

## PATENTABILITY OF AI INVENTIONS

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**Best Citation** - Gaurika Singh, PATENTABILITY OF AI INVENTIONS, ILE Monthly Review, 1 (1) of 2023, Pg. 01-04, ISBN - 978-81-961828-8-5

### Abstract

India has laws to protect a person's intellectual property when it comes to intelligence. The Indian Patents Act, passed in 1970, lays out the guidelines for granting intellectual property rights to those who create novel and groundbreaking innovations. With the development of technology, AI is now able to create original concepts that are patentable. However, the pertinent question to ask is if our current legal system acknowledges AI as inventors, and if so, what benefits and drawbacks there may be. Therefore, the objective of this paper is to research on the fundamental principles of patent law that must be considered in this context as well as the legal ramifications of patenting AI.

**Keywords:** Artificial Intelligence, WIPO, Patents Act, Patentability, Inventions

### Introduction

Artificial intelligence is the capacity of a robot or computer to carry out actions frequently performed by humans or other intelligent organisms. This involves the capacity for deductive reasoning, judgement, and generalisation based on algorithmic data processing. The computer is pre-programmed and can perform intuitive thinking, also known as machine learning, and data analysis by examining the repetitive patterns of human behaviour. Knowing the legal framework of patents for artificial intelligence and machine learning would be prudent given the importance of these technologies both worldwide and in India. The paper would examine the contemporary developments in

patentability of AI inventions, and the Indian legal framework governing their protection.<sup>1</sup>

### Literature Review

Artificial intelligence-based inventions are scrutinised in a manner akin to inventions that are computer-related. The inventions must meet the conditions of **Section 3(k) of the Patent Act**, which limits the ability to patent computer programmes as a whole. Most advancements in today's digital world are built by computer programmes, thus denying them protection would stifle innovation.<sup>2</sup>

A person or his assignee, or the legal agent of any decedent, may submit a patent application in accordance with Section 6 of the Indian Patent Act. The patent can be filed by either a natural person or a government agency. There is no mention of the machine being listed as an inventor on a patent, though.<sup>3</sup>

According to the court's ruling in the case of **V.B. Mohammed Ibrahim v. Alfred Schafranek**, only a natural person who actively contributes their skill or knowledge to the innovation qualifies as the inventor in legal terms. As a result, it is not viable to recognise AI as patent holders.<sup>4</sup>

<sup>1</sup> White Paper, *Artificial Intelligence Collides with Patent Law*, WORLD ECONOMIC FORUM, (Oct. 18, 2022, 6:57 PM), [http://www3.weforum.org/docs/WEF\\_48540\\_WP\\_End\\_of\\_Innovation\\_Protecting\\_Patent\\_Law.pdf](http://www3.weforum.org/docs/WEF_48540_WP_End_of_Innovation_Protecting_Patent_Law.pdf)

<sup>2</sup> *Current Scenario of Artificial Intelligence and patent protection in India*, RNA (Oct. 18, 2022, 12:14 AM), [https://rnaip.com/current-scenario-of-artificial-intelligence-and-patent-protection-in-india/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=current-scenario-of-artificial-intelligence-and-patent-protection-in-india](https://rnaip.com/current-scenario-of-artificial-intelligence-and-patent-protection-in-india/?utm_source=rss&utm_medium=rss&utm_campaign=current-scenario-of-artificial-intelligence-and-patent-protection-in-india).

<sup>3</sup> Essense Obhan, *Driving Into The Future: Regulating Autonomous Vehicles*, MONDAQ (Oct. 18, 2022, 12:14 AM), <https://www.mondaq.com/india/patent/1239240/driving-into-the-future-regulating-autonomous-vehicles>.

<sup>4</sup> Nayantara Sanyal, *Inventions By Artificial Intelligence: Patentable Or Not?*, MONDAQ (Oct. 18, 2022, 12:14 AM), <https://www.mondaq.com/india/patent/1223510/inventions-by-artificial>

It may be claimed, however, that an AI could also contribute its expertise or technical knowledge to an innovation in order for it to qualify as an invention.<sup>5</sup> The Supreme Court ruled in **Som Prakash Rekhi v. Union of India** that a jurisdictional person is the one has been given "personality" by law. A legal entity that has the ability to sue or who may be sued by another is referred to as having a juristic personality.<sup>6</sup>

The Supreme Court of the United States noted in the case of **Mayo Collaborative Servs v. Prometheus Lab** that artificial intelligence (AI) is the fundamental tool of scientific and technological endeavour and that establishing monopolies on them through patents would impede innovation. Patents shouldn't be issued for claims that merely replicate human action without requiring an inventive step.<sup>7</sup>

However, the Department of Commerce's Parliamentary Standing Committee ("Standing Committee") has suggested that the Department include new discoveries related to artificial intelligence (AI) and upcoming AI technologies under the purview of the Patents Act.<sup>8</sup>

### Research Methodology

This research paper shall use a combination of doctrinal and quantitative research methodology to find out the solutions to the issues mentioned. Doctrinal legal research methodology places more emphasis on the letter of the law than the actual application of the law. By employing this technique, the author shall create a descriptive and thorough examination of legal provisions discovered in

primary sources (cases, statutes, or regulations). The aim of this approach is to collect, arrange, and describe the law; to offer comments on the sources used; and, last, to identify and characterize the overarching theme or system and the connections between each source of law.

### Research Question/Issues

The following research questions will be addressed in this paper-

1. Whether inventions by Artificial Intelligence are patentable under the Patents Act.
2. Who has ownership of AI Inventions.
3. Who would be liable for infringement of inventions by AI.
4. How should an autonomous AI's accountability for patent infringement be handled.

### Outcome and Conclusion

Artificial Intelligence inventions should be judged on the basis of their "technical contribution" and "technical effect". Therefore, the technology should be granted a patent if it is capable of solving a technical problem through technical means.<sup>9</sup>

There may be certain repercussions of the same like, changing the standard of 'a person skilled in the art', dealing with the rights of the AI to sue, transfer, own or assign the invention, impact on human employment, etc.<sup>10</sup>

The intent of the Patent Act needs to be considered. Even though one may not have complete legal control over the innovation, everyone has a moral right to claim credit as the inventor. Even if the inventor may have agreed to contracts or agreements giving up their exclusive rights, the idea behind approaching the inventor for an invention was to help the inventors increase the economic value to which they are legally entitled.

intelligence-patentable-or-not#:~:text=As%20on%20date%2C%20these%20provisions,the%20AI%20as%20the%20inventor.&text=The%20content%20of%20this%20article,guid e%20to%20the%20subject%20matter.

<sup>5</sup> Archana Raghavendra, *Does AI Qualify As An 'Inventor' Based The Statute In Indian Patents Act, 1970?*, MONDAQ (Oct. 18, 2022, 12:18 AM), <https://www.mondaq.com/india/patent/1147320/does-ai-qualify-as-an-inventor39-based-the-statute-in-indian-patents-act-1970>.

<sup>6</sup> Som Prakash Rekhi v. Union Of India, 1980 AIR 1981 SC 212.

<sup>7</sup> Mayo Collaborative Servs v. Prometheus Lab, 566 U.S. 66 (2012).

<sup>8</sup> Muskan Saxena, *Patenting AI and its Legal Implications*, CENTRE FOR INTELLECTUAL PROPERTY RIGHTS RESEARCH AND ADVOCACY (Oct. 18, 2022, 12:44 AM), <https://iprlawindia.org/wp-content/uploads/2021/04/Muskan-Saxena.pdf>.

<sup>9</sup> Pooja Agarwal, *Research Paper on Artificial Intelligence* (Oct. 18, 2022, 6:00 PM), <http://www.casestudiesjournal.com/Vol-2,Issue%206%20paper%202.pdf>.

<sup>10</sup> Jatin Borana, *Applications of Artificial Intelligence & Associated Technologies* (Oct. 18, 2022, 6:12 PM), [http://www.sdtechnocrates.com/ETEBMS2016/html/papers/ETEBMS-2016\\_ENGEE7.pdf](http://www.sdtechnocrates.com/ETEBMS2016/html/papers/ETEBMS-2016_ENGEE7.pdf).

However, neither the benefits intended by the legislative intent nor moral rights may be granted to AI under current Indian law.<sup>11</sup>

The paper makes it clear that an AI cannot now be recognised in India as an inventor. However, due to the fact that AI is employed as a tool to aid the creator, inventions linked to AI are currently recognised in India.

AI must be treated as a legal person with all of the rights and duties that come with that status in order for it to be listed as an inventor. The alternative is to omit any inventors from the list. However, to do this, the patent law framework would need to change so that patents for AI could be granted without naming the creator. In such a situation, adequate steps must be done to offer incentives to those involved in developing and maintaining AI in order to continue creating AI that inspires original thought.<sup>12</sup>

When it comes to culpability for infringement, one possibility is to include an insurance system in which a fund is established for paying infringement damages. The second choice might be to blame AI directly. Giving AI the status of a legal person would be necessary for this. According to the European Parliament Resolution, future legislative measures shouldn't aim to reduce damages just because a non-human caused the violation.<sup>13</sup>

If a human agent is found guilty of violating a law, their liability should be proportionate to the amount of power they granted AI. However, the culpability must be determined in the same way as in the case of a corporate company if AI is to be held liable for infringement after being acknowledged as a legal person. A contractual arrangement is an additional choice because it

offers a foreseeable resolution in the event that an infringement happens. The party who was wronged will be compensated in accordance with the terms of the agreement and is entitled to damages in accordance with the relevant articles.<sup>14</sup>

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<sup>11</sup> Richard Kennedy, *Patenting Artificial Intelligence* (Oct. 18, 2022, 6:19 PM), <https://www.vennershipley.co.uk/resources/news/2018/11/26/patenting-artificial-intelligence>.

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