

PATENT LAW & AI INVENTIONS – CAN AI BE RECOGNIZED AS AN INVENTOR?

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Abstract

Artificial Intelligence (AI) is changing the face of innovation at a very fast pace, causing complicated questions of inventorship in the context of existing patent legislations. In the current paper, the question of whether an AI system, like DABUS, can be considered an inventor under the field of patent law is investigated. With particular reference to the Indian Patents Act, 1970, it brings into focus that the provisions of the existing law indirectly limit inventorship to natural persons. Comparative studies with countries like the United States, United Kingdom, and European Union reveal an international rejection of AI inventorship except in a few exceptions such as the South African DABUS case. Policy and responsibility issues along with reasons for AI inventorship are given by the study to provide protection for innovation in the era of automation. It concludes that although Indian law does not yet acknowledge AI as an inventor, changing technology requires legislative acumen, policy development, and international collaboration—necessarily through such solutions as hybrid or sui generis methods—to align innovation with responsibility in law.

Keywords– AI, Patent, Inventor, Intellectual Property Rights, AI Inventions.

Introduction

Artificial Intelligence (AI) has started to redefine the boundaries of innovation. AI systems like DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) have generated outputs whose novelty and usefulness draw comparisons with human invention. Conventional patent law, however, rests on the presumption that inventorship is that of a human being. The real question, thus, is whether an AI system may be identified as an "inventor" under patent law. This is an issue at the core of the international innovation ecosystem, with effects on attribution, ownership, and the very essence of intellectual property rights.

DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) is an artificial intelligence system created by Dr. Stephen Thaler. It is designed to generate new

ideas and inventions without direct human input.

In patent law debates, DABUS became famous because Dr. Thaler filed patent applications naming the AI itself as the inventor—**not a human**. This sparked global legal discussions about whether an AI can legally be recognized as an inventor.

Most patent offices and courts (in the UK, US, EU, and Australia) have rejected DABUS as an inventor, ruling that **only humans can hold inventorship status**, while South Africa is the only country that has accepted a patent naming DABUS as the inventor.

Core Legal Framework

The Patents Act, 1970 is the governing statute in India. **Section 6** permits "any person claiming to be the true and first inventor" to make an application for a patent.

Section 2(1)(p) defines "patentee" as the individual registered in the register as grantee or proprietor of the patent. The Act does not provide a definition of the term "inventor," but **Section 10** mandates disclosure of the inventor's name. By Implication, the law presumes that the inventor is a natural person. As compared to ownership, which can vest in corporations or assignees, inventorship adheres to the human mind who conceives the invention.

The same position is found globally. In America, the Patent Act employs the term "individual," which has been interpreted by courts to mean a natural person. The European Patent Convention and the UK Patents Act likewise infer the presumption of human inventorship.

Statutory provisions thus currently exclude AI.

Case Law and Jurisprudence

Indian jurisprudence, although indirectly confronting AI inventorship, has focused on human creativity. In **Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries**, the Supreme Court emphasized that invention arises from human creativity and intellectual effortⁱ. Globally, disputes around the DABUS AI system have informed the debate:

- **Thaler v. Comptroller-General of Patents [UK, 2021]** – The Court of Appeal decided that only a human being can be an inventor within the Patents Act 1977.ⁱⁱ
- **Thaler v. Hirshfeld [US, 2021]** – The District Court decided that the Patent Act's use of "individual" refers to human being.ⁱⁱⁱ
- **Thaler v. Commissioner of Patents [Australia, 2022]** – The High Court overruled a lower court, reaffirming human inventorship.^{iv}
- **European Patent Office rulings J 8/20 & J 9/20** – DABUS-named applications denied as human beings alone can be inventors.^v
- **South Africa** – Patent granted with DABUS as inventor, though without detailed reasoning.^{vi}

Contemporary Context

Policy discussions have gained momentum. The World Intellectual Property Organization (WIPO) has held consultations since 2019, highlighting the absence of a global consensus.^{vii} In India, NITI Aayog's "National Strategy for Artificial Intelligence" (2018) acknowledges the IP issues that AI raises but provides no concrete reforms.^{viii} Some practical examples are AI designed drug molecules (Insilico Medicine) and new material designs. These generate attribution and responsibility questions—who owns the product, and who is liable if infringement takes place?

Critical Analysis

The argument has two strands of significant importance.

First, objections to AI inventorship: The language of patent law makes the assumption of human inventors. Concerns regarding accountability are foremost—AI cannot grant rights, enforce them, or be held accountable. In addition, moral rights of inventorship have always been associated with human creativity and dignity.

Second, arguments in support: Sophisticated AI can independently create inventions, and there will be concerns of leaving them unprotected. If AI inventions are not patentable, innovators can opt for trade secrecy, discrediting public disclosure. Further, acknowledging AI inventorship would future-proof IP regimes in an era of increasing automation.

Comparative Approaches and Reform Options

Certain scholars suggest a hybrid solution—credit the AI as contributor but not assign inventorship to a responsible human (developer, programmer, or owner). Australia's temporary acknowledgement of AI inventorship in 2021 demonstrated openness but was later rolled back. South Africa's approach suggests a more relaxed approach but not doctrinally rigorous. The EU, US, and UK have followed a strict human-alone inventorship approach.

India can consider the following reforms:

1. Modifying Section 6 of the Patents Act to specify the definition of "inventor."
2. Releasing guidelines under the Indian Patent Office to deal with AI-powered inventions.
3. Pondering a sui generis approach for AI-created works, similar to copyright change.
4. Interacting with WIPO mechanisms to facilitate international harmonization.

Conclusion

Indian law currently doesn't permit AI to be considered an inventor. The international trend is cautious with limited exceptions. However, the rate at which AI innovation is occurring necessitates proactive reforms. India needs to balance accountability with policy on innovation, making its patent law suitable for the age of machine creativity. A hybrid model of attribution legislative clarity, and international cooperation are the keys to navigating the future of AI powered inventions.

References:

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- ^{iv} Thaler v. Comm'r of Patents, [2022] HCA 35 (Austl.).
- ^v EPO, J 8/20, J 9/20 (2021) (Eur. Pat. Off.).
- ^{vi} South African Patent No. 2021/03242 (granted July 28, 2021).
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