Artificial Intelligence (AI) and Inventorship (SCP/35/7)
Standing Committee on the Law of Patents (SCP)
Thirty-Fifth Session, October 16 to 20, 2023

Presentation by the Secretariat
Issues addressed in SCP/35/7

I. A brief overview and underlying technology
II. Human-AI Interaction in the Invention Process
III. History of inventorship
IV. International legal framework relating to inventorship
   Paris Convention, TRIPS Agreement, PCT, PLT
V. National/Regional frameworks regarding the concept of inventorship
VI. The “Dabus case”
   • Overview of the DABUS Applications
   • IP offices decisions and judgements of courts
VII. Concept of Inventorship in relation to AI inventions
Human-AI Interaction in the Invention Process

- Invention by human inventor(s) – No AI involvement
- Invention by human inventor(s), assisted by AI
- Joint human-AI inventions
- Al-invention, assisted by human
- Invention by AI – No human involvement

What is the notion behind the term “inventor” and how it is determined under the current patent law?
History and international legal framework

- From royal privilege to the Statute of Monopolies (1623)
  Patents for the first and true inventor of a new manufacture.

- Inventors’ right to be mentioned as such in the patent (moral rights)
  - Article 4ter of the Paris Convention
  - Incorporated in the TRIPS Agreement by virtue of TRIPS Article 2.1
    (obligation of the WTO members to implement Art, 1-12 and 19 of
    the Paris Convention)
  - Only the Contracting States of the Paris Convention can become
    PCT members.

- Indication of the inventor in a patent application (formality requirement)
  - PCT for international applications
  - Patent Law Treaty (PLT) incorporates by reference the form or
    contents a PCT international application.
National/Regional frameworks regarding the concept of inventorship

A. Inventor’s right to obtain a patent
   **Inventor’s oath or entitlement; Once the right is transferred, assignee-applicant’s entitlement to apply for a patent**

B. Moral rights and indication of the inventor in a patent application

C. Personhood of inventors (statutory definition, established case law, contextual reading)

D. Determination of an “inventor”
   **Case law developed in some countries:**
   *in general, an inventor makes a creative contribution to technological advancement, which results in an invention.*

E. Establishing joint inventorship
   **Case law developed in some countries.**
   *Joint ownership*

F. Employee inventors

G. Legal consequences of inaccurate designation of inventors
   - No indication of inventors
   - Wrongful designation of an inventor and usurpation
The DABUS Case

- Two applications filed by Stephen Thaler indicating the AI system “Device for the Autonomous Bootstrapping of Unified Science (DABUS)” as the name of the inventor

- EPO, UKIPO and reportedly 15 other jurisdictions received one or more applications. In addition, one PCT application was filed.

- Document SCP/35/7 summarizes decisions of some IP Offices and judgements of courts.

Concept of inventorship in relation to AI inventions

- Overview of scholarly literatures relating to patent protection of inventions created by AI.
- Areas in patent law that were discussed by IP Offices and courts regarding the DABUS case.
- Initiatives of some IP Offices exploring the issues.
Thank You