

CIPA calls for clarity about artificial intelligence and patents

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The Chartered Institute of Patent Attorneys (CIPA) in the UK has called for clarity over the patenting of innovations created by artificial intelligence. The issue has drawn a lot of attention lately. Last January, the EPO stated a machine cannot be an inventor, refusing patent applications EP 18 275 163 and EP 18 275 174 in which a machine called DABUS was named as the inventor.

In a position paper published this week, CIPA wrote: "Until very recently, human intellectual and practical endeavour has been responsible for creating (...) inventions (...). However, as the cognitive capabilities and power of artificial intelligence (AI) systems improve, they are already participating in advances across a wide range of technical fields, including medical research, such as drug discovery, and autonomous vehicles. An invention may be created using an AI system that will challenge this human-centric view of inventorship."



The paper refers to consultations and studies by the USPTO, the EPO and the UK Intellectual Property Office (IPO). In the decisions mentioned above, the EPO "considered that the interpretation of the legal framework of the European patent system leads to the conclusion that the inventor designated in a European patent must be a natural person. The Office further noted that the understanding of the term inventor as referring to a natural person appears to be an internationally applicable standard, and that various national courts have issued decisions to this effect."

According to the CIPA paper, there is "a tension between a desire by some applicants to obtain patent protection for an invention apparently created solely by an AI system, and the current legal position as expressed by various patent offices."

"Many in CIPA think patent rights should be available for inventions which represent new, non-obvious technical developments, regardless of how they were created (with or without an AI system).

Others in CIPA prefer to limit patent protection to inventions having a human contribution - in effect, retaining current inventorship requirements, but accepting that an invention created using AI is patentable as long as there is a genuine human contribution."

CIPA calls for an investigation of the issue, "including discussions with stakeholders such as industry, policy-makers and legislators", as "the ongoing uncertainty might cast doubt on the validity of granted patents for inventions created using an AI system; it might also potentially impact AI supported research and development in the UK and elsewhere."