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Editorial

Intellectual Property Safe - First-to-File and First-to-Invent System

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

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in 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].

The two filing systems are first-to-invent and first-to-file system. 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. Patent is granted to the person(s) or entity who file the patent application first in the First-to-file system, regardless of the date of actual invention.

However, the differences, pros and cons of first-to-invent and first-to-file system have been seldom discussed among biomedical researchers, basically the legal field works on it.

Under the first-to-invent regime, it grants the secure exclusive rights to inventors, not winners of the race to the Patent Office, there is no necessity for a researcher to rush a patent application to the Patent Office [2].

First to file system favors large corporations, with well-established invention disclosure procedures, patent committees and armies of in-house attorneys will always beat a lone inventor in the race to the Patent Office, thus placing small and independent inventors at a severe disadvantage [2].

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 present to and discuss with the draftman (for drawings), the programmer (e.g. for programming or 3D printing), the prototype maker and the patent attorney etc. before filing to the patent office. Most patent offices request their own standard format and language, the idea and invention need to appear in many mobile phones, computers and go through people which may be the own staff or a third party. The small and independent inventors are more prone to these disadvantages.

Many patent attorney and legal firms requested the filling of an online contact form or call for appointments and then have initial discussion with the inventors through the mobile phone and email. The Covid-19 hazard further encourages the phone discussion; online meeting and verification.

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

An Intellectual Property Safe System to protect the initial draft and/or prototypes is suggested to be added at the patent offices and related institutions in every country signed the The Patent Cooperation Treaty (PCT) [3], Hague [4] and Mandrid [5]. Photo, sound, video, documents; scannings and images could be taken at/ or filed at the patent offices or counters with same international security procedures by drop in.

An independent working team of technical staff and clerical officers for this safe system will receive central training from a team consists of patent attorneys; designers, authors, inventor, academic representatives all over the world and the WIPO officers. The training team should oversee the daily practice of the system and review the detail. The fees should be low, e.g. 1/4 of the filing fees, so the inventors/owners can safely organize the detailed, lengthy and costly routine procedures and they can seek the draftmen, IT professionals, third party prototype manufacturers, patent attorneys, partners and investors with minimal stress and highest security. The original system is still there, this is an additional choice. The running cost could be covered by the pool of the registration fees in each patent office and the WIPO.

Declaration of Conflict of Interest

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

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