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**Artificial Intelligence (AI) as an Inventor: Indian Perspective**

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# Artificial Intelligence (AI) as an Inventor: Indian Perspective

## Introduction:

- The domain of Artificial Intelligence (AI) is rapidly advancing and finding new utility frequently. It continues to overhaul on how to approach and solve problems in a wide variety of fields.
- Though AI is yet to innovate independently, its application in inventive activities is challenging traditional concepts of inventorship. Some patent offices have also issued specific guidelines and/or amended their patent laws related to inventorship in view of challenges imposed by AI-based inventions.
- The present session intends to analyze the possibility of naming an AI as an inventor / co-inventor under the current Indian Patent Laws.

# Artificial Intelligence (AI) as an Inventor: Indian Perspective

## Current Law and Practice related to inventorship for Patents in India:

- Indian Patent Act *does not* have a *specific definition for* the term *inventor*. In the absence of an explicit definition, it becomes *essential to read the Indian Patent Act as a whole* to understand the intention of the legislators and arrive at an understanding of the term inventor.
- To qualify as an *inventor* for a patent in India, a ‘person’ should be *true* (*genuine*) *and first to invent*.
- The Patents Act and Rules of India, prescribed forms and fee structures, broadly *characterizes ‘person’ under* following *two (2) categories*:
  - Natural Person; and
  - Legal / Juristic Person.

# Artificial Intelligence (AI) as an Inventor: Indian Perspective

## Current Law and Practice related to inventorship for Patents in India:

- Section 6 of Indian Patent Act which lists ‘persons’ entitled to apply for a patent also lists a ‘true and first inventor’ as one such category. Said section, differentiates an inventor from ‘Assignee’, or ‘Legal Representative’ of the inventor’.
- Section 2(1)(y) of the Act excludes the first importer from being a ‘true and first inventor’.
- In *V.B. Mohammed Ibrahim v. Alfred Schafranek*, AIR 1960 Mysore 173, it was held that:
  - A financing partner and / or a corporation cannot be treated as an inventor
  - Such a person neither contributes any ingenuity nor skill nor technical knowledge towards the invention.

# Artificial Intelligence (AI) as an Inventor: Indian Perspective

## **Current Law and Practice related to inventorship for Patents in India:**

- Thus a *natural person is differentiated* from others. There appears to be a *bar for person other than* the *natural person* to claim inventorship. Also, a *standard based on* ingenuity / skill / technical *contribution* has been set to qualify as as inventor.
- *What happens* when an AI contributes ingenuity or skill or technical knowledge towards the invention?
- In *Som Prakash Rekhi vs Union Of India & Anr on 13 November 1980 AIR 1981 SC 212*, Supreme Court held that *juristic person* is one to whom the “*law attributes personality*”.
- AI *fails to* qualify as juristic person. Thus naming it as inventor *leads to ambiguous interpretation* of Act.

# Artificial Intelligence (AI) as an Inventor: Indian Perspective

## Policy Consideration:

- In case of an ambiguity in the interpretation of a statute, the legislative intent and public policy tend to play a vital role in understanding the intention of statutes and laying possible future roadmap of its development.
- The legislative intent behind the Indian Patent Act can be found in the Ayyenger Committee report of 1959.
- The National Intellectual Property Rights (IPR) Policy on 12 May 2016 and laid out the future roadmap for IPRs in India.
- They demonstrates an intention of safeguarding the interest of the inventor / natural person who is the creator of IP and who can exercise his moral rights. As AI neither have moral rights nor can enjoy envisioned in said policies, it tends to fall outside ambit of being inventor under Indian Laws.

# Artificial Intelligence (AI) as an Inventor: Indian Perspective

## Examination of Inventions with AI contribution:

- As Indian Law is yet to explicitly recognize AI as an inventor, actions performed by an AI are to be considered the same as those of a tool. Therefore it appears that the contribution of an AI may be examined in uniformity with computer-related inventions (CRI).
- Subject to other requirements, Patent is likely to be granted for 'technical effect' or 'technical contribution' of the invention (*In consistency with FERID ALLANI Vs IPO dated 12 December 2019, by Delhi High Court*).
- However, for results expected from AI operations, patent rights may be limited and unexpected operations may continue to be termed as surprising results observed by inventors.

# Artificial Intelligence (AI) as an Inventor: Indian Perspective

## **Way forward:**

- With prevailing laws and National IPR policy adopted by the Government of India, it is unlikely that an AI would be named as an inventor / co-inventor in India anytime soon.
- Such inclusion would require recognition of AI as a juristic person along with the amendment of existing Patent Laws in India.
- For the convenience of stakeholders, we hope that a harmonized approach of all IP offices is adopted to successfully combat the new the challenges posed by Artificial Intelligence.



## About the Author / Speaker:

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Ankush Mehta is a Registered Indian Patent and Design Attorney and Agent, and Trademark Attorney. He is also a certified IP Protection Lawyer by Japan Patent Office. He is Principal Attorney at Mehta & Mehta Associates (MehtaIP). He completed his engineering studies in the domain of electronics and communication. He is also a member representative of MehtaIP at JIPA and a member of the Standing Committee of AIPPI at the IP Office Practice and Procedures Committee. He handles and supervises both contentious and non-contentious patents (in various fields of science and engineering), as well as trademarks and design matters. In particular, he has assisted multinational businesses, including Fortune 500 companies and UN Organizations, in the field of CRIs, telecommunications, pharmaceuticals, biotechnology, automobiles, electronic devices, aerospace, petrochemicals, metallurgy and medical devices.

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Thank You!  
ありがとうございました

Thought of the Day – Innovate to improve, innovate for all!