

Inventions that Invent

Who owns the IP created by an Artificial Intelligence (AI)?

By now, many would be familiar with the term AI and would have observed its use in everyday life. Take the *Tesla* autopilot¹ for example. Behind the scenes and the glamour, AI is being deployed in innovation and creation. To name a few, the achievement of AI has included the independent creation of music that cannot be distinguished from humans² and artwork generation³. While it is at its nascent stage, the machine may one day overtake humans in the making of songs and inventions, being the major drivers of economic growth.

In its multitude of uncertainties, who owns the IP created by an AI? These questions would have a foreseeably critical role in shaping the relevant law.

Could a computer be an inventor?

Could a computer's invention be patentable?

Would the owner of this patent be the computer, or the man that made the computer?

The England and Wales Court of Appeal recently found itself challenged by the above questions in *Thaler v Comptroller-General of Patents, Designs and Trade Marks*, [2021] EWCA Civ 1374.

Dr Thaler and DABUS, the AI

Dr Thaler applied for 2 patents where he named his AI neural system 'DABUS' as the inventor. The United Kingdom Intellectual Property Office (**UKIPO**) rejected the applications on the grounds that DABUS is "not a person" and a machine cannot hold such a right.

The High Court took a similar view. DABUS cannot own the right because it is not a person. Dr Thaler appealed to the Court of Appeal which unanimously decided that DABUS cannot qualify as an "inventor" as it is not a person.

The UK Court of Appeal chose a conservative approach to interpret what a 'person' means instead of contemplating what a 'person' can mean in the context of progression. The unanswered question is if the AI had independently made new inventions, could any human claim to be the owner?

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¹ <https://www.tesla.com/AI>

² <https://www.theverge.com/2020/4/30/21243038/openai-jukebox-model-raw-audio-lyrics-ai-generated-copyright>

³ <https://machinelearningmastery.com/introduction-to-style-generative-adversarial-network-stylegan/>

Burning Issue

This case is notable because it considers whether a machine can constitute an inventor. From the context of advanced AI, this issue will become increasingly relevant, not to mention policy considerations worldwide. Many forces around the world deploy AI for the creation of inventions. There may come a time when no piece of bleeding edge technology can be achieved without relying on advanced AI.

The doctrine of corporate personality emerged in 1897. That was considered a mark of progression at that time. If an incorporated company enjoys legal personality that it can hold intellectual property rights, why can't an AI neural system hold the same? It is unquestionable that a similar doctrine will emerge with regards to AI in the near future.

It goes without saying that a debate has been sparked as the World Intellectual Property Organisation has already initiated forums to discuss adaptation to the emerging frontiers of technology where AI technology is one of its primary topics.

DABUS to test the Malaysian system

Dr Thaler's application was an international joint effort to test existing patent law to register an AI neural system as an inventor. Dr Thaler and his team intends to push the issue on AI's position in our society which is undoubtedly already intertwined.⁴

Despite the UK Court's conservative approach, Australia⁵ and South Africa⁶ have already approved DABUS as the inventor for similar patent applications. Similar applications are also pending in the United States, Canada, China, India, Japan and Saudi Arabia among others.

In fact, the Australian and South African applications were done by way of the Patent Cooperation Treaty ("PCT") to which Malaysia is a signatory. Therefore, we will witness how the Malaysian MYIPO and Courts welcome Dr Thaler and DABUS, a true test to Malaysian patent laws.

Will the Malaysian Courts recognize DABUS as a 'person'? It cannot be overstated that the sphere of intellectual property law will undergo riveting changes in the years to come.

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This article is for general information only and should not be relied upon as legal advice.
The position stated herein is as at the date of publication on 18 March 2022.

⁴ <https://artificialinventor.com/>

⁵ Thaler v Commissioner of Patents [2021] FCA 879

⁶ ZA2021/03242 –South African Patent Journal