

Can an American Person or Company Patent NHI Technology as Its Own Invention? Inventorship, Novelty, Eligibility, Ownership, and Enforcement

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Key points

- A human who copies or transcribes an NHI design is not its inventor, and a declaration claiming original inventorship would be false (35 U.S.C. §§100(f), 101, 115).
 - The NHI cannot be named either: inventors must be natural persons (*Thaler v. Vidal*). An invention conceived only by an NHI is unpatentable by anyone.
 - A human who learns a principle from an artifact and then conceives a different device may patent that device, as with AI-assisted inventions (USPTO guidance, Nov. 2025); claim only the human contribution.
 - Secret artifacts are not prior art, so false claims are hard to defeat before disclosure; afterward, published descriptions anticipate (*Schering*).
 - Claims that seem to defy accepted physics face operability rejections (*Newman v. Quigg; In re Swartz*), as the Navy's 2018 inertial-mass-reduction patent shows.
 - Use the provenance questionnaire ([Form E6-1](#)) before any inventor signs a §115 declaration.
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1. Summary

The question is whether a human or a company may obtain a U.S. patent on a device, material, or process that a non-human intelligence designed, by presenting it as the applicant's own invention. Several fact patterns are possible: a contractor engineer reproduces a mechanism found in a recovered craft; a company reverse-engineers a recovered material and claims its composition; a researcher who reports communication with NHI files on a design said to have been received in that communication; or a team studies an artifact, learns a new principle from it, and then designs a device of its own that uses the principle.

Under current law the answer turns on who conceived the claimed subject matter.

1. **A human who copies an NHI design is not its inventor.** A patent may be obtained only by “[w]hoever invents or discovers” (35 U.S.C. §101); an “inventor” is “the individual ... who invented or discovered the subject matter of the invention” (§100(f)); and every named inventor must declare a belief that he or she is “the original inventor or an original joint inventor of a claimed invention” (§115(b)(2)). Conception, “the formation in the mind of the inventor, of a definite and permanent idea of the complete and operative invention,” is the touchstone of inventorship. *Burroughs Wellcome Co. v. Barr Labs., Inc.*, 40 F.3d 1223, 1228 (Fed. Cir. 1994). Someone who reproduces a design embodied in an artifact, or transcribes one received from another intelligence, did not form that idea. A declaration claiming original inventorship would be false, and §115(i) requires every declarant to acknowledge that a willful false statement is punishable under 18 U.S.C. §1001.
2. **The NHI cannot be named either.** The Federal Circuit has held that “the Patent Act requires that inventors must be natural persons; that is, human beings,” because the Act calls inventors “individuals” and that word ordinarily means a human being. *Thaler v. Vidal*, 43 F.4th 1207, 1211-12 (Fed. Cir. 2022), cert. denied (2023) (citing *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 454 (2012), and *Animal Legal Def. Fund v. U.S. Dep’t of Agric.*, 933 F.3d 1088, 1093-94 (9th Cir. 2019) (“individual” refers to human beings and not animals)). An invention conceived entirely by an NHI is therefore unpatentable by anyone until Congress changes the statute.
3. **A human who learns from NHI technology and then conceives something new can be an inventor.** Inventors may “use the services, ideas, and aid of others” without those sources becoming inventors, and “it can make no difference ... whether [the inventor] derives his information from books, or from conversation with men skilled in the science.” *Hess v. Advanced Cardiovascular Sys., Inc.*, 106 F.3d 976, 981 (Fed. Cir. 1997) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 111 (1853)). The USPTO applies the same rule to inventions made with artificial intelligence: the tool’s contribution does not count, and the question is whether a natural person conceived the claimed invention. Revised Inventorship Guidance for AI-Assisted Inventions, 90 Fed. Reg. 54636 (Nov. 28, 2025). By analogy, an engineer who studies an artifact, extracts a principle, and designs a different device that applies it may claim that device. The claim must be limited to what the human conceived.
4. **Secret NHI artifacts are not prior art, which makes false claims hard to defeat.** Prior art under 35 U.S.C. §102(a)(1) is what was “patented, described in a printed publication, or in public use, on sale, or otherwise available to the public.” A recovered craft held in a classified program is none of those things. Before public disclosure, then, an application copying the craft faces no prior art rejection, and the only bar is the inventorship requirement, which depends on facts the examiner cannot see and the government may decline to reveal ([Issue A1](#)). After disclosure, published descriptions of artifacts become prior art that anticipates or renders obvious claims to what the artifacts embody.
5. **Natural laws revealed by an artifact are not patentable.** “Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable.” *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012). A new physical principle demonstrated by NHI technology belongs in that category. An NHI-made material is a harder question: it is not “nature’s handiwork,” but it is not the applicant’s

handiwork either (*Diamond v. Chakrabarty*, 447 U.S. 303, 309-10 (1980)), and finding it “is not an act of invention” (*Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013)).

6. **Ownership follows the facts of the program.** Even a valid patent on a human improvement may belong to the United States or be subject to a government license if it was conceived under a federal contract, by a federal employee, or with NASA or Department of Energy involvement (§6).

2. Inventorship

2.1 The statutory requirement

The America Invents Act removed the pre-2013 provision barring a patent to one who “did not himself invent the subject matter sought to be patented” (former 35 U.S.C. §102(f)), but the requirement survives elsewhere in the Act. §101 limits patents to “[w]hoever invents or discovers”; §100(f) defines “inventor” as the individual who “invented or discovered the subject matter of the invention”; and §115(a)-(b) requires an oath or declaration from each inventor stating that “such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application.” The USPTO treats an application naming a non-natural person as an inventor as subject to “[a] rejection under 35 U.S.C. 101 and 115.” 90 Fed. Reg. at 54637.

2.2 Conception

Conception is complete when the inventor has “a specific, settled idea, a particular solution to the problem at hand, not just a general goal or research plan,” and the idea is “so clearly defined in the inventor’s mind that only ordinary skill would be necessary to reduce the invention to practice, without extensive research or experimentation.” *Burroughs Wellcome*, 40 F.3d at 1228 (as quoted in 90 Fed. Reg. at 54636-37). Applying that standard to the fact patterns in §1:

Fact pattern	Who conceived?	Patentable by the human?
Engineer reproduces a mechanism found in a recovered craft	The NHI designer; the engineer copied it	No. The engineer is not the “original inventor”
Team determines the composition of a recovered alloy and claims the composition	No human conceived the composition	No for the composition as found; possibly yes for a new human-designed method of making it, if that method is the team’s own
Contactee files on a design reportedly received in communication with NHI	The communicating intelligence, on the applicant’s own account	No. The applicant’s own description of the source defeats the §115 declaration

Fact pattern	Who conceived?	Patentable by the human?
Team learns a principle from an artifact and designs a different device that uses it	The team conceived the device; the principle is not patentable	Yes for the device as designed, subject to novelty, nonobviousness, and §112
Team adapts an NHI mechanism to a human aircraft, adding interface and control systems	Shared: NHI for the mechanism, humans for the adaptation	Only claims limited to the human contribution; claims that read on the mechanism itself are not the humans' invention. Among the humans, each named inventor must have contributed in some significant manner to the conception of at least one claim (<i>Pannu v. Iolab Corp.</i> , 155 F.3d 1344, 1351 (Fed. Cir. 1998))

The last row is the common case and the one most likely to produce litigation. The drafting discipline is the same as in AI-assisted work: identify what the human conceived, claim only that, and keep records that show which limitations came from the human ([Form E6-1](#)).

2.3 Derivation doctrine and its limits here

Derivation is proved by “prior conception of the invention by another and communication of that conception to the patentee.” *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1576 (Fed. Cir. 1997) (citing *Price v. Symsek*, 988 F.2d 1187, 1190 (Fed. Cir. 1993)). The doctrine fits awkwardly when the prior conceiver is not human. Proving that a non-human mind “conceived” a design, by clear and convincing evidence, would require evidence about the NHI that no litigant is likely to have. A challenger should instead attack the named inventor’s own conception directly: the patentee’s lab records, the program’s documents, and witness testimony showing that the claimed design was observed in an artifact before the named inventor had any idea of it. The statutory derivation proceeding is not available to an NHI or on its behalf, because only “[a]n applicant for patent” whose application names the true inventor may petition. 35 U.S.C. §135(a)(1).

2.4 Can an NHI be an “individual”?

Thaler rested on the ordinary meaning of “individual” as a human being and cited the Ninth Circuit’s holding that the word excludes animals. Counsel arguing that an NHI could be named would have to show “some indication Congress intended” a broader reading (*Mohamad*, 566 U.S. at 455, as quoted in *Thaler*), and none exists in the Patent Act. The argument has more force if courts come to treat some NHI as legal persons for other purposes ([Issue F1](#)), since *Thaler* also distinguished natural persons from “artificial entities.” A biological NHI is not artificial. Until a court or Congress addresses the point, practitioners should assume that NHI cannot be named and that an NHI-conceived invention is unpatentable in the United States.

2.5 Correcting inventorship does not save an NHI-derived patent

Section 256 lets the Director or a court correct “the error of omitting inventors or naming persons who are not inventors,” and the patent survives “if it can be corrected.” §256(a)-(b). Correction requires a true inventor to substitute. If the claimed subject matter was conceived only by an NHI, there is no human who can be named, and correction is impossible. The claims then fall under §§101 and 115 as construed by the USPTO, or under §282(b)(2) as a defense of invalidity “on any ground specified in part II as a condition for patentability,” a category that includes §101. Whether a court will treat lack of a human inventor as an invalidity defense under §282(b) after the repeal of former §102(f) has not been decided; the USPTO’s position that §§101 and 115 supply the rule is the best available authority.

3. Novelty and nonobviousness

3.1 Secret artifacts

Section 102(a)(1) measures novelty against what was “available to the public” before the effective filing date. An artifact held in a classified or unacknowledged program, and documents about it, are not public. The Supreme Court has held that a secret commercial sale can place an invention “on sale,” *Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.*, 586 U.S. 123 (2019), but government possession and study of a recovered object is not a sale, and secret government use is not “public use.” Prior to disclosure, a secret artifact does not defeat novelty.

3.2 After disclosure

Once the government or another source publicly describes or displays an artifact, the description is a “printed publication” and the object may be “otherwise available to the public.” A claim that reads on what the artifact embodies is then anticipated, and a claim that makes an obvious change to it is unpatentable under §103. Inherent features of a publicly available object can anticipate even if no one understood them at the time. The Federal Circuit held a claim to a drug metabolite anticipated by an earlier patent on the parent drug, because the metabolite necessarily formed when the drug was taken, though no one had recognized it. *Schering Corp. v. Geneva Pharmaceuticals, Inc.*, 339 F.3d 1373 (Fed. Cir. 2003). By the same reasoning, a feature that is necessarily present in a publicly described artifact is anticipated even if the description did not identify it. The one-year grace period in §102(b)(1) protects only disclosures by the inventor or by others who obtained the subject matter from the inventor, so it does not help an applicant whose claims read on a government-released artifact.

The practical result is a race. Applicants with access to an artifact before disclosure have an incentive to file before the government releases descriptions, and the inventorship requirement is the main legal barrier. Disclosure legislation should address that incentive directly (§8).

3.3 Operability and utility

Examiners reject claims to devices that appear to violate accepted physics, and the Federal Circuit has upheld such rejections. In *Newman v. Quigg*, 877 F.2d 1575 (Fed. Cir. 1989), an inventor’s “energy generation system” said to produce more energy than it consumed was refused for lack of

utility after National Bureau of Standards testing; in *In re Swartz*, 232 F.3d 862 (Fed. Cir. 2000), claims directed to cold fusion failed both utility and enablement. A human applicant claiming an improvement to NHI technology whose operating principle is unknown will meet the same objection and must supply test data that persuade the examiner the device works as claimed.

The Navy’s “inertial mass reduction” patent. The issue is not hypothetical. U.S. Patent No. 10,144,532 B2, “Craft using an inertial mass reduction device,” issued to the Department of the Navy on December 4, 2018 on an application filed April 28, 2016, naming Salvatore Cezar Pais as inventor. According to its abstract, microwave emitters drive a resonant cavity in the craft’s walls “to vibrate in an accelerated mode and create a local polarized vacuum outside the outer resonant cavity wall,” which is close to the capabilities insiders attribute to recovered craft. Press reports in 2019, drawing on the public prosecution file, said the examiner had rejected the application as inoperable and that the Navy then submitted a letter from a senior Navy technology official supporting it, after which the patent was allowed. The prosecution file is public in USPTO Patent Center and is worth reading for any client in this field. The case shows three points at once: an operability rejection can be overcome by government support even without public test data; government-employee inventions belong to the government (§6); and an agency may choose to patent rather than seek a secrecy order ([Issue E2](#)).

3.4 Enablement

An application must describe the invention and “the manner and process of making and using it” so that a person skilled in the art can make and use it (35 U.S.C. §112(a)). An applicant who can copy a mechanism but cannot explain how it works, or how to make the material it is built from, will struggle to satisfy §112. That requirement independently limits claims to NHI technology the applicant does not understand.

4. Subject-matter eligibility

The Patent Act covers “any new and useful process, machine, manufacture, or composition of matter” (§101), but the Supreme Court excludes laws of nature, natural phenomena, and abstract ideas. *Mayo*, 566 U.S. at 71. NHI technology raises the question in the following ways:

- **Physical principles demonstrated by NHI technology.** A previously unknown physical law (for example, a means of producing inertial or gravitational effects) is a law of nature however it was discovered. “[M]anifestations of laws of nature” are “free to all men and reserved exclusively to none.” *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 130 (1948). Applications of the principle can be patented only if they add an “inventive concept” beyond the principle itself. *Mayo*, 566 U.S. at 72.
- **NHI-made materials and devices.** These are manufactured, not natural, so the product-of-nature exclusion does not fit literally. *Chakrabarty* allowed a patent because the claimed bacterium was “not nature’s handiwork, but his own” (447 U.S. at 310). An NHI-made alloy is neither nature’s handiwork nor the applicant’s, and *Myriad* held that finding and isolating something that already exists “is not an act of invention” (569 U.S. at 591). The

more likely ground of rejection is inventorship (§2), since the applicant did not make the material.

- **Biological material from NHI.** Isolated NHI genetic or biochemical material would face *Myriad* directly if it is naturally occurring for the organism, and synthesized or modified versions would be judged as human inventions under the ordinary rules. Handling of remains raises separate issues ([Issue F2](#), §5).

5. False claims of inventorship: consequences

Consequence	Source
Criminal exposure for a willful false inventorship declaration	35 U.S.C. §115(i); 18 U.S.C. §1001
Patent unenforceable for inequitable conduct; filing a false declaration is the kind of “affirmative egregious misconduct” treated as material	<i>Therasense, Inc. v. Becton, Dickinson & Co.</i> , 649 F.3d 1276, 1292 (Fed. Cir. 2011) (en banc)
Breach of the duty of candor; practitioner discipline	37 C.F.R. §§1.56, 11.18, 11.303
Claims invalid or unpatentable for lack of a human inventor	35 U.S.C. §§101, 115; §282(b)(2); post-grant review within nine months of grant on any §282(b)(2)-(3) ground (§321(b)-(c))
If classified information is included in the application, unauthorized disclosure exposure and Invention Secrecy Act consequences	18 U.S.C. §793; 35 U.S.C. §§181-188 (Issues C3, E2)
Theft or conversion of government property or information used to prepare the application	18 U.S.C. §641 (Issue C3)
Patent counsel who learn that an application’s subject matter came from an artifact or from reported NHI communication must not file or maintain a declaration of original inventorship for claims covering that subject matter. Form E6-1 is a provenance questionnaire for that purpose.	

6. Ownership of patents on human improvements

A valid patent on a human-conceived improvement may still belong to someone other than the inventor.

- **Default rule.** “[R]ights in an invention belong to the inventor,” and the Bayh-Dole Act does not automatically vest title in a federal contractor or the government. *Bd. of Trs. of Leland*

Stanford Junior Univ. v. Roche Molecular Sys., Inc., 563 U.S. 776, 785 (2011). Title follows assignment agreements and contract clauses.

- **Federal contracts.** Inventions conceived or first actually reduced to practice in performance of a federal funding agreement are “subject inventions” under 35 U.S.C. §201, and the contractor must disclose and elect title or lose it, with the government keeping a license (§202). Defense contracts use the DFARS patent rights clause ([Issue D2](#)). Work on recovered material in a contractor program is the clearest case.
 - **NASA.** An invention “made” (conceived or first actually reduced to practice) in the performance of work under a NASA contract is “the exclusive property of the United States” when the inventor was employed or assigned to perform research and the invention relates to that work, or was made with government facilities, materials, or information, unless the Administrator waives. 51 U.S.C. §20135(a)(2), (b)(1).
 - **Atomic energy.** No patent may be granted for an invention “useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon” (42 U.S.C. §2181(a)), and an applicant for a patent on an invention useful in the production or utilization of special nuclear material or atomic energy must file “a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery” and whether it was made under a Commission contract (42 U.S.C. §2182). If NHI technology involves nuclear processes, those provisions apply now; they are also the best model for a statutory NHI provenance statement (§8).
 - **Government employees.** Under Executive Order 10096 and 37 C.F.R. part 501, the government obtains “the entire right, title and interest” in an invention made by a government employee during working hours, with a government contribution of “facilities, equipment, materials, funds or information,” or bearing “a direct relation to” the employee’s official duties (37 C.F.R. §501.6(a)(1)). A recovered artifact studied in a government program is a government contribution of materials and information.
 - **Eminent domain.** The House-passed UAP Disclosure Act would direct the government to “exercise eminent domain over any and all recovered technologies of unknown origin” controlled by private persons (H.R. 8800 (EH) §1767(a)), and defines “technologies of unknown origin” to include “engineering models or processes” (§1773 ¶(19)). If enacted, a taking of processes could reach trade secrets, which are property protected by the Takings Clause (*Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984)); patents are public franchises whose validity the government may review administratively (*Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC*, 584 U.S. 325 (2018)). Compensation issues are in [Issue E1](#).
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7. Foreign law

Other major patent systems also require a human inventor. The European Patent Office’s Legal Board of Appeal held in *J 8/20* (Dec. 21, 2021) (the DABUS application) that the inventor designated in an application must be a natural person; the United Kingdom Supreme Court reached the same result under the Patents Act 1977 in *Thaler v. Comptroller-General of Patents, Designs and Trade*

Marks [2023] UKSC 49; and the German Federal Court of Justice held in 2024 that only a natural person may be named, though a human who substantially influenced the result may be. An applicant who cannot claim original inventorship in the United States will not find a better forum in those systems. Novelty in the European system is measured against “everything made available to the public” (European Patent Convention art. 54(2)), which, like §102(a)(1), excludes secret government holdings.

8. How the law should develop

The existing rules produce a defensible core result (no one may patent what an NHI designed) but leave unresolved problems: the rule depends on facts that are classified; there is a filing race before disclosure; and nothing addresses technology the government itself has studied for decades and may wish to make available to the public. A statute should:

1. require, for any application in designated technical fields, a sworn provenance statement modeled on 42 U.S.C. §2182, stating whether the claimed subject matter was derived in whole or part from any recovered technology of unknown origin or from communication attributed to a non-human source;
2. bar patents on subject matter embodied in, or derived from, recovered technologies of unknown origin, except for claims limited to human-conceived improvements, with the burden on the applicant to show the human contribution;
3. let the government, on a showing in camera, have the USPTO reject or cancel claims on NHI-derived subject matter without public disclosure of the artifact, with judicial review under protective order;
4. treat NHI-derived technology released to the public as dedicated to the public, with a compulsory license for any human-improvement patent that blocks a public-health or energy use ([Issue D6](#)); and
5. require secrecy orders on NHI-derived applications to be reported to Congress ([Issue E2](#)).

[Form E6-3](#) is a model provision along these lines.

9. Practice points

- **Applicants and patent counsel.** Before filing, complete a provenance questionnaire ([Form E6-1](#)) for every named inventor. If any claim limitation came from an artifact, from documents describing one, or from reported NHI communication, either remove it from the claims or do not file. Keep contemporaneous records of the human’s own conception.
- **Cleared clients.** Do not put classified information in an application; any application touching program work should go through the employer’s security office and patent counsel, and will likely draw a secrecy order ([Issue E2](#)).

- **Accused infringers.** Plead invalidity and unenforceability based on lack of human conception and false inventorship declarations ([Form E6-2](#)). Seek discovery of the inventor's lab records and program access. If the patentee resists on classification grounds, raise the inconsistency of asserting a patent while withholding the facts of its conception.
 - **The government.** If a patent is issued on subject matter the government knows came from a recovered artifact, the government can file for post-grant review within nine months of grant on §101 grounds, request reexamination on any printed publication it is willing to release, or raise invalidity as a defense to a §1498 claim ([Issue E2](#)).
 - **After disclosure.** File promptly on human-conceived improvements. Released descriptions of artifacts become prior art against everyone.
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