

# Are you the True and Only Inventor of the invention?

## Author vs Inventor

The terms 'author' (used in scientific papers) and 'inventor' (used in patents) are not synonymous.

In the scientific world, authors of journal articles are typically those persons involved in designing or performing the experiments or in writing the resulting manuscripts as outlined in "DTU Danish Code of Conduct for Research Integrity" eBook pages 19-22.

In contrast, inventors of the subject matter in patents have to be legally determined, according to the criteria of patent law, by their involvement in the **original conception of the claimed invention** (i.e. the formation of a definite idea of the complete and operative invention in the mind of the inventor) - not necessarily the same individual(s) involved in determining whether the invention works or who write the analysis.

## Who are the inventors

At DTU we ask you to state the inventors when filing the Notification of Invention (NoI). Estimates of the inventors' shares of their contribution to the invention must be stated in cases with more than one inventor.

However, in the end it is the patent claims that determine the inventorship as they are the only part of a patent or patent application that define the boundaries of the patent owner's rights. **Therefore, the inventors and their shares of the invention may change during the patent application process.**

If a person is erroneously identified as "inventor" but was not actually involved in the conception of the invention, or if an actual inventor is omitted, it may have serious consequences for the patent owner. In the extreme, such mistakes can result in an invalidation of the patent. Inventorship is therefore a crucial issue in patent law.

## Guidelines for determination of inventorship

Legally, you will be considered an inventor if you can say yes to at least one of the following statements:

- You had the original idea about the invention
- You contributed to the conception of the claimed invention
- You contributed to overcoming a problem which arose while reducing the invention to practice, i.e. the process of showing that the claimed invention works for its purpose.

Legally, you will **NOT** be considered an inventor merely because:

- You performed standard scientific work in reducing the invention to practice by exercising ordinary skill in the art, e.g. a technician who simply performs experiments or assembles the invention
- You only contributed to an obvious element of the invention
- You only participated in consultations about the invention before or after conception of the invention
- You provided political impetus to the invention
- You are the supervisor or department manager of the person who conceived the invention
- You have only conceived the result to be obtained, but not the idea of how to achieve it
- You have discovered the problem but not the solution
- You contributed financially to the invention

## Examples from DTU

- **EXAMPLE 1:** Lisa identified a new protein (its sequence, structure and function). Frank found that the protein can be used in a specific application. In the patent application, only the new application of the protein is claimed which makes Frank the sole inventor, because Lisa only provided the protein. Lisa would be an inventor if the protein as such is also claimed.
- **EXAMPLE 2:** Simone, a student, constructs a new optical system according to the scheme devised by her supervisor. She does not become an inventor because she was merely following the directions of her supervisor. Her supervisor is the true inventor.
- **EXAMPLE 3:** Tony is a laboratory technician who performs tests according to the specifications given to him by his boss. Tony is not the inventor because he has merely contributed to the reduction to practice. However, if he contributed to the conception of the new product or process (e.g. by suggesting some essential changes), both he AND his boss would be inventors.
- **EXAMPLE 4:** Mark, a Ph.D. student, is responsible for field trials. He sets the specifications of the trials on his own and identifies an invention. Mark is the inventor, because he, by setting the specifications, contributed to the conception of the invention. His supervisor is NOT an inventor.
- **EXAMPLE 5:** In an industrial founded project Tom, a Post Doc, has designed and made a device for testing materials. One of the industrial partners has, besides paying a sum of money to the project, provided components for the device and tested the device. Tom wishes to carry out another project with the same partners and wants to make sure to keep up the good work relationship. The collaboration partner is NOT an inventor, but all of the partners may have signed a contract that determines how to share possible patent related rights (that is: the OWNERSHIP of the invention) between them.