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Intellectual Property Alert

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USPTO answers FAQs on Inventorship Guidance for AI-Assisted Inventions

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The USPTO clarifies how inventorship is analyzed for artificial intelligence (AI)-assisted inventions.



What's the impact?

- Responding to [FAQs](#) on recent [Guidance](#) for AI-Assisted inventions, the USPTO clarifies that it did not create a heightened standard for inventorship when AI technologies are used in the creation process.
- Stakeholders and examiners engaged in inventorship analysis should focus on the human contribution to the conception of an invention.

In February 2024, the United States Patent and Trademark Office (USPTO) issued Inventorship Guidance for AI-Assisted Inventions. Expressing the position of the Federal Circuit, the USPTO reiterated that an inventor or joint inventor must be a natural person who has contributed to at least one claim of a patent. Thus, any patent application naming a machine as an inventor or a

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joint inventor on an Application Data Sheet (ADS), an inventor's oath or declaration, or a substitute statement has improper inventorship.

No heightened standard for inventorship

The USPTO's new FAQs page indicates that the Guidance did not create a heightened standard for inventorship, and stresses that [existing law](#) applies regardless of the tools used in creating an invention. Thus, AI-based inventorship analysis should focus on the human contribution assessed using "guiding principles," namely:

- / A person's use of an AI system in creating an AI-assisted invention does not negate the person's contributions as an inventor;
- / A person merely recognizing a problem and prompting the AI system to produce a solution to the problem is not a proper inventor;
- / A person who takes the output of an AI system and makes a significant contribution to the output to create an invention may be a proper inventor;
- / A person who designs, builds, or trains an AI system in view of a specific problem to elicit a particular solution could be an inventor, where the designing, building, or training of the AI system is a significant contribution to the invention created with the AI system; and
- / A person who maintains intellectual domination over an AI system does not make that person an inventor of any inventions created using the AI system.

No additional duties of disclosure

The USPTO also indicates that the Guidance did not impose additional duties to disclose information beyond what is already mandated by existing rules and policies. According to [MPEP § 2001](#), applicants and individuals associated with the filing or prosecution of a patent application are responsible for meeting existing duties to disclose information material to patentability.

Presumption of inventorship maintained

And finally, according to the USPTO, the Guidance did not impose additional responsibilities to examiners to investigate inventorship for AI-assisted invention. As such, examiners will continue to presume, without further inquiry, that a named inventor or joint inventor in an application is the actual inventor or joint inventor to be named on the patent. [MPEP § 2157](#).

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