

***Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022) (Moore, Taranto, Stark)**

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Steven Thaler filed two patent applications naming “Device for the Autonomous Bootstrapping of Unified Science” (DABUS) as the sole inventor. DABUS is an artificial intelligence software system. The U.S. Patent and Trademark Office (PTO) determined that the patent applications lacked a valid inventor and issued a notice requesting an identification of valid inventors. Thaler petitioned the PTO Director to vacate the notices, which the PTO denied. Thaler then sued the PTO in the U.S. District Court for the Eastern District of Virginia under the Administrative Procedure Act. The district court granted the PTO’s motion for summary judgment, concluding that the applications lacked an inventor because, under the law, an “inventor” must be an “individual,” and the plain meaning of “individual” in the statute is a natural person.

Thaler appealed to the Federal Circuit, which affirmed. The court began its analysis with the language of the Patent Act, which defines an “inventor,” at 35 U.S.C. § 100(f), as the “individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.” The court held that, although the Patent Act does not define “individual,” it is clear from the language of the statute that an “individual” is a natural person, i.e., a human being. For example, the court noted that the statute uses the pronouns “himself” and “herself” rather than “itself” in reference to “individual” and the statute requires inventors to submit an oath or declaration. The court also noted that the Supreme Court has held that, unless there is an indication Congress intended otherwise, the word “individual” in statutes refers to a human being. The court also noted that requiring an “inventor” to be a human being is also consistent with its precedent, which held that neither corporations nor sovereigns can be inventors because they are not natural persons.

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Finally, while the court concluded that the statutory language was unambiguous, it noted that dictionaries also confirm that the common understanding of the word “individual” is a human being.

In concluding, however, the court noted that the question whether inventions made by human beings with the assistance of artificial intelligence are eligible for patent protection was not before it.