

# Protection of AI-Generated Inventions and Materials

~Current Discussions in Japan~

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# Protection of AI-Generated Inventions under the Japanese Patent Law

~IP High Court decision on the Dabus case~

# IP High Court Decision on January 30, 2025

## ~Dabus case~

### Background

- ✓ An applicant filed a patent application designating "Dabus, artificial intelligence that autonomously invented the present invention" as the inventor.
- ✓ The Commissioner of the JPO dismissed the patent application.
- ✓ The applicant filed a request with Tokyo District Court seeking the annulment of the dismissal of the patent application, but the Tokyo District Court ruled in favor of the Commissioner of the JPO.
- ✓ The appellant appealed to the IP High Court.

### Issue

Is the "invention" protected by patent rights limited to those made by natural persons?

# IP High Court Decision on January 30, 2025

## ~Dabus case~

### Court's decision

- ✓ Under the patent law, there are no provisions that define the origin of the "right to obtain a patent" other than Article 29, which stipulates "a person who has made an invention that can be used industrially may obtain a patent for that invention" and Article 35, which defines employee(natural person)'s invention. Therefore, under the patent law, the "right to obtain a patent" is a right that arises only when the inventor is a natural person.
- ✓ Furthermore, the procedures for patent applications also presuppose that the inventor is a natural person. There are no provisions that stipulate procedures for granting patents on the premise that the inventor is an entity other than a natural person.

# IP High Court Decision on January 30, 2025 ~Dabus case~

## Court's decision ~Cont'd~

- ✓ Therefore, it is understood that "inventions" that can be patented are limited to those invented by natural persons.
- ✓ In other words, **inventions autonomously made by artificial intelligence (AI) cannot be granted patents.**

# IP High Court Decision on January 30, 2025

## ~Dabus case~

The applicant argued that:

- ✓ Since the concept of AI inventions and the associated legal issues did not exist at the time the patent law was enacted, the lack of provisions concerning AI inventions in the patent law does not constitute a reason to uniformly deny protection for AI inventions.
- ✓ In light of the patent law's purpose of contributing to industrial development, it should be interpreted and applied in a way that grants protection for AI inventions to the fullest extent possible.

# IP High Court Decision on January 30, 2025

## ~Dabus case~

The Court ruled that:

- ✓ Whether or not to grant patent rights to AI inventions is a **matter requiring legislative discussion** based on a broad and careful discussion of the various impacts that AI inventions will have on society, including whether the rights should be equivalent to current patent rights, which are based on the premise that the inventor is a natural person.
- ✓ It is **difficult to address** this issue **through interpretation of the current law**.

\*The applicant filed a petition with the Supreme Court for acceptance of appeal, but **the Supreme Court dismissed the final appeal**. Therefore, the Intellectual Property High Court's decision became final.

# Protection of AI-Generated Materials under the Japanese Copyright Law

~Discussion on the Agency for Cultural Affairs~

# Is AI-Generated Material a Copyrightable “Work”?

A copyrightable “work” is defined as a “creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic, or musical domain (Article 2, Paragraph 1, Item 1 of the Copyright Act).

Based on the definition:

- (1) Material **autonomously generated by AI** does **NOT** constitute a copyrightable “work” because it is not a “creative expression of thoughts or sentiments.”
- (2) Material **created by a person using AI as a “tool”** to creatively express thoughts or sentiments constitutes a copyrightable “work”, and the AI user becomes the author.

# Created by a Person Using AI as a "Tool"

Determining whether a person has used AI as a "tool" depends on two factors:

- (1) whether the person had a "creative intention"
- (2) whether the person has made a "creative contribution"

## Creative Intention

→ An intention to express thoughts or sentiments as a certain result.

- \*It is not required to have a definitive intention in advance regarding the specific form of the result.
- \*It suffices to intend to use AI to generate a result that expresses one's individuality

# Created by a Person Using AI as a “Tool”

## Creative Contribution

→ It is considered necessary to comprehensively evaluate the entire process of using AI for generation.

## Volume of Instructions

- ✓ Instructions that are merely long and do not lead to creative expression → No
- ✓ Detailed instructions that specifically show what can be considered creative expression → Yes

## Number of Attempts

- ✓ Simply a large number of attempts → No
- ✓ Iteratively refining instructions based on the generated output → Yes

When a human adds or modifies something that can be considered creative expression to an AI-generated output, the added or modified portion is usually recognized as a copyrightable work.

Thank you for your kind attention!