

A person with light-colored, spiky hair and round black-rimmed glasses is peeking over the top edge of a brown cardboard box. Only their eyes, nose, and the top of their head are visible above the box. The background is a dark blue gradient with a subtle pattern of light blue diagonal lines.

Questel

Defensive Publication in a nutshell

**Protect your invention
at a lower cost and save time**

Discover how to set-up a
good **defensive program**

Introduction

Defensive Publication

Defensive Publication is a method of establishing prior art by publishing details of an invention into the public domain with the purpose of preventing others from obtaining a patent on the same invention.

The end goal is to secure the rights of the published invention.

Studies have revealed that up to two thirds of patenting organizations are using this method actively within their IP strategy.

Perhaps the most effective channel to make an invention public is Research Disclosure, a specialized defensive publication service which has been helping organizations establish prior art since 1960.

How can defensive publication block patents?

Put simply, defensive publications can be used to block subsequent patents at two points:

- 1) By examiners during the examination process
- 2) Through opposition or invalidity proceedings

In most cases **option 1** is preferred as it means that the examiners do the work ahead of the patent being granted.

Option 2 though important, may be more costly, especially in the event of litigation.

Why do organizations use defensive publication?

To understand why an organization would use defensive publication we can look at the other main alternatives used to protect inventions – patent and trade secrets.

How can defensive publication be used in relation to those?

While patents are powerful tools, they can be expensive, and a **defensive publication may be more economical**. The decision between patent and publication would be a trade-off between business aspects (is patenting desirable?) and legal aspects (is patenting possible?).

A survey carried out by Questel on their Research Disclosure client base revealed that that **defensive publication is used when:**

- The invention would be difficult to patent
- The invention relates to a product which is already well protected
- A patent would not be profitable

Another study highlights the risks with trade secrets and reveals that **defensive publication is preferred over trade secrets** if the importance of maintaining freedom to operate is critical. This is especially true when the risk is high that a competitor will re-invent and patent the invention.

Where can you publish?

Although clearly any document made available to the public will be defined as prior art, not all channels are equally effective for defensive publication.

Questel clients have responded that the main considerations for selecting a channel for defensive publication are: **reliability** in court, **accessibility** to patent examiners, option to publish **anonymously**, **cost**, and the **speed** of the process.

Reliability in court

Research Disclosure is recognized globally by the courts as an independent source of evidence of publication and sharply reduce the costs of objection proceedings. Our system of publishing in full both in print and online meets court standards of proof around the world.

Accessibility to patent examiners

As noted, another way that a patent can be blocked by a publication is when patent examiners find it during their examination process. In most cases, this would be the preferred method as the examiners take care of blocking the patent before it is granted. Obviously, this method relies on examiners having access to and searching the source in which the disclosure is published. *Research Disclosure* is regularly searched by major patent offices and has PCT Minimum Documentation status.

Anonymous publication

An anonymous publication is one option offered by *Research Disclosure*. An article can be published without disclosing either the inventor or the publishing organization. In most circumstances this is preferable: since it still blocks prior art whilst making it is considerably harder for competition to identify and locate the publication.

If not found during the examination process, the publication could be used as evidence in opposition or invalidation proceedings. That would clearly be a more costly method, especially in the event of litigation.

The aspect of **cost** is related not only to the fees themselves but also to the low degree of specialist time needed and the ease of the publication process.

Speed. With a service like Research Disclosure, a disclosure can be published immediately with a legally trusted publication date.

How can you publish with Research Disclosure?

The Research Disclosure publication process is simple:

An article is uploaded using an online submission form. Once approved, we date stamp, make the article available for online searching, and notify you of the paper journals publication date. This process normally takes only a few minutes.

Once complete, your publication will:

- Instantly be available for online searching and can be accessed by patent examiners who are also required to search the database in examination of PCT applications.
- Will be published in full in the monthly Research Disclosure Journal for additional legal reliability

The anonymous option in Research Disclosure makes it more difficult for competitors to identify and locate the publication.



The publication form
& information is available on
the Research Disclosure
website
www.researchdisclosure.com

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Jesper has worked within the IP industry since 2006 and joined Questel in 2011. As working initially in different commercial roles, now helping clients with customer support and trainings for the Orbit product lines as well as supporting the Research Disclosure defensive publication service.

Questel's mission is to allow **Innovation** to be developed in an **efficient, secured** and **sustainable way**

Questel is a true end-to-end intellectual property solutions provider to more than 6,000 clients and 1M users across 30 countries.

We offer a comprehensive software suite for searching, analyzing and managing inventions and IP assets.

Questel also provides services throughout the IP lifecycle, including prior art searches, patent drafting, international filing, translation, and renewals. These solutions, when combined with our IP cost management platform, deliver clients an average savings of 30-60% across the entire prosecution budget.

Research Disclosure launched in 1960 is operated by Questel Ireland Ltd and is the industry standard defensive publication service.

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