

## Die Seite der AIPPI / La page de l'AIPPI

### Inventorship of Inventions Made Using Artificial Intelligence (Q 272)

#### REPORT OF THE SWISS GROUP\*

#### I. Current law and practice

##### 1. What are the requirements to be considered an inventor of a patented invention in your jurisdiction? When this Study Question is referring to “your law” or “your jurisdiction”, please note this is intended to be inclusive of both statutory law and case law.

The inventor is the natural person originating the technical creation constituting an invention, i.e., producing and recording the essential elements of the technical teaching – regardless of how it was done or which tools were used (Art. 3 PatA<sup>1</sup>; Decision S2018\_003 of the Federal Patent Court, 24 August 2018, § 9; M.M. PEDRAZZINI/CH. HILTI Europäisches und schweizerisches Patent- und Patentprozessrecht, Bern 2008, 477).

The above definition is generally accepted as the “creative principle” (“*Principe créateur*” or “*Schöpferprinzip*”).

The natural person mentioned as the inventor in the Patent Register benefits from the legal presumption that he/she is indeed the inventor. Nevertheless, because the accuracy of the entry of the inventor is not examined by the Swiss Federal Institute of Intellectual Property<sup>2</sup>, this presumption may be reversed by the actual inventor in a civil action (Art. 74 § 6 PatA).

The civil courts review the inventorship status as part of proceedings requesting an assignment of the right to a patent. The burden of proof lies with the party alleging an incorrect designation of inventorship to demonstrate sufficient probability that the person designated as inventor was not the originator of the invention. The designated inventor is given the possibility to counterargue.

Similarly, in the context of an employment relationship, contractual obligations do not determine inventorship, i.e., whether an employee had a contractual obligation to make an invention within the meaning of Art. 332(1) CO<sup>3</sup>. Rather, the assessment is to be based on the activity actually performed by the employee and his/her position in the company (Cantonal Court Nidwald, March 11, 2008, Z 05 62 [sic! 2010, 41 et seqq., “Result-Verfahren”]).

##### 2. Assuming valid inventorship, does your law include provisions concerning the naming of the inventor of an invention? If yes, please briefly explain.

Yes. The applicant must provide the Swiss Federal Institute of Intellectual Property (IPI) with written confirmation of the name of the inventor (Art. 5(1) PatA). The person named by the applicant is mentioned as the inventor in the Patent Register, in the publication of the application, in the grant of the patent, and in the patent specification (Art. 5(2) PatA). The above applies *mutatis mutandis* where a third party provides an enforceable judgment establishing that he/she is the actual inventor, rather than the person named by the applicant (Art. 5(3) PatA).

As noted above, the accuracy of the designation of the inventor in the application or in the register is not examined by the IPI. Such verification can only occur before the special civil courts competent in patent matters, at the request of a third party (Art. 74(6) PatA).

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<sup>1</sup> Swiss Patent Act (PatA).

<sup>2</sup> Swiss Federal Institute of Intellectual Property (IPI).

<sup>3</sup> Swiss Code of Obligations (CO).

Usually, the designation of the inventor is made in a separate document indicating his/her first and last names, as well as his/her domicile (Art. 34(1) Patent Ordinance<sup>4</sup>). The designation of the inventor can be included in the patent application (Art. 34(2) PatO). If the designation of the inventor was not filed together with the request, it may still be filed within 16 months of the filing date or priority date, whichever expires earlier (Art. 35(1) PatO). In case of a divisional application (Art. 57 PatA), the inventor(s) can be designated within two months from filing, if the above 16-month term does not expire later (Art. 35(2) PatO).

If the designation of the inventor is not filed within the required deadlines, the IPI must refuse the patent application (Art. 35(3) PatO; Federal Supreme Court of Switzerland<sup>5</sup>, decision 110 II 70). However, an incorrect or incomplete designation of inventor(s) does not inevitably lead to nullity or unenforceability of the patent. Rather, a request for the provision of a declaration that the applicant is the author of the subject invention (Art. 74(6) PatA) or an action for rectification by the actual inventor(s) is issued (Cantonal High Court Zürich<sup>6</sup> of 29 January 1991, §2; Commercial Court Zürich<sup>7</sup> of 28 August 2007, published in ZR 107 (2008) No. 16, E. 3.2).

The applicant or patentee may request the rectification of the designation of the inventor. The request must be accompanied by a declaration of consent of the person wrongly designated as the inventor (Art. 37(1) PatO). If the person wrongly designated as inventor is already listed in the publication(s) of the IPI or is already entered in the Patent Register, the correction shall also be entered in the Register and be published (Art. 37(2) PatO).

A request may be filed that the identity of one or more of the inventor(s) should not be mentioned. The renunciation by the inventor of his/her right to be designated in the patent register and in the publications of the IPI (Art. 6 PatA) shall only be taken into consideration, if the applicant submits a declaration of renunciation by the inventor to the IPI no later than 16 months from the filing or priority date, whichever is earlier (Art. 38(1) PatO). The declaration of renunciation must contain the reference number of the patent application, be dated, and bear the signature of the inventor (Art. 38(2) PatO).

The declaration of renunciation that complies with the requirements and the designation of the inventor shall be filed separately; the existence of such titles shall be mentioned in the file (Art. 38(4) PatO). Therefore, these documents will not be immediately accessible in the event of a request for inspection of the file by third parties.

### **3. Does your law, including any regulations or official guidelines, provide any specific guidance or rules on inventorship of inventions made using AI?**

There are no regulations or official guidelines specifically applicable to inventions made using AI.

The State Secretariat for Education, Research and Innovation<sup>8</sup> (SERI) issued a collective report of the federal administration on Artificial Intelligence on 13 December 2019. The report provides that the legal framework in Switzerland is *a priori* adequate, including the integration of emerging applications and new business models using AI. Therefore, according to SERI, fundamental adjustments to the legal framework are not necessary at this stage, including patent law; see page 103 of the report "Rapport du groupe de travail interdépartemental 'Intelligence artificielle' au Conseil fédéral" (French version, no English version is available).

### **4. Under your law, is it possible for an AI entity to be considered an inventor or co-inventor in a patent application? If yes, please explain.**

No.

While not explicitly codified in Swiss law, various provisions exclude or prevent the consideration of an AI entity as an inventor in a patent application.

<sup>4</sup> Patent Ordinance (PatO).

<sup>5</sup> Federal Supreme Court of Switzerland (BGer); decisions of the BGer (BGE).

<sup>6</sup> Cantonal High Court of Zürich (OGer Zürich).

<sup>7</sup> Commercial Court of Zürich (HGer Zürich).

<sup>8</sup> State Secretariat for Education, Research and Innovation (SERI).

First, Art. 5(2) PatA provides that “the [natural] *person* named by the patent applicant shall be mentioned as the inventor in the Patent Register [...]” (emphasis added).

Second, Art. 34(1) PatO provides that the inventor is to be designated in a separate document together with his/her given name, family name and domicile.

Third, various acts before the IPI or Swiss courts require the signature of an inventor, such as for example the correction of inventorship. Moreover, the transfer of rights from an inventor to the applicant requires a declaration of intention by the inventor which can only be provided by a natural person.

**5. Under your law, is it possible to name an AI entity as an inventor or co-inventor in a patent application? If yes, please explain.**

No, for the same reasons as outlined above.

**6. In connection with a hypothetical patentable invention made using AI, which of the following contributions by one or more human contributors could be considered under your law as being at least co-inventorship of an invention made using AI? In each case, please explain why or why not. Please note this question does not consider inventorship of the AI itself; only inventorship of an invention made using the AI:**

- (a) Using AI to design a particular type of product or process, when the resulting patentable invention is of the type of product or process intended (e.g., a car designer who wishes to design a car body might start with a general shape, and then use AI to perfect aerodynamic or other characteristics leading to a patentable invention. Here, AI is being used as a tool to help invent, but the intent for the result lies with the user);
- (b) Using AI to achieve a particular intended goal, when a resulting patentable invention made using the AI is not directly related to that intended goal (e.g., an AI system is developed to go through social media data looking for one thing and then discovers a useful relationship leading to a patentable invention that was not an original objective of the system);
- (c) Designing or contributing to the design of the AI algorithm that is used in a) or b);
- (d) Selecting the data or the source of the data that is used to train the AI algorithm used in a) or b);
- (e) Generating or selecting the data or the source of the data that is input to the trained AI algorithm used in (a) or (b); and
- (f) Selecting one from a large number of outputs produced by the AI of (a) or (b) and recognizing it to be a patentable invention.

Most AI inventions concern software-implemented inventions, as opposed to hardware-implemented AI. Currently, this group considers that software-based AI inventions do not fundamentally differ from other computerized techniques, at least as far as intellectual property protection is concerned. Although the group acknowledges that computerized techniques lead to less-and-less tangible human involvement in the inventive process, the group fails to see a good reason to apply a specific regime to inventions made using AI. Therefore, inventorship requirements for inventions made using AI should be the same as for inventions made using any other type of tool.

With this in mind, the Swiss group has come to the conclusion that, in all of the above scenarios, humans may potentially be considered inventors provided that their respective contributions meet the requirements outlined above in A1. Whether or not a particular human contribution is sufficient to be acknowledged as inventorship has to be assessed on a case-by-case basis. In particular, this will likely be the case when:

- (a) using AI to design a particular type of product or process, when the resulting patentable invention is of the type of product or process intended; or
- (b) using AI to achieve a particular intended goal, even when a resulting patentable invention made using the AI is not directly related to that intended goal.

Indeed, in each of the above cases, inventorship would likely not be questioned if the human contributors had used another tool (e.g., another computer-aided technique or a mechanical tool) to arrive at the invention.

Concerning item (c), i.e., designing or contributing to the design of the AI algorithm that is used in (a) or (b), a similar question arises with respect to computer programs used to create copyrightable material. The authors of the corresponding software are typically not regarded as authors of the works subsequently created by persons using such software, provided that the creative influence of the software authors has no steering impact on such works. Similarly, designing an AI software is unlikely to be sufficient to acknowledge (co)inventorship of an invention made using this AI software.

Nevertheless, there may be scenarios where the authors of the AI software (the “AI authors”) or, more generally, the AI entity, may be considered to have sufficiently contributed to the development of an invention. Obviously, this may be the case when the AI authors are also users of the AI entity. In addition, this may also be the case where the AI entity was designed for the specific goal of developing an invention as in (a) or (b) above.

Using the same criteria, inventorship may be acknowledged for a human contributor in the scenarios indicated in (d), (e), and (f) above.

Where the human contribution is limited to the mere selection of data used to train the AI algorithm, key aspects to consider will be the extent to which this selection impacts the training of the AI entity (and consequently the invention) and/or whether the data selection performed qualifies, in itself, as an inventive contribution.

Similar considerations may apply to item (e), which concerns data inputs to the trained AI algorithm (e.g., for inference purposes). However, because the scenario assumed in (e) relates to the utilization of the AI entity after it has been trained (e.g., as in supervised approaches), it is less likely to involve inventive contributions from human users in practice. The case evoked under item (f), i.e., selecting a particular output from a large number of outputs produced by the AI entity and recognizing it to be a patentable invention, may also potentially be acknowledged as inventorship; a parallel can be made with selection inventions.

In sum, a sufficient causal link must exist between the human contributions made during the inventive process and the resulting invention, as with any other type of invention.

As discussed earlier, Swiss patent law does not provide an explicit definition of an inventor. Therefore, in the event of disputes as to the existence and/or identity of an inventor, the decisions fall to the courts. Thus, depending on requests and allegations of the parties and the case at hand, the courts may have to decide on the minimum degree of involvement required for a natural person to be considered as an inventor of an invention made using AI.

**7. Assuming an invention was made using at least a minimum amount of AI contribution during the inventive process at any stage, would this be considered as a red flag under your law leading to an exclusion of the patentability of the invention as a whole? Please briefly explain.**

No.

The involvement (or the contribution) of a computer in (to) a claimed invention is not, on its own, a reason to exclude an invention from patentability in Switzerland. The same conclusion can be drawn, by analogy, for an AI-based contribution made during the inventive process, see e.g., the previous AIPPI Report from the Swiss group: Report of Swiss group, Patentability of computer implemented inventions, sic! 2017, 672 et. seqq.

Using AI in the inventive process does therefore not represent a red flag under the Swiss patent law.

**8. According to the opinion of your Group, is your current law regarding inventorship of inventions made using AI adequate? Please briefly explain.**

Yes.

In Switzerland, the existing patent law is formulated in a technology-neutral manner and has proven to be sufficiently flexible to reasonably address inventorship issues concerning new technologies in the past, be they related to computer-implemented inventions or other types of technological evolutions. Hence, this group, in agreement with the current opinion of SERI, does not currently believe that the advent of AI requires a change to the existing law see 3.

**9. According to the opinion of your Group, would recognition of an AI entity as an inventor or co-inventor conflict with the public policy issue of fostering innovation (you may also refer to other general patent law doctrines under your law, if applicable)? Please briefly explain.**

The designation of the inventor does not seem to be directly linked to the policy of fostering innovation. Rather, it is seen merely as a right of the inventor, which can be compared to moral rights of creators of copyrighted works. The incentive for innovation arises from the duration of the monopoly conferred by patent protection and the possibility of effectively enforcing a granted patent.

Although there is no demonstrated support that the recognition of an AI entity as inventor or co-inventor would have a positive effect on fostering innovation, this would likely not undermine the policy of fostering innovation in general.

**10. In your jurisdiction, what is the purpose of naming the inventor in the patent application? Does the naming of the inventor in the patent application, if applicable, consider aspects of personal rights under your law, e.g., does it fulfill a reward function for personal effort? Please briefly explain.**

Articles 5 and 6 of the PatA seek to implement Art. 4<sup>ter</sup> of the Paris Convention for the Protection of Industrial Property, London text and correspond to Arts. 62 and 81 of the European Patent Convention. They respond to a postulate which is of particular interest to inventors working for an employer (Message from the Federal Council to the Federal Assembly concerning the revision of the Law on Patents for Inventions (of 25 April 1950), FF 1950 I 933 (967)). Both of these articles, introduced under the heading of "safeguarding the honour of the inventor", as well as Art. 4<sup>ter</sup> Paris Convention, deal exclusively with the moral rights of the inventor. Historically, the designation of the identity of the inventor has not been motivated by any incentive mechanism for creativity and innovation. It is a recognition of a moral right, or a scientific or industrial honor. It is a moral reward that derives from the inventor's personal efforts.

However, unlike the author of a copyrighted work, the inventor of a patented invention does not have the right to the integrity of the work. Rather, the rights of the inventor are limited to the right to be named in the sense of Art. 5 PatA.

**11. According to the opinion of your Group, would the recognition of inventorship by an AI entity conflict with or undermine the purpose of naming the inventor in the patent application you identified in question 10? Please briefly explain.**

The purpose of designating an inventor in a patent application, namely to provide recognition and motivation, does not seem to apply to the case where an AI entity is designated as inventor. However, the potential designation of an AI entity as inventor would presumably not conflict with the potential rights of a third party. Therefore, unless it would prevent the designation of a human inventor, the group does not see a risk that the hypothetical recognition of inventorship by an AI entity in general would undermine the purpose of naming the inventor in Switzerland. As such, this group considers it important to safeguard provisions recognizing that even limited contributions of human inventors should result in their designation as inventors of an AI-based invention.

As mentioned above, it is left to the courts to decide what is a sufficient contribution to an invention to be acknowledged as inventorship. Thus, even in the above hypothetical scenarios, a non-designated inventor would have the opportunity to request rectification of the designation of the inventor before a court. Even where an employer fails to designate a human inventor (due to compensation obligations, etc.), the legal system offers the possibility to remedy the deficiency.

**12. Do you consider international harmonization regarding inventorship of inventions made using AI as desirable? Please briefly explain.**

*If YES, please respond to the following questions without regard to your Group's current law or practice.*

*Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.*



Yes. This group, in particular members from industry, consider it important that law regarding inventorship is harmonized on an international level.

A lack of harmonization could potentially lead to situations where patent applications of the same family would designate different inventors in different countries, which would likely lead to confusion.

In this group's opinion, further harmonization is desired in respect of minimal requirements for humans to be named as inventors, be it alone or alongside AI entities (should they be considered inventors at all).

**13. What should be the requirements to be considered an inventor or co-inventor of an invention made using AI?**

This group does not see a need to distinguish such requirements from those currently applied to the determination of inventorship (or co-inventorship) of an invention made using other types of computer-related inventions (e.g., application programs such as CAD solutions meant to run on standard computer platforms) or any other tool.

In the case of AI, such a contribution may potentially take many forms, including designing and/or programming the AI system, selecting suitable input data (e.g., including both training and inference data for supervised training pipelines), pre-processing (e.g., cleaning) such data, if necessary, and parameterizing the AI system (e.g., for the training phase). In addition, human activities may be further necessary to select relevant contents from the outputs produced by the AI system, and/or clean up such contents, if not to improve them *a posteriori*. Such contributions may potentially qualify as inventive contributions which would in turn make the contributor an inventor.

**14. Should an AI entity, for example when considered as an "artificial person", be considered an inventor or co-inventor of an invention made at least in part by contribution from the AI entity assuming the same contribution, if made by a human inventor, would be considered inventorship under applicable patent law?**

No, this groups fails to see a clear need for this, inasmuch as humans are always involved in the development of an invention made using AI in practice, as noted earlier. Controversial scenarios relating to inventions made without any human contributions at all are evoked in 18.

**15. If AI is considered an inventor or co-inventor of an invention made using AI, should it be possible to name AI as an inventor or co-inventor in a patent application?**

To date, only human beings can be considered as inventors of patentable inventions. To be considered an inventor or co-inventor, an AI entity would first have to be acknowledged with or assigned a particular status in the law. Only then would it make sense to question the extent to which this AI entity should be named as inventor; see also 11.

**16. In connection with a hypothetical patentable invention made using AI, which of the following contributions by one or more human contributors should be considered under your law as being at least co-inventorship of the invention made using AI? In each case, please explain why or why not. Please note this question does not consider inventorship of the AI itself; only inventorship of an invention made using the AI:**

- (a) Using AI to design a particular type of product or process, when the resulting patentable invention is of the type of product or process intended (e.g., a car designer who wishes to design a car body might start with a general shape, and then use AI to perfect aerodynamic or other characteristics leading to a patentable invention. Here, AI is being used as a tool to help invent, but the intent for the result lies with the user);
- (b) Using AI to achieve a particular intended goal, when a resulting patentable invention made using the AI is not directly related to that intended goal (e.g., an AI system is developed to go through social media data looking for one thing and then discovers a useful relationship leading to a patentable invention that was not an original objective of the system);
- (c) Designing or contributing to the design of the AI algorithm that is used in (a) or (b);
- (d) Selecting the data or the source of the data that is used to train the AI algorithm used in (a) or (b);

- (e) Generating or selecting the data or the source of the data that is input to the trained AI algorithm used in (a) or (b); and
- (f) Selecting one from a large number of outputs produced by the AI of (a) or (b) and recognizing it to be a patentable invention.

As noted above in reference to question 6, any sufficient human contribution to a patentable invention (which is reflected in at least one claim of the corresponding patent application) may potentially be considered to impart inventorship or co-inventorship, as with any other type of invention. Courts will have a final say.

**17. If an invention was made using at least a certain level of AI contribution during the inventive process should the invention be excluded from patentability as a whole? If yes, what would be the minimum level of AI contribution to trigger this exclusion? Please briefly explain.**

No.

The same question has been addressed in respect of inventions made using computers; there is no need to distinguish AI contributions from other computer-aided contributions. As a result, a contribution from a computerized process in general or an AI entity in particular should not serve as a basis to exclude an invention from patentability.

**18. Please comment on any additional issues concerning any aspect of inventorship of inventions made using AI you consider relevant to this Study Question.**

As expressed earlier, the group is of the opinion that AI tools, at least those currently available, do not fundamentally differ from other, computer-based tools, at least as far as intellectual property is concerned. Therefore, much of the discussion on AI inventorship appears to be based on hypothetical tools (often fantasized as human-like intelligence systems), which, however, do currently not exist.

Nevertheless, the group recognizes that the advent of AI gives rise to less apparent, tangible contributions of human inventors. Specifically, there are situations where the actual contributions of human inventors do not exceed contributions that could have equally been made by an AI entity, as in, e.g., chemical compounds identified using automated screening tools. In such situations, one may be of the opinion that the threshold of inventorship has been reduced to an extent comparable to what software tools may achieve. Thus, a more general question concerns the definition of minimal requirements for inventorship.

Courts may have to deal with such questions in the near future.

Finally, assuming that inventions may be achieved without any human intervention at all, a potential issue arises from the requirement to designate a natural person as an inventor in a patent application, which may potentially lead to a dilemma. Namely, an applicant may be forced to designate a natural person that has not sufficiently contributed to an invention because the AI entity used to achieve the invention cannot legally be designated as inventor. While an incorrect inventor designation would not immediately invalidate a patent in Switzerland, this may be the case in other jurisdictions.

Such questions call for a debate as to the need for a *sui generis* right for AI-related inventions and, more generally, for computer-implemented inventions. Without doubt, intermediate intellectual property rights, e.g., between mere copyrights and patents, would be useful for applicants active in the field of information technology. Ultimately, such rights may not necessarily require the designation of an author or an inventor.

**19. Please indicate which industry sector views provided by in-house counsels are included in your Group's answers to Part III.**

Healthcare.

## Summary

*Various provisions of Swiss law implicitly exclude the possibility for an artificial intelligence (AI) entity to be named as inventor in a patent application. According to Swiss law, an inventor is a natural person originating the technical creation constituting an invention. The Swiss group recognizes that the advent of AI gives rise to less-and-less apparent and tangible contributions of human inventors to inventions involving AI. Nevertheless, this group fails to see a clear need to name AI entities as inventors, inasmuch as humans are always involved in the development of an invention involving AI in practice. Of course, a sufficient link must exist between the human contributions made during the inventive process and the resulting invention, as with any other type of invention. Whether such contributions are sufficient to be acknowledged as inventorship will have to be assessed on a case-by-case basis and, eventually, by courts. For the rest, the Swiss patent law is formulated in a technology-neutral manner and has proven to be sufficiently flexible to reasonably address inventorship issues in various technological areas. Currently, this group considers that AI-related inventions do not fundamentally differ from other types of invention, as far as intellectual property protection is concerned. Thus, there is no need to devise specific inventorship requirements for AI-related inventions. More generally, the current opinion of this group is that the advent of AI does not require a change to the existing patent law. That being said, the need for sui generis rights for AI-related inventions and, more generally, computer-implemented inventions, must be further debated.*

## Zusammenfassung

*Mehrere Bestimmungen im Schweizer Recht schliessen die Möglichkeit aus, dass eine Form der künstlichen Intelligenz (KI), bspw. eine Software, rechtsgültig als Erfinder einer Patentanmeldung genannt werden kann. Im Schweizer Recht ist ein Erfinder eine natürliche Person, welche die technische Schöpfung hervorgebracht hat. Der Schweizer Gruppe ist bewusst, dass durch das Aufkommen von KI oftmals der offensichtliche und spürbare Beitrag eines menschlichen Erfinders an einer Erfindung unter Mithilfe von KI gering geworden ist. Jedoch ist die Gruppe der Ansicht, dass es keinen naheliegenden Grund gibt, die Möglichkeit, KI als Erfinder anzuerkennen, einzuführen, da eine natürliche Person immer beim Entstehen einer Erfindung involviert ist. Dabei muss selbstverständlich weiterhin eine Verbindung bestehen zwischen dem tatsächlichen Beitrag und der daraus resultierenden Erfindung, so wie dies für jede andere Art von Erfindung gilt. Ob ein solcher Beitrag genügt, die Erfinderschaft anzuerkennen, muss schlussendlich vor Gericht entschieden werden auf Basis einer individuellen Fallanalyse. Im Übrigen ist die Gruppe der Ansicht, dass das geltende Schweizer Recht in der Vergangenheit ausreichende Flexibilität gezeigt hat, auf neue Formen von Erfindungen (bspw. im Softwarebereich) zu reagieren. Da nach Ansicht der Schweizer Gruppe KI-Erfindungen im Hinblick auf Fragen des gewerblichen Rechtsschutzes nicht fundamental von bspw. Softwarepatenten zu unterscheiden sind, besteht kein Anlass, das bestehende Schweizer Recht zu ändern. Es wird jedoch noch weiter zu debattieren sein, ob für KI-Erfindungen oder im Allgemeinen computerimplementierte Erfindungen neue Rechtsbestimmungen einzuführen sind.*

## Résumé

*Diverses dispositions du droit suisse excluent implicitement la possibilité de désigner un système d'intelligence artificielle (IA) en tant qu'inventeur dans une demande de brevet. Selon le droit suisse, un inventeur est une personne physique ayant contribué à la création technique constituant l'invention. Le groupe suisse reconnaît que les contributions humaines aux inventions impliquant de l'IA peuvent paraître moins tangibles que celles concourant à d'autres types d'inventions. Néanmoins, le besoin de nommer des systèmes d'IA comme inventeurs est questionnable, dans la mesure où des humains sont toujours impliqués dans le développement de telles inventions en pratique. Bien entendu, un lien suffisant doit exister entre les contributions humaines apportées durant le processus de création et l'invention résultante, comme avec tout autre type d'invention. La question de savoir si ces contributions sont suffisantes doit être évaluée au cas par cas et, in fine, par les tribunaux. Enfin, la loi sur les brevets en Suisse est formulée de manière neutre sur le plan technologique et s'est révélée être suffisamment souple pour traiter des problèmes d'inventeurs dans différents domaines de la technologie jusqu'à présent. Or, ce groupe considère que les inventions liées à l'IA ne sont pas fondamentalement différentes en ce qui concerne la propriété intellectuelle. Il n'est donc pas nécessaire de distinguer les*





*exigences en matière d'inventeurs pour ces inventions de celles appliquées pour d'autres types d'invention. Plus généralement, ce groupe considère que l'avènement de l'IA ne nécessite pas de modification de la loi actuelle sur les brevets. Cependant, la question de la nécessité d'un droit sui generis pour les inventions liées à l'IA et, plus généralement, les inventions mises en œuvre par ordinateur, doivent être débattues.*