



# WIPO CONVERSATION ON INTELLECTUAL PROPERTY AND ARTIFICIAL INTELLIGENCE Second Session

Session 1: IP Protection for AI-generated and AI-assisted Works and Inventions and Related Topics

## Issues on Patent Protection for AI-Generated-Invention

1. Can an AI-generated-invention be granted a patent?
2. Who Owns an AI-generated Invention?
3. Can AI be a legal inventor?

### DISCLAIMER

The opinions expressed herein are my own and do not represent the opinions of any entity.

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## 1. Can an AI-generated-invention be granted a patent?

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**Invention** refers to any new technical solution relating to a product, a process or an improvement there of. (Patent Law of the P.R. China, Article 2)

*The patent law does not make any restrictions on the actor who completes the invention. **For AI-generated-inventions, as long as they meet the legal requirements, they are not excluded from patent protection.***



## 2. Who Owns an AI-generated Invention?

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For **service inventions**, the right to apply for a patent, the patent application right, and the patent right all belong to the entity which the inventor served by.  
(Patent Law of the P.R. China, Article 6)

*For AI-generated-inventions, the provisions of service inventions can be referred to. The owner of AI has the right to apply for a patent, and then performs the patent application right, and enjoys the patent right after the patent is authorized.*



## 3. Can AI be a legal inventor?

**Inventor** means any person who has made creative contributions to the substantive features of the invention-creation. (Detailed Rules for the Implementation of the Patent Law of the P.R. China, Article 13)

An inventor has **the right to expressly indicate** in the patent documents that **he is the inventor**. (Patent Law of the P.R. China, Article 17)

An application shall **expressly specify** the name of the invention or utility model, **name of the inventor**, name and address of the applicant, and other matters. (Patent Law of the P.R. China, Article 26)

*All legal provisions imply the idea that only natural persons can be named as an inventor.*



## 3. Can AI be a legal inventor?

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Inventions are the result of intellectual work. The invention and creation are not restricted by the civil capacity. In practice, no matter whether the person who has completed the invention has full civil capacity, as long as he/she has completed the invention, he/she can be regarded as an inventor.

After the completion of the invention, if the right to apply for a patent and the patent application right are enjoyed by others, according to the provisions of the Patent Law, the inventor does not need to perform other obligations.

The remuneration right enjoyed by inventors can be transferred to the developers of AI.

*There are no obstacles to recognizing AI as an inventor at the legal and practical levels.*

*Even if the inventor is credited to be only a natural person, there is the possibility of creating a legal subject status for AI.*

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## WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI): Second Session

Preferred Date: Tuesday, 7 July 2020

Issue 2: Patents: Inventorship and Ownership

### Speech Title: Patent Protection of AI-generated inventions

Speaker: He Jun, Senior Judge, Intellectual Property Court of the Supreme People's Court of the People's Republic of China

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The following are my **personal** views on the patent protection of AI-generated inventions.

#### **First, should AI-generated inventions be subject to patent protection?**

With the development of AI technology, the role of AI in invention and creation has developed from assistance to independent creation. If patent protection is not granted for AI-generated inventions, it is very likely that a "human inventor" will be invented to obtain patent protection. A legal response must be found for the healthy development of AI technology and industry. Inventions defined in the Patent Law of the People's Republic of China refer to technical schemes or methods for products or improvements thereof; the Patent Law has not limited the subjects who complete the inventions and creations. **AI-generated inventions are not excluded from patent protection as long as they meet legal requirements.**

#### **Second, who is the owner of AI-generated inventions?**

According to the Patent Law of the People's Republic of China, in the case of service invention, the right to apply for a patent, the rights of an existing applicant and patent rights all belong to the entity where the inventor works. **For AI-generated inventions, provisions on service**

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**inventions can be used to grant the right to apply for patents to the owner of an AI application, who will then exercise the rights of an existing applicant and enjoy the patent rights after authorization.**

**Third, can an AI application be permitted to be an inventor?**

In accordance with the provisions of the Patent Law on subjects, an inventor and a patentee can be separated. Detailed Rules for the Implementation of the Patent Law of the People's Republic of China provides that the inventor under the Patent Law refers to a person who has made creative contributions to the substantive features of an invention-creation. It is generally held that the "person" here can only be a natural person. Even for a service invention, where the patentee can be a legal person or other organizations, the inventor can only be a natural person. At the same time, the Patent Law of the People's Republic of China requires that the name of the inventor be stated in the patent application documents, and the inventor has the right to state in the patent documents that he/she is the inventor. The above laws and regulations both imply that only humans can be the subjects of invention and creation.

It is worth noting that inventions and creations are the result of intellectual activities and are not limited by civil capacity. In practice, no matter whether the person who completed the invention or creation has full capacity, as long as he/she has completed the invention or creation, he/she can be recognized as the inventor. In addition, after the invention is completed, if the right to apply for a patent or the right of an existing applicant is assigned to others, then according to the Patent Law of the People's Republic of China, the inventor does not need to perform other obligations (the US Patent Law requires the inventor to make an oath or declaration). **Therefore, there is no legal or practical barrier to the determination of an AI application as the inventor.** The right to remuneration enjoyed by the AI-inventor, who is similar to a service inventor, can likewise be assigned to the developer of the AI application.

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This does not prevent granting inventorship to the AI application.

In addition, law can be revised through a legal procedure to create new legal subjects such as legal persons and grant them rights. Therefore, **even if the inventor is interpreted in a narrow sense, it is still possible to grant inventorship to an AI application.**