



For Immediate Release

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## Study Demonstrates Benefits of Adopting a “First-to-File” Patent System in U.S.

When two rival inventors seek U.S. patent protection for identical, but independently developed, inventions, current law gives priority to the entity or person that can prove they invented it first. The United States is the only industrialized nation to have a “first-to-invent” approach to awarding patents. This legal structure regularly leads to complex and time-consuming disputes either at the Patent Office or in court. Despite long-standing criticisms of the system, Congress has long resisted change because independent inventors, universities, and other “small entities” feel the alternative — a “first-to-file” system — would discriminate against them in favor of larger entities. In a new Washington Legal Foundation (WLF) paper, however, a former Patent and Trademark Office Commissioner provides compelling empirical proof that small entities would in fact *benefit* from a change in the law.

The publication, **SMALL ENTITIES AND THE “FIRST TO INVENT” PATENT SYSTEM: AN EMPIRICAL ANALYSIS**, is the latest installment of WLF’s educational WORKING PAPER series. The paper was written by **The Honorable Gerald J. Mossinghoff**, Senior Counsel to the law firm Oblon, Spivak, McClelland, Maier & Newstadt, and former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks. It features a foreword by **Robert A. Armitage**, Senior Vice President and General Counsel to Eli Lilly and Company.

Mr. Armitage states in his foreword, “Mr. Mossinghoff’s WORKING PAPER makes a seminal contribution to the debate over whether our existing patent law grounded on marshaling evidence of invention dates deserves ‘small entities’ relative to a system grounded on the first-inventor-to-file principle.” The study reveals that in situations over the past 22 years when a dispute arises where two parties claim the same invention at nearly the same time, small entities were in fact *disadvantaged* more often than advantaged by the current first-to-invent system. Mr. Mossinghoff’s narrative analysis of the data and the results of his study are supplemented with an appendix of bar charts.

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Copies of this educational paper, WLF WORKING PAPER, Number 129 (April 2005), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.