

Form E6-1. Inventor Provenance Questionnaire and Counsel's Filing Memorandum (NHI-Derived Subject Matter)

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Use. [Issue E6](#) concludes that a person who reproduces or transcribes a design conceived by a non-human intelligence is not its “original inventor” under 35 U.S.C. §115(b)(2), that no one may be named for subject matter conceived only by an NHI (*Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022)), and that a willful false declaration is punishable under 18 U.S.C. §1001 (§115(i)). A human who conceives a new device after learning from NHI technology may be an inventor of that device, as with inventions made using artificial intelligence (Revised Inventorship Guidance for AI-Assisted Inventions, 90 Fed. Reg. 54636 (Nov. 28, 2025)). This questionnaire separates the two for each claim limitation, and the memorandum records counsel’s conclusion.

Security warning. Do not record classified information on this form. If the answers would require classified information, stop, notify the inventor’s security officer, and complete the review through cleared counsel in an approved facility. A “yes” answer to Part B, question 1, ordinarily means the application must first go through the employer’s security and patent review and will likely draw a secrecy order ([Issue E2](#)).

When to use. Patent counsel before any inventor signs a declaration on technology that may draw on NHI sources. **Not for:** Ordinary inventions with no such sources.

Deadlines. Complete before filing; inventorship is fixed by the declarations.

Part A. Identification

Item	Response
Docket number / working title	
Named inventor (one form per inventor)	
Employer and position during the conception period	
Federal contract, grant, or cooperative agreement numbers under which any work was done	
Federal employee during the conception period? (yes/no; agency)	
Date range of conception, with supporting records (notebooks, files, emails)	

Part B. Access and sources

Answer yes or no; explain every “yes” in an attachment kept in counsel’s privileged file.

1. During or before the conception period, did you have access to any object, material, data, or document that you understood to be, or to describe, technology of unknown or non-human origin (including material associated with unidentified anomalous phenomena)?
2. Did you receive any information about such technology from another person, whether orally or in writing?
3. Do you attribute any idea in the application to communication with a non-human intelligence, by any means?
4. Did you sign any nondisclosure agreement, special access program indoctrination, or contractor agreement that covers the subject matter of the application?
5. Did you use any government facility, equipment, material, funds, or information in developing the subject matter?

Part C. Claim-by-claim contribution table

Counsel completes this table with the inventor after the claims are drafted.

Claim	Limitation	Who first had the idea of this limitation, and when?	Was this limitation observed in, measured from, or described in any source in Part B?	Record of the human's own conception (cite document)
1	[a]			
1	[b]			
...				

Part D. Inventor's acknowledgment

I have answered the questions above truthfully and completely to the best of my knowledge. I understand that I may be named as an inventor only for subject matter that I conceived, alone or with other named persons; that subject matter I learned from an object, document, or communication of non-human origin is not my invention; and that a willful false statement in an inventorship declaration is punishable under 18 U.S.C. §1001.

Signature: _____ Date: _____

Counsel's filing memorandum (privileged and confidential; attorney work product)

To: File [docket no.] **From:** [Patent counsel] **Date:** [__]

1. Questionnaire results. [Summarize Part B answers for each inventor.]

2. Inventorship analysis. For each independent claim, state whether every limitation was conceived by a named inventor. Apply the conception standard (“a definite and permanent idea of the complete and operative invention,” *Burroughs Wellcome Co. v. Barr Labs., Inc.*, 40 F.3d 1223, 1228 (Fed. Cir. 1994)) and the rule that inventors may use “the services, ideas, and aid of others” without those sources becoming inventors (*Hess v. Advanced Cardiovascular Sys., Inc.*, 106 F.3d 976, 981 (Fed. Cir. 1997)). Identify any limitation that was observed in or taken from a Part B source.

3. Decision. [Choose one.] - [] No Part B source contributed to any claim limitation. File. - [] Part B sources informed the work, but every claim limitation was conceived by a named inventor, as documented in Part C. File with the claims as drafted. - [] One or more limitations came from a Part B source. Claims [__] amended to remove them, or cancelled. File the remaining claims. - [] The subject matter as a whole came from a Part B source. Do not file. Advise the client in writing.

4. Security and ownership. [Security office review completed on (date) / not required.]
[Government rights: subject invention under 35 U.S.C. §201 / NASA, 51 U.S.C. §20135 / federal employee, 37 C.F.R. §501.6 / none.]

4A. Operability and enablement. [For any claim whose operating principle is not explained by accepted science:] State the evidence that the device works as claimed and that the specification enables a skilled person to make and use it: [test reports, with laboratory, dates, methods, measured results, and uncertainty; independent replication; models showing the claimed effect]. Examiners reject claims that appear to violate accepted physics for lack of utility and enablement, and the Federal Circuit has upheld those rejections. *Newman v. Quigg*, 877 F.2d 1575 (Fed. Cir. 1989); *In re Swartz*, 232 F.3d 862 (Fed. Cir. 2000). If the only evidence is a Part B source, the claim cannot be supported without disclosing that source. [Conclusion: data sufficient / obtain further testing before filing / narrow claims to what has been demonstrated.]

5. Duty of candor. Counsel has considered 37 C.F.R. §1.56 and whether any information about the sources in Part B is material to patentability, including to inventorship. [Conclusion.]

Drafting notes

- **Why claim by claim.** Inventorship is determined for each claim, and the common case is a mix of human and non-human contributions ([Issue E6](#), §2.2). Cutting the non-human limitations from the claims is usually the answer, but only if the remaining claims still describe something the human conceived and enabled under §112.
- **Contactee applicants.** An applicant who states in public, or in the application, that a design was received from an NHI has made an admission against original inventorship. Advise the client before filing.
- **Test data.** Plan testing before filing. Data obtained after filing can support utility in response to a rejection, but enablement is judged as of the filing date, so the specification must already describe how to make and use the device. A declaration under 37 C.F.R. §1.132 from an independent expert who ran or reviewed the tests carries more weight than the inventor's own statement.
- **Records.** Contemporaneous notebooks and dated files showing the human's own reasoning are the best evidence if inventorship is later challenged. Keep them, and keep them separate from any classified program records.
- **Privilege.** Keep Part B explanations and the memorandum in counsel's file. The acknowledgment in Part D is intended for the client's records, not for filing with the USPTO.
- Related: [Issue E6](#), E2, D2, C3; Forms E6-2, E6-3, E2-1.