

ASSESSING THE LEGAL OWNERSHIP OF AI-GENERATED INVENTIONS IN AFRICA: A CASE STUDY OF NIGERIA

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Abstract

This paper examines the implications of Artificial Intelligence (AI) as a potential inventor within the context of intellectual property law, particularly focusing on the Nigerian legal framework. It explores the evolution of patent laws, the definition of inventorship, and the challenges posed by AI-generated innovations. Through case studies of the DABUS incidents in various jurisdictions, namely the UK, US, and Australia, the paper highlights the legal and ethical complexities surrounding the recognition of AI as an inventor. Despite advancements in AI technology, current patent laws largely exclude non-human inventors, limiting the scope of protection for AI-generated works. The analysis reveals a pressing need for legislative reforms to adapt existing intellectual property frameworks to acknowledge the unique capabilities of AI. By redefining inventorship to include AI, the paper argues for a more inclusive approach that fosters innovation and reflects the realities of contemporary technological advancements. The paper recommends among others, an urgent action to ensure that intellectual property rights keep pace with the

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evolving landscape of creation and innovation driven by artificial intelligence.

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1.0.Introduction

Ever since humans appeared on the planet Earth, one major weapon for survival was man's capacity to find innovative solutions to the problems encountered.¹ We cannot imagine today's world without those countless inventions and innovations.² Since the 15th century, grants of ownership of intellectual property as a means of social and economic advancement have grown enormously.³ The increasing fortune of England in the 19th century and the extraordinary success of the U.S. in the 20th century are outstanding examples of what limited ownership of intellectual property granted and protected by governments can do. It is uncertain that without patent protection, time-defining technological innovations built around inventions would have happened quickly.⁴ The history of patents begins not with inventions, but with royal grants of industrial monopolies in the fifteenth

¹ World Intellectual Property Organisation, *The Role of Invention, Innovation and the Industrial Property System in Economic Development* (Being a national seminar organized by the World Intellectual Property Organisation in collaboration with the Academy of Scientific Research and Technology, Arab Republic of Egypt, held at Cairo Egypt on 15 and 16 of September,1997) 3 https://www.wipo.int/edocs/mdocs/innovation/en/wipo_inn_cai_97/wipo_inn_cai_97_1.d accessed 18th January 2025 .

² Ibid.

³ RK Bera, 'The Global Importance of Patents (2009) 96(5) *Current Science Journal* <https://www.jstor.org/stable/24104555> accessed 19 January 2025.

⁴ Ibid.

century.⁵ The Crown's prerogative to issue letters of patent was a central tool used to bestow privileges upon individuals in the furtherance of royal policies.⁶ When the crown wished to strengthen the areas lagging industrial development at the end of the middle ages, the issuance of letters of patent was central to enticing tradesmen and industrialists to come to England.⁷

It is no doubt that one of the greatest inventions of mankind is the use of technology to emulate human behavior, hence the creation and expansion of Artificial Intelligence (AI). The advent of AI brings with it a significant development of innovations that are developed by independent computational systems.⁸ The decision-making ability of AI with little or no human interference challenges the existing IP framework.⁹ It gives rise to legal complexities in respect of ownership and liability of AI, patentability of AI inventions, and creativity & ownership of AI-generated works attributable to various components of AI. With the increasing capability of AI to generate works without human intervention, there seems to be a strong case for granting protection to AI-generated works. Thus, the pertinent issue of ownership of the innovations that are created by AI.¹⁰ This paper seeks to examine the ownership regime of inventions under the

⁵ Adam Mossoff, 'Rethinking the Development of Patents: An Intellectual History, 1550-1800' *Hastings Law Journal* [2001] (52) <https://www.papers.ssrn.com/id863925> accessed 19 January 2025

⁶ Ibid.

⁷ Ibid.

⁸ Francesco Banterle, 'Ownership of Inventions Created by Artificial Intelligence' (2018) *AIDA* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3276702 Accessed 18th January 2025.

⁹ Akanksha Bisoyi, 'Ownership, liability, patentability, and creativity issues in artificial intelligence.' (2022) 31(4) *Information Security Journal: A Global Perspective*, 377–386. <https://doi.org/10.1080/19393555.2022.2060879> Accessed 19th January 2025.

¹⁰ Ibid.

Nigerian legal jurisprudence. It seeks to provide an analysis of the legal framework of patents with the sole aim of determining whether the aforementioned framework recognizes AI as owners of inventions. The paper is divided into 2(two) parts. The paper begins by providing a conceptual framework of terms. The researcher provides an overview on concepts such as intellectual property, patents, inventions Artificial Intelligence. The research work also examines the treatment of inventions through the lens of the Nigerian jurisprudence; examining the Patent and Designs Act. This tends to provide a foundation to understanding whether AI can be recognized as an Inventor in Nigeria.

The second part of this research examines the legal debates surrounding AI-generated inventions; It undertakes case studies like the DABUS cases in the U.S., EU, and Australia. This case study reveals the various jurisdictional rationale for the non-recognition of AI as an inventor. It also examines the ethical and practical implications of granting patents to non-human inventors.

2.0. Conceptual Framework

a) Intellectual property

Intellectual Property is a branch of law that protects some of the beautiful manifestation of human imagination.¹¹ It is described as the rights that a person has over an invention, an innovation, a copyright, a patented product or design, a trademark and all other such incorporeal hereditaments that are recognized in law as property. It includes the rights relating to literary, artistic and scientific works, performances and performing artists,

¹¹ WR Cornish, *Intellectual Property* (7th edn, Butterworth & Co 1995) 3.

photographs and broadcasts, inventions in all fields of endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names.¹² It is on the basis of such creations we have the intellectual property rights (IPR). Intellectual property rights are those rights that are granted to protect human creation from an indiscriminate or unfair use. The rights are preventive in nature in that they allow the owner to preclude others from carrying out acts in relation to the subject matter without his consent.¹³

b) Inventions

An invention can simply be defined as the creation of something new. This creation results from intellectual activity or activities. It is also defined as an activity aimed at making some scientific idea, theory or concept that may lead to the creation of something new when applied to a process of production.¹⁴ The word invention is used by authors and scholars to describe a new product in the field of science.¹⁵ Accordingly, the definition of an invention has been restricted to something new that is created as a result of applying scientific methods.¹⁶ Indeed, the term invention can be used to include all human creative activity, from composing a poem, writing music, making a painting to developing a chemical process.¹⁷ It is an act of creating or planning, an original imagination or the construction of that

¹² Article 2, Para VIII, World Intellectual Property Organization (WIPO) Convention 1967.

¹³ David Bainbridge, *Intellectual Property* (6th edn, Pearson Education Limited 2007) 3.

¹⁴ Jon Elster, *Explaining Technical Change: A Case Study in the Philosophy of Science* (1st edn) Cambridge Press 1983) 3.

¹⁵ *Ibid* 3.

¹⁶ *Ibid* 3

¹⁷ RR Nelson, 'The Economics of Invention: A Survey of the Literature' [1959] (32) *The Journal of Business* 101-127.

which has never existed before.¹⁸ It is a step forward in art.¹⁹ It is not only restricted to products but also includes the creation of a new process which is better than an existing process used to arrive at the same result.²⁰ An invention has also been defined as a change in the fundamental process of getting things done in a better and more efficient way that is different from the manner that it has been done.²¹ Inventions are the subject matter of patent protection.²² In other words, a right to patent seeks to protect an invention and the creator of such inventions. The right to patent confers certain exclusive right to the holder of the patent which may include the right to prevent others from using the said invention without his consent and also the way and manner the invention is to be used. Inventions are not defined under the Patents and Designs Act.²³ The law only provides for the categories of invention that can be patentable.²⁴ This means that where an application is made at the patent office for the protection of an invention, the invention must meet certain conditions before it can be protected under the Patent and Designs Act.

c) Artificial Intelligence

Artificial Intelligence (AI) refers to the reproductions of human intelligence in machines that are set to think like humans and imitate their actions.²⁵ The

¹⁸ Ibid.

¹⁹ FO Babafemi, *Intellectual Property, The Law and Practice of Copyright, Trademarks, Patents and Industrial Designs in Nigeria* (1st edn, Justinian Books 2006) 347.

²⁰ Ibid 348.

²¹ Ibid (n 40)

²² s 1(1) of the Nigerian Patents and Designs Act

²³ Cap. P2, LFN 2004.

²⁴ Ibid.

²⁵, Tom Boakai Tombekai, 'The Ownership of Artificial Intelligence (AI) Generated & Created Inventions' (2020). <http://dx.doi.org/10.2139/ssrn.3772947> Accessed 19th January 2025.

term may also be applied to any machine that exhibits traits associated with a human mind such as learning and problem-solving.²⁶ The ideal characteristics of artificial intelligence is its ability to rationalize and take actions that have the best chance of achieving a specific goal.²⁷ The origin of Artificial Intelligence has been traced to the Dartmouth Summer Workshop held in 1956 wherein AI was defined by John McCarthy, Mavin Minsky, Nathaniel Rochester, and Claude Shanon.²⁸ They defined AI in terms of “making a machine behave in ways that would be called intelligent if a human were so behaving”.²⁹ It has been defined as the ability to learn, its emulation capacity. The design of AI is rooted in its ability to mimic human skills and behaviour³⁰ While the term Artificial Intelligence was defines in 1956, the idea that machines could simulate human behavior and possess genuine thinking capabilities was first introduced by Alan Turing, who created the Turing test to distinguish between humans and machines.³¹ Since then, advancements in computational power have led to instant calculations and the ability to analyze new information in real time based on previously evaluated data.³²

Artificial Intelligence (AI) has emerged as a field of technology with widespread applications throughout the economy and society. Artificial

²⁶ Ibid.

²⁷ Ibid.

²⁸ Nicholas Berente, Bin Gu, Jan Recker, Radhika Santhanam, ‘Managing Artificial Intelligence’ (2021) 45(3) *MIS quarterly*

²⁹ Ibid.

³⁰ Brynjolfsson, E., and Mitchell, T. 2017. “What Can Machine Workforce Implications,“ *Science Learning Do?* (358:6370), pp. 1530-1534

³¹ Yoav Mintz, Ronit Brodie, ‘Introduction to artificial intelligence in medicine’ (2019) 28(2) *Minimally Invasive Therapy & Allied Technologies* 73-81

³² Ibid

Intelligence has been integrated into human existence, pervading various fields of endeavour such as medicine, law, technology, finance etc.

d) Patents

In simple terms, a patent is a right granted to the creator of an invention, by a government or government institution, which confers on the creator a legal monopoly on the subject matter of the invention. It is a right given to a person for an invention for a fixed period of time to prevent any other person from exploiting or using such an invention without the consent of the person.³³ A patent is a legal document that grants an exclusive right on the patented 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.³⁴ A patent is granted under the law to protect an invention that is new or essentially better in some way than what was made before, or for a better way of making it.³⁵ By way of working definition, a patent is a legal term used to describe a limited right that is conferred by the government, on a person who has engaged in an inventive activity to bring about an invention. A patent will only be granted to such a person where he has fulfilled the conditions laid down by the statute creating such right.

e) The Concept of Ownership and Inventorship in IP

In IP, the concept of Ownership is limited to the exclusive right to property, which includes the creations of the mind.³⁶ These are properties that possess

³³Chudi Nwabachili, *Intellectual Property Law and Practice in Nigeria* (1st edn, Malthouse Press Limited 2017) 139.

³⁴ OA Ayodele and FO Damola, 'Patentability of Inventions under the Patents and Designs Act: An Examination' in *NAUJILI* [2017](8)(2) <https://www.ajol.info/index.php/naujilij/article/view/156939> accessed 18th January 2025.

³⁵Babafemi (n 18) 347.

³⁶ Tom Boakai (n 25)

exclusive rights that are granted to a creator or inventor of an inventive process or intellectual creation and in some instances an entity.³⁷ This right to ownership grants an inventor or creator certain commercial benefits such as; monopoly, assignment and licensing power.³⁸ Ownership and Inventorship are used interchangeably and they are often confusing to people. The concept of Inventorship is premised on the involvement of the owner in the inventive step from the extensive research of conception, to the completion of an invention or intellectual creation, the inventorship right can also be granted to an entity based on an agreement between the entity and an employee relating to Intellectual Property right regarding technology deriving from work.³⁹ Having distinguished Ownership and Inventorship, the issue remains whether AI can be regarded as an inventor. It has been argued that human inventors have three basic rights: “to apply for a patent, to be recognized as inventor, and to be an owner of a patent. The question is whether these rights can be applied to AI systems. While AI can create inventive works, most regulatory bodies of patents have rejected the argument on granting patents for AI systems.⁴⁰ The rationale for such rejections is the based on the belief that AI does not possess a full legal capacity. AI still largely depends on human computational training, such as data trainers, programmers, developers, implementing engineers, etc. Hence, it lacks original inventorship or legal capacity to own property.⁴¹

³⁷ Ibid.

³⁸ Ibid.

³⁹ s 2 of the Patent and Designs Act also recognises Employers as inventors notwithstanding the fact they are not the true inventors of the creation or inventive process.

⁴⁰ Kenneth-Southworth and Li “AI Inventors: Deference for Legal Personality without Respect for Innovation?” (2023) 18(1) *Journal of Intellectual Property Law and Practice* 58, 59-60

⁴¹ Olasupo Owoye and Omolara Ajayi, “Artificial Intelligence and the Patentability of AI Inventions” (2023) 45(4) *European Intellectual Property Review* 228, 229

Another school of thought believes that AI has been used as a tool to create other inventions in areas such as health, technology and generative designs hence AI cannot be regarded as an inventor⁴²

3.0. The Legal Framework of Inventions in Nigeria

The Patent and Designs Act enacted in 1970⁴³ is an Act that provides for the registration and proprietorship of patents and designs in Nigeria. This Act came into existence as a result of the English laws that were received into Nigeria during the colonial era.⁴⁴ The Nigerian Patent and Designs Act⁴⁵ does not define patent. It only provides the type of invention that will be protected by patent. Thus, it provides that an invention will only be patentable if it is new or if it is an improvement on a patentable invention. It results from an inventive activity and is capable of industrial application.⁴⁶ It is of great importance to technologists, scientists, engineers, technicians, pharmacists, doctors, academics; etc.⁴⁷ The justification for a patent system is that inventors and investors are rewarded for their time, work and risk of capital by the grant of a limited, though strong, monopoly.⁴⁸ In Nigeria, the right to patent for an invention is granted to the first person that files an application for the patent and it does not matter if the applicant is not the true inventor.⁴⁹ Section 2(1) of the Patents and Designs Act⁵⁰ provides thus:

⁴² Muller, "Issues in Patenting 'Artificial Intelligence' from an EPO Perspective" (2024) 19(3) Journal of Intellectual Property Law and Practice 234, 240

⁴³ Cap. P2, LFN 2004.

⁴⁴ Babafemi (n 18) 344.

⁴⁵ Cap. P2, LFN 2004.

⁴⁶ s 1(1) of the Patents and Designs Act Cap.P2, LFN 2004.

⁴⁷ Babafemi (n 18) 342.

⁴⁸ Bainbridge (n 12) 346.

⁴⁹ Babafemi (n 18) 358.

⁵⁰ Cap.P2, LFN 2004.

Subject to this section, the right to a patent in respect of an invention is vested in the statutory inventor, that is to say, the person who, whether or not is the true inventor, is the first to file, or validly claim a foreign priority for a patent application in respect of the invention.

Thus, it is clear that the legal framework which confers a right to patent does not merely confer such right to on a true inventor (i.e, the entity that creates such creation). It is conferred on the individual who files a patent application first notwithstanding the fact that he is not responsible for the creation of such invention. Furthermore, the use of the term ‘person’ suggests that the law recognizes natural persons as there is no definition of the term from which it can be inferred that the word ‘person’ include Artificial entities such as Machines and other algorithms. While the Act recognizes the true inventor, it is not clear as to whether the term true inventor includes Artificial Intelligence or other entities other than natural persons.

4.0. The Ethical and Practical Implication of Granting Patents to Non-Humans; A Case Study of the Device for the Autonomous Bootstrapping of Unified Sentience (DABUS) Debacle

a) Background

The Device for the Autonomous Bootstrapping of Unified Sentience (DABUS), an AI machine by Dr. Stephen Thaler and his team, was created to imitate some aspects of the human ‘thinking ability. Hence DABUS can generate its own invention by “combining simple concepts into complex

concept chains and then reinforce desirable chains”.⁵¹ It differs from various other AI machines.⁵² For Instance, DABUS can identify and generate novel ideas without human intervention. According to Dr. Thaler, DABUS had produced two inventions:

- i. a food/beverage container which “makes tight packing grasping by a robotic arm
- ii. a light that flicks in a unique way to attract the audience’s attention during emergency situations; and Thaler mentioned DABUS as the (only) inventor on both claims.⁵³

Thaler filed patent before the EPO and UK IPO for these two inventions, because it does not require the disclosure of inventor initially in these jurisdictions.⁵⁴ Subsequently, the EPO required details of the inventor, Thaler mentioned DABUS as inventor and himself as an ‘employer of the AI system’.⁵⁵ Thereafter, Thaler filed patent applications in more than 15 jurisdictions. These applications were filed with the aim to list DABUS as the inventor to own its patent.⁵⁶ The jurisdiction include USA, UK, South Africa, Australia and India. However only South Africa granted patent for

⁵¹ Kenneth-Southworth and Li “AI Inventors: Deference for Legal Personality without Respect for Innovation?” (2023) 18(1) *Journal of Intellectual Property Law and Practice* 58

⁵² Ibid.

⁵³ Ursula Smartt, “Can Robots Have Feelings? Should We Now Apologise to the AI-Beast Called DABUS and Compliment ANNs Instead?” (2024) 46(3) *European Intellectual Property Review* 183, 184

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Abbott and Rothman, “AI-generated Output and Intellectual Property Rights: Takeaways from the Artificial Inventor Project” (2023) 45(4) *European Intellectual Property Review* 215, 216

DABUS, reason being South African patent law does not provide ‘substantive examination’ of patent application and it operates on a ‘depository system’.⁵⁷ Also, the term ‘inventor’ has not been defined in the South African Patent Act. The patent offices of most of the countries rejected DABUS patent applications. It has been judicially tested before the Australian, UK, US courts and details of these cases will be discussed.

i. The UK Approach

In 2018, Dr. Thaler filed patent applications in the name of DABUS, without naming a human inventor.⁵⁸ The UK Intellectual Property Office (UKIPO) rejected the applications, stating that DABUS could not be considered a person under the Patent Act.⁵⁹ Thaler challenged this decision, arguing he was the rightful applicant due to his ownership of DABUS.⁶⁰ The High Court and subsequently the Court of Appeal upheld UKIPO’s decision, with the Court of Appeal unanimously ruling that inventors must be natural persons.⁶¹ Thaler appealed to the UK Supreme Court, which confirmed that the Patent Act requires inventors to be human.⁶² The Court stated that DABUS, lacking legal personality, could not be an inventor or transfer rights. Thaler's claims based on ownership and the doctrine of accession were rejected. The Supreme Court found that Thaler failed to

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⁵⁸ The Thaler UK Supreme Court decision [2023] UKSC 49 at [5-10]

⁵⁹ Kenneth-Southworth and Li “AI Inventors: Deference for Legal Personality without Respect for Innovation?” (2023) 18(1) *Journal of Intellectual Property Law and Practice* 58, 60

⁶⁰ Thaler v Comptroller-General of Patents, Designs and Trade Marks [2020] EWHC 2412 (Pat), <https://knyvet.bailii.org/ew/cases/EWHC/Patents/2020/2412.html> Accessed 19 January 2025

⁶¹ *ibid.*

⁶² *Ibid.*

meet necessary conditions under the Patent Act, ultimately dismissing his appeal and affirming that patent applications would be deemed withdrawn.⁶³ This case highlights the limitations of current patent law regarding AI inventorship, emphasizing that changes would require parliamentary action.

ii. The US Approach

Like the UKIPO, the USPTO denied Dr. Thaler's patent applications for inventions created by the AI DABUS, citing the absence of an identifiable human inventor.⁶⁴ Thaler challenged this decision in the District Court for the Eastern District of Virginia, arguing that the denial stifled innovation contrary to the US Constitution.⁶⁵ The court upheld the USPTO's ruling, interpreting 35 U.S.C. 100 and 115 to mean only humans can be inventors, a view supported by the America Invents Act, which defines an inventor as an individual or group of individuals.⁶⁶ Thaler's appeal to the Court of Appeals for the Federal Circuit (CAFC) resulted in a similar conclusion that AI cannot be recognized as a legal inventor since it is not a "natural person."⁶⁷ The CAFC referenced previous cases to assert that "individual" in the Patent Act pertains exclusively to natural persons, and no Congressional intent was evident to extend this definition.⁶⁸ However, the CAFC did not address key issues such as the role of AI in the inventive

⁶³ The Thaler UK Supreme Court decision [2023] UKSC 49 at [48-50].

⁶⁴ The United States Patent and Trademark Office Decision of April 27, 2020, on Application No.16/524,350

⁶⁵ In the case of Thaler v Hirshfeld 558 F. Supp. 3d 238 (E.D. Va. 2021) [before the District Court for the Eastern District of Virginia];

⁶⁶ Abbott and Rothman, "AI-generated Output and Intellectual Property Rights: Takeaways from the Artificial Inventor Project" (2023) 45(4) *European Intellectual Property Review* 215, 219

⁶⁷ Ibid.

⁶⁸ ibid

process, ownership of AI-generated inventions, or the ability of AI to assign patent rights. In April 2023, the US Supreme Court declined to hear the case.⁶⁹

iii. The Australian Approach

Dr. Thaler filed two patent applications in Australia, naming the AI DABUS as the inventor.⁷⁰ The applications were rejected by the Deputy Patent Commissioner, stating that only humans could be recognized as inventors under regulation 3.2C(2)(aa).⁷¹ Thaler appealed to the Federal Court of Australia (FCA), which addressed three key questions: whether DABUS could be considered an inventor under Australian law, whether DABUS could derive the title of inventor from Thaler, and whether an AI could assign patent rights.⁷² The FCA concluded that while DABUS could be recognized as an inventor, it could not apply for or own a patent.⁷³ The court found that Thaler had complied with the regulations by naming DABUS as the inventor. However, the Commissioner of Patents argued that only a human could assign patent rights, which the FCA rejected, asserting that Thaler could be entitled to a patent for inventions made by DABUS.⁷⁴ The Commissioner appealed to the Full Federal Court of Australia (FCAFC), which overturned the FCA's conclusions about DABUS being an inventor or able to assign rights, stating that only individuals with legal personality

⁶⁹ Ibid.

⁷⁰ Jayaraman, "AI Legal Neutrality - All About Fine Balances Along the Determinacy-Indeterminacy Axis of Patent Law" (2023) 45(2) *European Intellectual Property Review* 112, 114

⁷¹ Ibid.

⁷² Ibid.

⁷³ Abbot and Rothman (n 67)

⁷⁴ Ibid.

can be actual inventors.⁷⁵ The FCAFC's ruling was final, as the High Court of Australia rejected further appeal.⁷⁶

5.0. Conclusion

The emergence of Artificial Intelligence (AI) as a potential inventor presents significant challenges to existing intellectual property frameworks. The inability of current patent laws in various jurisdictions—such as the UK, US, and Australia—to recognize AI as an inventor reflects a fundamental gap in the legal recognition of non-human creativity. As AI continues to develop innovative solutions autonomously, it raises critical questions regarding ownership, liability, and the ethical implications of granting patents. The current legal systems emphasize human inventorship, often overlooking the unique contributions of AI systems.

6.0. Recommendation

It is noteworthy that AI continues to permeate human endeavor and it also possess inherent qualities that enables it to create innovations with little or no human intervention. However, the issue of granting patents to these nonhuman inventors needs to be addressed at the international and domestic level. It is clear that a fundamental change needs to be made to the legal frameworks of patents in various jurisdictions. This paper posits that urgent parliamentary/legislative action needs to be taken to ensure flexibility in the category of persons that can be granted patent. This paper also posits that AI should be granted rights to patents. IP focuses on the protection of intellectual creation and innovation and one of the advantages of AI is the ability to reinvent creations which are beyond its original design. Hence it

⁷⁵ Ibid.

⁷⁶ Ibid.

is morally unjust to refuse patent application on the ground that the inventor is not a natural person notwithstanding that it possesses the power of creation which is the focus of Intellectual Property protection.

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