International Bureau of the World Intellectual Property Organization
scp.forum@wipo.int

C. 9141

WIPO has requested information pursuant to the 34th Session of the Standing Committee on the Law of Patents (SCP). Please find enclosed input from the Finnish Patent and Registration Office:

(ii) further study on the sufficiency of disclosure (Part II), relating to inventions having an experimental nature in unpredictable art, such as chemistry and biotechnology, and any other areas that deserve special attention, as proposed in document SCP/31/8 Rev.

The Finnish Patent and Registration Office has submitted information to C.8403 in January 2015. This information is still valid today.

(iii) a document compiling information relating to the expedited examination programs of IP offices, including information on Prioritized Examination of COVID-19 related patent applications. Any additional contributions may include, for example, objectives and qualifying grounds for expediting examination programs, institutional arrangements, fees etc.

The Finnish Patent and Registration Office provides for fast-track processing of patent applications under certain conditions. More information can be found:
https://www.prh.fi/en/patentit/applyforanationalpatentinfinland/processingofapplicationsatprh/fast-trackprocessing.html

(iv) a compilation on how jurisdictions around the world address the issue of artificial intelligence (AI) inventorship through jurisprudence, legislation and practice. In this context, Member States and Regional Patent Offices are kindly invited to transmit inputs with regard to the general concept of inventorship, including employee inventors and joint inventors, as well as the application of that concept to inventions by AI.

Section 1 of the Finnish Patent Act 1967 defines the inventor of a patentable invention as "[w]hoever has, in any field of technology, made an invention that is susceptible of industrial application, or his or her successor in title, shall be entitled on application to a patent and thereby to the exclusive right to professionally exploit the invention in accordance with this Act". In Finnish jurisprudence, a well-established interpretation of the word "whoever" is that it refers to a natural person. Thus, the Finnish Patent Act requires the inventor to be a human being, excluding the possibility of AI inventorship. This appears to be in consensus with international jurisprudence as outlined by the administrative and court decisions related to the so-called "DABUS" patent applications.

As matters currently stand, it is unclear whether changing the legal status of AI inventorship or creating new sui generis IP rights for such would provide societal benefits. As a general principle, law should be both technology neutral and as unambiguous as possible. Careful analysis of possible changes in patent law due to AI inventorship would be needed, a task made challenging by the rapid pace of development of AI technologies and its possible risks, some of which have likely not yet been revealed. We therefore propose to closely follow the issue, but to restrain from drastic legislative action.

Whether an AI system can truly independently invent novel technical, patentable substance matter is an issue beyond mere legal analysis. Nevertheless, should AI be deemed capable of independently generating novel and non-obvious inventions, and should this be considered problematic for the current patent system, some legal solutions have been suggested, in particular to name the AI system as an inventor in patent applications, to create a new sui generis type of an intellectual property right for such inventions or to leave AI-generated inventions without intellectual property protections at all for reasons of public policy or morality.

In all these solutions, several potential issues need to be considered in detail: Such novel legal frameworks should be applied to an easily identifiable set of AI systems and AI-generated inventions. Some definitions of AI cover all computer systems that exhibit intelligent behavior. It may be hard to come up with a legal definition that unambiguously separates AI inventors from more conventional automation tools. In order to objectively assess the actual role of AI and other automation tools in the inventing process, a new and burdensome disclosure requirement concerning the inventing process might be required for all inventions, as AI-generated inventions can relate to all fields of technology (similarly as the DABUS inventions do not relate to AI systems). Note that if publicly available AI systems are considered merely automation tools, they can be seen to both allow a less detailed description to be considered sufficient (i.e. to enable a person skilled in the art to carry out the invention) and to make a larger selection of inventions obvious, as the scope of routine experimentation is expanded. Thus, inventions made entirely (or that could be made entirely) by publicly available AI systems should effectively be excluded from patentability simply by such an increase in the inventive step requirement. It is also important to determine if any new legal frameworks apply only to inventions that are generated entirely by AI systems, i.e., if the role of the AI system in the inventing process should considered similar to that of a conventional automation tool after only a small amount of human involvement. Moreover, it needs to be decided what kinds of information should be given about a named AI inventor. It can be anticipated that there would be marketing and legal reasons to sometimes name an AI inventor, to sometimes not name an AI inventor, and to sometimes name a different AI inventor for a similarly made invention.

Nevertheless, we consider the above considerations largely hypothetical and see no valid reasons for granting an AI system inventorship of a patent nor other IP rights. Rather, we presently consider AI to be a tool of a human inventor, be that the person who operates the AI system, designs the algorithm, collects the input data for the system or performs another important steps for the software to function.

In summary, Finnish patent law *de lege lata* is clear: an AI system cannot be assigned patent inventorship. In our opinion, AI systems should be regarded as tools for human inventors and there therefore is no need for major changes in patent law due to AI as an inventor. From our standpoint, this also holds true for employee inventions, that is to say, AI should only be viewed as a tool, perhaps provided by the employer, and should not be granted legal personhood in any form, for example as a contributor in joint inventions.