Who will win the battle over CRISPR-Cas 9 patent rights?

History is full of cases in which several researchers have found the same or similar inventions almost simultaneously. This is the case with CRISPR?Cas9.

In May 2012, Professor [Jennifer] Doudna's team at the University of California, Berkeley (UC Berkeley) rushed to the U.S. patent office to file its first patent application for CRISPR-Cas9, the first of many to follow.

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A mere few months later, in December 2012, a research group at the Broad Institute affiliated with MIT and Harvard University (the Broad Institute) also filed its first patent application for CRISPR-Cas9.

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In this particular case, the question was whether UC Berkeley's patent application for the use of CRISPR-Cas9 in any living cell made the Broad Institute's more narrowly worded invention, the use of CRISPR-Cas9 in eukaryotic cells (i.e., animal and plant cells) in particular, obvious and thus invalid.

On September 10, 2020, the U.S. Patent Trial and Appeal Board rejected UC Berkeley's arguments, assigning UC Berkeley a filing date of January 28, 2013, and the Broad Institute an earlier filing date of December 12, 2012 — corresponding to the filing dates of their respective provisional patent applications. This decision confirms that, at this time, the Broad Institute has priority in the use of the CRISPR-Cas9 technique in animal and plant cells where arguably the greatest potential benefits of the technique lie.

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