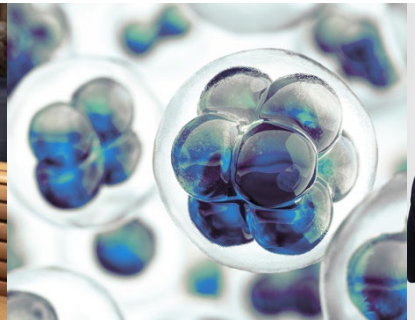
Europäisches Patentamt
European Patent Office
Office européen des brevets

# Patenting AI-related inventions under the European Patent Convention

## Securing legal certainty

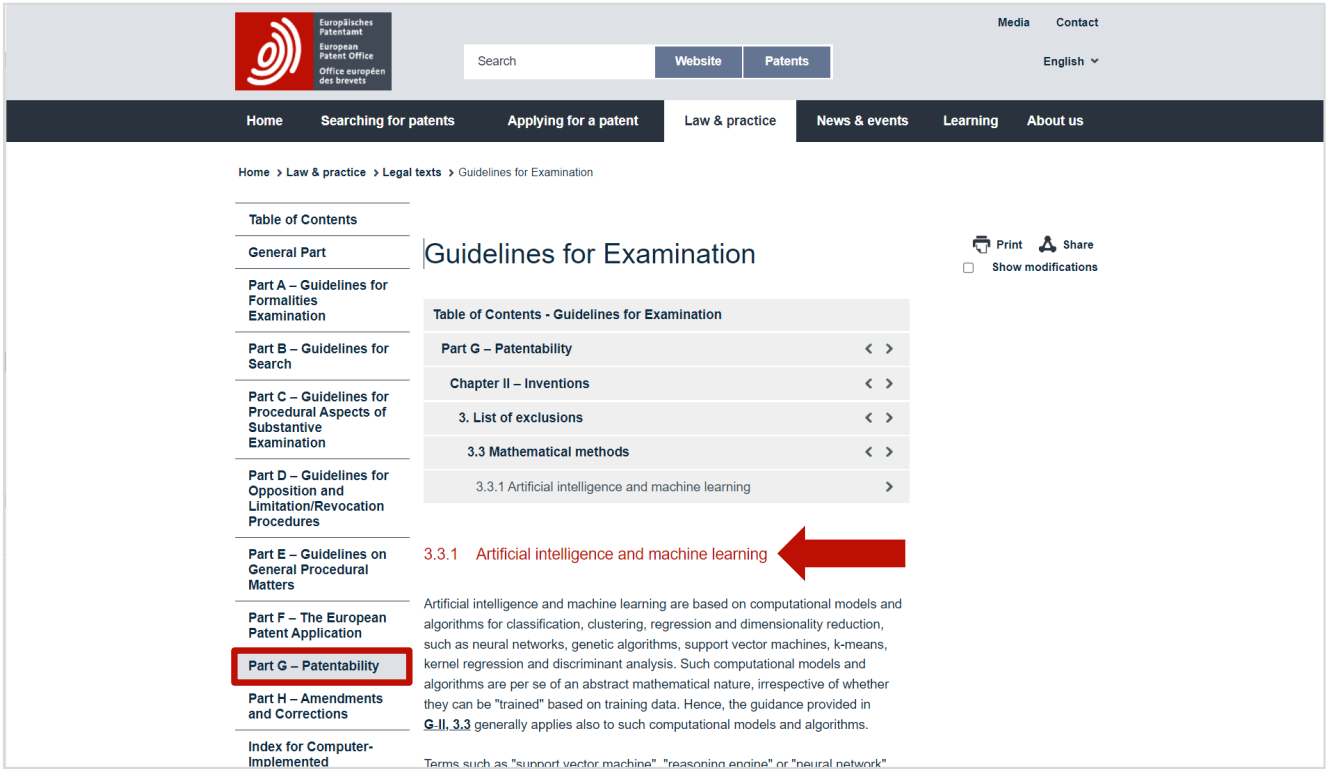




Heli Pihlajamaa
Director | D521 Patent Law and Procedures
22 September 2022

# Patentability of CII, including AI

| | | |
|---|---|---|
| **Art. 52 (1) EPC** | ▪ Inventions in all fields of technology | **patentability of CII and AI** |
| **Art. 52(2) and (3) EPC** | ▪ Mathematical methods, schemes, rules and methods for performing mental acts and computer programs etc. **are not regarded as inventions**<br>▪ if claimed **as such** in the application | |
| **Art. 54, 56 EPC** | ▪ An invention must be **novel**<br>▪ An invention must be **non obvious** for the skilled person over the prior art | |

# EPO guidelines on patenting AI



# EPO LBoA decisions J 8/20 and J 9/20

- Under the EPC the inventor must be a person with legal capacity

- Statement indicating the origin of the right to the invention must indicate the inventor or their successor in title (Article 60 EPC)

  - The EPO is competent to examine this

# Common understanding of inventorship

- The inventor is the person who created the invention by their own creative activity
  - Decisions in the EPO, UK, Germany, USA, Australia
  - Discussions with the EPC countries and IP5
  - Academic study on inventorship

- Human-centric approach to AI endorsed by the European Parliament and the Commission

# Thank you for your attention