

Advantages of Current Law:

- None relative to first-inventor-to-file.

Disadvantages of Current Law:

- Failing to be first-inventor-to-file all but destroys the prospect of gaining a patent for an invention.
- Being the first inventor to file is no guarantee of gaining a patent—only a ticket to a patent interference where proofs of invention may be needed.
- Opens the U.S.-based inventor to the specter of fraudulent invention date proofs, especially of foreign origin.
- Inventors bear all of the risks, costs, and other burdens of the first-to-invent system, while being required to seek patents as though the first-to-file principle dictated the number and timing of their patent filings.

Disadvantages of First-Inventor-to-File:

- None relative to current law.

Advantages of First-Inventor-to-File:

- More transparent, objective, predictable and simple – TOPS!
- Novelty and nonobviousness tested based solely on public disclosures.
- Non-public (secret) activities no longer bear on the right to patent.
- Better protects collaborators.
- Improved “grace period” for inventors who publicly disclose their inventions before seeking patents—once an inventor makes the first public disclosure, no other person may seek a patent on the disclosed invention, or any obvious variation of what was publicly disclosed.

Risks If **NOT** the “First-Inventor-to-File”

Under Current Law, If 2 Inventors File:

- **Must have independently corroborated invention date records, meticulously maintained to contest the right to a patent.**
- **Must wait years, at a minimum, for the right to patent to be resolved.**
- **Must be able of beating any earlier invention date of the first to file.**
- **Must sustain the cost of a patent interference—a six- or seven-figure expense for expert patent counsel.**
- **Miniscule prospect of gaining a patent—and the costs involved in losing the patent right are massive!**

Under S. 23:

- **A second-to-file inventor will learn quickly, inexpensively, and with certainty if a patent can be secured.**

Risks **EVEN** If the “First-Inventor-to-File”

Under Current Law:

- **No guarantee of a patent.**
- **If another inventor files for a patent, then must bear all the burdens of the patent interference system.**
- **Even if no other inventor seeks a patent, patent of the first to file can be invalidated based on “prior invention” proofs offered in court.**
- **Other types of secret, non-public activities can destroy the validity of a patent issued to the first to invent.**
- **Even the first inventor to file is forced to contend with a *non-transparent, subjective, and unpredictable patent law.***

Under S. 23:

- **None. Prior art = public disclosures.**

Grace Period Under Current Law

Inventor's Own Public Disclosures:

- **Not prior art.**

Public Disclosure By Another Inventor:

- **Can be "double prior art"—both as of date of the disclosure and as of any earlier date of invention—unless the non-discloser can document an invention date that is earlier than the earliest applicable "prior art" date of the disclosing inventor.**

Protection If First-Disclosing Inventor Elects Not to Seek a Patent:

- **Interloper can file and obtain a patent and stop the disclosing inventor from using the invention!**

Protection Against Collaborator's Work Being Used As "Prior Art":

- **Limited protection; co-worker's work can defeat the required "novelty."**

Grace Period Under "First-Inventor-to-File"

Inventor's Own Public Disclosures:

- **Not prior art.**

Public Disclosures By Another Inventor:

- **Guarantees that the inventor making the first public disclosure of an invention can seek a patent during the 1-year grace period and that no rival inventor can interfere with this right to patent of the inventor making the first public disclosure.**

Protection If First-Disclosing Inventor Elects Not to Seek a Patent:

- **Full protection against interloping—first public disclosure bars all but the disclosing inventor from patenting.**

Protection Against Collaborator's Work Being Used As "Prior Art":

- **Complete protection—a co-worker's work cannot be used as "prior art."**

Inventor/Collaborator-Friendly S. 23

Grace Period:

- **Full protection for an inventor making a public disclosure during the 1-year before seeking a patent.**

Co-Worker Protection:

- **Full protection against a co-workers' earlier-filed patents being cited as "prior art."**

Collaborator Protection:

- **CREATE Act continues and extends protection against collaborator's work becoming "prior art."**

Should Congress Model Europe?

- **No way. S. 23 has been carefully crafted to keep the best inventor- and collaboration-friendly features of current U.S. patent law—and actually Improve the "grace period"!**

European "Self-Collision" System

Grace Period:

- **No protection for an inventor making a public disclosure before seeking a patent.**

Co-Worker Protection:

- **None. Co-workers' earlier-filed patents can destroy the novelty of a another co-worker's later patents.**

Collaborator Protection:

- **None. Same treatment for collaborators and for co-workers—earlier patents can destroy novelty.**

Better Than S. 23?

- **Not at all. European patent law is neither inventor-friendly nor collaboration-friendly and does not represent a "best practice" for a first-inventor-to-file patent law.**