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ARTIFICIAL INTELLIGENCE AND ITS IMPACTS ON IPR

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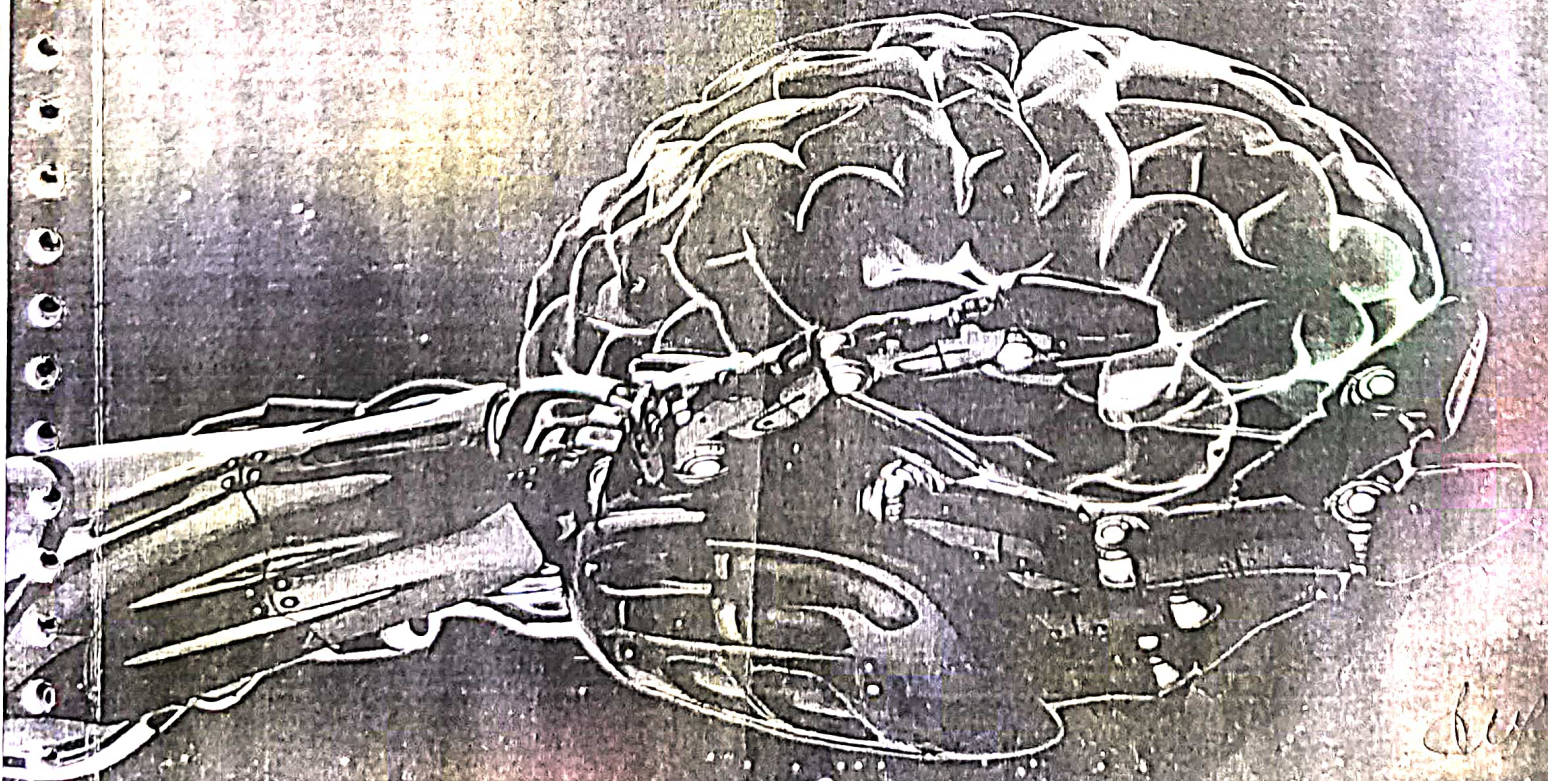


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LEGAL STATUS OF ARTIFICIAL INTELLIGENCE IN INDIA WITH REFERENCE TO COPYRIGHT AND PATENT LAWS

Dr. Chandralekha V. *

Mr. Shivashankar **

Abstract

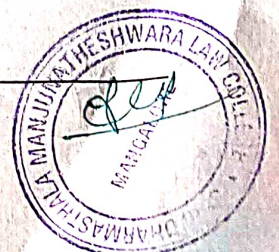
Artificial intelligence (AI) is alternative intelligence to human intellect. It is the ability of a digital computer or pre-loaded or independent robot, to perform tasks commonly associated with intelligent being. It is Science and Engineering of making Intelligent Machines, especially intelligent computer programs. It is related to the similar task of using computers to understand human intelligence but ai does not have to confine itself to methods that are biologically observable. IPR means a property created by using human intelligence. It has various facets like copyright and related rights, patent, industrial design and so on. As per ipr legislations human being or legal personality can own ipr if they create any property by the use of their intelligence. Nowadays A I also work in equal pedestal to human intelligence. AI has lion share in the work performed by the human being a step ahead, it can also work independently.

As in the legal realm, personality of any being is very crucial. Personality attracts it a bunch of rights and imposed certain duties. Does AI have legal personality or it is best to signify it as cyber personality. What happens, if it is entrusted as legal person? As per IP legislation any human or legal person can hold the intellectual property right. To expand this definition question arise that can AI, as a cyber-personality, claim the rights? If rights are claimed, will it impact human's right for IPR? Is there any moral tussle which human may face when AI takes over him? Will there be any real battle between the human and AI over intellectual property. In this article researchers wants to find out answer for this above problem. By answering, it provides relevant valid suggestions which might be accommodating to near future.

Keyword : Electronic Personhood, Patent, Copyrights, AI tussle.

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1.1 Introduction

“Only a human or other legal person can be an owner, controller or patentee. That of course includes an inventor who is a human. But it is a fallacy to argue from this that an inventor can only be a human.”

– Justice Beach in Taler v. commissioner of patent¹

It is said that, most curious concept in this world is very few. Among them IPR also has a space. The term has also gained importance during last one and half centuries and today encompassing almost everything which human brain create. In USA, there is a common saying, that everything under the sun is patentable except human being². A simple drawing, doodling to creating a fast processing super computer everything can be registered. Its simple words whatever the mind conceives is IP or intellectual property. Property can be corporeal or incorporeal. Copyrights, trade secret, Patent Geographical Indication, industrial designs are few examples for in corporeal property. Thus, a violation of this ownership is nothing but theft or trespass which is termed as infringement and, therefore, such property must be protected. However, present day IPR regime has moved from ancient free dissemination of knowledge concept which is core of our society.

AI is experiencing exponential growth, with Google filing one among the primary patents on AI back in 2015 and ending that first year by filing 5 more on the same subject. Likewise, many other establishments like Fujitsu, IBM, NEC, Microsoft, and Siemens have several patents on AI-related technologies and therefore the numbers still grow with each passing day.³

Not only has AI gained the attention of inventors, but it’s also been quite enticing for investors too. Investments in AI technology show skyrocketing trends. Accel, risk capital firm has announced a 500 million USD pool for various focus areas and AI was on the highest of the list⁴. Similarly, Habana labs (which was recently acquired by Intel), have invested billions of dollars in AI R&D⁵. Many believe that the wave of investment and energy being poured into AI is making it mankind’s greatest endeavours.

The R&D in Technology has reached such a stage that, artificially intelligent machines have begun to write a story like author, compose music like composer, paint a paintings like artists, Designed the designs like designer, and invented like inventor. Recently patented Food container invented by CREATIVE MACHINE called DABUS is best example to cite. Its high time for parliamentarians to deliberate

¹ Taler v. commissioner of patent [2021] FCA 879, “Ipwatchdog, DABUS Scores Again with Win on AI Inventorship Question in Australia Court”, Aug. 2, 2021, 2:15, <https://ipwatchdog.com/2021/08/02/dabus-scores-win-ai-inventorship-question-australia-court/> id=136304/
² Dimond v. Anand Chakrabarthy, 447U.S. 303 (more) 100 S. Ct .2204
³ Wood johnny, the number of global patent applications is breaking records. Where are the hotspots?, world economic forum, dec 19, 2022.
⁴ Bantia Jyothi, Accel sees Promise in AI investments, the Hindu business line, updated Aug. 13, 2023 at 05:37.



into the situation and bring enactment recognizing such machines and amending IP laws to recognise their innovation.

1.2 Method of Research

Desk research or secondary research technique is used by the researchers during the course of research pursuit. Since it involves synthesizing the existing data that can be sourced from internet, peer reviewed journal or authored book to reach a determined conclusion.

1.3 Meaning and Definitions

Artificial Intelligence means the ability of a digital computer or pre-loaded or independent robot to perform tasks commonly associated with intelligent being. According to National strategy for Artificial intelligence AI is a constellation of technologies that enables machines to act with higher levels of intelligence and emulates the human capabilities of sense, comprehend and act⁶. Intellectual Property Rights has several forms like Patent, trademarks, copyright, Designs, etc. Patent means an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.⁷ It's an exclusive right granted to the inventor for a new invention or improvement over the invention which is use full in any industry. Similarly Copyrights are the right given by the law to creator of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings.⁸ It's a bundle of right.

1.4 Legal status of Artificial Intelligence

At present, most of the researches on legal status of artificial intelligence focuses on exploring the concept of artificial intelligence from different angle, and then draws a conclusion that artificial intelligence is a subject, an object or a compromise between the two. Opinions on the legal status of artificial intelligence generally fall into the following categories:

- i) **Negative Theory:** The theory holds that artificial intelligence is only the object of legal relations and should not be granted legal subject status. As the development of artificial intelligence has not posed a subversive challenge to the traditional subject of law theory, we should still adhere to the traditional theory in the short term, and should not define it as the subject of law.⁹
- ii) **Positive Theory:** The theory holds that artificial intelligence should have the qualification of legal personality, including the agency theory, fictitious personality

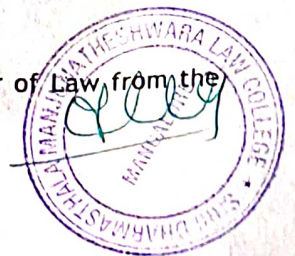
⁵ Leone Mike, intel acquires Habana labs for \$ 2Billion, Enterprise strategy groups, December 16,2019. La vis 16/02/2024 21:04,

⁶ Niti Ayog, NATIONAL STRATRGY FOR ARTIFICIAL INTELLIGNCE, June 2018, p12.

⁷ <https://www.wipo.int>

⁸ Act 14 of 1957, copyright act, 1957.

⁹ W Zhifeng, analysis of status of artificial intelligence as the subject matter of Law from the perspective of autopoiesis.



theory, electronic personality theory and other specific types. Scholars who hold the positive theory believe that with the rapid development of artificial intelligence, it will be widely used in all fields of society and have the ability to independently affect the rights and obligations of others. many non-natural entities have been gradually endowed with the qualification of "human" in law based on the needs of lawmakers, and have obtained the subject status. The trend of "non-human seen as human legally" is increasingly strengthened, which therefore explains the existence of humanoid robots to obtain the qualification of legal subject.¹⁰

iii) Compromise Theory: It is also known as the limited legal personality theory of artificial intelligence. This theory holds that artificial intelligence has legal personality, but its personality is special, and the scope of its rights and obligations is limited compared with other legal subjects¹¹. The "limited legal personality theory" believes that the essence of artificial intelligence is a tool, and its attribute serving the development of human society cannot be changed. However, artificial intelligence has independent and autonomous behavioural abilities, which should be endowed with legal personality. Since the consequences of artificial intelligence's behavioural ability to bear are limited, it shall be deemed to have limited legal personality, and be applied to special laws.

Legal Personhood as per law can be defined as the capability of holding rights and performing duties which also includes the ability to bear responsibility¹². Artificial intelligence is similar to legal persons. Since legal persons can have legal personalities, artificial intelligence should also have legal personality¹³. Artificial Intelligence is not limited to one nation. There are different legal provisions in different countries in the world and some part A I is provided with legal personality. Cyber personality can also be a word to emulate the legal personality for AI.

1.4. a) Sophia, a citizen of Saudi Arabia

Sophia, a sophisticated hominoid robot which has social skill to interact and exhibit 60 different human expressions as developed by Hanson Robotics has been honoured with citizenship of Saudi Arabia, ahead of future investment summit¹⁴. This hominoid robot is also honoured with champion title by UNDC to spread awareness on human rights. This robot is given with credit card by Romanian Business Corporation.

Many scholars around the world have different opinion in this matter. Some adoring it opines that as a huge step taken to provide a legal status to the robot and beginning

¹⁰ Id,

¹¹ Yuan. (2020). Revisiting the legal personality of AI From the functional perspective, journal of Shanghai university (social science ed) no 1.

¹² Vardhan Yash Gupta, Artificial Intelligence and Legal Personhood, legal service India, 13:45,15/02/2023; <https://www.legalserviceindia.com/legal/article-8473-artificial-intelligence-and-legal-personhood.html>

¹³ Davis C.R. (2011). An evolutionary step in Intellectual property rights, Artificial intelligence & Intellectual property, computer law & security review,27,601.

¹⁴ Cuthbert Olivia, Saudi Arabia becomes first country to grant citizenship to a robot, Arab news, 26 oct 2017. a vis 16/02/2023 20:05 <https://www.arabnews.com/node/1183166/saudi-arabia3>



of the 4th industrial revolution while some are opinion that time is not yet ripe to provide such electronic devices a legitimate status.¹⁵

1.4. b) Electronic personhood of European nations

Electronic personhood is used to describe the potential legal status of the most sophisticated autonomous robots so that they may have “specific rights and obligations, including that of making good any damage they may cause.”¹⁶ Electronic persons is a term first proposed by the European Parliament’s Committee on Legal Affairs in a draft report on civil law rules on robotics dated May 31, 2016. The term is used to describe the potential legal status of the most sophisticated autonomous robots so that they may have “specific rights and obligations, including that of making good any damage they may cause, and applying electronic personality to cases where robots make smart autonomous decisions or otherwise interact with third parties independently”¹⁷ electronic personhood is given to robots as protection for human from robots.¹⁷

1.4. c) AI Bills of Right in USA

The AI Bill of Rights is a set of principles designed to protect people’s privacy and civil rights by ensuring AI tools’ development is more transparent and monitored for inaccurate and biased data, among other precautions¹⁸. This framework applies to automated systems that have the potential meaningful impact on the American public’s rights, opportunities and or access to public resources. It must be enjoyed equally and fully protected, regardless of the changing role that automated system may play in our life. There is a vast progress in automated system in USA. This progress should not come at the cost of American people’s civil right and democratic valves. This document is intended to support the development, deployment and governance of automated system. This as 5 set of principle to which applies to automated systems.¹⁹

1.4. d) Legal Status of AI in India

Companies and corporations are granted with legal personality as well as legal rights as these companies and corporation act as an individual identity and even can undergo legal actions, basically can be sued in the same way a person can be sued in law. Though the company is controlled by a person but as a company is considered as an individual identity, in case commission of wrong, the person controlling the company will not be held liable completely but will be partly liable for the actions that are taken under by him the name of the company. Similarly if AI is considered as a legal

¹⁵ Id,
¹⁶ Electronic persons, Wikipedia.org, 08:50,15/02/2024,https://en.wikipedia.org/wiki/Electronic_persons
¹⁷ Supra,8
¹⁸ Glover Ellen, AI Bill of Rights: making automated system work for the American people, the white house science and tech department,oct 2022,https://builtin.com/artificial-intelligence/ai-bill-of-rights
¹⁹ Id,



personality, there is no obstruction would undergo legal actions and even face charges as are face by companies if anything goes wrong under the name of the legal entity. If something goes wrong that involve the actions of AI and the wrong is because of the working of AI, AI could be blamed and punish for the wrongs if it has a legal personhood²⁰.

At present in India AI is not considered as legal persona under any law. There are shortcomings in the existing law to register and recognise the AI as legal person. It cannot be registered under Companies Act, 2013 or other similar legislation as it lacks the requirements for registration as mentioned in those legislations. There are several other reasons for not considering it as legal person. For instance, if AI entities are conferred with legal personality with rights and obligations then it may interfere in the rights of other human being and entities. Humans may use the personality of these AI entities for meeting selfish ends and at the same time get successful in avoiding liability²¹. Even though there are laws to lift the veil, it may not be available in all cases. The AI entities with self learning ability is always threat to the society if legal personality is granted. Thus at present AI is not considered as legal person under any of the laws in India.

1.5 AI and Copyright

In every part of the world, government recognises the status of AI and its systems. It is very right space to discuss about as legal person; can AI have copyright over the works created?

Certain types of works that is eligible for copyright protection are as follows:

Copyright can be obtained for both published and unpublished works. Copyright registration is not mandatory as per Indian Copyright Act, 1957. Literary Works, Artistic Works, Musical Works, Dramatic Works, Audio-visual Works, Sound Recordings and these categories are not exhaustive, and copyright protection may extend to other types of creative works as well.

Each work is evaluated based on its originality, creativity, and expression to determine its eligibility for copyright. In India, copyright protection is granted to creative works that meet certain conditions and requirements. The conditions for the grant of copyright in India include:

1. Expression of work in Tangible Form
2. Originality Criteria,
3. Creativity Standard / labour/ judgement/skill/ capital invested

As per copyright Act, "The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed

²⁰ Supra, 14

²¹ Sangam Shakuntala, legal personality for artificial intelligence with special reference to robot: a critical appraisal, Indian journal of law and human rights, vol 6 no, Jan-June 2020. <https://journals.indexcopernicus.com/api/file/viewByFileId/1173348.pdf>

form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights”²². The Phrase ‘other person interested in the copyright’ includes entities with legal personality. There is no barrier under Indian copyright Act to provide copyright to A.I if it creates any copyrightable work independently. But A.I lacks legal personality under Indian law. So legally it cannot apply for copyright protection even if it has created any subject matter independently. A self-learning and independently working A.I can generate many work like human being for which the developer may not be able to get copyright as the requirement is not fulfilled by the developer.

Even though A.I cannot register copyright in its name, the rights are recognised by some of the entities. Nowadays, the print media and tele-media utilise the art created by AI in their daily broadcasting. Here is an example. Vijaya Karnataka,²³ daily Kannada newspaper circulated around Karnataka and beyond has not only utilised the art created by AI in reporting the news but also recognised its right by expressing that it is A I generated image. This shows that even the authenticated sources like newspaper have begun to recognise the AI art giving them moral rights (authors Special right)²⁴.



Source: Vijaya Karnataka 12/02/2024 ed

1.5. a) Appeal of Thaler in Federal Court²⁵

The present case involves Plaintiff’s application to register a copyright for an AIGenerated Work produced by one of Plaintiff’s AI systems referred to as a “CreativityMachine.”

²² Sec 45 of Copyright Act 1957.

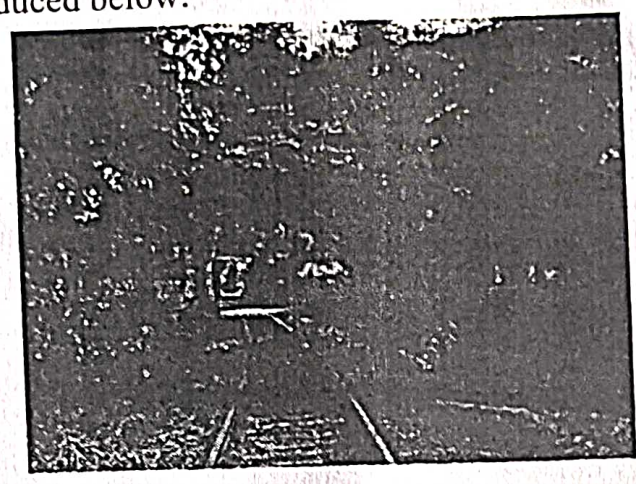
²³ Vijaya Karnataka, Kannada Daily news paper dated 12/02/2024 ed.

²⁴ Sec 57, copyright Act

²⁵ Thaler v. Perlmutter, <https://www.theipmatters.com>



The work is the two-dimensional artwork ("The Work") titled "A Recent Entrance to Paradise," reproduced below:



Source: Google Images

In denying the first request for reconsideration, the USCO reiterated its response that the copyright law only protects "the fruits of intellectual labour" that "are founded in the creative powers of the mind." Citing to *In re Trade-Mark Cases*²⁶, the USCO stated that since copyright law is limited to "original intellectual conceptions of the author," it refused to register the claim because it determined a human being did not create the Work. The USCO again cited to *Burrow-Giles Lithographic Co. v. Sarony*, Providing additional examples for its decision, the USCO also referred to *Urantia Found v. Kristen Maaherra*²⁷, arguing the court refused to extend copyright protection to non-human creations²⁸.

*Naruto v. Slater*²⁹ involved a series of images that a black crested black macaque, named Naruto, took of himself in Indonesia. Naruto, by and through his Next Friends, People for the Ethical Treatment of Animals, Inc. (PETA), sued David Slater, who owned the camera used by Naruto and who subsequently used Naruto's photographs without permission. While USCO is correct that the case was dismissed, this was not based on the USCO's Human Authorship Requirement. The case was dismissed based on standing. As the 9th Circuit Court articulated,

"We must determine whether a monkey may sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement. Our court's precedent requires us to conclude that the monkey's claim has standing under Article III of the United States Constitution. Nonetheless, we conclude that this monkey and all animals, since they are not human being lacks statutory standing under the Copyright Act. We therefore affirm the judgment of the district court."³⁰ Certainly, any number of judicial opinions has discussed originality in the context of

²⁶ *In re Trade-Mark Cases*, 100 U.S. 82, 94 (1879).
²⁷ 114 F.3d 955, 957-959 (9th Cir. 1997)
²⁸ *Urantia Found v. Kristen Maaherra* 114 F.3d 955, 957-959 (9th Cir. 1997),
²⁹ *Naruto v. Slater*, 888 F.3d 418, 420 (9th Cir. 2018).
³⁰ *Supra*,³⁰



human-centric mental activity, but none of those opinions have considered an AI Generated Work. It is hardly surprising that judgments from the Gilded Age would fail to consider the possibility of AI stepping into the shoes of a person and generating something creative. Dicta from such cases should therefore not be taken out of context to create a blanket prohibition on an entire field of publicly beneficial activity.

1.6 AI and Patents

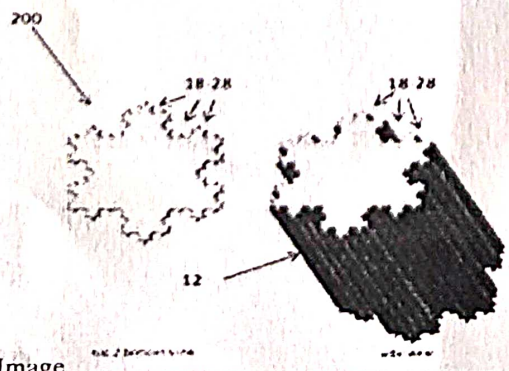
Patent Registration is a legal process which grants exclusive rights of ownership and usership to the inventor of a product, service, or technology. As a result, the inventor gains monopoly over his invention for the entire duration until the patent registration is valid.

1.6. a) Eligibility for Patent Registration

Patent registration in India is subject to certain eligibility criteria that an invention must meet to qualify for protection. The essential requirements for obtaining patent are;

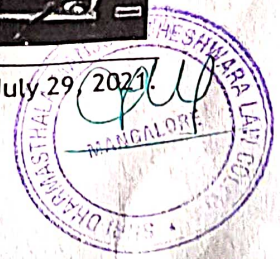
1. Novelty,
2. Inventive Step,
3. Utility/ Industrial Applicability
4. Patentability of subject matter

South Africa was a first country to honour patent to DABUS, a creative machine created by thaler which has created a fractal designed food container without any prompt or assistance from Human. The said person holding the ownership of the machine has applied for patent in many countries. As result, Australian court, directed its patent office to register the patent, honouring the appeal filed due to denial of application. HeretheSouth African patent office made history in July when it issued a patent that listed an artificial intelligence system as the inventor. The patent is for a food container that uses fractal designs to create pits and bulges in its sides. Designed for the packaging industry, the new configuration allows containers to fit more tightly together so they can be transported better. The shape also makes it easier for robotic arms to pick up the containers. ³¹



Source: Google Image

³¹ Conlon ed, Dabus; South Africa issues first-ever patent to AI inventor, Managing IP, July 29 2021. <https://www.managingip.com>



Prof Ryan abbot, professor of law, university of surrey, has presented, using food container as depicted in picture, before US senate his contention that there must be an amendment to present IP rights legislation so that innovation made by Independent Artificially intelligent machine under act.

1.7 Tussle between Human Intelligence and Artificial Intelligence

In the light of Flourishing technology recent times, independently working artificial intelligent machine are working in the same pedestals as of human being. It is worthwhile to analysis that pre-existing human's response is negative and the threat which this machines posses on human. There will be unproportionate registration of patent by AI (as connected to internet) compared to Human. This may deny fair opportunity to human. It might not be sarcastically to cite one of the responses given by Sophia that she will destroy humans one day³². There is a high risk to human being from this machine. This issue must be taken seriously by recognising them, impose them with liability for their dangerous behaviour,

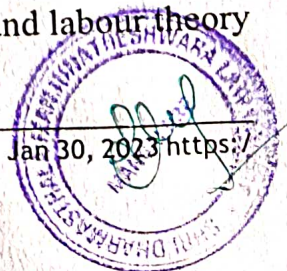
1.8 Critical Evaluation of IP rights to AI.

1. By giving IP rights to AI, the commercial exploitation of the invention is not possible. The benefited purchaser intending to purchase such rights has no proper identity to contract upon.
2. No liability can be posed to AI for its breach of IP rights of other right holders. If a legal person infringes others right, he can be penalised for infringement. In the case of AI powered machine it's impossible to bring it into book.
3. AI is at the end a machine, so there is a treat of mass automation production of invention of low quality.

1.9 Suggestions

1. Parliament must legislate a legislation giving Legal status to artificially intelligence machines which independently create intellectual property and artificially intelligent humanoid robots.
2. To bring effect the amendment to copyright act 1957 and patent act 1970. Covering invention created by artificially Independent machine.
3. To enact codified law to impose liability upon such machines and its owner from the threat it poses on human being.
4. If not recognised as legal person, the innovation cannot be registered by anyone, even by prompt giver or owner of machine. It's against sweat and labour theory of IP legislation.

³² einoryte Aurelija, Sophia, the AI robot: How Dangerous is She? , nordvpn blog, Jan 30, 2023 <https://nordvpn.com/blog/sophia-robot/>



1.10 Conclusion

At the end, artificial intelligence concept in India is in nascent stage as compared to other country. Parliamentarians should deliberate upon the issue. Innovation manifested by independent Ai machine without any prompts cannot be registered by machine owner as it is not created out of his sweat and labour. there is need to change the IPR laws so that innovation could registered and Artificial intelligent machinesshould be granted with legal status in line with corporation to protect our citizen from potential risks posed by them. There is a high requirement of enactment by which every raised issue is addressed.

"I believe AI is going to change the world more than anything in the history of humanity: more than electricity" - Kai fu lee, AI expert, chairman of sinovation ventures.

* * * *



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