

WIPO Circular C.9620

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

On 11th June 2024, the German Federal Court of Justice issued its decision in the appeal proceedings “DABUS” (Rechtsbeschwerdeverfahren X ZB 5/22).

The most important aspects of the decision are the following:

- Only a natural person can be designated as inventor in a patent application according to Section 37 para 1 German Patent Act. A machine system consisting of hardware and software (here: “DABUS”) cannot be designated as inventor, also if it has functions of artificial intelligence.
- For being designated as inventor of a technical teaching which has been found with the help of an Artificial Intelligence system, a human contribution that has substantially influenced the overall success is sufficient (para 38).
- An inventor designation according to Section 37 para 1 German Patent Act is necessary also in cases in which a system of artificial intelligence has been used to find the technical teaching (para 50).
- The inventor designation must be clear and coherent (para 55).

Overall, the decision confirms that only a natural person can be designated as inventor according to Section 37 para 1 German Patent Act.