A STUDY ON INVENTORSHIP IN INVENTIONS INVOLVING AI ACTIVITY

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AGENDA

• Introduction
• AI as inventor under current patent regimes
• Inventors in inventions involving AI activity
• Ownership of inventions involving AI activity
• Practical aspects of applications concerning inventions involving AI activity in the patent grant proceedings under the EPC
• Is the current legal framework, in particular the EPC, suitable for addressing inventorship and ownership of inventions involving AI activity?
INTRODUCTION

• **Definition** – What is being referred to as AI relies on performing mathematical methods or algorithms by way of a computer implementation. These methods or algorithms are typically capable of learning from data and process data in a manner that demonstrates "intelligence".

• **AI as inventors** – identifying AI systems as inventors may not only require accepting inventorship beyond natural persons under patent law, but also recognising computers as legal persons; this would represent a far-reaching reassessment of ourselves as humans and society's relationship with technology.
INVENTORSHIP RULES UNDER CURRENT PATENT REGIMES

• US, Japan, P.R. China, R. Korea, Germany, France, UK and Switzerland all appear to require creative or intelligent conception of the invention, or contribution thereto; it is a feature that either explicitly or implicitly runs throughout the definition of inventorship in all above jurisdictions.

• When assessing the nature of contribution to the conception stage it must be borne in mind that the real inventive 'spark', the decisive element that makes an invention work and differentiates it from that which has gone before does not necessarily have to originate from the inventive effort of the inventor.

• At present, AI systems could not be considered as inventors under the above patent regimes.
INVENTORS IN INVENTIONS INVOLVING AI ACTIVITY

• How to determine the inventor of an invention involving AI activity?
• How are the rights of the inventor impacted by the definition of the inventor, especially the moral rights?
• If the inventor status is not limited to natural persons, how can the moral and substantive rights of inventor(s) be safeguarded in the patent grant proceedings?
• If the inventor status is not limited to natural persons, how is this to be indicated in the designation of inventor, and which function in the chain of creation of the invention is to be indicated as inventor?
OWNERSHIP OF INVENTIONS INVOLVING AI ACTIVITY

• To whom does the right to a European patent belong in case of inventions involving AI activity?
  • where AI may be considered as inventor;
  • where the present status-quo is kept and only natural persons may be considered as inventors.

• How to define the applicable law concerning inventorship and ownership of the invention?

• How to apply the concepts of inventor and applicant in relation to inventions involving AI activity in the European patent grant proceedings?
What are the legal consequences of indicating AI as inventor or co-inventor in a European patent application?

• Not only that the present legal position does not allow for AI systems to be considered as inventors, it is submitted that at present there are no convincing reasons to consider a change in this respect.

• Hence, should a patent application be filed with the EPO designating an AI system as an inventor, it is likely to be found to be deficient under Article 81 and Rule 19 and, if not remedied, such application should be refused under Article 90.
THE SUITABILITY OF THE CURRENT REGIME, IN PARTICULAR THE EPC, FOR ADDRESSING INVENTORSHIP AND OWNERSHIP OF INVENTIONS INVOLVING AI ACTIVITY

• Suitability of rules on inventorship –
  for now as well as for the foreseeable/near future

• Suitability of rules on ownership –
  for now as well as for the foreseeable/near future
THANK YOU FOR YOUR ATTENTION QUESTIONS?