Thaler v Commissioner of Patents [2021] FCA 879


Facts

- Dr Stephen Thaler was the inventor of the Device for Autonomous Bootstrapping of Unified Sentience (DABUS). Dr Thaler built DABUS to invent new novel ideas. DABUS invented an improved storage container, among other things.
- The Commissioner of Patents (Commissioner) rejected the patent application filed by Dr Thaler naming DABUS as the inventor. This was because the application did not name a human inventor. The Patents Act 1990 (Cth) (Act) does not define the term "inventor".
- Dr Thaler applied to the Federal Court for judicial review of the Commissioner’s decision not to proceed with the DABUS application.
- The Commissioner argued that the Patent Regulations imply that the term "inventor" refers to a person, and that section 15(1) of the Act, which defines who may be granted a patent, also required the inventor to be human.

Issues

- Could an AI be named as an inventor for the purposes of the Patents Act 1990 (Cth)?

Held

- Justice Beach held that an AI could be named as an inventor for the purposes of the Act.
- Beach J noted that there was no specific provision in the Act that expressly refuted that an AI system can be an inventor, nor was there any specific aspect of patent law that would support an interpretation of the Act to exclude non-human inventors.
- Further, Beach J held that section 15(1)(c) recognises the rights of a person who derives title to the invention from an inventor to extend beyond assignments. Beach J stated that proprietary rights may subsist in an invention before applying for a patent and also that an invention is capable of being possessed and ownership may arise from possession. Dr Thaler, as DABUS' owner, would own any inventions made by DABUS.

Quotes

"If the output of an artificial intelligence system is said to be the invention, who is the inventor? And if a human is required, who? The programmer? The owner? The operator? The trainer? The person who provided input data? All of the above? None of the above? In my view, in some cases it may be none of the above. In some cases, the better analysis, which is consistent with the s 2A object, is to say that the system itself is the inventor. That would reflect the reality. And you would avoid otherwise uncertainty."
Justice Beach

Full Text

The full text can be found here:


Law case summary from www.lawcasesummaries.com