

Global Implications of Patent Law Variation,” Koji Suzuki (1991)

A patent is an exclusive right to use an invention for a certain period of time, which is given to an inventor as compensation for disclosure of an invention. Although it would be beneficial for the world economy to have uniform patent laws, each country has its own laws designed to protect domestic inventions and safeguard technology. Despite widespread variation, patent laws generally fall under one of two principles: the first-to-file and first-to-invent. The first-to-file principle awards a patent to the person or institution that applies for a patent first, while the first-to-invent principle grants the patent to the person or institution that was first to invent - and can prove it. Most countries have adopted the first-to-file system. However, the United States maintains a first-to-invent system, despite obvious shortcomings. A result of countries employing different patent law principles is inconsistency of patent ownership.

Patent ownership is not recognized globally. On the contrary, ownership may change depending on the country. It is not uncommon for an invention to have two patent owners - one in the United States and one in the rest of the world. This unclear ownership often has economic consequences. If a company is interested in using a patented invention, it may be unable to receive permission from both patent owners, which in turn may prevent manufacture of a particular product. Even if permission is received from both owners, paying royalties to both may be quite costly. In this case, if the invention is useful enough, a company may proceed and pass on the added cost to consumers.

International economic tension has also been increasing as a result of differing policies. Many foreign individuals and companies believe that they are at a serious disadvantage in the United States with regard to patent ownership because of the logistical difficulties in establishing first-to-invent status. Further, failure of the United States to recognize patent ownership in other countries is in violation of the Paris Conventions on Industrial Properties, which requires all member nations to treat all patents equally. The conflict surrounding patents has prompted the World Intellectual Properties Organization (WIPO) to lobby for universality in patent laws. WIPO maintains that the first necessary step involves compelling the United States to reexamine its patent principle, taking into account the reality of a global economy. This push may indeed result in more global economic cooperation.