

DABUS at the Boards of Appeal of the EPO: A Case Note

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Introduction

On 27 March 2026, the Boards of Appeal of the European Patent Office (EPO) issued a decision (T0528/25) concerning the DABUS case (AI inventorship). This decision stems from the applicant's appeal before the EPO against the Examination Division's rejection of European patent application 21216024 (publication number: EP 4 067 251 A1), filed as a divisional application (EP 18 275 163.6). The applicant, Dr Stephen L. Thaler, had identified an artificial intelligence (AI) system named 'DABUS' as an autonomously generating patentable invention. The EPO's receiving section rejected the application because designating an AI system as an inventor does not meet the legal requirements of the European patent law. The subsequent appeal was also dismissed by the Legal Boards of Appeal. The applicant then filed this request before the Boards of Appeal. This note outlines a brief summary of the Boards of Appeal decision.

The Main Request:

The main request was to recognise Dr Thaler as an inventor. It consists of the claims 1-9 and the description together with the EPO Form 1002, and an Addendum to the designation of inventor (as filed on 22 December 2023).² The following two particulars should be mentioned here.

First, on the destination of the inventorship, the EPO Form 1002 contains the following statements:

“A machine called “DABUS” conceived of the present invention. The invention disclosed and claimed in this European patent application was generated by a specific machine called 'DABUS'. Dr Thaler owns DABUS, built DABUS, trained DABUS, and used DABUS. Dr Thaler nevertheless submits that he is not an inventor under traditional criteria, because, in the case of the present invention, the machine only received training on general knowledge in the field and proceeded to independently conceive the invention and identify it as novel

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² The Boards of Appeal of the European Patent Office (T0528/25), p. 3

and salient. If the training Dr Thaler provided DABUS had been given to a person, that person would meet inventorship criteria as an inventor. In the present case, DABUS was not created to solve any particular problem, was not trained on any special data relevant to the present invention, and the machine, rather than a person, identified the novelty and salience of the present invention.”³

Second, a note on page 1 of the description contains the following statements:

“The invention disclosed in this application is an AI-generated invention, which was conceived autonomously by the artificial intelligence machine DABUS, located at 1767 Waterfall Dr, St Charles, Missouri 63303, United States of America. Dr Thaler, the applicant, is the owner of DABUS.”⁴

First Auxiliary Request:

The first auxiliary request also claimed Dr Thaler as the inventor. It consists of the claims 1-9 and the EPO Form 1002 (as filed on 22 December 2023), together with an amended page 1 of the description and an amended Addendum to the designation of inventor.⁵ Both documents were filed on 4 October 2024.⁶ In this respect, the designation of the inventorship statement was slightly changed. It stated that “A machine called ‘*DABUS*’ had been caused to conceive of the present invention”.⁷ In the earlier statement (filed on 22 December 2023), it was “A machine called ‘*DABUS*’ conceived of the present invention”.

The new amended EPO Form 1002 added the following statements at the beginning of the inventorship designation:

“Dr Thaler had caused a specific machine called “DABUS” to conceive of the invention disclosed and claimed in this European patent application.”⁸

The rest of the statements in the addendum to the EPO Form 1002 remained the same as the earlier submission.⁹ The note on page 1 of the amended description states that:

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ “Dr Thaler owns DABUS, built DABUS, trained DABUS, and used DABUS. In the present case, DABUS was not created to solve any particular problem, was not trained on any special data relevant to the present invention,

“The file contains information about how the invention was conceived that was submitted after the application was filed, which is not included in this specification.”¹⁰

Second Auxiliary Request:

The second auxiliary request designated Dr Thaler as the inventor. It was submitted with claims 1-9 and EPO Form 1002 (as filed on 22 December 2023), together with the addendum to the designation of inventor filed on 4 October 2024 and the description as originally filed.¹¹ It differs from the first auxiliary request in that it contains the description as originally filed (with no amendment).¹² The EPO Form 1002 and the addendum remained unchanged from the first auxiliary request.

Third and Fourth Auxiliary Requests:

It should be noted that the applicant submitted a new third auxiliary request containing only Form 1002, designating Stephen L. Thaler (the applicant) as the inventor.¹³ The Board notified the applicant of its preliminary opinion that none of the requests is allowable.¹⁴ In response (a letter dated 12 January 2026), the applicant submitted arguments on the merits and filed a new fourth auxiliary request containing only the EPO Form 1002 and designating him (Stephen L. Thaler) as the inventor.¹⁵

The Decision of the Examination Division:

The Examination Division concluded that the main request does not meet the requirements of Article 81, Rule 19(1), and 60(1) of the EPC.¹⁶ The applicant designated himself as an inventor, but his application included some contradictory statements.¹⁷ In the EPO Form 1002, the applicant designated himself as an inventor. However, the addendum describes that “invention was conceived autonomously by the machine DABUS and that the applicant was not an

and the machine, rather than a person, identified the novelty and salience of the present invention.” The Boards of Appeal of the European Patent Office (T0528/25-3.2.07), *ibid*, 4

¹⁰ *Ibid*

¹¹ *Ibid*

¹² *Ibid*

¹³ *Ibid*, 5

¹⁴ *Ibid*, 6

¹⁵ *Ibid*

¹⁶ *Ibid*, 4

¹⁷ *Ibid*

inventor under the traditional criteria.”¹⁸ Moreover, the preamble to the amended description states that the AI machine automatically generated the disclosed invention.¹⁹ Thus, there is an apparent contradiction, and the Examination Division could not determine who the inventor was, *Dr Thaler or DABUS*.²⁰

A similar conclusion was drawn for both auxiliary requests. The language of the addenda to the first and second auxiliary requests suggests they did not claim that Dr Thaler made the invention. Instead, they clearly stated that the DABUS system ‘*conceived the invention*’, whereas Dr Thaler ‘*caused*’ DABUS to ‘*conceive of the invention*’.²¹ It was concluded that the change of the wording to ‘*caused*’ did not substantially change the conclusion.²² It may, however, suggest the applicant's involvement in the inventive process.²³ Thus, DABUS conceived the invention and thus remains the inventor.²⁴

Key Arguments before the Boards of Appeal:

Dr Thaler argued that he should be treated as an inventor because he owned, used and trained the DABUS.²⁵ According to the applicant, no case law has disregarded his claim to be an inventor under European patent law.²⁶ It was further submitted that the addendum to the EPO Form 1002 and the note in the description were added to clarify the applicant's involvement.²⁷ Another reason for this explanation was to ensure there is no misrepresentation.²⁸

On the first and second auxiliary requests, it was submitted that the wording in the addendum has been simplified and shortened and no longer contains the controversial statements.²⁹ The new wording, which was submitted before and approved by the Federal Supreme Court of

¹⁸ Ibid, 5

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid, 6

²⁵ Ibid, 7

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

Germany (X ZB 5/22, decided on 11 June 2024), remains unchanged.³⁰ Contrary to the statements of the Examination Division, there is no need to assume any suggestive meaning of the term '*caused*' now. Instead, the applicant's involvement is explicitly stated in the new addendum, beyond any doubt.³¹ Finally, the applicant owned and used DABUS, which is sufficient to treat him as an inventor.³²

The designation of the inventor in the third auxiliary request remains the same as that of the German Federal Court of Justice (X ZB 5/22).³³ The applicant argues that this removes the confusion and contradictions over the previous auxiliary requests. The applicant, for its fourth auxiliary request, argues that an exceptional circumstance justifies its admission under Article 13(2) of the RPBA.³⁴

Decision of the Boards of Appeal:

There are four interrelated legislative provisions centred on inventorship: Articles 60, 62, and 81, and Rule 19(1) of the EPC. The right to a European patent belongs to the inventor or his successor in title.³⁵ The primary presumption is that an applicant is entitled to a patent. In this respect, the designation of the inventorship is a key issue. The first sentence of Article 81 of the EPC requires that a patent application shall designate the inventor.³⁶ The second sentence of the same provision stipulates that if the patent applicant is not the inventor or sole inventor, the application shall contain a statement indicating 'the origin of the right to a European patent'.³⁷

Article 19(1) complements Article 81 insofar as, if the applicant is not the inventor or sole inventor, the designation of the right to a European patent shall be provided separately.³⁸ The designation shall particulars: the inventor's family name, given name, and full address, and shall be accompanied by the applicant's or his representative's signature.³⁹ The guidelines on the inventorship statement were slightly modified by the Administrative Council's Decision in

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Ibid, 8

³⁴ Ibid

³⁵ Article 60, the European Patent Convention (the EPC), 1973

³⁶ Article 81, ibid

³⁷ Article 81, ibid

³⁸ Rule 19(1), ibid

³⁹ Rule 19(1), the European Patent Convention (the EPC), 1973

2021.⁴⁰ It is now required that “the designation shall state the family name, given names and country and place of residence of the inventor, contain the statement referred to in Article 81 and bear the signature of the applicant or his representative.”⁴¹ It must be noted that the EPO shall not assess or verify the accuracy of the designation of the inventorship.⁴² Finally, the inventor shall have the right to be mentioned in reference to the applicant.⁴³

In the previous case laws dealing with DABUS (AI inventorship), namely J 8/20 and J 9/20, it was held that ‘inventor’ under the EPC must be a person with legal capacity.⁴⁴ In both cases, the AI machine (DABUS) was named as an inventor. In the present case, the main request was to recognise Dr Thaler, not DABUS, as the inventor. This is a key departure from the previous two cases mentioned above. The Board agrees with the Examination Division that the submitted EPO Form 1002 and the addendum are unclear and ambiguous on the designation of the inventor.⁴⁵ The rule is that statements in the application, along with other documents, must be clear and consistent in content.⁴⁶ This is required to ensure legal certainty and efficient determination of European patent entitlement under Article 60(1).⁴⁷

In the instant case, the statements are self-contradictory. In the EPO Form 1002, the applicant designates himself as the inventor, but an addendum to this form states that “A machine called DABUS conceived the present invention” and the applicant is “not an inventor under traditional criteria”.⁴⁸ The Board views that such a formulation of an inventorship statement is contradictory. The addendum does not merely supplement the EPO Form 1002 by stating that the invention was devised using an AI machine; it also raises the question of whether the

⁴⁰ Decision of the Administrative Council of 15 December 2020 amending Rules 19 and 143 of the Implementing Regulations to the European Patent Convention (CA/D 11/20), Citation: OJ EPO 2021, A3, Online publication date: 29.1.2021

⁴¹ Ibid,

⁴² Rule 19 (1), ibid

⁴³ Article 62, ibid

⁴⁴ The Boards of Appeal of the European Patent Office (T0528/25), p.10

⁴⁵ Ibid, 14

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

applicant should be recognised as the inventor.⁴⁹ Thus, the Board concludes that the main request is not allowable.⁵⁰

On the first and second auxiliary requests, the Board also agreed with the Examination Division that they contain similar contradictions to those found in the main request.⁵¹ The key point is that the addendum to both requests states that “a machine called DABUS had been caused to conceive of the present invention.”⁵² The statement that the AI machine ‘conceived’ the invention can be inferred to mean that the AI machine is still an inventor.⁵³ The core function of an inventor can be found in the addendum that DABUS “identified the novelty and salience of the present invention”.⁵⁴ Here, the consideration is not whether an AI machine can make substantial inventive contributions, yet a human can claim inventorship over that invention.⁵⁵ It is not the Board's job to decide what level of human contribution is sufficient to be regarded as an inventor (in the AI context).⁵⁶ Instead, the key issue is to examine how the applicant's declaration as a whole is to be formally understood.⁵⁷ The first and second auxiliary requests are not clear and unambiguous; thus, they do not meet the requirements of Article 81 and Rule 19 of the EPC.⁵⁸

The Board did not accept the third auxiliary request, considering that this does not clearly and unambiguously identify the appellant as the (sole) inventor.⁵⁹ Hence, it is also not allowable.⁶⁰ The fourth auxiliary request was submitted for the first time (with the applicant's letter of 12 January 2026) in response to the Board's communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA).⁶¹ The admittance of this request is subject to

⁴⁹ Ibid, 15

⁵⁰ Ibid, 16

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid, 17

⁵⁴ Ibid

⁵⁵ Ibid, 18

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid, 19

⁶⁰ Ibid

⁶¹ Ibid, 20

Article 13(2) of the RPBA of 25 July 2025.⁶² The Board rejected the fourth auxiliary request for lack of an exceptional circumstance, as alleged by the applicant to justify its admission.⁶³

Conclusion

At present, it is settled that AI cannot be an inventor under European patent law. The patent applicant must designate an inventor. If the patent applicant is not the inventor or sole inventor, the designation of inventorship must include a statement of the origin of the right to a European patent. The main conclusion is that the inventorship statement must be precise, clear, and unambiguous.

⁶² Ibid

⁶³ Ibid