

# Kluwer Patent Blog

## Brazil: Update on Bill on AI-Generated and Assisted Inventions

Roberto Rodrigues Pinho, Tatiana Machado (RNA Law) · Wednesday, October 9th, 2024

*Rapporteur's Opinion proposes substitute text and recommends approval*

In February 2024, a Brazilian congress member, Antônio Luiz Rodrigues Mano Júnior (known as Júnior Mano), 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, if approved, would allow patenting autonomously generated AI, naming the AI system itself as the inventor.

On October 7, 2024, the rapporteur assigned in the Industry, Commerce, and Services Committee, Representative Leonardo Gadelha, submitted his Opinion recommending the approval of the bill with a substitute text.

### Criticism of the Bill

Rep. Gadelha's Opinion observes that the proposal to allow AI systems to be named as inventors "faces substantial criticism." One of the main opposing arguments is the absence of legal personality in AI systems, an essential condition for patent rights ownership. In Brazil, similarly to other jurisdictions, only natural persons and legal entities can hold patents.

The rapporteur further points out that "assigning authorship to an AI could also undermine the protection and value of human creativity," since "creativity and inventiveness are inherently human characteristics." Recognizing AI systems as inventors could dilute the value of intellectual human labor and "discourage investments in developing human creative and intellectual skills, redirecting resources toward improving AI systems."

Another point highlighted in the Opinion relates to the "ambiguity in ownership." If an AI system were considered the inventor, who would own the intellectual property rights: the AI developer, the system operator, or the entity providing the data for the AI's training? According to Article 6, §2, of the IP Statute, a patent can be applied for by the inventor, their heirs, successors, assignees, or employer/contractor. Who would be authorized to apply for a patent on behalf of the AI system? Would this authorized party act as a mere representative or as the actual applicant/patent holder?

The Opinion also recognizes the the impact such a change would have on "how inventions are registered and protected, requiring adjustments in patent systems not only at the national level but also in multilateral organizations."

## **The solution proposed by the Rapporteur**

Despite these criticisms, Rep. Gadelha asserts that Bill #303/2024 “opens a virtuous and necessary path for the discussion of using AI systems in the field of inventions.” Therefore, he proposes a substitute text and recommends the approval of the bill.

The substitute text proposes adding a new paragraph to Article 6 of the IP Statute with the following wording: “In cases where the invention or utility model is developed with the assistance of artificial intelligence systems, the patent ownership will be assigned, in all cases, to the author, following the provisions of §1 of this article.”

Additionally, it suggests amending Article 19 of the IP Statute to require, for a patent applicant, a “descriptive report on the use of artificial intelligence systems in the development of the invention or utility model, classifying the level of assistance provided by AI systems into categories: absent assistance, partial assistance, predominant assistance, or fully autonomous, as regulated.”

Article 35, on its turn, would establish that the opinion issued by the Brazilian PTO (*Instituto Nacional da Propriedade Industrial* – INPI) during the technical examination may also address the classification of the level of assistance provided by AI systems.

Finally, the substitute text introduces a modification to patent terms, which would be adjusted according to the level of AI participation. Invention patents developed “with the predominant assistance of an AI system” would have a term of five years from the filing date. Invention patents generated “fully autonomously” by AI would be in force for three years. For utility models, the terms would be three years and one year, respectively.

## **Considerations on the substitute text**

Although Rep. Gadelha’s proposal aims to make the “necessary adjustments for the full effectiveness” of Bill #303/2024, it does not fully resolve the issues identified in the Opinion.

The substitute text stipulates that patent ownership in cases of inventions or utility models developed with AI assistance will be granted to the human “author.” For inventions or utility models developed with partial (or even predominant) AI assistance, this poses no problem. However, who would be the “human author” when the invention or utility model were developed fully autonomously by the AI system? This is not clear.

Moreover, even though the Opinion acknowledges the need to define “new criteria for assessing inventiveness, novelty, and industrial application” for these inventions, the substitute text itself does not address this point.

The assessment of the inventive step for inventions developed with partial AI assistance shall be based on the human author’s contribution; however, in the case of inventions predominantly or autonomously generated by AI, what should be the parameter? What would be the definition of a “person skilled in the art”? Beyond the (relevant) discussions about the legal personality of AI systems, a fundamental question arises here: are AI systems capable of autonomously developing something that is inventive in the traditional sense?

The change proposed for patent terms is also a potential source of contention. First, it is questionable whether Brazil can establish a reduced term for patents, seeing as the TRIPS

Agreement stipulates that term of protection available shall not end before the expiration of a period of twenty years counted from the filing date (Article 33).

Secondly, the proposal uses vague concepts that may create uncertainty. Considering that the substitute text only refers to predominant and fully autonomous assistance in Article 40, one can infer that inventions developed with partial assistance will be entitled to a patent term of 20 years from the filing date. However, how to distinguish between partial and predominant assistance? Would it be up to the Brazilian PTO to establish this distinction?

### **Final Considerations**

For some years now, the issue of inventorship and ownership of AI-generated or AI-assisted inventions has been challenging courts and patent offices worldwide. However, the prevailing understanding, at least in major jurisdictions, is that inventions autonomously generated by AI cannot be patented because AI systems cannot be named as inventors.

While it is often said that the legislative process is too slow to keep up with technological advancements, there are situations where it is indeed better to wait for the issue to mature. Therefore, given this scenario, Brazil's initiative to "lead the way" in regulating this topic seems premature. Rep. Gadelha's Opinion acknowledges that "a lack of international uniformity could hinder the mutual recognition of patents between countries, creating legal uncertainties for companies operating globally." Would it not be better to wait for further progress in discussions, then?

---

*To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please [subscribe here](#).*

### **Kluwer IP Law**

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

---

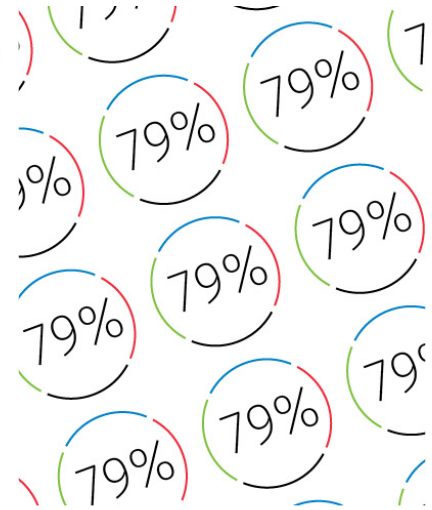
79% of the lawyers think that the importance of legal technology will increase for next year.

**Drive change with Kluwer IP Law.**

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT  
The Wolters Kluwer Future Ready Lawyer  
Leading change



This entry was posted on Wednesday, October 9th, 2024 at 12:42 pm and is filed under [Patents](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.