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CAN A MACHINE INVENT? THE INDIAN PATENT OFFICE'S DABUS REFUSAL AND THE FUTURE OF AI INVENTORSHIP

~Aviral Goyal

ABSTRACT

This article examines the Indian Patent Office's April 2026 refusal of Dr. Stephen Thaler's patent application naming the artificial intelligence system DABUS as the sole inventor under Application No. 202017019068. It analyzes the Controller's statutory interpretation of Sections 2(1)(y), 6, 7, and 10 of the Patents Act, 1970, which restrict inventorship strictly to natural or juristic persons and reject the premise that machine ownership establishes a "proof of right" to file. Situating the Indian ruling against the global trajectory across the European Patent Office, the United States, the United Kingdom, Australia, and South Africa, the article explores the procedural dynamics of pre-grant opposition under Section 25(1) and argues that while the decision confirms India's alignment with international consensus against autonomous AI inventorship, it leaves unresolved the critical threshold question of how patent law must treat inventions where artificial intelligence performs the substantive bulk of the inventive process.

INTRODUCTION

Dr. Stephen Thaler has spent six years touring the world's patent offices with the same pitch: my machine invented this, put its name on the certificate. On 15 April 2026, the Indian Patent Office became the latest, and entirely unsurprised, stop on that tour, and it said no.¹ The application, No. 202017019068, claims a food container generated, according to Thaler, by an artificial neural system called DABUS (Device for the Autonomous Bootstrapping of Unified Sentience). He named it the sole inventor and asked the Controller to accept that the machine's

¹ In re Patent Application No. 202017019068, Order under Section 15 of the Patents Act, 1970 (Indian Patent Office, Assistant Controller Neeraj Kumar Meena, Apr. 15, 2026).

outputs were autonomously generated, his own role limited to owning and operating the system. India was a late entrant; Thaler filed the same claim across roughly eighteen jurisdictions from 2019 onward, and by the time this order landed, the litigation trail elsewhere was already long enough to predict the ending.

NO ROOM FOR A NEW PERSON

The Controller's reasoning is not adventurous, and that is rather the whole point. Sections 2(1)(y), 6, 7 and 10 of the Patents Act, 1970, when read together, assume throughout that an "inventor" is a person capable of making a first disclosure, filing a declaration, and being named as such in the specification.² DABUS, however sophisticated it may be, is neither a natural person nor a juristic one as recognized under Indian law, and the Act does not comprehend and has no vocabulary for a non-person occupying that slot.

OWNERSHIP IS NOT PROOF OF RIGHT

Ownership does not rescue the application either. Section 7(2) requires an applicant who is not the inventor to establish "proof of right" to file, and the order holds that merely owning or operating an AI system does not generate a right of that kind.³ Thaler had also leaned on his PCT declaration under Rule 4.17(ii), which lets an applicant assert entitlement at the international phase. The order treats that declaration as a procedural formality incapable of overriding a mandatory requirement of Indian domestic law once the application enters national phase.⁴ As something of a parting shot, the Controller found an independent problem too: the claimed container disclosed no inventive step under Section 2(1)(ja), so even a human-named version of this application might not have survived examination.⁵

A PROCEDURAL LOSS, A SUBSTANTIVE WIN

What makes this order worth reading closely, rather than filing away as "India joins the club," is a smaller story underneath it. A pre-grant opposition built almost entirely around the objection regarding the inventorship was filed by Dr. Kalyan C. Kankanala. It was rejected, but not on the merits. Inventorship is not of the listed grounds under Section 25(1); therefore

² The Patents Act, No. 39 of 1970, §§ 2(1)(y), 6, 7, 10 (India).

³ The Patents Act, No. 39 of 1970, § 7(2) (India).

⁴ Patent Cooperation Treaty Regulations, r. 4.17(ii), June 19, 1970, as amended.

⁵ The Patents Act, No. 39 of 1970, § 2(1)(ja) (India).

the opposition was procedurally incompetent from the outset.⁶ Despite this, when the refusal order addressed the substantive question, it referred to the opponent's brief extensively enough that the two documents could be read side by side. An opposition can lose on the pleadings and still win the argument, so long as the Controller independently picks it up. Procedural gatekeeping and substantive reasoning travel on different tracks and losing the former does not mean losing the latter.

INDIA WAS NOT FIRST, AND KNEW IT

This order reads like the final domino piece in a set that had already fallen. The European Patent Office's Board of Appeal rejected the application to name DABUS as inventor in December 2021, holding that Article 81 EPC requires a natural-person inventor.⁷ The US Federal Circuit reached at the same result in *Thaler v. Vidal*, reading the Patent Act's "individual" as inherently human.⁸ The UK Supreme Court closed out its version of the saga in late 2023, and Australia's Full Federal Court, having briefly flirted with a broader reading at first instance, was reversed on appeal.⁹ Only South Africa granted the patent without any amendment as the CIPC runs a depository system with no substantive examination, so the application passed through without anyone deciding the question India, the EPO, the US and the UK all confronted head-on.¹⁰ By April 2026, India was not breaking new ground. It was declining to be the outlier.

THE QUESTION NOBODY HAS ANSWERED

It would be a mistake to read this as India taking a stand against AI-assisted invention as such. The order is narrower: it bars an AI system from being named inventor, full stop, and says nothing about an invention emerging from a human researcher working closely with an AI tool, which is a very different and far more common scenario. Pharmaceutical research increasingly relies on systems like AlphaFold to identify promising drug targets, with human scientists then designing and claiming the resulting compounds, and nothing here forecloses those patents.

⁶ The Patents Act, No. 39 of 1970, § 25(1)(f) (India); In re Patent Application No. 202017019068, Order under Section 25(1) and Rule 55 (Indian Patent Office, Apr. 15, 2026); Pre-Grant Opposition of Dr. Kalyan C. Kankanala, filed Nov. 11, 2024.

⁷ Case J 8/20, Designation of Inventor, Legal Board of Appeal, European Patent Office, Dec. 21, 2021.

⁸ *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022).

⁹ *Thaler v. Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49; *Commissioner of Patents v. Thaler* [2022] FCAFC 62 (Austl.).

¹⁰ Companies and Intellectual Property Commission (South Africa), Patent Journal, July 2021, Patent No. ZA2021/03242.

What remains genuinely open is the harder question sitting behind this one: at what point does an AI system's contribution become large enough that a human co-inventor's name starts to feel like a polite fiction? The Patents Act was not built with that question in mind, and a single Controller's order was never going to be the forum to answer it. Six jurisdictions have now independently confirmed that a machine cannot be an inventor. Not one of them has yet said what happens when the machine is doing most of the inventing.