Priority Principles (102(g))

Patent goes to the first inventor to reduce the invention to practice, unless:

(1) the invention was conceived first by a rival, and

(2) that rival exercised diligence in reducing the invention to practice
Priority Principles (102(g))

Patent goes to the first inventor to reduce the invention to practice, unless:

(1) the invention was conceived first by a rival, and

(2) that rival exercised diligence in reducing the invention to practice
Situation #1
Situation #1

X conceives
Situation #1

X conceives

Y conceives
Situation #1

X conceives → X RTPs → Y conceives
Situation #1

X conceives

Y conceives

X RTPs

Y RTPs
Situation #1

X conceives

X RTPs

Y conceives

Y RTPs

X wins; diligence irrelevant
Situation #2
Situation #2

X and Y conceive simultaneously
Situation #2

X and Y conceive simultaneously

X RTPs
Situation #2

X and Y conceive simultaneously

X RTPs

Y RTPs
Situation #2

X and Y conceive simultaneously

X RTPs

Y RTPs

X wins; diligence irrelevant
Situation #3
Situation #3

X conceives
Situation #3

X conceives

Y conceives
Situation #3

X conceives

Y conceives   Y RTPs
Situation #3

X conceives

Y conceives

Y RTPs

X RTPs
Situation #3

X conceives

Y conceives

Y RTPs

X RTPs

X wins if and only if he can show that he exercised diligence during this period
Situation #3

X conceives  Y conceives  Y RTPs  X RTPs

X wins if and only if he can show that he exercised diligence during this period
Situation #4 (Interference Paradox)
Situation #4 (Interference Paradox)

X conceives
Situation #4 (Interference Paradox)

X conceives

Y conceives
Situation #4 (Interference Paradox)

X conceives  Y conceives  Z conceives

Y conceives
Situation #4 (Interference Paradox)

X conceives  Z conceives

Y conceives  Z RTPs
Situation #4 (Interference Paradox)

X conceives  Z conceives  X RTPs

Y conceives  Z RTPs
Situation #4 (Interference Paradox)

X conceives

Y conceives

Z conceives

Z RTPs

X RTPs

Y RTPs
Situation #4 (Interference Paradox)

X is not diligent

X conceives  Z conceives  X RTPs

Y conceives  Z RTPs  Y RTPs
Situation #4 (Interference Paradox)

X is not diligent
Y is diligent during this period

X conceives
Z conceives
X RTPs

Y conceives
Z RTPs
Y RTPs
Situation #4 (Interference Paradox)

X is not diligent
Y is diligent during this period
[Z is diligent during this period]
Situation #4 (Interference Paradox)

X is not diligent
Y is diligent during this period
[Z is diligent during this period]

X conceives  
Z conceives  
X RTPs

Y conceives  
Z RTPs  
Y RTPs

X prevails over Y (prior RTP and conception);
Situation #4 (Interference Paradox)

X is not diligent
Y is diligent during this period
[Z is diligent during this period]

X conceives  Z conceives  X RTPs

Y conceives  Z RTPs  Y RTPs

X prevails over Y (prior RTP and conception);
Y prevails over Z (prior conception + diligence);
Situation #4 (Interference Paradox)

X is not diligent
Y is diligent during this period
[Z is diligent during this period]

X conceives
Z conceives
X RTPs

Y conceives
Z RTPs
Y RTPs

X prevails over Y (prior RTP and conception);
Y prevails over Z (prior conception + diligence);
Z prevails over X (prior RTP; X has prior conception but no diligence during the critical period)
Situation #4 (Interference Paradox)

X is not diligent
Y is diligent during this period
[Z is diligent during this period]

X conceives
Z conceives
X RTPs

Y conceives
Z RTPs
Y RTPs

X prevails over Y (prior RTP and conception);
Y prevails over Z (prior conception + diligence);
Z prevails over X (prior RTP; X has prior conception but no diligence during the critical period)
Proposals to Resolve Interference Paradox

• Give the patent to no one
• Eliminate the party with the worst claim, then apply standard rules
  – Y has neither first conception nor first RTP;
  – Z prevails over X
• Award patent to first to conceive (X)
• Award patent to first to RTP (Z)
• Award patent to first to begin diligent work
  – Y and Z would tie