



FEDERAL PUBLIC SERVICE
MINISTRY OF DEVELOPMENT, INDUSTRY, TRADE AND SERVICES
BRAZILIAN NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY
DIRECTORATE OF PATENTS, COMPUTER PROGRAMS AND TOPOGRAPHIES OF INTEGRATED CIRCUITS

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Note C. 9260
Standing Committee on the Law of Patents
Brazil

Information on Document updating Sections V and VI of Annex to document
SCP/35/7(Artificial Intelligence (AI) and Inventorship)

Inputs for the preparation of documents to the 37th Session of the
Standing Committee on the Law of Patents¹

ARTIFICIAL INTELLIGENCE AND INVENTORSHIP IN BRAZILIAN LEGISLATION

- **Section V: National/Regional Legal Frameworks Regarding the Concept of Inventorship.**

In Brazil, the authorship of patents by AI has been the target of legislative proposals. Bill No. 303, of 2024² (Bill 303/2024), authored by Deputy Júnior Mano (PL-CE), proposes amending the Art. 6 of Law No. 9,279, of 1996 (IP Law), to provide for the ownership of inventions generated autonomously by artificial intelligence systems. The Bill defines that "In the case of inventions generated autonomously by an artificial intelligence system, the patent may be applied for in the name of the artificial intelligence system that created the invention, which shall be considered the

¹ The answers to this Note have been provided on behalf of Brazil by Brazilian National Institute of Industrial Property (INPI).

² Bill 303/2024 can be accessed via the link:
https://www.camara.leg.br/proposicoesWeb/prop_mostrarIntegra?codteor=2387544&filename=PL%20303/2024



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inventor and holder of the rights inherent to the invention" (proposed amendment introduces Paragraph 5 to Art 6 of IP Law).

In the INPI's view, the amendments proposed brings legal uncertainty, as it ends up indirectly generating a right (AI right to patent ownership) that is not supported in the Brazilian Federal Constitution and in the entire legal system in force. Furthermore, the proposal appears to be out of line with Bill No. 2338, of 2023, which provides for the regulation of the use of Artificial Intelligence, where human participation in the Artificial intelligence cycle is established as a basic principle.

The Rapporteur of the Science, Technology and Innovation Commission of the Brazilian Congress, congressman Leonardo Gadelha, proposed modifications to Bill 303/2024, presented in the form of a Substitute Text³.

The Substitute Text of Bill 303/2024 presents four highlights: (i) in cases where an invention or utility model is developed with the partial or full assistance of AI systems, patent ownership will be conferred on the human author (Art. 6 of IP Law), (ii) the patent term depends on the level of the assistance provided by Artificial Intelligence (Art. 40 of IP Law), (iii) applicant must disclose the use of artificial intelligence systems in the development of the invention or utility model, classifying the level of assistance provided by AI systems into categories: absent assistance, partial assistance, predominant assistance, or fully autonomous, as regulated (Art. 19 of IP Law) and; (iv) the examination report issued by INPI must also address the classification of the level of assistance provided by AI systems (Art. 35 of IP Law).

INPI's opinion⁴ is that only item (i) of the proposal would be eligible for incorporation into national legislation, since it would preserve the authorship of the invention to a natural author. The

³ Bill 303/2024 – Substitute Text can be accessed via the link:

https://www.camara.leg.br/proposicoesWeb/prop_mostrarIntegra?codteor=2482633&filename=Tramitacao-PL%20303/2024

⁴ Opinion No. 00027/2024/CGPI/PFE-INPI/PGF/AGU, of December 6, 2024.



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other items (ii), (iii) and (iv) would not be acceptable due to the commitments assumed by Brazil in the TRIPS Agreement (mainly, Articles 33 and 27.1).

Bill 303/2024 is still under discussion in the National Congress.

- **Section VI: The “DABUS” Case. The inputs may also include information regarding new cases and decisions on AI as an inventor.**

In Brazil, DABUS, an Artificial Intelligence (AI), was designed as an inventor of the claimed subject matter in the application BR 11 2021 008931-4 A2, derived from PCT/IB2019/057809, of 09/17/2019. The applicant, Stephen Thaler, explained that the invention was autonomously generated by AI.

The Brazilian National Institute of Industrial Property (INPI) rejected the application BR 11 2021 008931-4 A2 based on the legal fact that an inventor must necessarily be a natural person. The question was studied by the Federal Attorney Office of INPI that issue a legal opinion⁵, with the view that an AI cannot be designated as an inventor, based on Art. 6 of Law No. 9,279, of 1996 (IP Law), Paris Convention (CUP) and TRIPS Agreement.

To date, INPI has not been notified that the applicant has challenged the decision to withdraw the patent application from the Brazilian national phase before the Brazilian courts.

⁵ Opinion No. 00024/2022/CGPI/PFE-INPI/PGF/AGU, of August 8, 2022.