

PUBLISH OR PERISH, OR PUBLISH AND PERISH!

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The decision by the National Institutes of Health to permit citation of so-called “interim research products” nearly a year ago now may be doing good things for dissemination of knowledge and increasing scientific rigor, but has dangerous pitfalls for patent seekers.

Specifically, last March the NIH began allowing citations to interim research products in NIH applications, proposals and reports. An example of an interim research product is a preprint, which is typically an unreviewed manuscript that is made public.

This initiative has its fans and detractors. But it is nevertheless permissible to publish a manuscript without peer review more or less instantaneously, with the motivation to do so provided by the ability to include a citation to the published preprint in an NIH submission.

There are several repositories that accept and quickly publish preprints of online submitted manuscripts, regardless of their whether or not they have a downstream “official” publication in a scientific journal after peer review. One example is bioRxiv, which is a repository for manuscripts in the life sciences area (<http://biorxiv.org/>). Repositories offer authors certain conveniences in addition to rapid publication, such as providing a route for manuscript submission to a journal without having to duplicate the uploading and data entry process. So there are at least a couple of lines of enticement to use the preprint publication route.

Those authors who are patent savvy will know better than to publish a preprint without consulting their IP staff so that it can be reviewed, and a decision taken on whether or not to file at least a provisional patent application first. But in cases where IP awareness is not as keen as one would like, or there are multiple authors – some of whom may not be inventors or otherwise aware of IP concerns - the risk of the cat getting out of the preprint bag too early is surely heightened.

While delaying publication of research should be avoided, it is important for technology transfer professionals in particular to make faculty aware of the potential risk of publishing a preprint too soon. Otherwise, a hasty publication without consideration of IP rights could significantly impede the ability to pursue foreign patent rights.

(These thoughts are the author's alone, and do not constitute legal advice of any kind)

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