



PD53 Patent Law and Procedures | D531 Patent Law and Processes

# **EPO input for WIPO documents and webpage update**

## **Artificial Intelligence (AI) and Inventorship**

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## Introduction/Background

Pursuant to the decision of the thirty-sixth session of the Standing Committee on the Law of Patents (SCP), which was held in Geneva from October 14 to 18, 2024, WIPO invited the EPO to send to the International Bureau of WIPO inputs for the preparation of several documents and a new webpage (C.9260).

This document provides input for updating Sections V and VI of Annex to document [SCP/35/7](#) (Artificial Intelligence (AI) and Inventorship).

### 1. Section V: National/Regional Legal Frameworks Regarding the Concept of Inventorship

The information in Section V of Annex to document [SCP/35/7](#) (Artificial Intelligence (AI) and Inventorship) relating to the European Patent Convention and its application by the European Patent Office is up to date.

### 2. Section VI: The “DABUS” Case

The parts of Section VI reporting on the DABUS decisions issued by the European Patent Office and the Legal Board of Appeal of the European Patent Office (paragraphs 152 – 157) are overall up to date, except paragraph 154, reporting on the divisional application [EP 21 216 024](#). The below information explains the current state of the proceedings in the divisional application. It is proposed to delete the last sentence of paragraph 154 and to add the information below:

“With the [decision dated 25 November 2024](#), patent application EP 21 216 024 was refused by the Examining Division because none of the designations of inventor on file, according to the Main Request as well as the first and second Auxiliary Requests met the requirements of Article 81, Rule 19 and Article 60(1) EPC.

In the Main request, the applicant Mr Stephen L. Thaler, designated himself as the inventor in Form 1002 and filed an Addendum stating that the invention was conceived autonomously by the machine DABUS and that Mr Thaler was not an inventor under the “traditional criteria”. Additionally, the applicant filed an amended description containing a preamble stating that the invention disclosed in the application was an AI-generated invention, which was conceived autonomously by the artificial intelligence machine DABUS. The Examining Division concluded that the Addendum and the amended description contradicted the statement filed in Form 1002. Since the patent application must meet the EPC requirements as a whole (Article 97 EPC), this contradiction made the designation of inventor unclear, and did not allow to establish who was designated as inventor.

Both auxiliary requests were refused for the same reasons. The designation of inventor according to the first and second auxiliary requests indicated Mr Stephen L. Thaler as inventor and comprised a modified Addendum which stated that “Dr Thaler had caused [...] DABUS to conceive of the invention...”. The Examining Division concluded that the statement that DABUS conceived of the invention amounted to unambiguously stating that DABUS was the inventor and was in contradiction with the designation of Mr Thaler as inventor in Form 1002.

An appeal is pending. On 24 January 2025 the applicant filed a notice of appeal. The grounds of appeal may be filed until 25 March 2025.”