

# INVENTEUR ET IA : INTERVIEW LEGALCOMMUNITY.CH

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Under the Court's reasoning, simply recognising that an AI output is patentable may suffice to establish inventorship. Copyright, however, still requires a human intellectual creator exercising creative control. "Without harmonization, Swiss innovators may face inconsistent expectations across domains," Strobel cautions. Her advice is pragmatic: companies should begin preparing compliance records now, regardless of whether reforms have taken effect. That means keeping dataset provenance logs, recording right-holder consents, and documenting prompt-engineering and configuration choices. "Robust internal compliance and transparent documentation are the best defense against legal challenges," Strobel says. This not only prepares firms for copyright scrutiny but also strengthens their claims to inventorship under patent law.



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## THE THRESHOLD OF HUMAN INPUT

For Philippe Gilliéron, partner at BMG law and professor at the University of Lausanne, the Swiss ruling is both expected and surprising. Expected, because it aligns with Germany and other jurisdictions in insisting on human involvement. Surprising, because the threshold appears so low. "The mere finding by users that the output of an AI system solves a technical problem may already be a sufficient contribution," he observes.

That interpretation, Gilliéron notes, is far more permissive than the United States, where the USPTO's 2024 guidelines require applicants to show detailed human guidance in order to satisfy the "significant contribution" test. The discrepancy highlights a risk for innovators working across borders: what may count as inventorship in Switzerland could fail elsewhere.

He also underlines that the divergence between patent and copyright law may reflect their distinct purposes. While copyright protects the individuality of a human-created work, patents are designed to protect technical solutions. "While the 'significant contribution' of the human being needs to have played a role on the individuality of the resulting output under copyrights, this 'significant contribution' may well be the finding out by the human being that the generated output may actually amount to an invention in a given context," he explains, noting that many inventions in history emerged from chance discoveries, from Pierre and Marie Curie to Jacques Dubochet.

In practice, Gilliéron advises companies to take advantage of the Swiss flexibility, but with caution. "Spotting a patentable idea can establish inventorship in Switzerland," he says. That makes it essential to train R&D staff to recognise potentially patentable outputs, while also documenting data selection, prompt design and evaluation. At the same time, filing strategies must anticipate stricter standards abroad and adapt inventor declarations accordingly.

## A FUTURE POLICY DILEMMA

For now, the law is clear: only people can be inventors. As Antonsson and Ling remind, the



Un grand merci à [Legalcommunity.ch de m'avoir interviewé \(p. 31\)](#) au sujet de l'[arrêt rendu le 26 juin 2025 par le TAF](#) dans l'affaire DABUS, affaire dans laquelle le TAF a considéré qu'un système IA ne pouvait être désigné comme inventeur et sur laquelle [j'ai déjà eu l'occasion de m'exprimer](#).

L'occasion de faire le point sur quelques implications pratiques de certains considérants du TAF au sujet de la brevetabilité des inventions.

