

Tokyo District Court rules an AI system cannot be named as a patent inventor

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The Tokyo District Court Holds an Artificial Intelligence System Cannot Be an Inventor Under Japanese Patent Law

Following similar decisions in other countries, a Japanese court held for the first time on May 16, 2024, that an inventor in the Patent Act is limited to a natural person and does not include an artificial intelligence ("AI") system.

June 2024 Alert

In Tokyo District Court Case R5 (gyo-u) no. 5001, plaintiff Stephen Thaler had filed Japanese patent application no. 2020-543051 pursuant to PCT application no. IB2019/057809, and listed the inventor's name as "DABUS, the artificial intelligence that autonomously invented this invention." The commissioner of the Japan Patent Office ordered the plaintiff to amend the name of the inventor to that of a natural person, stating only a natural person can be named as an inventor. The plaintiff refused and filed a request for examination. The commissioner denied the request and rejected the application. The plaintiff filed suit, arguing the rejection is unlawful because the term "invention" in the Patent Act includes AI inventions and the name of the inventor is not required for an application relating to an AI invention. The court dismissed the plaintiff's lawsuit for the following reasons: One, Article 2, paragraph 1 of the Intellectual Property Basic Act defines "intellectual property" as "inventions ... that [are] produced through creative activities by human beings ... ," hence an invention is something produced by a natural person. Two, Article 36 of the Patent Act, which lists requirements of a patent application, requires the name of the inventor on the application, and since this "name" refers to that of a natural person, the Patent Act presumes that an inventor is a natural person. (Note: the Japanese word for "name" is氏名, and the character 氏connotes the meaning of a natural person.) Three, Article 66 of the Patent Act stipulates that patent rights come into effect by the registration of a patent, and Article 29, paragraph 1 stipulates "a person who invents an invention ... may obtain a patent for that invention," and since an AI system is not a legal person or have the right to obtain a patent, the above-mentioned "person who invents the invention" is a natural person. Four, if the "inventor" in the Patent Act were interpreted as including an AI system, there would be no legal basis to determine who should be the inventor among the AI that made the AI invention: the right holder of the software or the hardware that outputs the AI invention, the person who exclusively manages it, or other persons related to the AI invention. Lastly, the court observed that the patent office and courts in many countries are being cautious about interpreting the definition of "inventor" in their respective patent law to cover AI, and that it will be up to the legislature to create a new legislative framework that addresses the rights related to inventions created by AI systems.

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Shogo Asaji

Of Counsel

Tokyo + 81.3.6744.1612

sasaji@jonesday.com

Practice: Intellectual Property

Carl A. Kukkonen III

Partner

San Diego + 1.858.314.1178

ckukkonen@jonesday.com

Practice: Intellectual Property

Emily J. Tait

Partner

Detroit + 1.313.230.7920

etait@jonesday.com

Practice: Intellectual Property

Michiru Takahashi

Of Counsel

Tokyo + 81.3.6800.1821

mtakahashi@jonesday.com

Practice: Intellectual Property

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