

# Legal consequences of inaccurate designation of inventor

Submission to SCP to update SCP 35/7 ‘Artificial Intelligence and Inventorship’

## 1. Introduction

The WIPO SCP secretariat looked at the legal consequences of inaccurate designation of inventor in the Annex to [SCP 35/7 ‘Artificial Intelligence and Inventorship’](#). Paragraph 108 of the Annex states if “the applicant fails to provide the names of the inventors or indicates the wrong inventors (either in good faith or intentionally), there can be different consequences to the application and different kinds of remedies may be available, depending on the applicable law”.

This report aims to update the overview given in SCP 35/7 by summarising the legal consequences of inaccurate designation of inventors for patent applicants and patent holders under the national or regional laws of 13 cross-regional WIPO Member States.<sup>1</sup> Understanding these legal consequences, in particular the similarities and differences between different legal frameworks, may give a better understanding of the risk of legal uncertainty for patent applicants and patent owners where AI is used in the invention process. This legal uncertainty may be seen as a risk to investment in research that employs AI.

### 1.1. Aim of this work

Each participating country has prepared a summary of the legal consequences under their national laws of inaccurate designation of inventors, to more fully explore the themes identified in the SCP 35/7 paper. The summary is intended to:

- Explain any national rules that provide a right to challenge a patent application or a granted patent on the grounds that the wrong inventor has been named;
- Include details of the class of persons who may bring a challenge, the procedure and time period in which a challenge may be made; and
- Include any helpful administrative decisions or case law regarding a challenge on the ground of inventorship.

Collectively, the compiled legal summaries are aimed be used to identify key similarities and differences between national laws, thus identifying potential risks for patent applicants and patent owners where AI is used in the invention process.

## 2. Participating countries

Summaries were received from the following WIPO members. Some members have also provided a [submission to the SCP paper 35/7](#), however the information is also included here for the purposes of comparison.

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<sup>1</sup> Value judgments, interpretations and suggestions for further work contained in this document, which go beyond describing the current law in the participating countries, do not necessarily represent the position of every individual participating country and are not to be understood as a call for action vis a vis WIPO originating from the individual participating countries.

- Australia
- Canada
- Chile
- Finland
- Germany
- Israel
- Japan
- Morocco
- Republic of Korea
- Singapore
- Switzerland
- United Arab Emirates
- United Kingdom

## 2.1. Legal texts

Unless otherwise stated, the legal provisions of each Country referred to throughout this document come from the following texts:

*Table 1 Legal texts referred to in report*

Australia	Patents Act 1990
Canada	Patent Act (R.S.C., 1985, c. P-4)
Chile	Law Nr. 19.039 on Industrial Property, last amended Law N° 21.335 dated June 30, 2022
Finland	Patents Act (No.550 of December 15, 1967)
Germany	Patent Act as published on 16 December 1980 (Federal Law Gazette 1981 I, p. 1), as last amended by Article 1 of the Act of 30 August 2021 (Federal Law Gazette I, p. 4074)
Israel	Patents Law, 5727—1967
Japan	Patent Act (Act No. 121 of 1959)
Morocco	Law No. 17-97 on the Protection of Industrial Property as amended and supplemented by Laws 23-13 and 31-05.
Republic of Korea	Patent Act, Enforcement Rules of the Patent Act
Singapore	Patents Act 1994
Switzerland	Federal Act on Patents for Inventions (Patents Act, PatA), of 25 June 1954 (Status as of 1 July 2025) Ordinance on Patents for Inventions (Patents Ordinance, PatO), of 19 October 1977 (Status as of 1 July 2025)
United Arab Emirates	Federal Law no. 11 of 2021 on the Regulation and Protection of Industrial Property Rights
United Kingdom	Patents Act 1977

### **3. Findings**

A summary of the key similarities and differences between different countries' laws are presented here. Please refer to the national legal texts for further details.

#### **3.1. Legal effect of inaccurately designating the inventor**

According to the laws of the participating countries, a patent may only be granted to the inventor or someone who derives the title from the inventor. Therefore, one of the main consequences of an inaccurate designation of inventorship is that it may disrupt the flow of entitlement to a patent. In some instances, an inaccurately named inventor may not lead to a dispute of patent entitlement (for example, if both the wrongly named inventor and 'true' inventor work for the same employer, the entitlement may still be held by that employer). In some cases, a wrongly named inventor (or an inventor that has been wrongly *not* named) can lead to the entitlement to the patent being challenged.

Consequences of both inaccurate designation of inventor and wrongly determined entitlement are covered in this report.

#### **3.2. Requirement to name the inventor(s)**

All participating countries, apart from Israel, reported a legal requirement to name the inventor(s) on a patent application.

In practice, these countries require that a human is named as the inventor(s).

It is notable that most countries do not appear to have requirements to validate the entitlement of the named inventor(s) to the invention at the point of filing – i.e., it is merely an administrative check that a person is named. For example, IP Australia conducts a formalities check to ensure an applicant has included the name of the inventor. Similarly, the Canadian IP office accepts assertions of inventorship at face value (with other offices also reporting similar practice).

Korea noted that there are grounds to reject a patent application if the wrong inventor is named (Art. 62 Patent Act). An examiner may request the applicant for an interview to confirm whether the inventor (applicant) is a true inventor (under Art.17 of Regulations for the Handling of Patents & Utility Models).

UAE noted that the notarized Deed of Assignment signed by the inventor is mandatory if the inventor is not the applicant (under Art.19(6)C of Cabinet Resolution no. 6 of 2022).

Israel reported that there is no legal requirement for the inventor(s) to be named. According to s.11(b) of the Patent Law "If the applicant is a person other than the inventor, then he shall state in the application how he came to be the owner of the invention". In practice, it is sufficient that the applicant would mark in the patent application form one of these three options: "entitlement by operation of Law", "entitlement by transfer" or "entitlement by agreement". According to s.76 of the

Patent Law "the person who submitted a patent application deemed the owner of the invention, as long as the contrary has not been proven".

### 3.3. Remedies for incorrect designation of inventor

#### 3.3.1. Corrections

Australia, Canada, Japan, Korea, Singapore, Switzerland and UK reported provisions for the applicant to correct details of a patent application, including the inventor(s), as shown in Table 4.

For example, in Australia s.104(1)(b) provides that an applicant can make amendments to their patent application where there is a clerical error or an obvious mistake. This includes amending the patent request form that contains a field for listing the inventors for the claimed invention and may require a statement of reasons for leave to amend.

Finland reported provisions for the patentee to remove themselves as a designated inventor. In Canada, the patentee is able to disclaim part of a patent specification for which they claimed they were the inventor of but were not, but this is conditional on the patentee having included that part by mistake, accident, or inadvertence, and without any wilful intent to defraud or mislead the public (s.48). In Finland, provisions are part of the Patenttikäsikirja (i.e. Guidelines for search and examination in Finnish), with no statutory basis.

#### 3.3.2. Invalidation/revocation of patent

Invalidation or revocation of a patent is possible in most of the participating countries. This is either on the grounds of wrongly named inventor or on the grounds of the patent being granted to person who was not entitled to it. This is summarised in Table 2.

*Table 2 Invalidation of patents based on wrongly named inventor(s)*

<b>Can a patent be invalidated/revoked due to a wrongly named inventor or incorrect entitlement?</b>	
Australia	The patent is not invalid merely because the patent was granted to a person who was not entitled to it (s.22A) but revocation is possible under s.138
Canada	Failure to name the correct inventor of the claimed invention could theoretically invalidate a patent under subsection 27(1) of the Patent Act*
Chile	No (as of 2022)**
Finland	No, inaccurate designation of inventor as such is not a statutory ground for revocation (s.53)
Germany	A patent cannot be revoked/invalidated just because of a wrongly designated inventor. However, a patent can be

	revoked/invalidated in the case of usurpation (Section 21 para. 1 no. 3 German Patent Act). This requires that the essential content of the patent has been taken from the descriptions, drawings, models, implements or equipment of another person or from a process used by this person without their consent.
Israel	Patents are not invalidated due to a wrongly naming inventors, unless it has bearing to the question of ownership of the patent. ***
Japan	Yes, if the patent has been granted on a patent application filed by a person that does not have the right to the grant of a patent for the invention, a request for a patent invalidation trial may be filed (Art.123)
Morocco	No
Republic of Korea	Yes, where the patent has been granted to a person not entitled to obtain the patent (Art.133)
Singapore	<p>There is no penalty for naming the wrong inventor - this is reflected in the wording of s 24(2)(a), which requires the applicant to identify the person(s) they believe to be the inventor(s).</p> <p>A patent can be revoked if the “patent was granted to a person who was not entitled (either alone or with other persons) to be granted that patent” or if the “patent was obtained fraudulently, on any misrepresentation, or on any non-disclosure or inaccurate disclosure of any prescribed material information, whether or not the person under a duty to provide the information knew or ought reasonably to have known of such information or the inaccuracy”. (s.80)</p>
Switzerland	<p>Failure to mention an inventor leads to the rejection of the patent application (Art. 35 Sect. 3 PatO). There is no direct penalty for naming the wrong inventor.</p> <p>The court shall however, on application, declare the nullity of the patent if the proprietor of the patent is neither the inventor nor his successor in title, nor has a right to the grant of the patent on other legal grounds. (Art. 26 Sect. 1 let. d PatA).</p>
United Arab Emirates	Yes: if the applicant or patent holder is not a legitimate owner of the invention, and not entitled for the patent, the patent may be cancelled in the post-grant re-examination or invalidated in the court (Cabinet Resolution no. 6 <sup>2</sup> , Arts. 42 and 52)
United Kingdom	There is no penalty for naming the wrong inventor - this is reflected in the wording of s.13(2)(a), which requires the

<sup>2</sup> Cabinet Resolution no. 6 of 2022 on Implementing Regulation of Federal Law no. 11 of 2021 on the Regulation and Protection of Industrial Property Rights

	<p>applicant to identify the person(s) they <i>believe</i> to be the inventor.</p> <p>However, a patent can be revoked if the "patent was granted to a person who was not entitled to be granted that patent" [s.72(1)(b)].</p>
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\* The Federal Court in Canada has the power to void a patent under subsection 53(1) of the Patent Act where a material allegation in the petition is untrue, however caselaw has established that a failure to name the correct inventor is unlikely to render the patent void unless the allegation was wilfully made for the purpose of misleading. The state of the law is still unsettled on this point.

\*\*In Chile, a wrongly named inventor was grounds for invalidation of the patent before 2022, and any legitimate patent owner had no other option but to request the declaration of invalidity of the registration. However this law has now been changed, and the patent may be transferred to the rightful owner by virtue of a new usurpation action (Art.50bis).

\*\*\* In Israel, any person may oppose the grant of a patent before granting, or request the cancelation of a patent, for grounds in which the opponent, and not the applicant, is the owner of the invention (s.30, s.31(3), s.73B of the Law).

### 3.3.3. Transfer of rights

**All** countries reported provisions stating that the rightful inventor(s)/person entitled to the patent may have rights transferred to them when they were not initially named but are subsequently identified as an inventor/entitled person. This may occur before or after the patent is granted and is summarised in Table 3.

*Table 3 Transfer of rights based on wrongly named inventor*

Transfer of rights to eligible inventor	
Australia	<p>-Eligible person may apply for a declaration of the person's eligibility for a revoked patent and the ineligibility of a former patentee (s.35)</p> <p>-Register of Patents may be rectified by Commissioner (s.191A) or by court order (s.192).</p>
Canada	-Federal Court has jurisdiction to vary named inventors on the patent record after the patent is granted (s.52)
Chile	-Legitimate owner may request the transfer of the patent registration, as well as requesting damages compensation (art.50bis)

Finland	-Claim by true inventor may result in transfer proceedings by the office pre-grant (s.18) or in court post-grant (s.53)
Germany	-Entitled person or a party aggrieved by usurpation can require the patent applicant to assign to him the right to the grant of the patent. Where the application has already resulted in a patent, he can require the proprietor of the patent to transfer the patent (s.8)
Israel	<p>- If ownership of the invention is challenged by way of pre-grant opposition (s.31(3)), then the opponent may request that the patent be granted to him, and the Registrar may – in addition to any other relief – grant the patent to the person who proved that he is the owner of the invention (s.33(a))</p> <p>- After a patent is granted, a civil claim for the transfer of rights on the grounds of an ownership can be filed with the court. In patent invalidation proceedings based on the grounds of ownership, there is no remedy for the transfer of ownership*</p>
Japan	-Person that has the right to the grant of the patent for the invention pertaining to the patent may request that the patentee transfer the patent right (Art.74)
Morocco	-Aggrieved person may claim ownership of the granted title for an invention stolen from the inventor (Art.19)
Republic of Korea	-Person who holds the right to acquire the patent may file a claim for the transfer of the patent (Art.99-2)
Singapore	<p>- Before a patent is granted, any of the co-proprietors of the application may question whether any right in the application should be transferred or granted to any other person (s.20(1)(b))</p> <p>- After a patent is granted, any person having (or claiming) a proprietary interest in the patent may question whether any right in the patent should be transferred or granted to any other person (s.47(1)(c))</p>
Switzerland	The Swiss Patents Act provides an action for assignment (Art. 29 PatA): When the patent application has been filed by an applicant who is not entitled to the grant of the patent, the entitled person may apply for assignment of the patent application or, if the patent has already been granted, he may apply for assignment of the patent or file an action for nullity.

United Arab Emirates	-Owner of the right to the invention may request the Ministry to transfer the application or patent of the invention or the utility certificate to him (Art.9)
United Kingdom	-Person who has (or claims to have) a proprietary interest in the patent may question whether any rights under the patent should be transferred or granted to someone else (s.37)

\* CivA 4052/19 Y.S.M. Lebinyan v. Tadbik (12/9/2020).

### 3.4. Opportunities to challenge incorrect designation of inventor

#### 3.4.1. Who can challenge?

In some countries, the opportunity to challenge an inaccurate designation of inventor/ incorrect entitlement is only available to a person claiming to be the true inventor. In some countries, other people may challenge the inaccuracy of the name inventor(s), as summarised in Table 4.

As noted in 3.3.1, provisions are available in most countries for the applicant to correct the application themselves with regards to the named inventor(s).

*Table 4 Summary of persons able to challenge inaccurate designation of inventor(s)*

<b>Who can challenge the designation of inventor(s)?</b>	
Australia	<ul style="list-style-type: none"> <li>- Applicant (to amend own application, s.104)</li> <li>- Person claiming the patent should be granted to them as well as or instead of the applicant (s.35, 36)</li> <li>- Minister or any other person opposing the grant of a patent for inaccurate patentee entitlement (s.59-standard patents, s.101M-innovation patents)</li> <li>- Minister or any other person may apply to a prescribed court for an order revoking a patent due to inaccurate patentee entitlement (s.138)</li> </ul>
Canada	<ul style="list-style-type: none"> <li>- Applicant can request a correction in the naming of inventors (patent rules s.106)</li> <li>- Patentee may disclaim the subject matter in the patent (Patent Act s.48)</li> <li>- Person claiming the patent should be granted to them as well as the named applicant(s) (s.31)</li> <li>- The Commissioner or “any person interested” can apply to the Federal Court to vary or expunge the record of inventorship (s.52)</li> </ul>



Chile	<ul style="list-style-type: none"> <li>- The “legitimate owner” may request the transfer of the patent registration (Art.50bis)</li> <li>- “Any interested party” may file an opposition to an application (up to 30 days after publication)</li> </ul>
Finland	<ul style="list-style-type: none"> <li>- Applicant can add inventor after filing application (s.C.3.1 Patenttikäsikirja, no statutory basis)</li> <li>- Inventor may remove themselves (s.C.3.1 Patenttikäsikirja, no statutory basis)</li> <li>- Someone claiming to be the true inventor (s.17, 18, 53)</li> </ul>
Germany	<ul style="list-style-type: none"> <li>- The entitled person in respect of whose invention an application has been filed by a non-entitled person (s.8)</li> <li>- A party aggrieved by usurpation (s.8)</li> </ul>
Israel	<ul style="list-style-type: none"> <li>- Any person may oppose the grant of a patent before granting, for grounds in which the opponent, and not the applicant, is the owner of the invention (s.s.30, s.s.31(3) of the Law). According to case law, an opposition on such grounds would not be limited to the true owner, but open to any person.*</li> <li>- The inventors, or next of kin, have an inalienable right to demand that their names be stated in specifications, in the Register and in the patent certificate (s.39, s.42 of the Patent Law).</li> </ul>
Japan	<ul style="list-style-type: none"> <li>- A person undertaking a procedure may make an amendment (Act.17)</li> <li>-The person that has the right to the grant of the patent for the invention pertaining to the patent may request that the patentee transfer the patent right (Art.74)</li> <li>-A person that has the right to the grant of the patent may file a request for a trial for patent invalidation (Art.123)</li> </ul>
Morocco	<ul style="list-style-type: none"> <li>- An inventor may oppose being mentioned in a patent (Art.20)</li> </ul>
Republic of Korea	<ul style="list-style-type: none"> <li>- Applicant can add or correct the names of the inventors (Art.28(1) of the Enforcement Rules)</li> <li>- Between filing and grant, information can be provided by a third party and the examiner may refer to the provided information when making a rejection decision (Art. 63-2)</li> <li>- An interested party (limited to those who have the right to obtain a patent) can seek to invalidate a patent or transfer the rights (Art.133, Art.99-2)</li> </ul>

	<ul style="list-style-type: none"> <li>- An examiner can seek to invalidate a patent (Art.133)</li> </ul>
Singapore	<ul style="list-style-type: none"> <li>- Applicant may apply to Registrar to correct an error in the Statement of Inventorship (r.91)</li> <li>- "Any person" can refer the question of entitlement to the patent to the Registrar pre-grant (s.20(1)(a))</li> <li>- Any person having (or claiming) a proprietary interest in the patent may question who are the true proprietors of the patent (s.47(1)(a)) or whether the patent should have been granted to the persons to whom it was granted (s.47(1)(b))</li> <li>- Any person who alleges that he ought to have been mentioned as inventor in any patent/application or any person who alleges that any inventor(s) in any patent/application ought not to have been so mentioned (s.24)</li> </ul>
Switzerland	<p>Both the Applicant and the named Inventor can correct errors in the Statement of Inventorship (Art. 37 PatO).</p> <p>A third party can file an action for the assignment of the patent application if the application has been filed by an applicant who is not entitled (Art. 29 PatA, for the entitlement see Art. 3 PatA). If the patent has already been granted, third party may file for assignment or nullity of the patent (assignment: Art. 29 PatA; nullity: Art. 26 PatA).</p>
United Arab Emirates	<ul style="list-style-type: none"> <li>- "Applicant" may request to amend errors (including correction, addition or deletion of inventor) in the application (Cabinet Resolution no. 6 Art.26)</li> <li>- "Anyone" to request cancellation of the registered patent through the office (Cabinet Resolution no. 6 Art.42)</li> <li>- "A concerned party with substantial interest" to invalidate the patent through the courts (Cabinet Resolution no. 6 Art.42)</li> <li>- The "true owner of the invention" to transfer the application or patent (Federal Law no. 11 Art.9)</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>- Applicant may apply to comptroller to correct a clerical error, including name of inventors (s.117)</li> <li>- Any person who alleges that a person mentioned as inventor should not to have can apply to the comptroller for a certificate to that effect (s.13(3))**</li> <li>- Any person who claims that the patent should be granted to them instead of or as well as the applicant (before or during application, s.8, 12, 82)</li> <li>- Any person who has (or claims to have) a proprietary interest in the patent (after grant, s.37, 72(1)(b))</li> </ul>

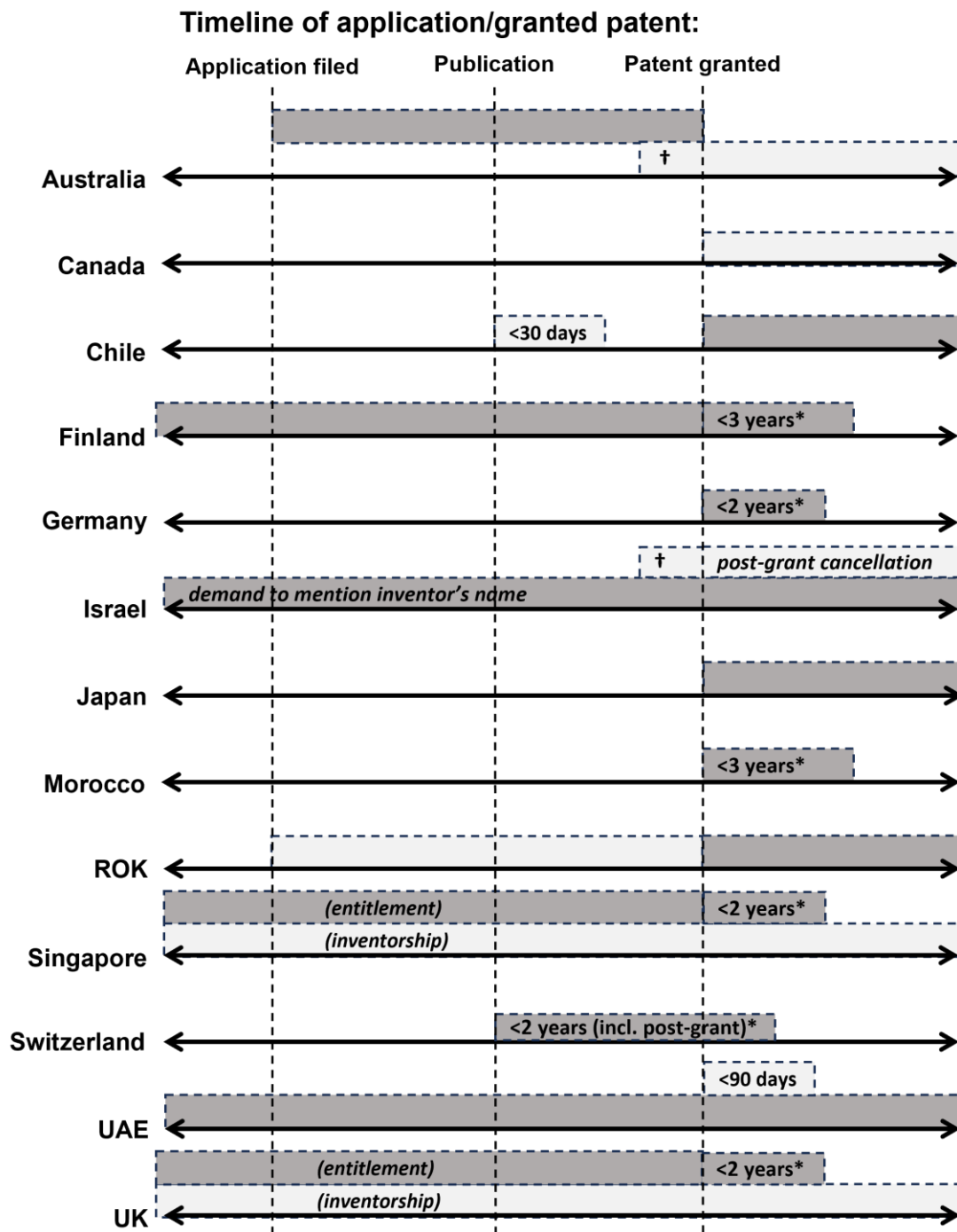
\*CivA 217/86 Shachter v. Abmatz Ltd. 44(2) PD 846 (1990); CivA (DC TA) 3032/06 Kamil v. Bezeq Benleumi Ltd.- P.T. Nevo Legal Database (Jan. 16, 2007)

\*\*historically, claims under this section of UK patent law have been limited to entities with a direct interest in the patent.

### **3.4.2. When can challenge occur?**

Challenge may occur before and/or after the granting of a patent. In some countries, a challenge may only occur in a limited time window during the life of the application/patent. In other countries, challenge can occur at any time during the life of the application/patent. Figure 1 shows a simplified comparison of the time windows available for persons to challenge the named inventor according to national laws. Note that the opportunity to challenge at a particular time may come from one or more provisions of a particular country. For example, the right to challenge the entitlement to a patent in the UK falls under Patents Act sections 8, 12, and 82 for pre-grant challenges, and sections 37 or 72 for post-grant challenges, which are limited to a time period of 2 years after the grant of the patent (with exceptions).

In most cases where the time available to challenge is limited, there may be exceptions allowed for instances where the inaccurate designation was a result of the applicant acting in bad faith. For example, in Singapore a claim may be made up to a period of 2 years after the date of the grant, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to the person that the person was not entitled (either alone or with other persons, as the case may be) to the patent (s.47(5)(b)).



**KEY:**  Third parties may challenge  Only interested parties may challenge

† AU+IL: pre-grant third party challenges to entitlement are possible during the 3-month opposition window after a patent has been advertised as accepted

\*exceptional circumstances may apply beyond the specified limits (e.g. in event of bad faith)

Figure 1 Schematic showing window of opportunity to challenge inaccurate designation of inventor/entitlement during the lifetime of a patent application/granted patent in 10 countries. "Third parties" includes persons who do not need to have a vested interest in the patent application or granted patent. "Interested parties" are those who believe that they have a right to the application/patent. Note that the opportunity for an applicant to amend/correct their own application is not included.

## 4. Conclusions and considerations for possible future work

On consideration of the inaccurate designation of inventor, the Annex to SCP 35/7 'Artificial Intelligence and Inventorship' noted that:

- In some countries where an inventor is wrongly designated an amendment may be made while the application is still pending.
- In some countries an error in the indication of the inventor(s) is not a ground for invalidation of the patent. In other countries the improper declaration of inventorship in a patent application may lead to invalidation.
- In some countries an interested party, or an examiner, may file a petition for trial to seek invalidation of a patent, if the patentee has no right to obtain the patent in accordance with the national laws.
- In some countries the patent laws allow for a revocation procedure and/or transfer of the right to a true inventor, at the pre- or post-grant stage, in case of usurpation.

The findings of this report broadly agree with these conclusions.

Some similarities were shared between all participants. For instance, all participating countries require an inventor to be named on the patent application, and the inventor must be a human. Most (if not all) the participants, however, do not conduct a substantial examination of the right of the named inventor(s) to the patent application. Further work could explore to what extent any investigation on the accuracy of the named inventor is currently carried out in practice during the application process, as well as what is legally required to prove that the named inventor is entitled to their claim at the point of application. If AI is involved in the inventive process, could it be necessary to reveal the role of the AI in order to ascertain whether a human contributor is eligible to be named as an inventor?

All participating countries also have means to remedy a wrongly designated inventor, and specifically to transfer the right to a true inventor, albeit through slightly different mechanisms. The main differences lie in *who* can mount a challenge and *when* that challenge can occur.

Where AI is involved in the inventive process, there may be limited opportunity to challenge the validity of an application or patent when a human is wrongly named in place of an AI. This is particularly relevant in countries where only the rightful inventor can challenge the inaccurate designation of inventor(s), assuming that an AI itself would be unable to mount a challenge.

Conversely, where challenge is restricted to interested parties only (i.e., those purporting to be the inventor), and/or for a limited time-period, there may be a lower risk of undue delays or legal uncertainties introduced by third parties making spurious objections to inventorship. It may therefore be beneficial to consider whether there is a need for a route of challenge by a third party not entitled to the patent in order to rectify the inaccurate designation, and what the benefits/risks may be in countries where this is already the case.