

Artificial Intelligence (AI) as an Inventor: Indian Perspective

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 given challenges imposed by AI-based inventions.

The present article intends to analyze the possibility of naming an AI as an inventor / co-inventor under the current Indian Patent Laws.

Current Law and Practice related to inventorship for Patents:

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 relevant provisions of the Patents Act, 1970 (*hereinafter the 'Act'*) and The Patents Rules, 2017 (*hereinafter the 'Rules'*) of India, prescribed forms and fee structures under First Schedule of the Act, broadly characterizes 'person' under following two (2) categories:

- Natural Person (*the said term is mentioned explicitly in the Rules*); and
- Legal / Juristic Person which is divided further into two (2) categories, that is, Small Entity and Start-ups and others (*including Firm, Companies, State or Government*).

Section 6 of the Act which lists 'persons' entitled to apply for a patent also lists a 'true and first inventor' as one such category. As per said Section, an inventor is recognized differently from 'person claiming to be 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'.

The limited Indian Case laws setting precedent in regards to inventorship further adds clarity on the requirement to qualify as an inventor. In *V.B. Mohammed Ibrahim v. Alfred Schafranek*, AIR 1960 Mysore 173, it was held that a financing partner could not be treated as an inventor as such a person neither contributes any part of his ingenuity nor skill nor technical knowledge towards the invention in question. It further held that "A corporation cannot be the sole applicant claiming to be the inventor".

A reading of abovementioned provisions of law along with the above-cited judgment differentiates a natural person from others. It also seems to bar person other than the natural person from claiming inventorship. Therefore, a natural person who is true and first to invent; and who contributes his ingenuity or skill or technical knowledge towards the invention appears to fulfil the requirement to qualify as an inventor in India.

In light of the above judgement, one may also argue that an AI may also contribute ingenuity or skill or technical knowledge towards the invention, thereby qualify as an inventor. Clarification in this regard may be sought from another judgment by the Hon'ble Supreme Court of India. In *Som Prakash Rekhi vs Union Of India & Anr on 13 November 1980 AIR 1981 SC 212*, Supreme Court held that a juristic person is one to whom the “*law attributes personality*”.

Presently as AI is not recognized as a juristic person in India, neither can it become a party to a contract nor can it independently engage in transferring/obtaining rights to patent/patent application. Further, it would be inherently barred from opposing/revoking a patent application/patent as such rights are conferred only to a ‘person’. Likewise, AI would be unable to perform numerous rights and duties given under the Act to a ‘person’. Given the same, AI not only appears to fall short of fulfilling requirement to qualify as an inventor in India but naming them as inventor / co-inventor may lead to ambiguous interpretation.

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.

This report suggested mentioning of inventors as a matter of right in patents. The principle behind such suggestion was that whether or not the actual deviser has a proprietary right to the invention, he has a moral right to be named as the inventor. Such a mention of inventor's name besides affording him mental satisfaction also gives him prestige and increases his economic worth, advantages to which he is legitimately entitled. However, by a contract/agreement in law, he may have parted with his proprietary interest in a particular Patent granted but continues to retain this moral right.

Subsequently, the Indian government also approved the National Intellectual Property Rights (IPR) Policy on 12 May 2016 and laid out the future roadmap for IPRs in India. One of the visions of the National IPR Policy was to devise mechanisms so that the benefits of the IPR regime reach all inventors. It identifies a requirement to sensitize the inventors and creators of IP on measures for protection and enforcement of their rights. It discusses nurturing IP culture and enables inventors to realize their potential for generating, protecting, and utilizing IPRs, which would contribute to wealth creation, employment opportunities, and business development.

Analysis of legislative intent and current public policy 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. AI, on the other hand, can neither be entitled to moral rights nor seem to enjoy benefits envisioned by the legislative intent or public policy. Considering the same, under prevailing laws in India, naming of AI as inventor / co-inventor appears to be unlikely till explicit amendments are carried to that effect.

Examination of Inventions with AI contribution:

If AI cannot be named as an inventor, then what should be expected during the examination of an AI-based patent application?

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 examination of computer-related inventions (CRI) in India.

In *FERID ALLANI Vs IPO dated 12 December 2019*, Hon'ble Delhi High Court in India held that if the invention demonstrates a 'technical effect' or a 'technical contribution' it is patentable even though it may be based on a computer program. Therefore, subject to fulfilment of other requirements for a grant, Patent is likely to be granted for 'technical effect' or 'technical contribution' of the invention. 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.

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 challenges posed by Artificial Intelligence.

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