all documents related to the invention in the notebook? No, things such as correspondence, purchase receipts, informational researched material, etc. do not need to be included but it is a very good plan to keep them all and keep them neatly filed with the dates you got them noted on them. Evidence is evidence and dated material from third parties makes very convincing evidence because it is extremely difficult to fake.

What kinds of things should be recorded? The most important by far are clear understandable descriptions and drawings of what your invention is as it develops. **DO NOT** try to fake legalese writing or be flowery or self laudatory. Do be clear and understandable--this of course means your writing/drawing (in permanent ink remember) must be legible. If you can't write so people can read and understand you **THEN LEARN HOW ASAP** (in all of history there have only been 2 successful inventors who could not communicate on paper successfully [of course I made that up!], you won't be the first or the next one).

Mistakes

Oops! What if you're not perfect and you goof in your writing or drawing? Simple, **DO NOT FIX IT** by any means including but not limited to white out, erasures, over writing, etc. But do

correct it by lining out with a single line or a large 2 line X depending on what is to be corrected and rewriting or redrawing. For small corrections they may be okay beside the error, for larger ones do them in the next available space in the notebook then be absolutely certain to add reference notes both from where the error is to the correction and back and note why and what the error was. Seem like a lot of work? Of course it is.

It is though, perfectly legitimate to draw, or even write, on a separate piece of paper first your new developments so you know before you put it in the notebook just what it is you will be recording. Of course you can sign, date, and keep your drafts too (more documentation is good remember). Also you can do your drawing on paper in pencil where you erase and fix to your hearts content then electrostatically copy that drawing and permanently glue it in your notebook. Whew, that makes it easier---unless you start getting lazy and leave "putting it in the notebook" for "first thing tomorrow" and "tomorrow" just never seems to come.

But wait, can't you just catch up later and sign your catch-up entries with the original date? No one will ever know? Someone will and you can probably bank on the court finding out. But you can put your entries in your notebook and sign and date them for the actual date of entry with an honest note to the effect that you actually did the original development on whatever date and the reasons you are just now getting it recorded in the notebook. Honesty is the best policy and I'm sure you already know (and practice) that.

Witnesses

But won't it just be your word against an opponent's guesses anyway? Not on your life--because you're going to have witnesses! Ideally pages in your notebook should be marked (at least) "read and understood" and signed and dated by at least one witness that does not stand to gain from your invention and who most certainly is able to understand it. Preferably you'll have two such witnesses and you'll get your notebook witnessed every day you make entries into it. At the very least get it witnessed every week or two. Your witnesses will need to be able to explain what was on the page they witnessed and how it works. Your witnesses will need to be able to explain what was on the page they witnessed and how it works. Got that? And it means...

Your witnesses must understand what was on the page from **WHAT THEY READ AND SEE ON THE PAGE**--not from an explanation complete with handwaving you give them on the side. To be more explicit, not only must your witnesses be able for certain to understand it from your writing and drawings, so must any judge or jury with minimal coaching in the state of the art. If it can't be understood from what is presented on the page then it simply does not count toward proving your invention conception or reduction to practice.

If a page is not filled up at the time of witnessing, **ABSOLUTELY ALWAYS** put a big X through the rest of the page before it is witnessed then start your next entries on the following page. **YOU MUST NEVER CHANGE** (for example to correct an erroneous entry) **A WITNESSED PAGE WITHOUT GETTING THE CHANGE WITNESSED AS YOU MAKE IT.** The witness(es), preferably one of your standard witnesses, can initial (if obvious who, or sign if not) and date the correction beside your initialing and dating of the correction. An alternative or for larger corrections you may want to X out the whole page and re-enter it all in corrected form as a later page in your notebook. Don't forget to reference back and forth between the erroneous and corrected page and get dates, signatures and/or initials as appropriate. Lot of trouble of course.

And, oh yeah, be sure your name and current contact information are on the cover or inside the

front cover of the book just in case it ever gets left somewhere when you've removed it from your regular place of safekeeping.

Is an inventor's notebook your only choice? No. Some inventors are content to simply get key dates/accomplishments and their appropriate documentation witnessed. A thorough write-up with preliminary drawings documenting the date of conception and then another one for the date of proven testing of an actual reduced to practice prototype for example. All the "diligent pursuit" and "non-abandonment" stuff still applies and can certainly knock you out of the water but in most instances the risk is pretty low. Make your own risk/reward/effort business decisions.

You can, of course, use the Provisional Application for Patent, www.idearights.com/firsttoinvnt.htm, (for constructive "reduction to practice") as discussed elsewhere in this information but I strongly suggest you have a solid business basis for the latter rather than just a hope of riches.

Final Notebook Magic

I keep getting asked if all this stuff is necessary or just what is essential. The bottom line is simple. The records that a judge or jury believe are the ones that count in court. There is no "magic" that you can do now to guarantee that belief 5, 10, 20 years from now when you should need it--in the VERY UNLIKELY event you ever do. Witnesses and corroborating evidence are far more powerful than a raw notebook page. Do your best to keep adequate, understandable, and believable records but never forget that it is sales in the marketplace that make the profits. Focus on having a WANTED, novel, non-obvious invention and getting it all the way through the process and out on the market. The records will only (sometimes) protect you IF your invention becomes successful AND someone infringes your patent, or (also rarely) you need the records to swear behind a date during patent prosecution.



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