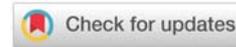


**Received:** 26 September, 2022**Accepted:** 09 November, 2022**Published:** 10 November, 2022***Corresponding author:** Cecilia Young, Independent Researcher, London, UK,
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Short Communication

Intellectual property safe – First-to-File and First-to-Invent system

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Abstract

All countries use the First-to-File system. An inventor may feel very tense about the time race and the physical and cyber security of his intellectual properties. Biomedical researchers and inventors are particularly vulnerable since most of them may not possess enough IT knowledge to maintain cyber security. An Intellectual Property Safe System to protect the initial draft and/or prototypes is suggested.

Protection of knowledge and intellectual properties

The academic field views knowledge as invaluable and protects it at the highest level. Healthy competition is encouraged among researchers. Filling the knowledge gaps and publishing papers with proper citations to recognize other authors are the routines.

Intellectual Property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; symbols, names and images used in commerce. IP is protected by law. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish [1].

Inventors in the medical field can protect their intellectual properties through filing in patent offices, types of intellectual properties are copyright, patents, trademarks, industrial designs, geographical indications and trade secrets [1].

First-to-Invent vs First-to-File

First-to-Invent and First-to-File systems were the two systems. Under the First-to-Invent system, the first person to invent could delay filing and still be awarded a patent over a later inventor who happens to file first. A patent is granted to

the person(s) or entity who filed the patent application first in the First-to-File system, regardless of the date of actual invention.

The differences, pros and cons of the First-to-Invent and First-to-File systems have been seldom discussed among biomedical researchers, basically, the legal field works on it.

All countries use First-to-File

The First-Inventor-to-File (FITF) provision of America Invents Act transitions the U.S. to a First-Inventor-to-File system from a First-to-Invent system and became effective on March 16, 2013 [2]. Now, all countries use the First-to-File system.

Placing independent inventors at a disadvantage

Under the First-to-Invent regime, it grants secure exclusive rights to inventors, not winners of the race to the Patent Office, there is no necessity for the inventor to rush a patent application to the Patent Office [3].

The first-to-File system favors large corporations, with well-established invention disclosure procedures, patent committees and armies of in-house attorneys who will always beat a lone inventor in the race to the Patent Office, thus placing small companies and independent inventors at a severe disadvantage [3].



Difficulties for independent inventors to file the intellectual properties

The general legal advice is "do not talk about the idea to anyone and file the intellectual properties as soon as the inventor can". However, the inventor may need to discuss with the draftsman for digital drawings and design patent format; the programmer for 3D programming and 3D printing of e.g. bone graft and clear aligners; the prototype maker; and the patent attorney for the patentability and the application forms to be filled, etc.

Physical and cyber security of the intellectual properties

Inventor usually asks others to sign non-disclosure agreements. However, most patent offices request their own standardized styles, formats, languages and application forms. The ideas and inventions may appear in many mobile phones, computers and internet service providers. Problems may arise simply due to the Bluetooth was automatically on when the customer first switches on the mobile phone.

The e-agreements were not shown during the purchase of mobile phones and computers. No one can read all the versions of the agreements on their mobile phones and computers, the version on the official site is not universal [4]. Furthermore, both the program and the agreement update periodically automatically or when one inserts a new sim card in another country in which the laws are different.

Compulsory electronic payment and third parties tracking increase the security risks

The ideas and inventions may go through people which may be the own staff or a third party. Third parties usually ask for the details to take the jobs, hire staff, or make quotations. Small companies and independent inventors are more prone to these disadvantages.

Impact of COVID-19

Many patent attorneys and legal firms requested the filling out of an online contact form or call for appointments and then have an initial discussion with the inventors through mobile phone and email. The COVID-19 hazard further encourages phone discussions; online meetings and verifications.

Inventors are not familiar with the required format e.g, Dotted/ dashed or broken lines are understood to be for illustrative purposes only and form no part of the claimed design, but are considered necessary to show the environment in which the design is used, may be represented in the drawings by broken lines [5].

Patent attorneys might ask other companies to draw the patent designs from the technical drafts given by the inventors to the required formats and number of views. Patent offices objected to the incorrect drafts format from inventors, patent owners and patent attorneys and the designs need to be redrawn.

Sole biomedical researchers and inventors are particularly vulnerable

The inventor may feel very tense about the time race, and the physical and cyber security of his intellectual properties. Biomedical researchers and inventors are particularly vulnerable since most of them may not possess enough IT knowledge to maintain cyber security.

An intellectual property safe system

An Intellectual Property Safe System (IP Safe System) to protect the initial draft and/or prototypes is suggested to be added at the patent offices, related institutions, or independent offices in every country that signed The Patent Cooperation Treaty (PCT) [6]; The Hague Agreement Concerning the International Deposit of Industrial Designs (Hague System) [7]; and Madrid -International Trademark System (Madrid System) [8]. Documents, photos, sound recordings, video; scannings and images, etc could be taken/ or filed with the same international security procedures by a drop-in. Immediately receipts with the exact copies with reference numbers should be given to the Inventor or IP owners.

An independent working group with standard training

An independent working group of technical staff and clerical officers for this safe system should receive central training from patent attorneys; designers, authors, inventors, academic representatives all over the world and the World Intellectual Property Office (WIPO) The training team should oversee the daily practice of the system and review the details. The IP safe system fee should be low, e.g 1/4 of the routine filing fees.

The inventors can have this option and then safely organize the detailed, lengthy and costly routine procedures with minimal stress and the highest security.

Complementary to filing system to protect the field

This suggested Intellectual Property Safe System is complementary to the existing filing system. The running cost could be covered by the IP safe system fee together with the pool of the registration fees in each patent office and the WIPO due to the basic principle to protect the inventors and the field.

Declaration of conflict of interest

The author is a patent and trademark owner and the Editor of this Journal.

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