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Case Comment: *Thaler v Vidal*: Can a Machine be an Inventor?

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INTRODUCTION

In the rapid growth of artificial intelligence, the constant question that arises has been who is the inventor? Whether the law is ready to accept the fact that it can be an inventor, the law which has been built over centuries around the figure of the human creator. *Thaler v Vidal*¹ was the first case that confronted this question legally.

Dr Stephen Thaler, a physicist and AI developer, developed an artificial intelligence system which was known as DABUS – Device for the Autonomous Bootstrapping of Unified Science. As per Thaler, DABUS autonomously generated two inventions, without any help or input from humans. Dr Stephen Thaler filed for the patent application under the United States Patent and Trademark Office (USPTO), stating DABUS as the sole inventor of the inventions. USPTO refused to accept the application, stating that the inventor must be a natural person. Later, he challenged this decision before the U.S. District Court, which also affirmed, and the Court of Appeals for the Federal Circuit also concluded that, as per the Patent Act, ‘inventor’ must be a natural person. This case of *Thaler v Vidal* analyses the Federal Circuit’s reasoning

¹ *Thaler v Vidal* [2022] 43 F 4th 1207 (Fed Cir 2022)

and becomes the precedent for all AI inventorships. The Patent Act of 1970² also mirrors the same human-centric foundation as the US Patent Act.

HISTORICAL BACKGROUND OF THE CASE

Dr Stephen Thaler was a physicist and an AI developer who invented an artificial intelligence system called DABUS, which he described as ‘a collection of source code or programming and a software program.’³ In 2019, Thaler filed two patent applications in the USPTO:

- ‘Neural Flame’ – a flashing light device mimicking neural activity patterns, and
- ‘Fractal Container’ – a beverage container with fractal geometry surfaces designed for easier robotic grip.

Thaler mentioned DABUS as the sole inventor of both the applications, and he did not contribute to any of the inventions. The USPTO issued Thaler a ‘Notice to file missing parts of nonprovisional application.’ Thaler petitioned the director of USPTO to vacate those notices, to which the USPTO denied the petition, stating that ‘a machine does not qualify as an inventor.’ Therefore, Thaler went for the judicial review under the Administrative Procedure Act.

The US District Court for the Eastern District of Virginia granted the USPTO’s motion for summary judgment⁴ on 3 September 2021, concluding that the ‘inventor’ must be an ‘individual’ and, as per the Patent Act, the plain meaning of ‘individual’ mentioned in the statute is limited to a natural person. Thaler appealed to the Federal Circuit, which heard the oral arguments on 6 June 2022 and affirmed on 5 August 2022 – issuing the first appellate ruling in American Legal history on whether AI can be a statutory inventor.

ISSUES BEFORE THE COURT

The main issue on appeal was whether an AI software can be the sole ‘inventor’ under the Patent Act. Two sub-issues which arose were:

² Patents Act 1970

³ *Thaler v Vidal* [2022] 43 F 4th 1207 (Fed Cir 2022)

⁴ *Thaler v Hirshfeld* [2021] 558 F Supp 3d 238, 240 (ED Va 2021); *Thaler v Vidal* *Thaler v Vidal* [2022] 43 F 4th 1207 (Fed Cir 2022)

1. Whether the statutory term ‘individual’ in 35 USC § 100(f)⁵ qualifies the non-human entities like AI systems.
2. Whether Thaler’s policy arguments on promoting innovation can override the statute’s text.

THE COURT’S DECISION

The Textualist Holding: The reasoning for the Federal Circuit started and ended with the statements from the statute. As per the Patent Act, ‘inventor’ is an ‘individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention’. According to the Supreme Court’s holding in *Mohamad v Palestinian Authority*⁶, the word ‘individual’ as a noun ordinarily means a human being, a person, to which the Federal Circuit concluded that it carries the same meaning in the Patent Act.

Three main textual markers supported this conclusion. Firstly, the use of personal pronouns ‘himself’ and ‘herself’ in the Patent Act for the reference of an inventor, and deliberately preventing the use of ‘itself’.⁷ Second, the oath or declaration is a requirement which can only be fulfilled by a human. Third, prior Federal Circuit precedent in *Max-Planck* and *Beech Aircraft* had consistently held that ‘inventors must be natural persons.’⁸

Rejection of Thaler’s Statutory Arguments: The court held that § 103's manner-of-making provision concerns conditions for patentability, not the identity of inventors. It cannot override the express definitional provision in § 100(f). The use of ‘whoever’ in § 271 does not redefine ‘individual’ in § 100(f).

Rejection of Policy Arguments: Thaler presented three arguments, which were dismissed. First, he stated that AI inventorship can promote innovation and encourage the public for inventions. The court concluded it to be ‘speculative and lacking a basis in the text’. Second, he invoked the constitutional purpose of patents – in order to promote innovation, science and art. The court held that this provision is a grant of legislative power to Congress, not the

⁵ 35 US Code 2018, s 100(f)

⁶ *Mohamad v Palestinian Authority* [2012] 566 US 449

⁷ *Thaler v Vidal* [2022] 43 F 4th 1207 (Fed Cir 2022)

⁸ *University of Utah v Max-Planck-Gesellschaft Zur Forderung der Wissenschaften E V* [2013] No.12-1540 (Fed Cir 2013)

judicial licence to expand statutory meaning. Third, Thaler turned to South Africa for the DABUS patent: the court dismissed this as irrelevant to the interpretation of US law.

CRITICAL ANALYSIS

The Federal Circuit's decision was sound, as textualism has a well-established rationale; the court is not the legislature, which can alter or expand the statutory meaning while risking judicial policy. As the Patent Act states, 'inventors' do not consist of AI; read with the Supreme Court's guidance, the judgment of the court seems to be correct. However, the judgment lacked so many pointers that are necessary.

Firstly, the concept of 'conception' mentioned in the Patent Act, which was defined as the formation in the mind of the inventor of a definite and permanent idea of the complete operative inventions.⁹ DABUS works as an autonomous system. By resolving the case on merely the 'individual', the court stepped aside from the question about the conceptual doctrine which is built around the human mind, which needs to be altered with the advancement of autonomous AI. This is the doctrinal question that the court must answer.

Secondly, the judgment creates an unacknowledged gap. Where AI invents something autonomously without any human intervention, which later does not have a valid inventor which can be registered and the invention goes unpatented. This discourages society and the upcoming inventors on the core basis of the patent system.

Judgement also fails the collaboration of Humans and AI inventions, where human gives the input, and AI generates the output. The USPTO's 2024 inventorship guidelines tried to fill this gap, but without statutory authority, it is still void.¹⁰

COMPARATIVE ANALYSIS: THE GLOBAL LANDSCAPE

DABUS's application was universally rejected, making it a unique test case. The European Patent Office¹¹ and the UK Supreme Court¹² concluded the same as the Federal Circuit, holding that the inventor can only be an individual, a natural person and not an AI system.

⁹ Ryan Abbott, *THE REASONABLE ROBOT: Artificial Intelligence and the Law* (CUP 2020)

¹⁰ 'Inventorship Guidance for AI-Assisted Inventions' (United States Patent and Trademark Office, 13 February 2024) <<https://www.federalregister.gov/documents/2024/02/13/2024-02623/inventorship-guidance-for-ai-assisted-inventions>> accessed 30 March 2026

¹¹ Decision of the Legal Board of Appeal [2021] J 0008/20

¹² *Thaler v Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49

The Australian Federal Court also ruled the same in 2021 that the AI cannot be an inventor¹³, which was later reversed by the Full Federal Court on this appeal. South Africa remains the only jurisdiction which accepted the application and granted a DABUS patent, though due to a lack of substantive examination, it was legally conclusive.

This near-universal convergence of outcomes reflects a shared structural feature: patent statutes everywhere were drafted for a world in which humans were the only plausible inventors. The uniformity of result should not, however, be mistaken for doctrinal sufficiency. What the global trajectory reveals is not that existing law is adequate, but that existing law uniformly fails to address what truly matters – how IP systems should treat AI-generated innovation going forward.¹⁴

THE INDIAN DIMENSION

Statutory Framework: The Patents Act 1970 does not expressly define ‘inventor.’ Section 2(1)(p) provides that the ‘true and first inventor’ is the person who originates the idea of the invention,¹⁵ while Section 6(1)(a) permits applications to be filed by ‘any person claiming to be the true and first inventor.’¹⁶ As per the Indian Patent Act, the ‘person’ must include natural persons and government bodies, but corporations and institutions cannot be held as inventors, as they lack the ability and capacity to conceive. In *VB Mohammed Ibrahim v Alfred Schafranek*¹⁷, the court held that only a person who can contribute their skill and knowledge will be considered as an inventor. In *National Institute of Virology v Vandana S Bhide*¹⁸, the person must make an intellectual contribution to the final scientific work held by the Indian Patent Office. In *Shining Industries v Sri Krishna Industries*¹⁹, the Allahabad Court held both contributions as an essential requirement. Critically, none of the decisions contemplated the artificial inventor.

¹³ *Stephen L Thaler v Commissioner of Patents* [2021] FCA 879; *Commissioner of Patents v Thaler* [2022] FCAFC 62

¹⁴ Ryan Abbott, 'THE ARTIFICIAL INVENTOR PROJECT' (*WIPO Magazine*, 11 December 2019) <<https://www.wipo.int/en/web/wipo-magazine/articles/the-artificial-inventor-project-41111>> accessed 30 March 2026

¹⁵ Patents Act 1970, s 2(1)(p)

¹⁶ Patents Act 1970, s 6(1)(a)

¹⁷ *VB Mohammed Ibrahim v Alfred Schafranek and Ors* AIR 1960 Kant 173

¹⁸ Shraddha Singh Chauhan, ‘Assessing Inventiveness and Ownership of AI-related Inventions’ (*Anand & Anand*, 23 August 2022) <<https://www.anandanand.com/news-insights/assessing-inventiveness-and-ownership-of-ai-related-inventions/> - :~:text=In National Institute of Virology,work leading to a patent.> accessed 30 March 2026

¹⁹ *Shining Industries & Anr v Sri Krishna Industries* AIR 1975 All 231

India's Encounter with DABUS: India has already encountered the DABUS question administratively. In Patent Application No 202017019068, the Controller of Patents objected to DABUS being listed as an inventor, citing Sections 2 and 6 of the Act on the ground that DABUS is not recognised as a person. This administrative ruling carries no precedential weight. There is no High Court or Supreme Court judgment on the question, no IPO circular laying down a general policy on AI inventorship, and no legislative amendment on the horizon.

The Ayyangar Committee Report 1959, the foundational document behind the Patents Act, emphasised that naming an inventor is a matter of moral right: inventors are entitled to be credited and to derive economic benefit from their contribution.²⁰ An AI system can neither assert moral rights nor hold economic interests. The *Som Prakash Rekhi*²¹ standard that a juridical person is one to whom the law attributes personality has never been extended to AI. India thus inherits the same structural gap as the United States, but without the clarity of a binding appellate precedent.

India's Greater Vulnerability: The Indian position is more precarious than the American one. *Thaler v Vidal*, whatever its limitations, at least provides settled federal law that inventors must be human beings. India's Patents Act, lacking an express definition of 'inventor,' leaves the boundary ambiguous. A creative argument that the Act's definition of 'person' is broad enough to accommodate an AI as a novel category cannot be conclusively rejected without a High Court or Supreme Court ruling.

India's National IPR Policy 2016²² commits to modernising the IP framework in line with India's innovation ambitions. With India's growing AI ecosystem and aspirations as a global technology hub, the absence of legislative clarity on AI inventorship is increasingly a policy liability, not merely an academic lacuna.

CONCLUSION

Thaler v Vidal delivers a clear answer that an AI cannot be an inventor. The Federal Circuit's textualist reasoning is doctrinally coherent, and its institutional deference to Congress

²⁰ N R Ayyangar, *Report on the Revision of the Patents Law* (1959)

²¹ *Som Prakash Rekhi v Union of India & Anr* (1981) 1 SCC 449

²² *National IPR Policy 2016* (Department of Industrial Policy and Promotion, 2016)

appropriately restrained. But the decision's very precision is also its most significant limitation. By refusing to engage with the conception doctrine, the human-AI collaboration question, and the consequences of leaving AI-generated inventions unpatentable, the court has resolved the immediate dispute while leaving the deeper legal crisis intact.

For India, the case is both a warning and an opportunity. The Patents Act 1970 shares the same human-centric architecture as the US Patent Act. The DABUS application has tested India's administrative framework and found it unprepared. Waiting for litigation to force a judicial solution is a poor substitute for considered legislative reform. India has the opportunity to design a forward-looking framework for AI inventorship, one that the United States, bound by its own statutory language, has so far declined to create. The concept of inventorship was built for a world where only humans could invent. That world has changed. The law must change with it.