



## AI Inventor Coming To Canada? Maybe Not

On December 5, 2025, Dr. Stephen Thaler filed a Notice of Appeal to the Federal Court of Canada, challenging a decision that an artificial intelligence (“AI”) machine cannot be named as an inventor under Canadian patent law. This appeal brings Canada one step closer to a definitive answer to a crucial question: can an AI machine or system be named as an inventor in a Canadian patent application? Dr. Thaler developed an AI system known as DABUS (Device for Autonomous Bootstrapping of Unified Sentience). DABUS was named the only inventor on patent applications filed in multiple jurisdictions, including Canada. These applications were deliberately filed as test cases to determine whether an AI system can be named as an inventor under existing patent laws. The Canadian application at issue originated from a Patent Cooperation Treaty (PCT) application filed on September 17, 2019, which entered the national phase in Canada as Canadian Patent Application No. 3,137,161 (the “DABUS application”).

On June 5, 2025, the Canadian Intellectual Property Office (“CIPO”) finally refused the DABUS application. In a decision rendered by the Patent Appeal Board (“PAB”) of CIPO, it was held that under the Patent Act and the Patent Rules, an inventor must be a natural person. The PAB reached this conclusion by analyzing the grammatical and ordinary sense of the word “inventor”, the legislative context throughout the Patent Act, and the fundamental object and scheme of the patent system, which is designed as a quid pro quo to incentivize human ingenuity. According to the PAB, including an AI system within the meaning of “inventor” would represent a “radical departure” from the intended meaning of the legislation. Thus, AI systems cannot legally qualify as inventors. Because DABUS is not a natural person and no inventor other than DABUS was named in the DABUS application, “the application cannot be filed by ‘the inventor or the inventor’s legal representative’ as required by subsection 27(2) of the Patent Act.” In addition, “an ‘inventor’ cannot be identified according to the

requirements of subsection 54(1) of the Patent Rules.” Dr. Thaler’s appeal to the Federal Court of Canada seeks to overturn this decision.

A decision from the Federal Court is expected in 2026, making this an important case in Canada to watch in 2026. Clarity may soon emerge on how the Court will interpret the Patent Act and the Patent Rules to resolve the issue of AI inventorship, and whether Canada will align itself with other jurisdictions in the world on the question of AI inventorship. Ultimately, however, we may have to wait for the Federal Court of Appeal, and perhaps the Supreme Court of Canada, to have the final words. To date, most patent offices and courts in many other countries have rejected the notion that AI systems can be named as inventors. Below is a summary of how this issue has been addressed in other countries in connection with the same original DABUS patent application or its counterparts.

<b>Jurisdiction</b>	<b>Patent Office Decision</b>	<b>Court Decisions</b>	<b>Final/Current Status</b>
Canada	Refused, Jun 5, 2025	Pending	Current: AI cannot be inventor; Appealed; Appeal filed on Dec 5, 2025
United States	Refused, Apr 22, 2020	District Court, affirmed, Feb 24, 2021 Federal Circuit, affirmed, Aug 5, 2022 Supreme Court denied cert., Apr 23, 2023	Final: AI cannot be inventor
United Kingdom	Refused, Dec 4, 2019	High Court, affirmed, Sep 21, 2020 Court of Appeal, affirmed, Sep 21, 2021 UK Supreme Court, affirmed, Dec 20, 2023	Final: AI cannot be inventor
European Patent Office (EPO)	Refused, Jan 27, 2020	Board of Appeal, affirmed, Dec 21, 2021	Final: AI cannot be inventor
Australia	Refused, Feb 9, 2021	Federal Court, reversed, 30 Jul 2021 Full Federal Court, reversed, Apr 13, 2022	Final: AI cannot be inventor

		Special leave to appeal, denied, Nov 11, 2022	
China	Refused, 2023	Pending	Current: AI cannot be inventor
Japan	Refused, Oct 12, 2022	Tokyo District Court, affirmed, May 16, 2024 Intellectual Property High Court, affirmed, Jan 30, 2025	Current: AI cannot be inventor
New Zealand	Refused, Jan 31, 2022	High Court, affirmed, Mar 17, 2023	Current: AI cannot be inventor; Appeal pending
South Africa	Patent accepted: Jul 28, 2021	None	Patent issued: AI listed as inventor
South Korea	Refused, Sep 28, 2022	Seoul Administrative Court, affirmed, Jun 30, 2023 Seoul High Court, affirmed, May 16, 2024 Korean Supreme Court, appealed, Jun 18, 2024	Current: AI cannot be inventor; Appeal pending

It should be noted, however, regardless of how this case will be decided, the question at issue is narrowly limited, i.e., whether AI can be named as an inventor in a patent application. This does not affect the patentability of AI technologies themselves. On the contrary, patents covering AI technologies, invented by human, are routinely granted in Canada and elsewhere. For example, patents have been granted on the AI technologies underlying the DABUS system, naming Dr. Thaler as inventor. For companies and businesses developing AI related technologies, seeking patent protection should be a key strategic consideration.

If you are developing or commercializing AI-based innovations, please contact us to discuss your intellectual property strategy and, in particular, patent protection for your AI technologies. Dr. Sean X Zhang may be reached by e-mail at [szhang@dalelessmann.com](mailto:szhang@dalelessmann.com) or by telephone at 416-369-7807.



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