

David McCombs, Eugene Goryunov, Dina Blikshteyn, Adam Erickson in *Legaltech News*: AI Invents But Can't Be an Inventor. So Now What'

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In recent months, “Device for the Autonomous Bootstrapping of Unified Sentience” (DABUS) has dominated patent headlines. DABUS is an AI system created by Dr. Stephen Thaler that “generates novel ideas ... having the most novelty, utility, and value.” Simply put, it’s a machine that is good at inventing stuff. So good, in fact, that Dr. Thaler has even filed patent applications on two of DABUS’s inventions in ten countries and the European Patent Office (EPO).

Dr. Thaler’s patent applications named only one inventor: DABUS. Three patent offices: UKIPO, EPO, and USPTO have substantively reviewed the applications and have unanimously rejected the applications because DABUS, a non-human, cannot be named as an inventor. In light of these rejections and at a time when patent laws are not equipped to handle an AI inventor, creative solutions are required to secure patent (or other intellectual property) protection for inventions conceived by AI.

When a human contributes to a conception of an AI invention, adding a human on a patent application is an option. the contribution may be slight. For example, a human may be added on a predominantly AI-invented patent application by contributing to a single claim or claim limitation. This approach is untested, but the USPTO may not reject the patent application because the application does include a human inventor. Another benefit of this strategy stems from the joint inventorship on the application, as joint inventors are co-owners of the patent. As such, the human inventor can claim full ownership of the patent rights regardless of the amount they contributed. In case of DABUS, for example, a single patent application could have included claims directed to DABUS itself, as well as the inventions invented by DABUS, and listed both DABUS and a human as inventors.

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