
THE ARTIFICIAL INVENTOR AND THE ANTHROPOCENTRIC STATUTE: AI-GENERATED INVENTIONS, THE DABUS REFUSAL, AND THE REFORM CHOICE FACING INDIAN PATENT LAW

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ABSTRACT

On 15 April 2026 the Indian Patent Office issued its first substantive determination on machine inventorship, refusing Stephen Thaler’s DABUS application and confirming that an artificial intelligence system cannot be the “true and first inventor” under the Patents Act, 1970. Read against the wider global series and India’s Revised Guidelines for Examination of Computer Related Inventions, 2025, the refusal is frequently described as evidence that Indian patent law is “broken” or structurally deficient. This article resists that framing. It argues, first, that the refusal is a coherent and defensible application of the internal logic of patent law rather than the symptom of a drafting failure; the human-authorship requirement is embedded across the Act’s entitlement, declaration and evaluation provisions because it reflects the derivation principle and the incentive rationale on which the system rests. Second, it shows that the real question DABUS crystallises is not doctrinal but normative, and that it is genuinely contested: the scholarly field divides between a “tool” position that resists any reform, a “recognition” position that would extend the system to machine inventions, and an “alternative-incentives” position that would withhold patent protection altogether. Third, it contends that the strongest objection to India’s current settlement is institutional rather than textual: a policy question this consequential and this contested has been left to executive guidance and case-by-case construction, even though a parliamentary committee flagged it as early as 2021. The article maps the design space, tests the comparative models that are said to be transferable to India, and proposes a calibrated, evidence-led reform path—one that gives the Controller enacted rather than inferred authority, resolves ownership before inventorship, and builds in structured review—while candidly acknowledging the risks of over-reform. Its contribution is to reframe the Indian debate from a narrative of crisis to one of deliberate legislative choice.

Keywords: AI inventorship; DABUS; Patents Act 1970; CRI Guidelines 2025; derivation principle; incentive theory; patent reform; Parliamentary Standing Committee; comparative patent law.

I. Introduction: From Crisis to Choice

In the ordinary course, a patent refusal settles a dispute and leaves the law where it found it. The Indian Patent Office's refusal of the DABUS application on 15 April 2026 did something less common: it announced, for the first time in Indian practice, an answer to a question the Patents Act, 1970 had never been asked—whether an artificial intelligence system can be recognised as the person who invents.¹ Assistant Controller Neeraj Kumar Meena held that it cannot. The claimed food container, said to have been generated autonomously by a system its applicant did not himself direct, could not be attributed to any inventor the statute is capable of recognising, and—on an independent ground—did not in any event clear the inventive-step threshold.²

India was the last of the major jurisdictions to reach this point, and its arrival completed a striking pattern. Between 2018 and 2020 Thaler filed materially identical applications in some seventeen offices, deliberately naming the machine and no human as inventor, precisely so that each system would be forced to confront the question without the escape route of treating the AI as a mere instrument.³ The results were nearly unanimous in outcome and instructively varied in reasoning. The United Kingdom Supreme Court, the United States Court of Appeals for the Federal Circuit, the European Patent Office and the Full Federal Court of Australia each refused; only South Africa, whose office does not examine for inventorship, granted.⁴

It is tempting to read this convergence, and India's belated addition to it, as proof that the world's patent statutes have been overtaken by technology—that a nineteenth-century architecture of human inventors has collided with a twenty-first-century reality of inventive machines, producing a “gap,” a “vacuum,” or a “crisis” that only urgent amendment can repair.

¹Indian Patent Office, Order under Section 15, Patent Application No. 202017019068 (15 Apr. 2026) (N.K. Meena, Asst. Controller of Patents & Designs) [hereinafter DABUS India, s.15 Order]. A companion order of the same date rejected a pre-grant opposition to the application under Section 25(1) [hereinafter DABUS India, Opposition Order].

²DABUS India, s.15 Order, *supra* note 1. The application, titled “Food Container and Devices and Methods for Attracting Enhanced Attention,” was filed by Dr. Stephen L. Thaler on 5 May 2020; the First Examination Report issued on 26 October 2021 and a hearing was held on 12 March 2026 before the refusal on 15 April 2026.

³The strategy is the stated object of the Artificial Inventor Project. For the intellectual case behind it, see Ryan Abbott, *I Think, Therefore I Invent: Creative Computers and the Future of Patent Law*, 57 B.C. L. Rev. 1079 (2016); Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* (2020).

⁴*Thaler v. Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49; *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022), cert. denied, 143 S. Ct. 1783 (2023); EPO Legal Board of Appeal, J 8/20 and J 9/20 (2021); *Commissioner of Patents v. Thaler* [2022] FCAFC 62 (Austl.). The South African grant (Application 2021/03242, 24 June 2021) issued without substantive examination.

That is the register in which much of the Indian commentary, including a good deal of student and practitioner writing, has been conducted. This article takes a different view. The convergence is better understood not as the failure of patent law but as the expression of its internal logic; and the question DABUS raises for India is not whether a broken statute must be fixed, but which of several defensible policy positions the country should deliberately adopt, and through which institution.

Three claims follow. First, the April 2026 refusal is doctrinally sound and structurally coherent: the requirement of a human inventor is not an accident of drafting that a court might read away, but a load-bearing feature that runs through the Act's provisions on entitlement, declaration and evaluation because it is entailed by the derivation principle—the rule that the right to a patent must originate in, and be traced from, a recognised inventor.⁵ Second, the choice the refusal exposes is normatively open and genuinely contested. The academic literature does not divide into reformers and reactionaries; it divides into at least three coherent camps, each resting on a different account of what patents are for. Third, the most persuasive criticism of India's present arrangement is not that the statute cannot accommodate AI—it plainly and coherently declines to—but that a contested policy question of this magnitude has been resolved by an examination manual and an individual Controller's construction, when a parliamentary committee identified it for legislative attention five years ago and the elected branch has yet to answer.

The argument proceeds as follows. Part II reads the global series analytically rather than as a catalogue, isolating the common doctrinal obstacle. Part III reconstructs the Indian decision in full—including the neglected pre-grant-opposition order and the Controller's own signal that reform is a matter for Parliament. Part IV asks whether the Act is truly “inadequate,” and concludes that it is coherent but under-legitimated. Part V sets out the three normative positions and the theoretical stakes that make reasonable people disagree. Part VI examines why executive guidance, however sophisticated, cannot be the final word. Part VII tests the comparative models. Part VIII proposes a calibrated reform path, and Part IX concludes. Throughout, the aim is to replace the vocabulary of deficiency with the vocabulary of design—because the honest description of India's position is not that its patent law has failed, but that

⁵The point is developed in Part IV. For the comparative articulation of the same principle, see Thaler [2023] UKSC 49, [79]–[96] (Lord Kitchin); *Commissioner of Patents v. Thaler* [2022] FCAFC 62, [105]–[120].

it has reached a fork it has not yet been made to choose.

II. The Global Series and the Common Doctrinal Obstacle

The value of the DABUS litigation for the Indian analyst lies less in its uniform outcome than in what the several courts had to say to reach it. Stripped of jurisdictional detail, the refusals rest on three overlapping types of reasoning, and it is the third—not the first—that does the real work and that India’s own order tracks most closely.

A. *Definitional reasoning and its limits*

The most visible line of reasoning is definitional: the word “inventor” means a natural person. The Federal Circuit reached its result this way, reading the Patent Act’s reference to an “individual” in light of the settled presumption that the term denotes a human being absent contrary indication.⁶ Definitional reasoning is clean but shallow. It tells us how a particular statute happens to be worded; it does not explain why every system, including those whose statutes do not define “inventor” at all, reaches the same conclusion. India’s Act is precisely such a statute: Section 2(1)(y) defines the “true and first inventor” only negatively, by excluding importers and foreign communicatees, and says nothing express about legal personality.⁷

B. *Declaration reasoning: acts a machine cannot perform*

A second line looks to the procedural acts the statute requires of an inventor and observes that a machine can perform none of them. It cannot hold a nationality or an address, cannot swear a declaration, cannot sign. The European Patent Office’s refusal was, at bottom, of this character—the designation of an inventor under the Convention presupposes an entity capable of being named and of bearing the rights and duties that naming entails.⁸

C. *The derivation principle: the obstacle that actually binds*

The deepest line of reasoning, and the one common to the United Kingdom, Australian

⁶Thaler v. Vidal, 43 F.4th 1207, 1210–13 (Fed. Cir. 2022) (relying on the ordinary meaning of “individual”). The Supreme Court declined review, leaving the natural-person reading in place: 143 S. Ct. 1783 (2023).

⁷The Patents Act, No. 39 of 1970, § 2(1)(y) (India) [hereinafter Patents Act]. The term “inventor” is nowhere affirmatively defined, a point the Indian order acknowledges: DABUS India, s.15 Order, *supra* note 1.

⁸EPO Legal Board of Appeal, J 8/20 and J 9/20 (2021), affirming that a designated inventor must be a person with legal capacity. The Indian Act’s cognate requirements appear in Patents Act §§ 7(3), 10(6).

and Indian decisions, is neither about the meaning of a word nor about the mechanics of a form. It is about title. Patent systems are built on the premise that the right to a patent originates in the inventor and reaches any other applicant only by a traceable chain—by assignment, employment, or succession. Lord Kitchin’s judgment for a unanimous UK Supreme Court turned on exactly this: because DABUS is not a person, it can hold no right; because it holds no right, there is nothing for Thaler to derive; and ownership of the machine, however complete, is not a mode by which the machine’s (non-existent) rights pass to its owner.⁹

The derivation principle is what makes the human-inventor requirement resistant to interpretive repair. One can imagine a court reading “individual” generously, or excusing a missing signature; one cannot, without rewriting the system, manufacture a chain of title whose first link does not exist. This is the obstacle India’s Controller confronted, and it is why—as Part IV argues—the barrier to AI inventorship in India is structural in a precise and defensible sense, not merely verbal. The lesson of the global series is therefore not that many statutes share an outdated definition, but that they share a coherent theory of title that machines, as non-persons, cannot enter. Any reform worth the name must engage that theory rather than tinker with vocabulary.

III. The Indian Refusal of April 2026: Two Orders, One Position

Indian commentary has tended to treat the DABUS refusal as a single event. In fact the Patent Office issued two orders on 15 April 2026 arising from the same application, and reading them together is essential both to state India’s position accurately and to see why that position, though correct, sits on contestable institutional ground.

A. The Section 15 refusal and its three-stage inventorship analysis

The principal order refused the application under Section 15 following examination. Its inventorship analysis moved in three steps. First, the Controller located the entitlement rule in Section 6, which confines the right to apply to the true and first inventor, an assignee of that inventor, or the legal representative of a deceased inventor—each category presupposing a person capable of holding, transferring, or bequeathing rights. An AI system fits none.¹⁰

⁹Thaler [2023] UKSC 49, [79]–[96]. The Full Federal Court of Australia reasoned to the same effect on entitlement: *Commissioner of Patents v. Thaler* [2022] FCAFC 62, [105]–[120], reversing the contrary first-instance view of Beach J in *Thaler v. Commissioner of Patents* [2021] FCA 879.

¹⁰DABUS India, s.15 Order, *supra* note 1; Patents Act § 6(1).

Second, he held that Sections 7 and 10(6) require declarations of inventorship—name, nationality, address, signature, and the assumption of consequences for misstatement—that a machine cannot make; the defect is substantive and not curable in prosecution.¹¹ Third, and most importantly, he rejected Thaler’s ownership theory on derivation grounds: Section 7(2) requires proof of a right derived from the inventor, and ownership of the machine cannot supply that derivation where the machine is not itself a cognisable inventor.¹²

Two subsidiary rulings deserve note because they close the procedural escape routes. The Controller held that a declaration under PCT Rule 4.17(ii) cannot cure the defect at national phase, because Section 138(4) gives a designating PCT application the effect of a Section 7 application, so Indian inventorship requirements apply undiminished.¹³ He also rejected the argument that Section 2(1)(s)’s extension of “person” to the Government demonstrated that inventorship reaches beyond natural persons: where Parliament meant to extend “person,” it did so expressly, and Section 3(42) of the General Clauses Act, 1897 extends the term only to entities with recognised legal personality, which no Indian statute confers on an AI system.¹⁴

Independently of inventorship, the order held the claimed container to lack an inventive step: a fractal wall profile enabling stacked interlocking was, in substance, a routine workshop variation on known containers, without the technical advance Section 2(1)(ja) demands.¹⁵ This alternative holding gives the Indian refusal a doctrinal reach many of its counterparts lack, and it carries a quiet lesson for the reform debate: recognising machine inventors would not, by itself, lower the substantive bar an invention must clear.

B. The pre-grant opposition order: why the objection did not fit the box

The companion order rejected a pre-grant opposition filed by Dr. Kalyan C. Kankanala, who had argued that DABUS could not be an inventor. The rejection is doctrinally revealing. The opposition was mounted under Section 25(1)(f), which addresses whether the claimed subject matter is patentable—not whether the applicant is entitled or the inventorship validly

¹¹DABUS India, s.15 Order, supra note 1; Patents Act §§ 7(3), 10(6).

¹²DABUS India, s.15 Order, supra note 1; Patents Act § 7(2). This is the Indian articulation of the derivation principle discussed in Part II.C.

¹³DABUS India, s.15 Order, supra note 1; Patents Act § 138(4).

¹⁴DABUS India, s.15 Order, supra note 1; General Clauses Act, No. 10 of 1897, § 3(42) (India).

¹⁵DABUS India, s.15 Order, supra note 1; Patents Act § 2(1)(ja). The alternative holding matters for reform: even a statute that recognised AI inventors would still filter this particular claim out on ordinary patentability grounds.

declared. The Controller held that an inventorship objection could not be sustained through that gateway, since entitlement and procedural compliance are simply not what Section 25(1)(f) is about.¹⁶ The result is that both the applicant and the opponent lost, but the opposition failed on a technicality of fit: the very mechanism a third party might use to police machine inventorship does not cleanly reach the inventorship question at all. That mismatch is itself evidence that the Act was not built with this controversy in mind. It is not that the statute answers the AI question badly; it is that several of its instruments were designed for a different set of questions and now have to be pressed into service by construction.

C. The Controller's signal: a question for Parliament

The most consequential sentence in the two orders is easily overlooked. The Controller acknowledged that policy recommendations and parliamentary reports urging reform of the law on AI-generated inventions may bear on future law-making, but do not alter the present statutory position.¹⁷ This is judicial restraint of the most orthodox kind, and it is the hinge of this article's argument. The adjudicator did not claim that the law is as it should be; he claimed only that it is what it is, and that changing it is not his office. He thereby handed the normative question back to the legislature—the same question the 161st Parliamentary Standing Committee had already placed on the legislature's desk in 2021.¹⁸ The refusal, in other words, does not close the Indian debate. It refers it upward, and finds no one there.

IV. Is the Statute “Inadequate”? Coherence Versus Legitimacy

The dominant claim in the Indian literature is that the Patents Act is “structurally inadequate” to accommodate AI inventions. The claim is half right, and the half it gets wrong matters. The Act is indeed pervasively anthropocentric; but pervasiveness is a sign of design, not of failure, and “inadequacy” is the wrong diagnosis for a statute that answers the AI question clearly, if unfavourably to the applicant.

¹⁶DABUS India, Opposition Order, *supra* note 1; Patents Act § 25(1)(f). A related ground under § 25(1)(h) concerning disclosure of the foreign (South African) filing was also dismissed, the applicant having filed timely Form 3 disclosures.

¹⁷DABUS India, s.15 Order, *supra* note 1 (recording that reform recommendations are relevant to future legislation but do not change the current position). This mirrors the interpretive restraint of Thaler [2023] UKSC 49, [48]–[50], which expressly left policy to Parliament.

¹⁸Dep't-Related Parliamentary Standing Committee on Commerce, 161st Report, Review of the Intellectual Property Rights Regime in India, ¶¶ 8.1–8.20 (Rajya Sabha, 23 July 2021) [hereinafter 161st Report].

A. The anthropocentric architecture, mapped

The human-inventor assumption is not confined to one clause; it recurs because each provision performs a function that presupposes a legal subject. Section 2(1)(y) supplies only a negative floor, its affirmative content drawn from the operative provisions.¹⁹

Section 6 fixes entitlement and, through the derivation principle, requires a personal origin for the chain of title. Sections 7(3) and 10(6) require declarations only a person can make. Section 3(k) excludes computer programmes and algorithms “per se,” channelling AI-related claims through the technical-effect inquiry the Delhi High Court articulated in *Ferid Allani*—an inquiry that asks what technical contribution the claimed subject matter makes, and that presupposes a human-framed problem and solution.²⁰ Section 2(1)(ja) measures inventive step against the “person skilled in the art,” a hypothetical human technician; and Section 17, which resolves competing inventorship claims, assumes claimants who can assert, adduce evidence, and be bound.²¹

B. Coherence, not accident

Read together, these provisions do not reveal a legislature that forgot to address machines. They reveal a legislature that built an incentive-and-title system for the only inventors it had ever encountered, and whose every mechanism—reward, disclosure, priority, dispute resolution—assumes a beneficiary who can be moved by reward and bound by obligation. The anthropocentrism is the theory working as intended. That is why interpretive repair is unavailable: to read the Act as reaching machine inventors, a court would have to sever the inventor from the person, the right from the holder, and the incentive from anyone capable of responding to it. The Controller was right to decline the invitation, and the UK Supreme Court right to say the same task belongs to the legislature.

C. The real deficit is democratic, not textual

If the statute coherently declines to recognise machine inventors, wherein lies the problem? Not in the answer but in its provenance. India’s operative position on one of the

¹⁹Patents Act § 2(1)(y). See Part II.A above on the limits of definitional reasoning.

²⁰Patents Act § 3(k); *Ferid Allani v. Union of India*, W.P.(C) 7/2014 (Delhi H.C. 12 Dec. 2019) (requiring a demonstrable technical effect or contribution for computer-related inventions to escape the § 3(k) exclusion).

²¹Patents Act §§ 2(1)(ja), 17. The “person skilled in the art” standard is examined further in Part VIII in connection with the recalibration problem.

defining IP questions of the decade currently rests on two instruments of limited democratic pedigree: a set of examination guidelines issued by the Patent Office, and a single Controller's construction of provisions that never mention the controversy. Neither was enacted by Parliament; neither binds a court; neither reflects a deliberate legislative judgment that the human-only rule is the right policy rather than merely the current one.²² The deficiency, properly stated, is one of legitimacy and durability. A rule this consequential should be chosen, not inferred; and once the elected branch has been alerted to the question—as it was in 2021—its continued silence converts an omission into an implicit, and unaccountable, policy choice.

V. The Theoretical Stakes: Why Reasonable People Disagree

Reframing the Indian problem as a choice only helps if the choice is real. It is. The scholarly debate does not pit sensible reformers against nostalgic formalists; it arranges itself around three internally coherent positions, each grounded in a different theory of the patent bargain. India must pick among them with open eyes, and the merits are genuinely balanced.

A. *The “tool” position: no reform is needed*

The first position holds that current law already does everything worth doing. On this view, AI is a research instrument—an extraordinarily powerful one, but no more an inventor than a microscope or a simulation package. Where a human frames the problem, selects the model, curates the data, or interprets the output, that human is the inventor and the AI's role is absorbed into ordinary practice; where no human contributes in that sense, there is simply no invention the patent system was designed to reward.²³

This position draws strength from incentive theory. Patents are a bargain: a time-limited monopoly is exchanged for disclosure, and the monopoly is justified because, without it, costly human invention would be under-supplied. But a machine needs no inducement to compute, and its outputs, once the system exists, may be generated at negligible marginal cost and in enormous volume. Extending exclusive rights to such outputs, several scholars argue, risks the

²²On the non-binding character of the guidelines, see Part VI. The 161st Report expressly identified the Patents Act as “not well equipped” for AI inventorship and called for legislative review: 161st Report, *supra* note 15, ¶¶ 8.16–8.20.

²³This is, in substance, the position of the UK IPO after its consultations, and of the U.S. framework: see Part VII. It is also the Indian Government's stated view, the Minister of State for Commerce and Industry having indicated that existing IP laws are adequate to encompass AI—notwithstanding the 161st Report's contrary recommendation.

opposite of the intended effect—over-patenting, thickets, and a flood of machine-generated claims that raise entry barriers rather than lower them.²⁴

B. The “recognition” position: extend the system

The second position, most closely associated with Ryan Abbott, accepts the premises of incentive theory but draws the opposite conclusion. The purpose of the patent system, on this account, is to promote innovation for the benefit of the public—not to reward human effort as such. If inventive machines can produce socially valuable technical advances, withholding protection removes the incentive to build and deploy those machines, and society is the poorer for it.²⁵ Recognition—whether by naming the AI as inventor and vesting rights in its owner, or by a statutory rule that treats the deployer as the default inventor—also answers a practical pathology of the tool position: its incentive to conceal. If a human name must appear, applicants will supply one regardless of who, or what, actually conceived the advance, corrupting the accuracy of the register and the inventive-step inquiry that depends on it.²⁶

C. The “alternative-incentives” position: withhold patents entirely

A third position, less often noticed in Indian writing, rejects both recognition and the assumption that patents are the right instrument at all. On this view the correct response to genuinely autonomous machine invention is to leave it in the public domain and to promote it, where promotion is needed, through mechanisms other than exclusive rights—first-mover advantage, trade secrecy, social recognition, prizes, or targeted funding.²⁷ Its constitutional variant asks a sharper question still: if the animating theory of patents is the promotion of human ingenuity, an “inventorless” invention may fall outside the very object the system exists

²⁴See Daniel J. Gervais, *The Human Cause*, in *Research Handbook on Intellectual Property and Artificial Intelligence* (Ryan Abbott ed., 2022) (arguing that inventorship requires a human cause and warning of the risks of protecting machine outputs at scale); Mauritz Kop, *AI & Intellectual Property: Towards an Articulated Public Domain* (Stanford–Leiden Working Paper, 2020) (contending that natural-rights, moral and incentive rationales do not apply to inventive machines, which “need not stand on the shoulders of giants”).

²⁵Abbott, *I Think, Therefore I Invent*, supra note 3, at 1097–1114; Abbott, *The Reasonable Robot*, supra note 3 (developing the “legal neutrality” principle that AI and human behaviour should, where possible, be treated alike).

²⁶The concealment problem is widely noted across the AI-IP literature; for its inventorship articulation, see Abbott, *The Reasonable Robot*, supra note 3. Abbott has separately proposed that, where the machine cannot be named, its owner be treated as the default assignee.

²⁷Shlomit Yanisky-Ravid & Xiaoqiong (Jackie) Liu, *When Artificial Intelligence Systems Produce Inventions: An Alternative Model for Patent Law at the 3A Era*, 39 *Cardozo L. Rev.* 2215 (2018) (arguing for withholding patent protection from AI inventions and relying on alternative incentives). See also the eight attributes of machine intelligence—including autonomy, creativity and unpredictability—catalogued in that literature and echoed in the 161st Report.

to serve.²⁸

D. The line the Guidelines draw is itself a contested judgment

These positions are not merely academic; they map onto concrete drafting choices, and they expose the fragility of the distinction on which India's current settlement rests. The CRI Guidelines 2025 sort AI inventions into "AI-generated" (autonomous, non-patentable) and "AI-assisted" (human-directed, potentially patentable).²⁹ But that line is not a natural kind; it is a policy choice dressed as a fact. Real inventive processes lie on a spectrum of human contribution, and the question "how much human input converts generation into assistance?" is exactly the question the recognition and tool positions answer differently. Drawing the line is unavoidable—but where to draw it, and who should draw it, are contested normative decisions, not administrative housekeeping. That is the strongest reason the line should be fixed by statute rather than by manual, a theme Part VI develops.

VI. The Limits of Executive Guidance

The CRI Guidelines 2025 are a genuine achievement and deserve to be described as such before they are criticised. Issued after a multi-stage consultation and successive drafts, they bring structured, example-driven method to the Section 3(k) inquiry, articulate heightened disclosure expectations for AI and machine-learning claims, and for the first time give examiners an explicit vocabulary for AI inventions.³⁰ They are, on their own terms, an example of an administration doing conscientious work within the space the statute leaves it. The difficulty is not their quality but their constitutional weight, and three features limit what they can settle.

A. They are not law, and say so

The Guidelines disclaim rule-making force. They state that they do not constitute

²⁸David L. Schwartz & Max Rogers, *Inventorless Inventions? The Constitutional Conundrum of AI-Produced Inventions*, 35 Harv. J.L. & Tech. 531 (2022); see also Dan L. Burk, *AI Patents and the Self-Assembling Machine*, 105 Minn. L. Rev. Headnotes 301 (2021).

²⁹CGPDTM, *Revised Guidelines for Examination of Computer Related Inventions, 2025*, § 5 (notified 29 July 2025) [hereinafter CRI Guidelines 2025] (dedicated treatment of AI, ML, deep learning, blockchain and quantum computing).

³⁰CRI Guidelines 2025, *supra* note 27; the Guidelines proceeded through draft versions in March and June 2025 before notification, and draw on recent case law including the novelty methodology discussed in *Ericsson v. Lava* (Delhi H.C. 2024).

delegated legislation, that in any conflict the Patents Act and Rules prevail, and that they are themselves revisable in light of judicial and statutory developments.³¹ This is not a drafting oversight to be lamented; it is the honest self-description of an administrative instrument. But it means the Guidelines cannot bind a court, cannot foreclose a future Controller from a different view, and cannot supply the appellate standard against which refusals are ultimately tested. Tellingly, the April 2026 refusal itself rested on the Act, not the Guidelines—because only the Act could carry the legal weight required to sustain a decision on appeal.

B. A spectrum cannot be administered as a binary without a statutory anchor

As Part V.D observed, the AI-generated/AI-assisted distinction governs outcomes but rests on a contestable, spectrum-not-binary judgment about the quantum of human contribution. The United States offers a cautionary parallel: having confined inventorship to natural persons, the USPTO had to issue detailed guidance in February 2024 on when a human's contribution to an AI-assisted invention is "significant" enough to qualify—importing the Pannu joint-inventorship factors to make the judgment administrable.³² Even that careful framework leaves the boundary to be litigated case by case. India's Guidelines gesture at the same boundary with far less machinery and no statutory anchor at all, guaranteeing that the decisive question in every hard case will be resolved by whoever happens to examine it, without a definition Parliament has endorsed.

C. Silence on ownership: the sequencing error

The Guidelines address who may be an inventor but are silent on who owns an AI-assisted invention when developer, deployer, funder and user all have a claim. That silence reproduces, at the ownership layer, precisely the uncertainty the inventorship classification was meant to dispel. Singapore's consultation identified the point as one of sequence: the prior question is not "who invented?" but "who owns the output?"³³ For India's innovation base—dominated by small and medium enterprises and research institutions that deploy AI tools without bespoke

³¹CRI Guidelines 2025, supra note 27 (expressly providing that the Guidelines are not rule-making and yield to the Act and Rules). The point is not a criticism of the drafters, who state the position candidly; it is a feature of the instrument's nature.

³²USPTO, Inventorship Guidance for AI-Assisted Inventions, 89 Fed. Reg. 10,043 (13 Feb. 2024) (adopting the significant-contribution factors of *Pannu v. Iolab Corp.*, 155 F.3d 1344 (Fed. Cir. 1998)).

³³See Part VII.C. The sequencing insight—that ownership allocation is analytically prior to, and often more tractable than, the metaphysics of inventorship—recurs in the comparative literature and is directly applicable to the Indian position.

IP agreements—the absence of a default ownership rule is not a peripheral gap. It is a live source of transaction cost and litigation risk that guidelines, which classify inventions without allocating rights in them, are structurally unable to close.

D. The legitimacy point, restated

Underlying these three limits is the institutional argument of Part IV.C. A contested normative choice—where to draw the human-contribution line, whether to recognise or withhold, how to allocate ownership—has been made, to the extent it has been made at all, by an examination manual and individual adjudication. That is not a criticism of the Patent Office, which has filled a vacuum responsibly. It is an argument about who should be filling it. Guidance is the right instrument for administering a policy the legislature has chosen; it is the wrong instrument for choosing the policy.

VII. Comparative Models and What Actually Transfers

Comparative material is useful to India only if its transferability is tested rather than assumed. Four jurisdictions are usually invoked; each offers something, and each offers less than is often claimed.

A. United Kingdom: human direction, deliberately left for review

The United Kingdom pairs a firm judicial “no” with a deliberate legislative “not yet.” After the Supreme Court’s refusal, the UK IPO consulted on AI and IP and concluded that the human-inventor requirement should remain for the present, while committing to revisit the question as capability evolves.³⁴ The transferable element is not the substantive rule—India has effectively reached the same place—but the posture: an explicit, reasoned decision to hold the line for now and to schedule reconsideration, rather than an unexamined default. What the UK model does not solve is the autonomous case or the ownership vacuum, which it, too, leaves open.

B. United States: a workable middle on “significant contribution”

The United States is more useful than its bare “natural persons only” holding suggests.

³⁴UK IPO, Artificial Intelligence and Intellectual Property: Copyright and Patents—Government Response (2022), following the earlier Call for Views (2020). The operative model treats AI as a tool and requires human inventive contribution.

Having settled inventorship on humans, it did the harder downstream work of specifying, through the 2024 guidance, when a human's role in an AI-assisted invention is substantial enough to sustain inventorship—using the Pannu factors familiar from joint-inventorship law.³⁵ For India this is the most directly borrowable component: a statutory or rule-based significant-contribution standard would give the CRI Guidelines' AI-assisted category a tested analytical spine, and would convert a contestable binary into a structured, reviewable inquiry.

C. Singapore: the sequencing lesson

Singapore has legislated nothing yet, but its consultation produced the analytic insight this article has already relied upon: ownership is prior to inventorship. Before asking whether the law should recognise a machine inventor, it asks who should own machine output, and treats the latter as the tractable question that clears most practical uncertainty.³⁶ The lesson for India is procedural as much as substantive: a reform that fixes ownership defaults may deliver most of the commercial certainty stakeholders need, even while the deeper inventorship question is deferred.

D. South Africa: a caution and a proposal

South Africa's much-cited "grant" to DABUS is authority for nothing: it reflects the absence of substantive examination, not a considered decision that machines may invent.³⁷ Its prospective reform proposals are more interesting, reportedly favouring a deployment-based ownership rule that vests rights in the person who put the AI to work in a commercial or research setting, subject to contract. That model suits an economy, like India's, in which AI tools are typically deployed by firms rather than lone researchers—but it should be borrowed as a default ownership rule, not as a backdoor recognition of machine inventorship, which its own drafters do not intend.

E. What transfers, and what does not

Three propositions survive the transferability test. First, the significant-contribution

³⁵USPTO Guidance, *supra* note 31; *Pannu v. Iolab Corp.*, 155 F.3d 1344 (Fed. Cir. 1998). The factors ask whether the person contributed significantly to conception, beyond merely explaining well-known concepts or the state of the art.

³⁶See Part VI.C. The Singapore consultation is valuable less for any enacted rule than for reordering the inquiry so that ownership allocation is addressed first.

³⁷The South African grant issued without inventorship examination; its disclosure was before the Indian Office and did not assist Thaler. See *DABUS India*, s.15 Order and Opposition Order, *supra* note 1.

standard is directly borrowable and would immediately strengthen the AI-assisted category. Second, a default ownership rule is both borrowable and urgent, and should be settled before the metaphysics of inventorship. Third, a bespoke *sui generis* regime for autonomous inventions—attractive in the abstract—is premature for India, which lacks the judicial and administrative infrastructure to run a novel right and would do better to gather evidence before building one. The comparative record counsels calibration, not wholesale transplant.

VIII. A Calibrated Reform Path for India

The recommendations that follow are offered as a design, not a rescue. They proceed from the premises established above: that the human-inventor rule is coherent and defensible; that the choice among tool, recognition and alternative-incentives positions is genuinely open; that the present arrangement's weakness is legitimacy and durability rather than doctrine; and that comparative experience counsels calibration. They are deliberately modest at the contested core and firm only where consensus is available.

A. First, decide the question openly—in Parliament

The threshold recommendation is institutional. Whatever India decides, it should decide the human-inventor question by legislative act rather than leave it to guidance and construction. This is not a call for any particular outcome; a considered parliamentary decision to retain the human-only rule would be a perfectly legitimate result, and arguably the correct one on current evidence. The point is that the decision should be made, visibly and accountably, by the branch the 161st Report addressed.

B. Codify a significant-contribution standard for AI-assisted inventions

Where consensus exists—that AI-assisted inventions with real human contribution are and should be patentable—it should be given statutory or rule-based form. Borrowing the tested significant-contribution approach, the standard would identify as inventor the natural person or persons who materially directed the inventive process: by formulating the technical problem, selecting or designing the system, curating the training data, or making the technical choices that shaped the result. This does not expand inventorship beyond persons; it clarifies which persons qualify, gives the CRI Guidelines' better half an enacted anchor, and converts a

contestable binary into a reviewable inquiry.³⁸

C. Settle ownership before inventorship: a deployment default

Following the sequencing lesson, India should enact a default ownership rule for AI-assisted inventions arising in employment or commissioned research, vesting rights in the employer or commissioning entity absent written agreement to the contrary. Such a default lowers transaction costs for the SMEs and research institutions that make up the bulk of India's AI users, and closes the ownership vacuum the Guidelines cannot reach—delivering much of the practical certainty stakeholders need even while the harder inventorship question remains open.

D. Give the autonomous case enacted treatment—and a sunset review

The genuinely contested case—fully autonomous machine invention—should be handled honestly rather than resolved by fiat. Two defensible options exist. Parliament may enact an express exclusion, giving the Controller enacted authority to refuse such applications instead of the inferred authority he now exercises, and supplying a clear appellate standard. Or it may enact a time-limited holding position coupled with a statutory duty on the CGPDTM to review the adequacy of the exclusion within a fixed period and to report to Parliament with evidence and draft proposals.³⁹ This article does not pretend to resolve which option is right, because the underlying normative disagreement is real. It recommends only that whichever is chosen be chosen by statute, and that a sunset-review mechanism prevent today's answer from ossifying by default.

E. Flag, without over-claiming, the inventive-step recalibration

Any move toward recognising machine contribution would eventually strain the “person skilled in the art” standard, since a system whose knowledge and processing exceed any human practitioner's cannot be neatly measured against a human baseline. This is a real problem, but a second-order one; it need not be solved before the threshold questions and should be remitted

³⁸The formulation adapts the significant-contribution logic of the USPTO Guidance and Pannu, *supra* notes 31, 38, to the Indian entitlement framework in §§ 2(1)(y) and 6, without disturbing the human-person requirement.

³⁹A statutory review duty, modelled on the deliberate “hold and revisit” posture of the UK response (Part VII.A), is preferable to open-ended silence because it commits the elected branch to return to the question rather than letting an unexamined default harden.

to the same review mechanism rather than pre-empted now.⁴⁰

F. Guard against over-reform

Finally, the reform temperament matters. The tool and alternative-incentives positions are not obstacles to be overcome; they are warnings to be heeded. The risks of expansive recognition—over-patenting, machine-generated thickets, strategic concealment, and the dilution of the inventive-step filter—are serious enough that India should legislate the consensus elements now and require evidence, gathered through the Patent Office’s own filing data, before extending protection to the autonomous case. A reform that is confident about ownership defaults and cautious about machine inventorship is not timid; it is proportionate to a question on which the best scholarship remains divided.

IX. Conclusion

The refusal of 15 April 2026 did not break Indian patent law. It revealed a question the law had never been required to answer and, having answered it in the only way the present statute permits, referred the larger choice upward to a legislature that has so far declined to make it. The Controller’s reasoning was coherent, his restraint orthodox, and his signal unmistakable: the human-inventor rule is what the law is, not necessarily what it must be, and altering it is Parliament’s work.

The contribution of this article has been to change the vocabulary in which India’s debate is conducted. The Patents Act is not “inadequate” in the sense of a failed or obsolete instrument; it is coherent, and it declines to recognise machine inventors for reasons internal to the theory of patents rather than by oversight. What it lacks is not a clause but a choice—a deliberate, accountable, legislative decision among the tool, recognition and alternative-incentives positions that thoughtful scholars continue to hold in good faith. The strongest criticism of the status quo is therefore institutional: a contested policy of real consequence should not rest on an examination manual and a single construction when the elected branch was alerted to it in 2021 and remains silent.

India’s answer, when it comes, may well be to keep the human-inventor rule; on current

⁴⁰Patents Act § 2(1)(ja). The recalibration problem is well known in the literature but does not arise unless and until the human-only rule is relaxed; premature amendment would risk the over-patenting the tool position rightly fears (Part V.A).

evidence that would be a defensible and perhaps a wise result. But it should be kept, if it is kept, by decision rather than by default—anchored in statute, paired with a default ownership rule and a significant-contribution standard where consensus already exists, and coupled to a review mechanism that keeps the autonomous question open to evidence. The tradition of purposive, development-calibrated patent design that runs from the Ayyangar Committee to the present is precisely the asset required for that task.⁴¹ DABUS did not present India with a crisis to be managed. It presented a choice to be made. The task now is to make it in the open.

⁴¹Justice N. Rajagopala Ayyangar, Report on the Revision of the Patents Law (1959); 161st Report, *supra* note 15. The Ayyangar tradition of calibrating patent policy to India's developmental needs, rather than importing foreign frameworks wholesale, is well suited to making a deliberate—rather than a default—choice on AI inventorship.