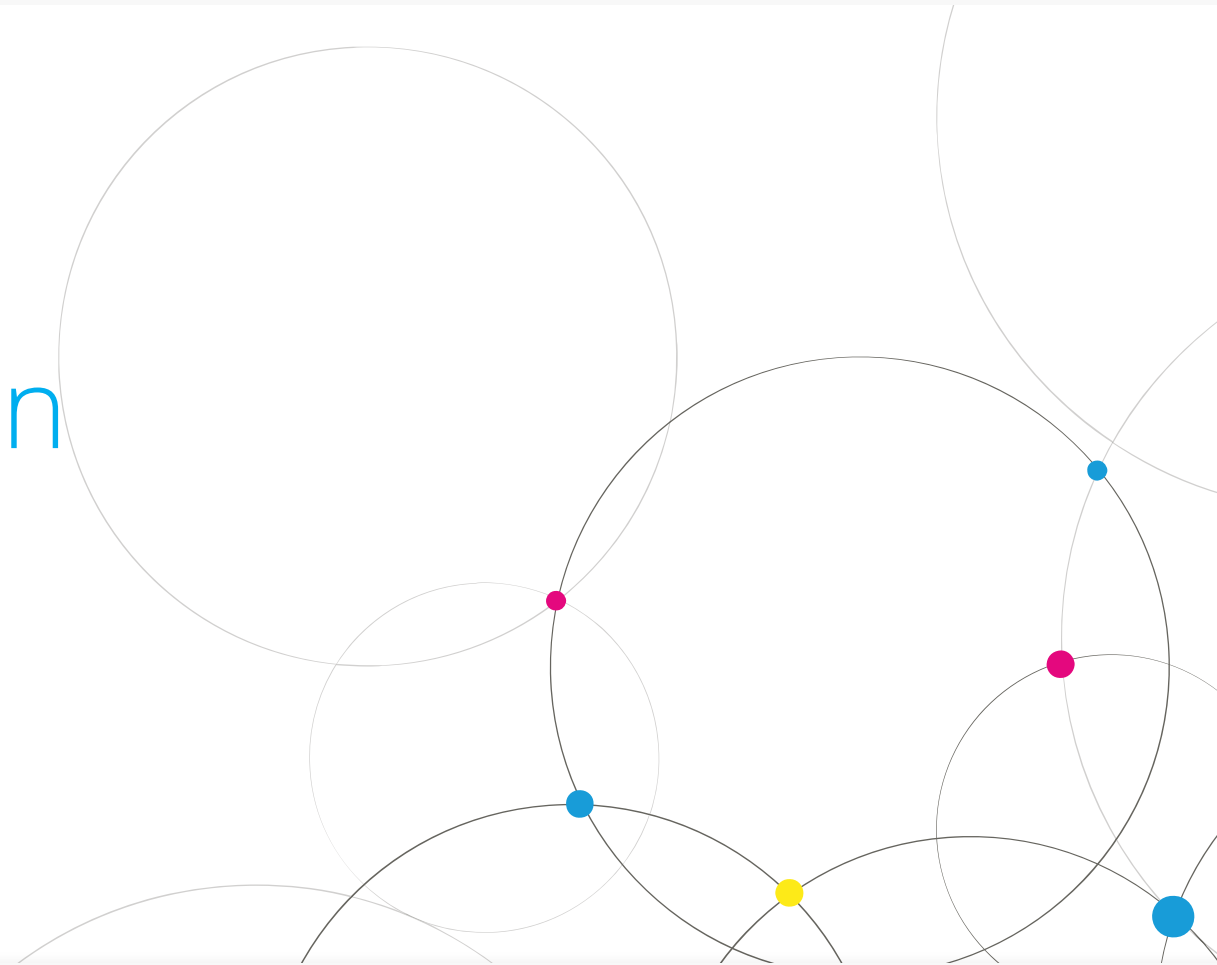


AI and patent protection

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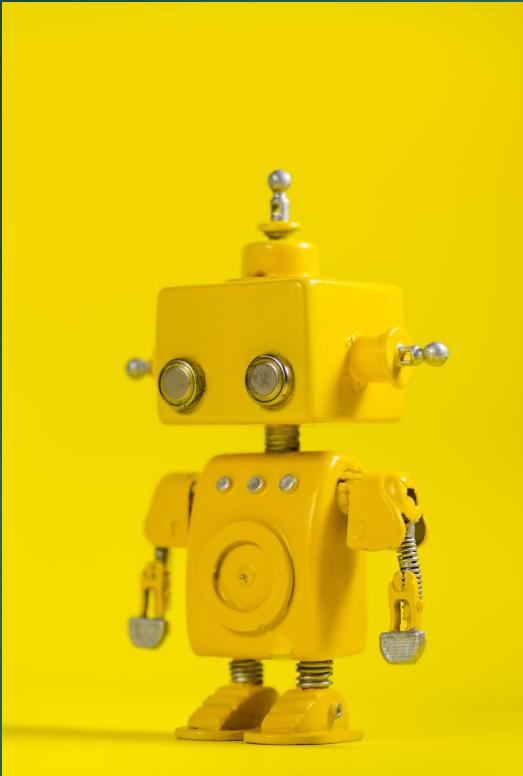
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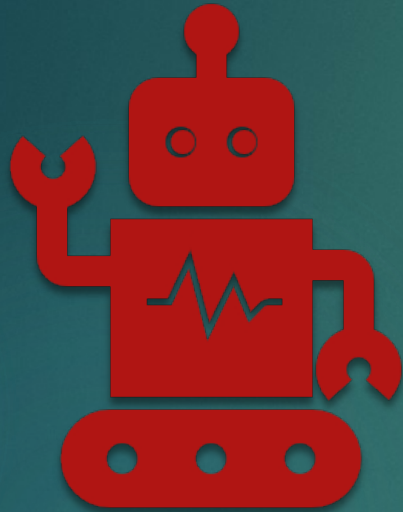


INVENTORSHIP OF AI-GENERATED INVENTIONS

Federica Franchetti - Orsingher Ortu Avvocati Associati



- ▶ No agreed position on the protectability of artificial intelligence inventions.
- ▶ Patent protection in line with the justifications for patent exclusivity;
- ▶ NO patent protection: AI-inventions should fall into public domain.



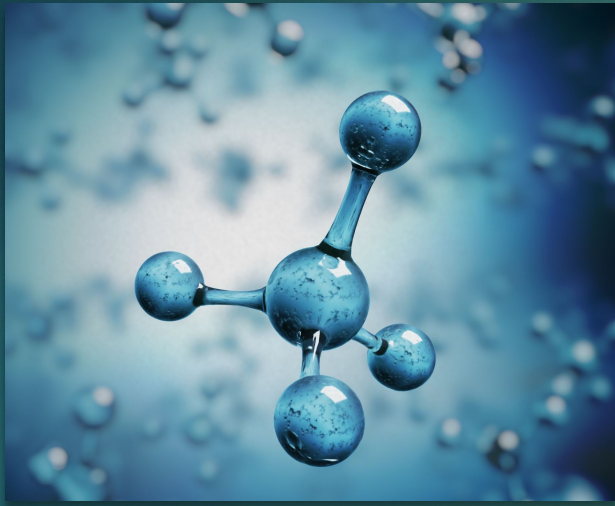
- ▶ Several objections have been raised to the protectability of AI;
- ▶ complete independence of machines from humans would be a futuristic scenario;
- ▶ Humancentric model of inventor is an established paradigm;
- ▶ AI has no legal personality;



- ▶ There is no definition of invention; patent law merely states what is required for an invention to be patentable;
- ▶ Nothing is said neither re: the inventive process followed, nor with regard to the inventor who made the invention
- ▶ *“intellectual property is not concerned with the creative process itself, but rather, more pragmatically, with the quality of the good that constitutes its result. (...) The creativity examined by the law is, therefore, an object-based creativity”.*
- ▶ From the point of view of the subject of protection, there is no appreciable difference between human and AI inventions;



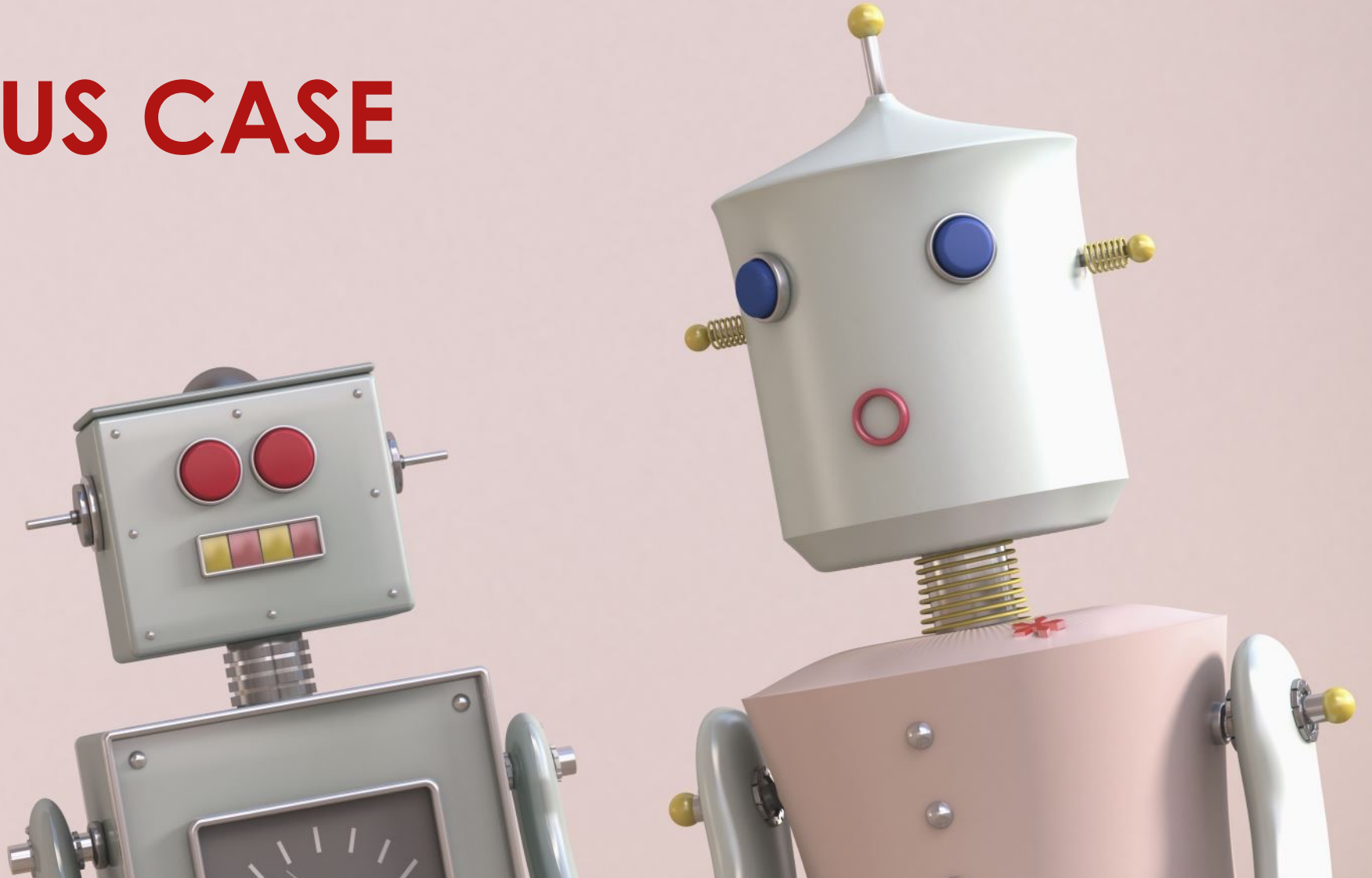
- ▶ Old-fashioned idea of inventive activity carried out by independent individuals;
- ▶ the patent right belongs to the inventor or his successor in title, i.e., the person who carried out the inventive process.
- ▶ AI has no legal personality, and therefore it seems that it could not be designated as the initial owner of rights to the inventions it conceived.
- ▶ The fact that moral rights are granted to inventors seems to further confirm the human characterization of our patent system → personality right.
- ▶ General rule is that the patent application and the patent shall include the designation of the inventor



► To sum up:

in principle, the patent inventorship regime under our current patent system can apply to AI-generated inventions, but since the inventor is usually defined in terms of natural person, a wrong designation, if on one hand is not affecting the validity of the patent, on the other hand, it may lead to a refusal of the patent application due to formality reasons.

DABUS CASE



- ▶ The applicant indicates as inventor a machine, DABUS arguing that the machine should be recognised as the inventor and that the applicant, as the owner of the machine, was an assignee of any IP rights created by this machine.

