

AI AS AN INVENTOR

The Israeli Commissioner of Patents ("the Commissioner"): Artificial intelligence (AI) cannot be considered an "inventor" within the meaning of such term in the Israeli Patents Law, 1967 ("the Patents Law"); therefore, AI cannot own or transfer an invention.

Similar to court holdings in the USA, England, Europe and other jurisdictions around the world, the Commissioner also did not see it fit to accept Dr. Stephen Thaler's patent applications for an AI-generated invention.

The named inventor in patent applications filed by Dr. Thaler is stated to be an AI machine known as DABUS (Device for the Autonomous Bootstrapping of Unified Sentience). In support of the applications, Dr. Thaler filed a declaration attesting to the fact that the inventive process was arrived at solely by DABUS without any human involvement whatsoever.

The starting point for statutory construction is the language of the law and, particularly, the plain, natural meaning of the stated language.

Thus, after reviewing the language of the Patents Law, and the dictionary definition of the term "inventor", the Commissioner determined that the term "inventor" in the Patents Law is intended to refer in its usual and ordinary sense to a natural person (a human being).

Moreover, the term "owner of an invention" is expressly defined in the Patents Law to mean "The inventor himself or persons who derive title under him, being entitled to the invention by operation of law, by transfer or by agreement".

The Commissioner accordingly held that every invention begins with an "inventor", who is a human being, and from him the invention is passed down whether by operation of law, transfer or agreement to the "owner of the invention".

Therefore, Dr. Thaler cannot indicate his source as the "owner of the invention" in the sense of the Patents Law. The source "by virtue of transfer" as indicated by Dr. Thaler in the patent Application Form cannot be accepted since, by law, DABUS does not have the legal capacity to engage in an act amounting to the transfer of rights in the patent applications.

Thaler's main argument in challenging the above assertion was that due to the underlying purpose of patent law - encouraging innovation and encouraging disclosure of inventions to the public, in exchange for time-limited monopoly - the law must be interpreted in a way allowing for the patent protection of AI-developed inventions, and that thwarting the grant of the sought patent protection could impair the incentive to develop AI machines or to protect their products only by Trade Secrets.

The Commissioner noted that these are all weighty arguments, but that expanding the protection accorded under the Patents Law raises questions of policy, and therefore it must be left to the legislator to consider and decide the issue.

As remarked in the Commissioner's decision, most of the courts in the countries deliberating the identical subject-matter refused to register a patent for an invention made without any human interaction and involvement. Therefore, even if Dr. Thaler's view is correct that protecting, through established patent law, the products of AI machines that conceive inventions is the right policy tool to encourage the invention of these machines and the public disclosure of their products, it is doubtful whether the protection garnered to such inventions by a small number of countries will indeed satisfy the purpose of intellectual property laws as asserted by Dr. Thaler.

Takeaway Points:

It is important to note that the Commissioner's decision did not address the question of the extent of human interaction and involvement required for a person to be considered an inventor of an invention conceived with the assistance of AI or using AI.

Therefore, and since in all cases it is plausible to establish the existence of some degree of human involvement or interaction, including AI-training, the development of algorithms or the definition of parameters for AI to operate, it seems that it will be possible to successfully obtain patent protection for AI-generated invention.

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