



Not an Equal World for AI?

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No Inventorship for them!

OVERVIEW

Imagine a world being run by a superior race in the near future, where humans are overpowered by Artificial Intelligence (AI) and the AI, like humans, have minds, thoughts, feelings, are self-conscious/self-aware and have the capacity to perform human like actions. This does look like a scene straight out from the movie "Minority Report" isn't it! However, this scenario isn't going to be a reality soon. However, there is a new trend which looks like we are heading in the same direction.

It wouldn't come as a surprise to us if we look at the statistics that tells us that in the last couple of years, AI related filings have gone up exponentially. However, a recent filing in the same vertical got us thinking in a new light/perspective. Not until recently when patent applications were filed for inventions which were a brainchild of AI based systems, the issues with respect to AI being named as the inventor came into limelight during examination.

UNDERSTANDING AI:

AI is a robot or machine that is expected to think like humans and mimics actions of humans such as speech, perception, vision, and even decision making. However, AI systems that exist in the current scenario typically demonstrate at least some of the following behaviors associated with human intelligence such as planning, learning, reasoning, problem solving, social intelligence and creativity. Since AI can perform multiple human like activities, it is not baffling, that AI can come up with their own inventions.

NATURAL/LEGAL PERSONS VS AI

At this juncture, it is vital to understand the fundamental differences between an AI and a natural/legal person according to the legal system. The jurisprudence defines a natural person as a human being, or a real and living being and who has the power of thought, speech and choice. Also, a natural person can exercise their rights and accordingly perform their functions. In contrast, machines or AI cannot exercise such rights. Although, AI uses cognitive processes to achieve set targets, there is no sufficient reason to declare AI as a legal personality.

According to the existing legal framework that governs the patent law, inventorship may be claimed only by natural persons, and legal persons or bodies' equivalent to legal persons.

THE PECULIAR CASE OF DABUS ^[1]

The issue with AI inventorship came into prominence when two patent applications (EP18275163 and EP18275174) were filed designating AI as the inventor. The two patent applications were directed towards a beverage container and a flashing device respectively. These inventions were created autonomously by 'DABUS' (Device for the Autonomous Bootstrapping of Unified

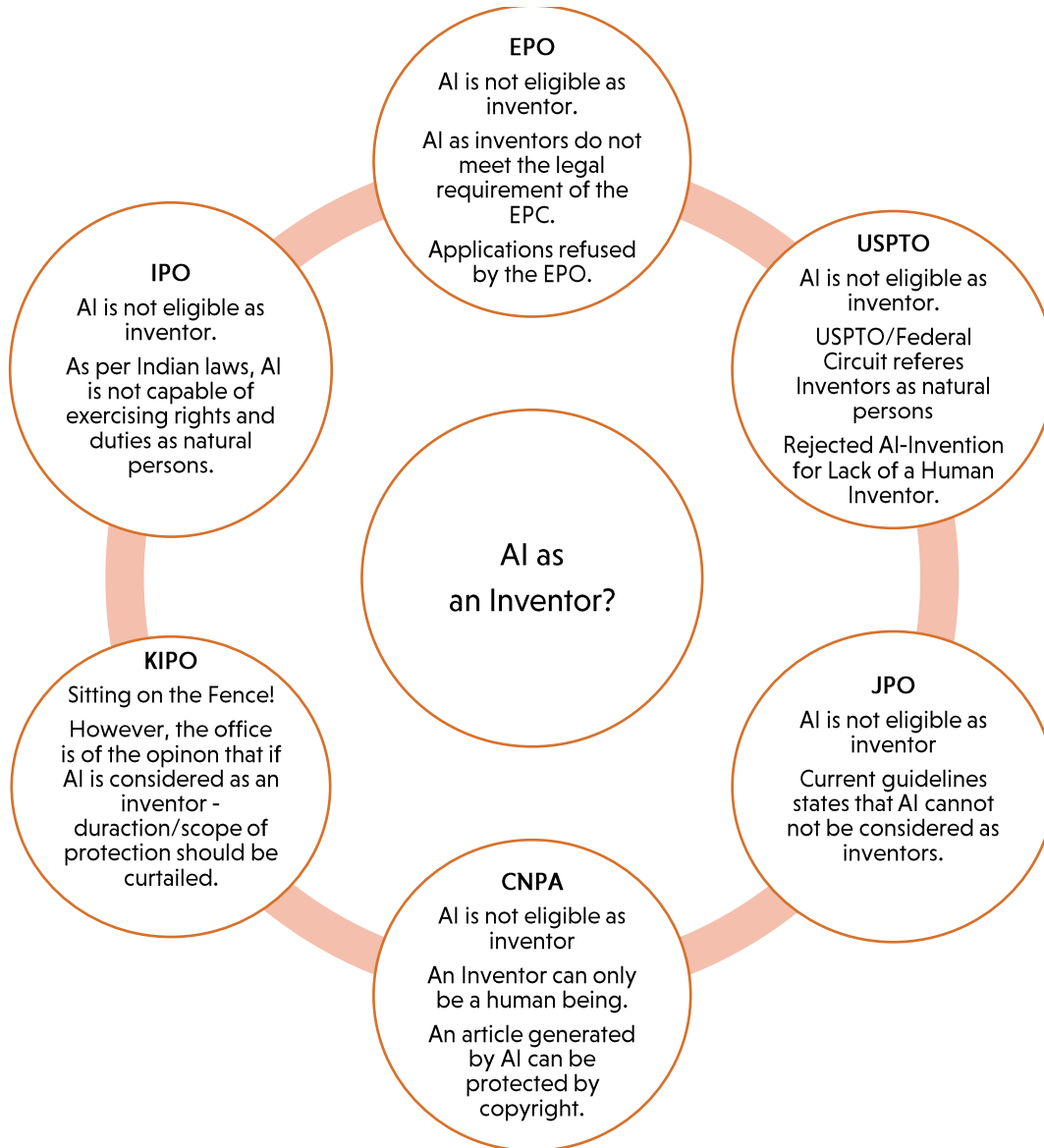
Sentience), a patented AI system created by Dr. Stephen Thaler. DABUS used an artificial neural system capable of mimicking the creative process of a human brain. Apparently, the device is configured in such a way that it converts the information that it has learned into ideas. Applications belonging to this patent application family had been filed across multiple jurisdictions.

The patent applications have been examined by the European Patent Office (EPO) and United States Patent and Trademark Office (USPTO) and have been denied a grant. Both USPTO and EPO have raised concerns over inventorship stating that the existing law of respective jurisdictions limit inventorship to natural persons.

In addition to aforesaid reasons, EPO has also shows concerns over other rights that a natural person would possess i.e. enforcement rights, transfer rights, etc. Finally, the USPTO and EPO have concluded that these accompanying rights require legal personality in order to be exercised, something that an AI machine lacks. It should be noted that this application is in prosecution phase in multiple jurisdictions and all the major patent offices (IP5) including IPO hold a similar stance/opinion in the DABUS issue.

However, a noteworthy argument made by the applicant was that "DABUS has performed what is traditionally considered the mental part of the inventive act. Based on DABUS results, a skilled person could have reduced the invention to practice. Inaccurately listing himself as an inventor could subject him criminal sanctions."

The following synoptic chart illustrates how AI inventorship is perceived by patent offices of different jurisdictions.



FUTURE OF AI INVENTORSHIP:

Despite the stance of various patent offices on the "AI as an inventor" issue, KIPO has a very interesting and progressive thought process on the same. KIPO ^[2] believes that enormous advancements and progress in AI technology has caused the need for reconsideration and revisions concerning legal philosophical questions on the incentive theory of the patent system. However, modifying the period of protection for inventions created by AI and limiting the scope to the patent claims just as is, such as by omitting the Doctrine of Equivalents applied to conventional IP would be necessary when AI is acknowledged as an inventor.

The aforesaid and other questions related to AI creators of intellectual property are major hurdles that patent offices, courts, and legislators would have to deal with in future. Nevertheless, it is safe to say that we will definitely come across a very interesting turn of events as AI and machine learning are progressing exponentially. But as it stands, AI machines are still under the magnifying glass and denied position as inventors on patent applications.

-Authors: [Nethravathi D](#) | [Abhijith Paipad](#)

References

[1] <http://artificialinventor.com/dabus/>

[2] [ww.wipo.int/export/sites/www/aboutip/en/artificial_intelligence/call_for_comments/pdf/ms_korea.pdf](http://www.wipo.int/export/sites/www/aboutip/en/artificial_intelligence/call_for_comments/pdf/ms_korea.pdf)

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Bangalore

102, Prestige Loka, 7/1, Brunton Road,
Bangalore- 560 025, INDIA.

+91 80 6693 5000

Silicon Valley

220 California Ave, Suite 201,
Palo Alto, CA- 94306, USA.

+1 650 325 7100

Mumbai

93-B Mittal Court, Nariman Point,
Mumbai- 400 021, INDIA.

+91 22 6669 5000

IPpro Services (India) LLP

To know more visit www.ipproinc.com

ask@iproinc.com