



Can AI be an inventor?

An overview of the current situation

About the author



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Dear Reader

We are pleased that you are interested in our white paper. In the following, you will receive an overview on the discussion of artificial intelligences as inventors. This whitepaper shall enable you to keep up to date on the topic of AI and patents. You can deepen your knowledge of the topic with the training courses we offer digital patents.

Best regards,

A handwritten signature in black ink that reads "Alexandre Ho".

Jean-Claude ALEXANDRE HO
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The question whether artificial intelligence can be an inventor has been in the limelight since respective patent applications have been filed in different jurisdictions, with the DABUS AI designated as inventor.

European patent applications EP 18 275 163 and EP 18 275 174:

- Both patent applications indicate “DABUS” - a type of connectionist artificial intelligence - as inventor → a machine was designated as inventor (applicant: the right to the European patent is acquired from the inventor by being its successor in title)

- The DABUS invention:
a shape-changing
drink container

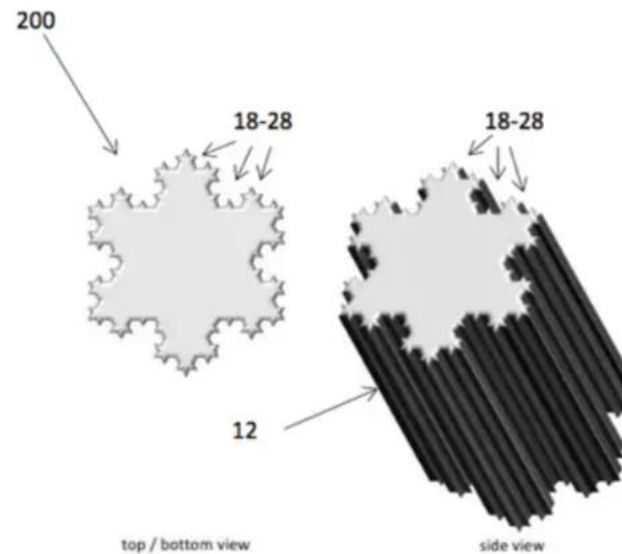


Fig. 6

Can AI be an Inventor? – EPO Opinion



European patent applications EP 18 275 163 and EP 18 275 174:

- EPO first instance hearing on 25 November 2019
 - refusal of both applications (do not meet the requirement of the EPC that an inventor designated in the application has to be a human being, not a machine)
- Currently under Appeal
 - preliminary opinion on June 21, 2021:
“In the preliminary view of the Board, under the EPC the inventor designated for the purpose of a patent application must be a person having legal capacity.”
The appeal hearing is scheduled to be heard later this year.

Can AI be an Inventor? – Other Jurisdictions



UK

- In September 2020, the England and Wales High Court has handed down a judgement dismissing the DABUS AI system as inventor. Justice Smith also pursued the anthropocentric approach: inventor = human being
- *“Admitting DABUS as inventor would mean creating a new patent law. This is a task for parliament and not for the court house.”*

Australia

- Australian Patent Office refused to proceed with the application
- Appeal Decision on July 30, 2021:
“None of these provisions exclude an inventor from being a non-human artificial intelligence device or system. ... “An inventor as recognised under the Act can be an artificial intelligence system or device. But such a non-human inventor can neither be an applicant for a patent nor a grantee of a patent.”

Can AI be an Inventor? – Other Jurisdictions



US

- The USPTO refused to allow the application, stating that legislation and Federal Circuit case law on inventorship “require that an inventor must be a natural person”.
- September 2, 2021: Judge Leonie Brinkema at the Virginia Eastern District Court ruled in favour of the USPTO: *"Policy arguments do not override the overwhelming evidence that Congress intended to limit the definition of "inventor" to natural persons. As technology evolves, there may come a time when artificial intelligence reaches a level of sophistication such that it might satisfy accepted meanings of inventorship. But that time has not yet arrived, and, if it does, it will be up to Congress to decide how, if at all, it wants to expand the scope of patent law."*

South Africa

- The South African IP Office granted the application (depository system)

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