

Brazilian IPO decides that AI machines cannot be named as inventors

By José Roberto de Almeida Junior and Jessica Satie Ishida - Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados, Brazil

The Brazilian Industrial Property Office (“INPI”) has recently decided that patent application no. BR 11 2021 008931-4 could not enter the national phase in Brazil, since an artificial intelligence (“AI”) system called DABUS was appointed as inventor.

This decision follows opinion no. 00024/2022/CGPI/PFE-INPI/PGF/AGU issued by the INPI’s Specialized Federal Attorney Office regarding the interpretation of Law no. 9.609/1996 (“Brazilian Industrial Property Law” or “LPI”), the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Though it recognizes that non-humans could be subjects of law (citing the Universal Declaration of Animal Rights of 1978 as an example), the opinion explains that, in Brazil, it is not possible to extend this understanding to the right to be named an inventor, expressed in article 6 of the LPI, which is based on personal rights and thus could only be held by a natural person.

Under this logic, the Specialized Federal Attorney Office concludes that only humans could be named as inventors, but also emphasizes the need for specific rules regulating inventions developed by artificial intelligence machines and systems. According to the Specialized Federal Attorney Office, such measure is important to safeguard investments in the research and development of new technologies. The patent applicant can still file an appeal against the INPI’s decision.

It is important to note that the INPI’s position is very similar to the ones previously adopted by other industrial property offices such as the European Patent Office (EPO) and the United States Patent and Trademark Office (USPTO), that also decided that inventors must be natural persons. Even in the cases where such administrative decisions have been challenged before the courts, at least for the moment, the courts have sided with the industrial property offices, as per the latest judgment by the United States Court of Appeals for the Federal Circuit affirming the USPTO’s decision.

It remains to be seen whether the patent applicant will challenge the INPI’s rejection decision or even discuss it before the Brazilian courts. Even in the absence of these possible next steps, the DABUS’ case has raised several important conversations around the world about the analysis of AI-related inventions.

[Click here to go to the AIPPI Newsletter October 2022](#)