

Kluwer Patent Blog

Brazilian Congressman introduces bill to allow AI as inventor

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On February 20, 2024, a Brazilian Congressman introduced a bill to amend the national IP Statute (Law #9,279/96) and regulate the ownership of inventions generated by artificial intelligence systems. Bill #303/2024 proposes the addition of a paragraph to Article 6 of the IP Statute, which regulates ownership of inventions, with the following wording: *“in the case of inventions autonomously generated by artificial intelligence systems, a patent can be requested in the name of the artificial intelligence system that has created the invention, being the artificial intelligence system considered the inventor and owner of the rights arising from the invention.”*

In the justification for the bill, the Congressman mentions the DABUS case, citing an article^[1] that compiles the decisions rendered in different jurisdictions relating to a patent application filed by Stephen Thaler for an invention created by his AI machine, called DABUS. The Congressman observes that *“although in some countries the applications were initially rejected based on the argument that the inventor needs to be a human person, in other places the debate continues, with arguments being presented in favor and against the possibility of AI being listed as an inventor.”*

Against this background, the Congressman says the bill aims to update the Brazilian legislation to the reality of technological innovations, eliminating uncertainties that could harm development in this field. The Congressman states that *“by allowing that these systems be recognized as patent inventors, we are incentivizing innovation and research on this field, at the same time as we guarantee a legal system that is effective in the protection of intellectual property rights.”*

Currently, in the absence of a statutory provision regulating AI-generated inventions, the BRPTO rejects the possibility of indicating an AI system as inventor in a patent application filed in Brazil. In 2022, the BRPTO federal attorneys issued a legal opinion (Opinion #24/2022) observing, as a premise, that the rules regulating the acquisition of intellectual property rights *“have historically ignored the possibility of non-human figures, or machines, being the authors of artistic works or inventions.”* In this sense, Article 6 of the Brazilian IP Statute has wording which, according to the federal attorneys, only allows for human beings to be named as inventors in patent applications. They then conclude that *“at this moment, eventual invention patents developed or generated by artificial intelligence challenge the current system to protect industrial property rights.”* As an afterthought, the federal attorneys affirm that *“specific legislation needs to be enacted regulating inventions developed by artificial intelligence machines, which will probably be preceded by international treaties aimed at harmonizing the principles of protection at the national level.”*

Bill #303/2024 closes this gap in the Brazilian legislation, although the wording proposed still

leaves rooms for questions. The IP Statute will also require an amendment to clarify, for instance, who would be entitled to file an application for an AI-generated invention. The paragraph proposed in the bill says nothing about this. Its final part (“*being [the artificial intelligence system] considered the inventor and owner of the rights arising from the invention*”) seems to indicate that the application could (or perhaps even, should, absent an express assignment) be filed in the name of the AI system. This is in line with Article 6, paragraph 2, of the current statute, which establishes that “*the patent can be filed in the inventor’s name, by their heirs or successors, by the assignee, or by the person or entity to whom the law or the employment or service provider contract determines the ownership belongs.*”

However, conflict may arise wherein the entity that invented the AI system is different from the entity (company or person) that is taking the measures to apply for an application for that AI-generated invention. Amending the IP Statute to regulate these other aspects related to AI-generated inventions would help to diminish the uncertainties even further.

There will be plenty of opportunities for this to be done. Bill #303/2024 will soon be assigned to one of the House of Representatives Committees. The President of the House will define which committee will discuss the bill based on its thematic relevance. Since Bill #303/2024 proposes an amendment to the IP Statute, it will likely be sent to the Industry, Commerce, and Services Committee. There, a House Representative will be designated as its rapporteur. The bill will probably also be sent to the Science, Technology, and Innovation Committee.

The rapporteur is responsible for consulting experts and the public to write a report which will then serve as basis for debate and voting by the other members of the committee(s). If the bill passes this stage, it will be sent to the Constitution and Justice Committee, where it is assessed whether the bill violates any provision of the Constitution. Afterwards, if approved, the bill will be sent directly to the Senate. If any of the House Committees vote to reject the bill, it will be returned to the President, who will put the bill up to a vote in a plenary session.

[1]

<https://www.ipstars.com/NewsAndAnalysis/The-latest-news-on-the-DABUS-patent-case/Index/7366>

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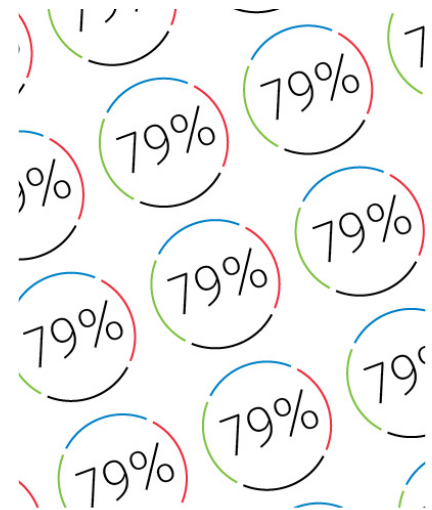
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