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# Kutak Rock Client Alert

## USPTO Releases Guidance on Inventorship for AI-Assisted Inventions

The United States Patent and Trademark Office (“USPTO”) issued [Guidance](#) on February 13, 2024, providing clarity on inventorship requirements for patents and applications involving artificial intelligence (“AI”) assisted inventions. The Guidance emphasizes that inventors and joint inventors named on U.S. patents and patent applications must be natural persons and outlines a process for determining inventorship in such cases. Here are some key takeaways:

### Inventors Must Be Natural Persons

The Guidance reiterates that the patent laws of the U.S. require inventors or joint inventors be natural persons. AI-assisted inventions are not exempt from this requirement.

### AI-Assisted Inventions Are Not Automatically Unpatentable for Improper Inventorship

The use of AI in the invention process does not automatically render the invention unpatentable due to improper inventorship. Each case is evaluated on its own merits considering factors such as the level of human involvement and contribution to the invention process.

### Naming Inventors for AI-Assisted Inventions

The Guidance provides a two-pronged approach for determining inventorship in AI-assisted inventions: (1) the role of the natural person(s) in conceiving the claimed invention, and (2) the contribution, if any, made by the AI.

### Application of the *Pannu* Factors

The Guidance references the “*Pannu* factors” which provide a non-exhaustive list of considerations for determining whether natural persons significantly contributed to an AI-assisted invention. These factors include:

- The nature and extent of human involvement in the invention process.
- The level of direction, supervision, or oversight provided by a human inventor throughout the invention process.
- The amount of human ingenuity involved in devising the AI system itself.
- The relationship between the claimed invention and the AI-generated output.

The Guidance provides more clarity on how to determine inventors and joint inventors for AI-assisted inventions. By applying the *Pannu* factors, inventors and examiners can determine whether a natural person significantly contributed to an AI-assisted invention and thus qualifies for inventor status under U.S. patent law.

Evaluating issues including inventorship, obviousness, written description, and enablement will take on new dimensions for patents drafted using the help of AI. If you would like more information regarding these issues, please contact [Jason S. Jackson](#). Jason is a computer scientist, experienced patent litigator, and head of Kutak Rock's [Post-Grant Proceedings Group](#).

