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THE QUEST FOR PATENTABILITY OF ARTIFICIAL INTELLIGENCE INVENTIONS. AN ALBANIAN LAW PERSPECTIVE

Technological breakthroughs have often challenged traditional perceptions of legal institutions. It was the industrial revolution that led to the need for internationalization of patent law, with the first wave marked by the Paris Convention of 1883. Similarly, it can be reasonably expected that the involvement of artificial intelligence in the creative domain will most likely trigger the need for regulation of the patentability of works created by artificial intelligence. The traditional perspective on intellectual property law in general, and of patent law in particular, is currently challenged at a local level in various cases regarding whether artificial intelligence-generated outputs can qualify as inventions, who may be recognized as the inventor, and how disclosure and novelty standards should adapt to machine-driven creativity.

This paper examines these issues through the lens of Albanian patent law, situating national provisions within the broader European and international context as well as selected jurisprudence of various states, such as the United States of America. It explores the readiness of the current legal framework to accommodate the challenges raised by artificial intelligence, as well as the potential for regulating this matter under the upcoming artificial intelligence governance legal framework. Ultimately, it argues for a constructive approach that balances legal certainty with technological progress. From a methodological point of view, while I focus my analysis on the Albanian legal framework, particularly on the patent law enacted recently, the discourse is highly relevant for other legal orders as well, inasmuch as the governance of artificial intelligence might be a relevant channel for addressing challenges of patent law.

Keywords: Albania, artificial intelligence, patents, persons.

1. INTRODUCTION

Artificial intelligence might be one of the most transformative factors in societies across the world in the recent decade. Its power to transform constitutes a significant premise for revolutionizing the way human society will work, live, and interact in the near future. Similar

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to and taking over the previous three industrial revolutions, artificial intelligence, along with robotics, the Internet of Things (IoT), biotechnology and nanotechnology, promises to lead human society toward a fourth industrial revolution consisting of a fusion of physical, digital, and biological systems, which serves as the basis for developing smart factories. Overall, it is reasonable to expect that economic efficiency and productivity should be improved, and any costs saved could be reallocated in more intensive capital or inefficient industries, while economies might become more customized, resilient, and sustainable over time.

While such advantages sound quite promising, they do not come without costs and risks to our society. First and foremost, the development of systems requires intensive capital for research and development, and in order to accommodate such costs, industries have to make significant trade-offs. Uncertainty and high-risk investments must be considered in this regard. Second, cybersecurity risks make the interconnected facilities and hardware more vulnerable. Third, the reduction of human intervention in smart factories shall also reduce employment opportunities, and this could become quite challenging for labor intensive industries until the workforce transition is completed. Fourth, lack of standardization might emphasize the interoperability concerns, where different hardware and software need to be synchronized in order to communicate seamlessly. Fifth, diverging normative models in the regulation of artificial intelligence in various jurisdictions shall most probably hinder efficiency in the cross-border outreach of these systems. To what extent could societies internalize these costs and risks remains quite unclear since there are significant unknown variables in this exercise. Amid such background uncertainties, one can ask what the legal implications of such a revolution could pose for the multilayered legal orders throughout global society. While some implications can be predicted, and hence regulated in advance, others cannot.

This paper will elaborate on the current discourse of the capacity of the Albanian legal order to extend patent protection to artificial intelligence-generated content, under the assumption that industrial property rights need to be protected as an imperative for justifying research and development in the industry. In order to approach this question, the paper will first shed light on the concept of artificial intelligence and potential interference with patent law in general, to continue with the main normative premises of the patentability of artificial intelligence-generated content in the Albanian jurisdiction. Lastly, the discussion will conclude with a brief prospect of the patentability of artificial intelligence inventions in the Albanian jurisdiction.

2. THE CONCEPT OF ARTIFICIAL INTELLIGENCE AND INTERFERENCE WITH PATENT LAW

The concept of artificial intelligence refers to the family of technologies composing a system which is distinct from traditional software systems or programming languages, and "that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments" (EU Regulation 2024/1689). The United States Patent and Trademark Office (USPTO) defines the concept of artificial intelligence as comprising one or more of the following eight component technologies: 1) knowledge processing, 2) speech recognition, 3) high computing power hardware, 4) evolutionary computation, 5) machine learning, 6) computer vision to extract and understand information from media, 7)

natural language processing, and 8) planning and control to achieve certain goals (Scambia, 2025, p. 1215).

The European Union is among the pioneers of regulating the normative environment for artificial intelligence systems, having enacted the first comprehensive legal infrastructure for regulating the providing and deploying artificial intelligence systems in the Union area based on a risk-based approach. Mainly for this reason, the EU Artificial Intelligence Act can well be considered an attempt to regulate in a centralized approach the fair use of this breakthrough technology in European space.

Being the first mover grants some advantages in terms of setting the rules and prohibitions on a particular industry, but at the same time this also triggers criticism of loopholes and inadequate regulation. This probably explains the slow path of the regulation of these systems worldwide, with a few other countries such as the United Kingdom and Japan adopting a decentralized approach to regulation, which allows for a more adaptive and flexible regulatory method at a sectoral level. Accordingly, while a central law on artificial intelligence is missing in the United Kingdom, other sectoral legislation, such as the one regulating financial services or data protection, addresses the use of artificial intelligence more broadly (Rough, 2026, p. 5). In Japan, a law passed in May 2025 established the main principles for the promotion of research, development, and utilization of artificial intelligence-related technologies in various areas, hence maintaining a decentralized approach (Public Relations Office, 2025). Both these centralized and decentralized approaches do not seem to interact with any selected national or international legal frameworks that regulate industrial property law in general and patent law in particular.

While missing regulatory frameworks at an international level, artificial intelligence is nevertheless gaining wide applicability in the global virtual space. The fragmented regulation of artificial intelligence in various jurisdictions, which vary from limited norms of ethical nature or decentralized norms on transparency, to more advanced normative frameworks for managing risks of artificial intelligence systems, reflect diverging approaches that various societies are implementing as regards these systems in their marketplace.

With no normative regulation on the relationship between artificial intelligence systems and patent law, in order to observe potential interactions of these systems with the normative regime of patent law, it might be reasonable to highlight some relevant aspects of such interactions. Accordingly, artificial intelligence systems may have two distinct applications, namely, predictive and generative. While predictive artificial intelligence (PredAI) systems use historical information, machine learning algorithms, and statistical techniques to forecast future events, behaviors, or trends, generative artificial intelligence (GenAI) creates new media content (text, image, sound, or video) by focusing on structured data for providing insights for decision-making processes (see Wachter, 2024, p. 674). Both PredAI and GenAI share social, ethical, and legal risks concerning environmental impact, data protection, discrimination and bias, while GenAI presents further risks such as cybersecurity, inaccurate content and offensive content, misinformation, harmful information, hallucinations, and violation of intellectual property rights (Wachter, 2024, pp. 674–675). GenAI is based on Large Language Models (LLMs) to produce texts and answer questions (Wachter, 2024, p. 674).

While the training of LLMs raises particular issues of copyright infringement, the output generation of GenAI raises the issue of both copyright and patent infringement (Novelli *et al.*, 2024, p. 10). Accordingly, given that GenAI systems utilize data and are trained based on the

existing knowledge embodied in various sources in the open space of the World Wide Web, the intellectual property law is mainly concerned with the issues of copyright protection of pre-existing materials and the discourse on whether output generation should be regarded as a derivative creation or autonomous creation from pre-existing materials (Novelli *et al*., 2024, p. 10). Hence, the subject matter of the new content should be compared with the content of pre-existing materials in order to observe any similarities or differences that justify the novelty criterion needed in patenting new inventions.

In addition to the interference between artificial intelligence-generated works and patent law from the subject-matter perspective, one could reasonably raise the question of whether patent law could grant protection to an autonomous invention generated by artificial intelligence systems. Despite the generic nature of this question, at the outset it should be highlighted that patent law, similarly to other intellectual and industrial property law, is regarded as anthropocentric in that it regulates moral and economic rights of humans in the first place (Novelli *et al*., 2024, p. 11). Accordingly, the fundamental premise for intellectual or industrial law is that the author or inventor must be a natural person, while certain moral or economic rights deriving from the work or creation may also be granted to legal entities, which are also persons but of an artificial nature, established ultimately by virtue of expressed human will. In view of this, the 'human-author imperative' of patent law might be extended to artificial intelligence-generated content only insofar as a human element is identified in the process of output generation. This prediction is based on the assumption that training GenAI complies with normative predictions of intellectual and industrial property law inasmuch as the output content is regarded autonomous and duly satisfies the criteria for patentability. The intervention of humans in the process by providing prompts to GenAI before generating a certain output is certainly proof of human contribution to the creation of a certain invention, but to what extent could this contribution be regarded as substantial for the entire invention? Certainly, prompting the invention is not a mere mechanical process which only humans can do, either as natural persons, or in their capacity as representatives of their virtual creations, namely, as legal entities. Inserting a prompt to a GenAI system represents a psycho-emotional process as a premise of the wish or desire for the generated output. In view of this, GenAI is to be considered a tool in the hands of human society for accomplishing certain results that respond to human intent. This imperative is in line with the European Parliament's view on artificial intelligence technologies and their impact on intellectual property rights, asserting that:

> "[European Parliament] takes the view that technical creations generated by Artificial Intelligence technology must be protected under the IPR legal framework in order to encourage investment in this form of creation and improve legal certainty for citizens, businesses and, since they are among the main users of Artificial Intelligence technologies for the time being, inventors; considers that works autonomously produced by artificial agents and robots might not be eligible for copyright protection, in order to observe the principle of originality, which is linked to a natural person, and since the concept of 'intellectual creation' addresses the author's personality; calls on the Commission to support a horizontal, evidence-based and technologically neutral approach to common, uniform copyright provisions applicable to AI-generated works in the Union, if it is considered that such works could be eligible for copyright protection; recommends that ownership of rights, if any, should only be assigned to natural or legal persons that created the work

lawfully and only if authorisation has been granted by the copyright holder if copyright-protected material is being used, unless copyright exceptions or limitations apply; stresses the importance of facilitating access to data and data sharing, open standards and open source technology, while encouraging investment and boosting innovation" (EU Parliament Resolution 2020).

The document approved by the European Parliament not only confirms the human-centric approach of intellectual property law but also endorses a scenario in which 'artificial agents' and 'robots' may potentially claim copyright protection, but by virtue of the principle of originality, linked to natural persons, they are excluded a priori from the possibility of being recognized as authors. This proviso can be applied to inventors *mutatis mutandis* regarding claims for patentability. Hence, by virtue of this logic, artificial intelligence-generated content may be potentially patented due to the protection imperative inherent in the utilitarian model of the intellectual property protection system, but such protection cannot be awarded to non-natural persons or non-legal entities as subjects of intellectual and industrial property law.

The same approach is also valid from the perspective of the European Patent Convention (EPC), signed in Munich, Germany, in October 1973. While Art. 52(1) provides for a subject matter of protection granted to any inventions in all fields of technology, subject to specific criteria, the families of technology used for generating artificial intelligence output are excluded from protection by virtue of not satisfying the primary criterion of being an invention. Under Art. 52(2) and (3) of the EPC, mathematical methods, schemes, rules and methods for performing mental acts and computer programs, etc., are not regarded as inventions. Additionally, the invention, being defined as such, can be patented if it satisfies the non-excludability test, is novel, non-obvious for the skilled person, and can be suitable for industrial applications (Arts. 52, 53, 54, 56, and 57 EPC). Art. 58 of the EPC provides that only natural or legal persons, or anybody equivalent to a legal person by virtue of the law governing it, can file for a European patent.

Comparable to the EPC, the United States Patent Act of 1952 provides similar conditions for obtaining a patent under the United States law, i.e., satisfying without exception the definition of invention under USC 101 and 102, the criteria of novelty (USC 103) and non-obvious subject matter (USC 104), while as per definitions, an inventor is defined as an individual (natural person) who invents or discovers the subject matter of the invention (USC 100(f)), adopting in this way a more narrow scope of subjects entitled to patent protection.

3. NORMATIVE PREDICTIONS OF INDUSTRIAL PROPERTY LAW FOR THE INNOVATION CHALLENGES: THE CASE OF ALBANIA

The modern industrial property law in Albania accompanied the economic transformation of the country from a centrally planned economic system to market economy, a transformation triggered by the fall of the communist regime in 1991. The first liberal law on industrial property was enacted in 1994 (Law no. 7819, dated Apr. 27, 1994 "On industrial property," amended (Official Journal 6, dated June 23, 1994). This law was repealed with the entry into force of Law no. 9947, dated July 7, 2008 "On industrial property," amended (Official Journal 121, dated July 31, 2008). This law was also partially repealed with the entry into force of the Law 52/2025 "On trademarks" (Official Journal 138, dated Aug. 1, 2025) and Law 53/2025 "On patents, utility models and supplementary protection certificates" (Official Journal 138,

dated Aug. 1, 2025) ("Albanian Patent Law"). Over the years, Albania has maintained the same scheme as the EPC regarding the normative criteria for granting a patent.

Albanian Patent Law aims to ensure adequate protection for inventions of physical or legal entities in Albania and abroad (Art. 2(a)). Art. 4(8) of this Law defines an individual as any subject that is distinguished from physical or legal entities, which are defined in para. 25 of the same Article. Art. 4(25) of Albanian Patent Law refers to the concept of physical or legal entities of the Albanian Civil Code. The latter regulates physical entities in Arts. 1-23 by providing in particular for their legal capacity (Art. 1) as an equal capacity of any physical person to enjoy rights and carry civil obligations within the scope of the law, and the ability to act which is fully obtained by law at the age of eighteen (Art. 6). Legal entities are further regulated in Arts. 24-63 of the Albanian Civil Code and other specific legislation, such as commercial law, law on NGO-s, etc. Pursuant to Art. 24 of the Civil Code, legal entities can be public or private. While public legal entities are defined as public institutions, state enterprises, or other public entities established by law (Art. 25), Art. 26 provides that private legal entities consist of profit entities (commercial companies) and not-for-profit entities (associations, foundations, and other entities – e.g., centers – of private character).

Reflecting upon these categories of entities defined in the Albanian Civil Law, it can be inferred that the concept of physical entity in the Albanian Civil Code refers to a human being, an individual, which in legal language is also termed natural person (Garner, 2007, p. 3618). Here we can observe that the concept of an individual defined in Art. 4(8) of Albanian Patent Law is not properly explained in line with the categories of persons regulated in the Albanian Civil Code and other legislation. Indeed, the concept of an individual, according to the Albanian Language Dictionary, refers to a single human being, hence to a physical person as defined in Art. 1 of the Albanian Civil Code (Albanian Academy of Sciences, 2026, entry "individ"). This provision is quite recent in the Albanian patent legislation and might be well considered an error if seen in reference to Art. 14(1) of Albanian Patent Law, which defines the inventor as the individual that has created an invention during his creative work. Hence, provided that the individual, as defined in Art. 4(8) is distinguished from any of the categories of persons defined in Art. 4(25) related to Arts. 1-63 of the Albanian Civil Code, it can be inferred that neither a physical (natural) person nor a legal person can be regarded as an inventor in view of Art. 14 of Albanian Patent Law. In order to deconstruct this fallacy, a historical interpretation, along with a systematic interpretation of other specific legislation, should be employed to evidence that the concept of the inventor is wrongly defined in the current Patent Law.

Amid these incorrect definitions of the subjects of patent law, it would be even more difficult to recognize artificial intelligence systems as holders of rights under Albanian Patent Law. Indeed, if we infer from the above interpretations that the concept of an individual, provided in Art. 14(1) in relation to Art. 4(8) of Albanian Patent Law, is essentially a physical (natural) person that creates an invention during their creative work, it is then excluded that such a person can be a virtual system consisting of a family of hardware, software, and other technologies inasmuch as it misses the legal capacity and ability to act pursuant to the Albanian Civil Code and other legislation in force. It is by virtue of the doctrine of civil legal capacity and the legal capability to act that the denial of patentability would be construed under Albanian Patent Law.

As to the normative criteria for obtaining a patent, Albanian Patent Law follows the same structure as the EPC, inheriting also the same deficiencies as this Convention, as observed in

Cornish, Llewelyn & Aplin (2019, para. 5-001). Accordingly, for an invention to be patented, the creation must first and foremost be determined as an "invention," and, as in the case of the EPC, this concept is not defined under Albanian Patent Law. Having established that creation is regarded as an invention, in order for it to be patentable, it should cumulatively satisfy the following criteria:

1. it must be novel (or not "anticipated") (Art. 5(1)(a) in relation to Art. 9 of Albanian Patent Law);
2. it must contain an inventive step (thus escaping the taint of "obviousness") (Art. 5(1)(b) in relation to Art. 11 of Albanian Patent Law);
3. it must be capable of industrial application (Art. 5(1)(c) in relation to Art. 12 of Albanian Patent Law); and
4. it must not fall within any of the categories of subject-matter specifically excluded under Art. 7 or made subject to exception under Art. 5(2) of Albanian Patent Law.

As for its relationship with artificial intelligence, Albanian Patent Law as a recently enacted piece of modern legislation is missing a normative definition of or approach to this concept, although it would have been quite innovative to address this issue in the context of industrial property law.

4. PROSPECTS OF PATENTABILITY OF ARTIFICIAL INTELLIGENCE INVENTIONS IN THE ALBANIAN JURISDICTION

As observed in the previous section, Albania is far from recognizing artificial intelligence inventorship under the auspices of the patent legislation alone, particularly amid the inconsistencies with the definition of the concept of an individual, physical/legal person, and the inventor. Jurisprudence is scarce in this regard. However, the approach of the Albanian Government to artificial intelligence, with its wide adaptation in administrative practice, suggests that normative regulation should also follow, most probably based on the European Union model. Whether such regulation will also address issues of the patentability of inventions that are autonomously generated by artificial intelligence systems remains desirable, though questionable, since its regulation is missing from European Union law.

While artificial intelligence is an evolving technological phenomenon that will most likely transform the life of our society, most probably the legislation that will be introduced across various jurisdictions will either be scarce in terms of normative power or insufficient in terms of predicting the scope of the phenomenon. Jurisprudence seems to confirm that the normative environment is not yet ready to recognize artificial intelligence systems as inventors. In the Thaler v. Vidal case, adjudicated in the Court of Appeals for the Federal Circuit on Aug. 5, 2022, the Court addressed the question of whether an artificial intelligence software system can be listed as the inventor on a patent application. The USPTO, after concluding that the Patent Act defines "inventor" as limited to natural persons, that is, human beings, denied Stephen Thaler's patent applications, which failed to list any human as the inventor. Thaler challenged this conclusion in the U.S. District Court for the Eastern District of Virginia, which confirmed the decision of USPTO. The Court of Appeal confirmed that the Congress had determined in the Patent Act that only a natural person can be an inventor, so artificial intelligence systems cannot be eligible to file for obtaining patent protection for an invention. In this way, under a strict interpretation of legal provisions, it seems that the category of inventors

includes human beings exclusively (see also Scambia, 2025, p. 1210). This formal interpretation of legal norms confirms that the legal normative environment is far from accepting the expansion of industrial property protection to artificial intelligence-generated content.

In light of this approach, and by virtue of literal, historical, and systematic interpretation of the concept of the inventor under Albanian Patent Law and other legislation, it can be inferred that the patentability of artificial intelligence-generated content cannot be granted to any applicant other than natural person or to legal entities for inventions created in the course of an employment relationship (Art. 15 Albanian Patent Law). Hence, in view of these observations, it could be expected that the extension of the patentability of artificial intelligence-generated inventions toward artificial intelligence systems is an outcome that cannot be expected based on a wide interpretation of legal norms and the given court cases. This would require significant changes in the Albanian legislation. Redefining the concept of person under the Albanian Civil Code constitutes a systemic change for which the Albanian legal system seems to be unprepared. The normative choice of creating virtual holders of rights other than traditional legal persons might be justified in principle if viewed in light of the general function of intellectual property law. Certainly, creating legal monopolies to address market failures is justified by the need to secure legal certainty as a precondition for high and intensive investment needed for research and development (see also Cottier, 2021, para. 4). Beyond these functions, from the legal normative perspective, the Albanian legislation would need to better understand and elaborate the human role in artificial intelligence invention and the principles of autonomy and originality in such inventions, before formally expanding the concept of inventor to artificial intelligence systems by a legal definition in the Patent Law.

5. CONCLUSION

The question of the patentability of artificial intelligence-generated content as more than the fair use of technology as a tool for assisting inventors to develop new technologies, raises concerns about the observance of intellectual and industrial property protection of information which is being utilized for the development of new technologies. The training test having been completed, it is reasonably to be expected that creation should be original and autonomously developed by artificial intelligence systems. Should that be the case, legal regimes would generally accept the possibility of patenting such inventions, although the patent rights can only be granted to natural or legal persons, depending on jurisdiction. Albanian Patent Law would accept either of these subjects in qualified conditions (an employment relationship for legal entities) to apply for a patent and be nominated as patent holders. The extension of patent exclusive rights to artificial intelligence systems is currently excluded from the formal perspective. Albanian law in general and Albanian Patent Law in particular do not recognize the legal capacity of non-person entities such as artificial intelligence systems. From a technical and material perspective, the current state of technology does not exclude the human role from the process of prompting the entry for a particular artificial intelligence invention. Hence, the role of human intervention as a psycho-emotional completion of the invention process would materially exclude the establishment of the criterion of full autonomy in the process of invention, and this remains a substantial challenging obstacle for patentability of artificial intelligence inventions in most jurisdictions. However, this discourse would most likely be melted by the naive idea that this family of technology, which can achieve so much in terms of creation and decision-making premises, could one day also be able to

define the prompt itself and hence overtake the human role in this psycho-emotional process of wishing for a result. Until then, the legislation worldwide will most likely be unable to anticipate the frontiers the new era in artificial intelligence technology will bring.

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