

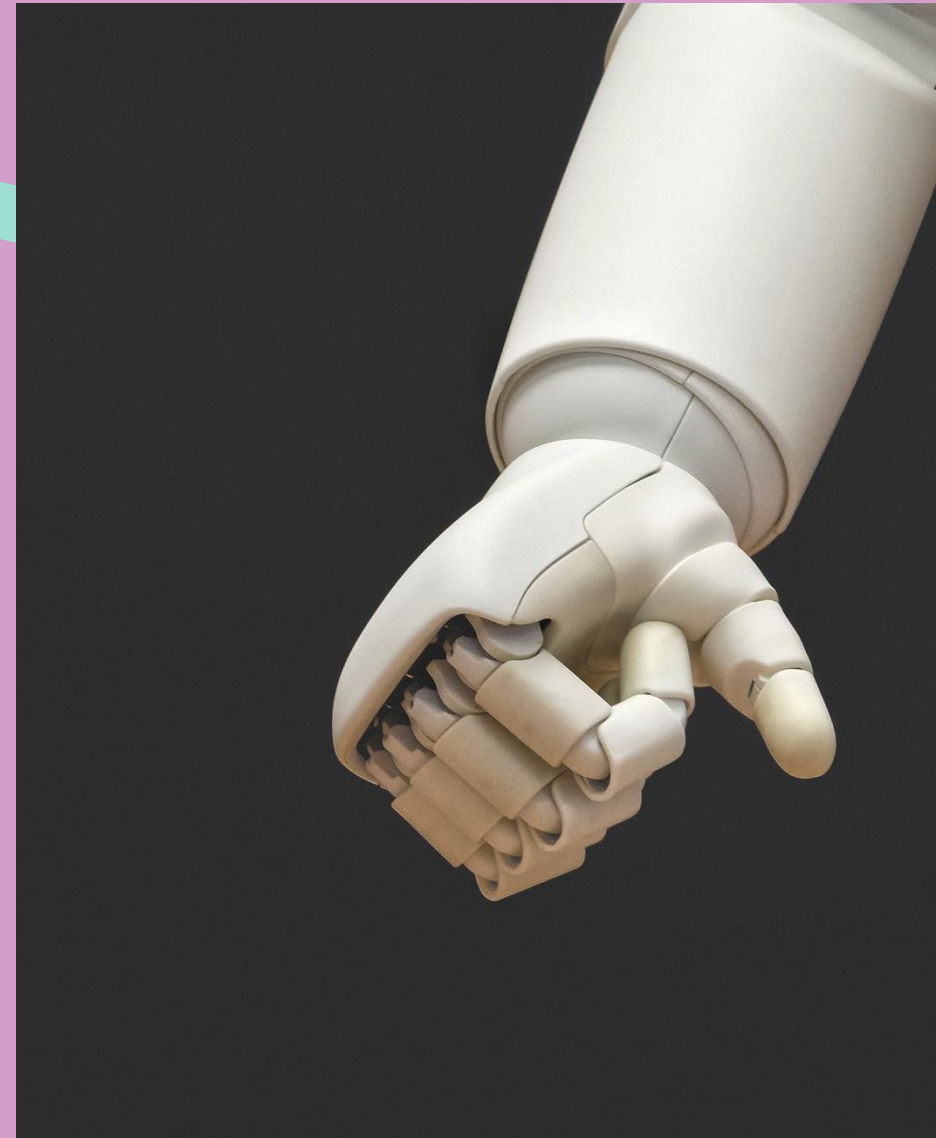
Bird & Bird

AI 'inventorship'

November 14th, 2025

Bird & Bird

AI Inventorship



AI as an inventor in Europe

DABUS has been rejected as an inventor in the European Patent Office (EPO) and in the German and UK courts in appeals from DPMA and UKIPO.

The European Patent Convention (EPC) provides:

Article 60(1):

"The right to a European patent shall belong to the inventor or his successor in title..."

Article 81:

"The European patent application shall designate the inventor. If the applicant is not the inventor ... the designation shall contain a statement indicating the origin of the right to the European patent."

AI as an inventor in Europe

EPO decision J8/20, December 21st 2021

"A machine is not an inventor within the meaning of EPC"

Article 60(1) fulfils three functions:

- (1) Creates right to the patent;
- (2) Vests the right in the inventor;
- (3) Provides for it to be transferred.

AI as an inventor in Europe

“Under the EPC the designated inventor has to be a person with legal capacity. This is not merely an assumption on which the EPC was drafted. It is the ordinary meaning of the term inventor...”

“There is no reason to assume that the EPC uses the term in a special way departing from its ordinary meaning.”

AI as an inventor in Europe

Can or could such an application be filed with a different inventor?

“... the Board is not convinced that there is a problem of unequal treatment of specific applicants and categories of inventions ... The Board is not aware of any case law which would prevent the user or the owner of a device involved in an inventive activity to designate himself as an inventor under European patent law.”

AI as an inventor in Europe

UK Supreme Court decision *Thaler v Comptroller-General of Patents* [2023]
UKSC 49

"Of course, the applicant may and often will not be the inventor but may nevertheless make and pursue the application for a perfectly good and proper reason... But in all cases, and unless the applicant has already given the UKIPO the information, the applicant is required:

- (i) to identify the person or persons whom he believes to be the inventor or inventors; and
- (ii) to indicate the derivation of his right to be granted the patent;

and if he fails to do so the application shall be taken to be withdrawn."

"The structure and content of sections 7 and 13 of the Act, on their own and in the context of the Act as a whole, permit only one interpretation: an inventor within the meaning of the 1977 Act must be a natural person, and DABUS is not a person at all, let alone a natural person..."

AI as an inventor in Europe

Can or could such an application be filed with a different inventor?

"... DABUS, a machine with no legal personality, is not and has never been an inventor within the meaning of the 1977 Act. This is more than a formal objection. It goes to the heart of the system for granting a monopoly for an invention. The second is that Dr Thaler, on his own case, has no independent right to obtain a patent in respect of any such technical advance."

The Court did not comment on whether (to mirror the EPO's words) *"the user or the owner of a device involved in an inventive activity"* could be an inventor. Rather, the Court addressed the importance of the inventor being a (natural) person in the context of the assumed facts of Dr Thaler's case – that there was no human involved.

However, a subsequent first instance decision in September 2025 has indicated that the substantive position may require the invention to have come from a human as indicated in the quotation on the previous slide. This would imply that if AI is the "actual devisor" of the invention then, in principle, there would be no human inventor and it would be unpatentable. In *practice* however, inventorship is rarely scrutinized.

Scrutiny of inventorship

Assuming a human inventor is identified challenging the patent as AI-generated will be difficult

Patents Act 1977

Section 72 Power to revoke patents on application

(1) Subject to the following provisions of this Act, the court ... may ... revoke a patent ... on (**but only on**) any of the following grounds, that is to say—

...

(b) that the patent was granted to a person who was not entitled to be granted that patent;

...

(2) An application for the revocation of a patent on the ground mentioned in subsection (1)(b) above—

(a) may only be made **by a person found** by the court ... **to be entitled to be granted that patent** ...; and

(b) may not be made if that action was commenced ... after the second anniversary of the date of the grant of the patent ...

Contact



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'Bird & Bird is known for its large and impressive IP department, historically having a dedicated office for them. This focus makes them a strong choice for clients seeking specialists.'

Legal 500 UK, 2025

'Bird & Bird's lawyers have excellent knowledge and skills. They are readily able to call on subject matter experts across the firm, all of whom have excellent advisory skills.'

Chambers Global Guide, 2025

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