IP5 EPO JPO MOIP CNIPA USPTO

Inventorship of AI-generated Inventions

June 2024 (Updated in June 2026)

Background

- ✓ At the IP5 Heads meeting held in June 2023, the IP5 Heads endorsed the launch of the project regarding “Inventorship of AI-generated Inventions”.
- ✓ The objective of the project is to provide an overview of the IP5 Offices’ examination practices and case law on AI-generated inventions to help users understand the examination practices regarding inventorship of AI-generated inventions.
- ✓ The scope of the project is to compile relevant legal texts and resources of the IP5 Offices, including laws, examination guidelines, practice manuals, case law, etc., and then to publish them on the IP5 website.

Results of collection of existing materials

- ✓ By listing materials in the form of hyperlinks to webpages, obsolescence of the output will be avoided. Users could access the latest materials by clicking the links even in the future.
- ✓ Overview table of answers from the IP5 Offices is shown from the next page.

Disclaimer

While the content aims at promoting transparency in practices of the IP5 Offices on Inventorship of AI-generated inventions at the time of the data collection, it may not be considered or construed as legally binding in any way. The IP5 Offices cannot guarantee the completeness, accuracy, or fitness for specific purposes of the data presented.

	EPO	JPO	MOIP	CNIPA	USPTO
1. Laws related to the inventorship of an invention or designation of the inventor	The European Patent Convention (EPC), Article 60 Right to a European patent [English] [German] [French] EPC, Article 81 Designation of the inventor [English] [German] [French] EPC, Rule 19 Designation of the inventor [English] [German] [French]	Patent Act, Article 29 Patent Act, Article 36(1) Patent Act, Article 184-5 [English] [Japanese]	Patent Act, Article 33 Persons entitled to patent Patent Act, Article 42 Patent applications Patent Act, Article 203 Submission of documents [English] [Korean]	Patent Law of the People's Republic of China, Article 6, 16, 26 [Chinese] Rules for the Implementation of the Patent Law of the People's Republic of China, Rule 14 [Chinese]	35. U.S. Code 100 Definitions [English] 35. U.S. Code 101 Inventions patentable [English] 35. U.S. Code 115 Inventor's oath or declaration [English] 35. U.S. Code 116 Inventors [English]
2. Examination results, case law related to the inventorship of an AI-generated invention, including inventions generated by DABUS listed as an inventor in Stephen Thaler's patent application	Decision of the Receiving Section dated 25.11.2019 concerning applications EP 18 275 163 and EP 18 275 174 Abstract: The applications are refused in accordance with Article 90(5) EPC since the designations of inventor filed for each of the applications do not meet the requirements of Article 81 and Rule 19 EPC. Grounds: a) a designation indicating a machine as inventor did not meet the requirements of Article 81 and Rule 19(1) EPC, because an inventor within the meaning of the EPC had to be a natural person.	Decision of the Tokyo District Court; Reiwa 5 (Gyo-U) Case No. 5001. [Japanese] Decision of the IP High Court, Reiwa 6 (Gyo-Ko) Case No. 10006. [Japanese] [English] Abstract: A patent right is a right that is created and granted under the Patent Act, and a right to be granted a patent is also a right that is created and granted under that Act. There are no provisions in the Patent Act regarding the	Examination results of Stephen Thaler's patent application (press released) [English] [Korean] Abstract: A natural person only is accepted as a valid inventor under the Korean Patent Act and a relevant precedent, so it is not permitted to name AI as an inventor in a specification. Such an application is invalidated, and therefore the application is deemed not to have been filed.	Reexamination result of Stephen Thaler's patent application (press released) [Chinese] Abstract：The CNIPA's decision on the reexamination of the patent application for the invention entitled "Food container and device and method for attracting enhanced attention" was to uphold the decision of rejection. The reexamination decision was based on the basic principles of civil law and a interpretation of the	Case law of the US Court of Appeals for the Federal Circuit, *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022) [English] USPTO Petition decision on an application listing AI ("DABUS") as the sole inventor [English]

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	b) the "statement indicating that the applicant acquired the right to the European patent from DABUS as employer", and "the correction of this statement to indicate succession in title" did not meet the requirements of Articles 60(1) and 81 EPC, because a machine had no legal personality. Therefore, it could neither be an employee of the applicant nor transfer any right to him. Case law of the EPO Board of Appeal J 0008/20 (Designation of inventor/DABUS) (21/12/2021) [English] Abstract: The main request is not allowable because the designation of the inventor does not comply with Article 81, first sentence, EPC. Under the EPC the designated inventor has to be a person with legal capacity. This is not merely an assumption on which the EPC was drafted. It is the ordinary meaning of the term inventor (see, for instance, Oxford Dictionary of English: "a person who invented a particular process or device or who invents things as an occupation". There is no reason to	occurrence of a "right to be granted a patent" and the primary owner of such right, except for the main sentence of Article 29, paragraph (1) of that Act, which provides that "A person that invents an invention with industrial applicability may obtain a patent for that invention,…," and Article 35, paragraph (3) of that Act, which provides for an exception to the former to the effect that with regard to an employee invention made by an employee, etc. who is a natural person, a right to be granted a patent for the invention primarily belongs to the employer under certain conditions. Therefore, the "right to be granted a patent" under the Patent Act is a right that comes into effect only when the inventor is a natural person. In addition, the Patent Act presupposes that the inventor is a natural person in the patent application procedure and other procedures. There are no provisions in the	Case law of the Seoul Administrative court (press released); decision rendered on case No. 2022GuHap89524 [English] [Korean] Abstract: Under Article 33(1) of the Korean Patent Act (KPA), a person who makes an invention or his or her successor shall be entitled to a patent. In other words, ‘an inventor’ according to the KPA refers to ‘a natural person’ who makes an invention. At present, under the Korean Patent Act, it is not permitted to designate ‘Artificial Intelligence (AI)’ only as an inventor in a patent application because AI is not a natural person.	legislative purpose of the patent inventor system. It made it clear that an artificial intelligence could not be recognized as an inventor in patent administrative procedures.	

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	assume that the EPC uses the term in a special way departing from its ordinary meaning (J 0008/20 point 4.3.1 of the Reasons). The auxiliary request does not comply with Article 81, second sentence, EPC in conjunction with Article 60(1) EPC, and is not allowable. Article 81, second sentence EPC requires that where the applicant is not the inventor, they must file a statement on the origin of the right to the European patent. A statement that the applicant is the owner and creator of the machine does not bring the applicant within the scope of Article 60(1) EPC because it does not refer to a legal transaction which would have made him a successor in title within the meaning of EPC. (J 00008/20 points 4.4.1 – 4.4.2 of the Reasons). Decision of the Examining Division dated 25.11.2024 concerning application EP 21 216 024 [English] Abstract: The application is refused because the main request as well as the first and second auxiliary requests do not meet the	Patent Act specifying a procedure for granting a patent based on a right other than the "right to be granted a patent" prescribed in that Act or a procedure for granting a patent on the assumption that a person other than a natural person is named as the inventor. Consequently, it is appropriate to construe that "inventions" for which patents may be granted under the Patent Act are limited to those for which natural persons are the inventors. In other words, since the existing Patent Act recognizes the right to be granted a patent and provides for the procedure for granting a patent only with regard to inventions made by natural persons, no patents may be granted for inventions made autonomously by an AI (AI Inventions) under that Act.	Case law of the Seoul High court (press released); decision rendered on case No. 2023Nu52088 [English] [Korean] Abstract: In view of interpretations of Articles 33 and 42 of the Patent Act, it is obvious that an inventor refers to a natural person. It is beyond the limitations of legitimate legal interpretation to incorporate AI into the inventor, under the regulations set forth in the Act, in view of AI's emergence and development, the current AI level, social perception of AI, etc. If there exists a certain subject matter sufficient to be protected as an AI invention in the future, its legal protection needs to be guaranteed, in a supplemented manner, by legislation to be processed through social discussion.		

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	requirements of Article 81, Rule 19 and Article 60(1) EPC. Grounds: the Addendum and the amended description contradict the statement filed in Form 1002, making the designation of inventor unclear, and not allowing the examining division to establish who is designated as inventor. According to Article 81 and Rule 19(1) EPC, the applicant must designate the inventor and according to Article 97 EPC the application as a whole must meet the requirements of the EPC. The examining division is not able to determine who the applicant designates as the inventor (himself or the artificial intelligence system DABUS) and whether the applicant has the right to the invention. It follows that a designation of inventor meeting the requirements of Article 81 and Rule 19 EPC is not present. The ambiguity as to who is designated as inventor results in an uncertainty as to whether the applicant has the right to the patent which might result from this application (Article 60(1) EPC).	Decision of the Supreme Court, Reiwa 7 (Gyo-Hi) Case No. 159			

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3. Any materials including examination guidelines, manuals, reports, webpages regarding AI-generated invention **Please specify where this information can be searched**	Guidelines for Examination in the European Patent Office (2025) on designation of inventor (not limited to AI) A-III, 5.1 Dedicated EPO website on Artificial Intelligence [English]	Indication of Inventor in Patent Applications (not limited to AI-generated inventions) (JPO webpage) [Japanese]	Inventorship of AI-generated inventions (MOIP webpage) [English] [Korean] White Paper on Artificial Intelligence and Intellectual Property [Korean] AI-Assisted Invention Application Guidelines (2026) [Korean]	Guidelines for Patent Examination（2023）, Part 1, Chapter 1, Section4.1.2, Part 2, Chapter 9, Section 6 [Chinese] CNIPA Decision on Revising the Guidelines for Patent Examination (Order No. 84) [Chinese] Guidelines for Patent Application for AI-Related Inventions, Chapter 2 [Chinese]	Federal Register Notice: Revised Inventorship Guidance for AI-Assisted Inventions (28 November 2025) [English] Separately, the following two subject matter eligibility updates are relevant because they specifically reference the examination of claims related to machine learning or artificial intelligence. 1. Memoranda of December 4 regarding voluntary Subject Matter Eligibility Declarations (SMEDs) under Rule 132. [English] 2. Advance notice of change to the MPEP in light of *Ex Parte Desjardin*. [English]

Summary

- ✓ ***AI Inventorship:***
  At present, all IP5 Offices require that an inventor must be a natural person, and therefore do not permit the designation of an AI system as the inventor.

- ✓ ***Human Inventorship for AI-assisted Inventions:***
  Where a natural person uses AI tools in the inventive process, the IP5 Offices at present acknowledge that the individual qualifies as an inventor, when they meet the existing human inventorship standards of the IP5 jurisdictions, with no additional legal tests introduced.