Supreme Administrative Court Judgment

Court case No. 110 appeal No. 813

Appellant: THALER, Stephen L.

Appellee: TWIPO, Ministry of Economic Affairs

The Appellant appealed the Administrative judgment made by the Intellectual Property and Commercial Court.

The Decision of this court is as follows:

Main text

Appeal dismissed.

The costs of the appeal trial shall be borne by the appellant.

Reason

I. Summary of Facts: The appellant applied for a patent for invention to the appellee on October 17, 2019 with the name of "food or beverage container" (formerly known as "food container") as patent application No. 108137438 (hereinafter referred to as the "disputed application". Due to the lack of or incompleteness in the specification, drawings and application form, the appellee requested to make corrections by letter dated October 25, 2019, No. 10841557970 of (108) Zhi Zhuan No. 1 (2) 15171. Although the appellant corrected the relevant documents on February 6, 2020 and April 17 of the same year, the inventor stated in its application form was an artificial intelligence system. Letter No. 10940656670, requesting the Appellant that the application form with a natural person as the inventor should be corrected within 1 month from the date of receipt of the document. On June 29, letter No. 10940948300 of (109) Zhizhuan No. 1 (2) 15173 was the sanction of "not accepting" the application in dispute (hereinafter referred to as the original sanction). The appellant was dissatisfied and filed an administrative lawsuit in sequence, and declared that the appeal decision and the original sanction were revoked; the appellee should accept the disputed application. This appeal was filed after the Intellectual Property and Commercial Court (hereinafter referred to as the original trial) dismissed his lawsuit with Administrative Judgment No. 4 (hereinafter referred to as the original judgment).

2. The claims of the appellant and the defense of the appellee in the original trial shall be cited in the original judgment.

The investigation evidence, and concluded that: (1) Article 16, Paragraph 1, Paragraph 2 of the Patent Rule stipulates that the application shall specify the name and nationality of the inventor. Although this paragraph does not expressly state that the inventor must be a natural person, but with reference to the provisions of Article 5 (2), Article 6 (1) and Article 7 (4) of the Patent Law, the inventor may be the patent applicant himself, and may also apply The right to apply for a patent is assigned to others by legal acts, or is inherited by an heir upon death, etc., which means that the inventor should have the ability to make a right. If the right to apply for a patent belongs to the employer or investor, the inventor has the right to name representation. Refer to the provisions of Article 19 of the Civil Law on the right to name, which is placed in the first section "Natural Person" in Chapter II "Person" of the General Provisions. The nature of the right to name representation is the right of personality. Therefore, the "inventor" in the current patent law should not only be the person who actually conducts research and invention, but also the subject who can legally enjoy rights such as personality rights. The appellant named the artificial intelligence system without legal personality as DABUS and filled it in the application form, which is obviously difficult to recognize that it already has the items that should be recorded in Article 16, Item 1, Paragraph 2 of the Patent Rule. The application in dispute does not record the name and nationality of the inventor (natural person), which does not comply with the provisions of Article 16, Paragraph 1, Subparagraph 2 of the Patent Rule. The provisions of this article are inadmissible, and there is no violation. (2) According to current patent-related regulations and practical insights, the inventor under the Patent Law must be a natural person who has made substantial contributions to the technical features recorded in the scope of the patent application and has made spiritual creations to complete the invention. The artificial intelligence system does not have the self-consciousness or mind to complete the invention and engage in spiritual creation, and will not motivate its creation motive because of the expectation of obtaining patent protection, nor can it be the subject of the right to transfer its actual creation to others in the place of the patent applicant; and The so-called artificial intelligence system is the owner or owner of the inventor, and it does not meet the requirements of the patent applicant in Article 5, Paragraph 2 of the Patent Law. The application in dispute uses DABUS, a non-natural person, as the patent inventor. The framework of the relevant laws and rules is inconsistent, and the appellant’s claim that a non-natural person is the inventor is inconsistent with the intent of the current patent-related laws and rules, and is difficult to adopt. (3) The subject matter of rights regulated by the Patent Law and the Copyright Law is different. According to Articles 11 and 12 of the Copyright Law, a legal person may be the author by agreement. The ownership of the patent rights and interests of the completed invention and the investment to hire others to engage in research and development have different regulations according to the different forms of their normative rights, and there is no inevitable relationship between them. The appellant's claim that the two are the same laws that protect creation, encourage disclosure and promote the development of related industries should be consistent and standardized, and no equivalents should be used.

4. The court has verified that the original judgment is not wrong. The grounds of appeal are hereby supplemented as follows:

 (1) According to Article 5 of the Patent Law: "(Item 1) *The term "right to apply for a patent" shall mean the right to file a patent application in accordance with this Act.* .(Item 2) *Subject to provisions of this Act otherwise prescribed or the covenants otherwise set forth in an agreement, the term "the owner of the right to apply for a patent" shall mean an inventor, a utility model creator, a designer, or the assignee or successor thereof*.” Article 6, paragraph 1 states: “*The right to apply for a patent or the patent right is both assignable and inheritable*.” Article 7, 1 Item 1 and Item 4 stipulate: "(Item 1) *Where an invention, a utility model or a design is made by an employee in the course of performing his/her duties, the right to apply for a patent and the patent right thereof shall be vested in his/her employer and the employer shall pay the employee reasonable remuneration; where there is an agreement providing otherwise, such agreement shall prevail.* … (Item 4) *Where the ownership of the right to apply for a patent and the patent right are vested in the employer or the fund provider pursuant to Paragraph 1 or the preceding paragraph, the inventor, utility model creator or designer concerned shall be entitled to a right to have his/her name shown as such.*" And "inventor" refers to the person who actually conducts research and invention, the inventor must be a person who has made substantial contributions to the technical features recorded in the scope of the patent application, and he must solve the problem that the invention or new model intends to solve. The problem or the effect achieved produces a concept, and then proposes specific technical means that can achieve the concept. The inventor may be the owner of the right to apply for a patent, and may also assign the right to apply for a patent to others by legal acts, or inherit it by an heir upon death; if the right to apply for a patent belongs to the employer or investor, the inventor has the right to name representation. The right to express the name of the inventor is a kind of personality right, so the inventor must be a natural person. Therefore, Chapter 2 "Patent Application" of Part 1 of the Patent MPEP stipulates that the inventor must be a natural person. Chapter 3 "Patent Applicant" of Title I stipulates: A patent applicant refers to a person who has the right to apply for a patent and files a patent application by name, which may be a natural person or a legal person. Inventor (a new type of patent is the creator of a new type, and a design patent is the designer), refers to the person who actually creates the invention (a new type, design), who must be a natural person, etc., in line with the legislative intent of the provisions of the Patent Law, and no additional laws will be added. There are no restrictions or violations of legal reservations. Therefore, it is not adopted that the appellant maintains that the Patent Law does not restrict inventors to be natural persons, and that Article 1-2-1 of Title 1 of the Patent MPEP stipulates that "inventors must be natural persons" to add restrictions that are not in law, which violates the principle of legal reservations.

　(2) This Act is enacted to encourage, protect, and utilize the creation of inventions, utility models, and designs, and to promote industrial development." (Item 1) The competent authority for this Act is the Ministry of Economic Affairs. ( Item 2 ) Patent business shall be handled by a specialized agency designated by the Ministry of Economic Affairs.” “If the applicant is late in the statutory or designated period for patent application and other procedures, unless otherwise provided for in this Act, the application shall not be accepted., shall still be accepted." "To apply for a patent for invention, the patent applicant shall submit the application to the specialized patent authority with the application, specification, scope of application, abstract and necessary drawings." Article 1 of the Patent Law, Article 3, Article 17, Paragraph 1, and Article 25, Paragraph 1. Article 11 of the Patent Rule authorized by Article 158 of the Patent Law stipulates: "If the application documents do not conform to the statutory procedures and can be corrected, the patent agency shall notify the applicant to make corrections within a time limit; Article 17, Paragraph 1 of this Law stipulates that it shall be handled.” Article 16, Paragraph 1 stipulates: “Anyone who applies for a patent for invention shall specify the following matters in his application: 1. The name of the invention. 2. The name and nationality of the inventor. 3. The applicant's name, nationality, domicile or business office; if there is a representative, the name of the representative should also be indicated. 4. If an agent is appointed, his name and office should be listed". The application for an invention patent shall be determined by the TWIPO. The applicant shall submit the application form, specification, scope of patent application, abstract and necessary drawings to the TWIPO. The application should state the name and nationality of the inventor, and refer to the previous regulations and explanations. The inventor must be a natural person. If a non-natural person is listed as the inventor, the application document does not conform to the legal procedures and should be corrected. The applicant is notified to make corrections within a time limit, and if the corrections are not made within the time limit or the corrections are still incomplete, they shall be handled in accordance with the provisions of Article 17 of the Patent Law.

 (iii) After investigation, when the appellant filed the disputed application to the appellee on October 17, 2019, according to the application submitted by him, "Inventor 1 Nationality: 90 Others, Chinese name: to be provided later, English name: NONE, DABUS " and other words, the appellant recognized that the application was incomplete, and first requested corrections in letter No. 10841557970 dated October 25, 2019 (108) Zhizhuan No.15171. It was amended on April 17, 2020, but its application stated "Regarding the inventor, the technology in this case was invented by DABUS (Chinese translation: Dabus). DABUS is an Artificial Intelligence (AI) system, and the only inventor. In other words, this case was not invented by a human inventor.” and other words, after the appellee believed that the inventor in this case was not a natural person, and then on May 5, Letter No. 10940656670109 of (109) Zhizhuanyi (2) 15173 requested appellant to correct the application with a natural person as the inventor within 1 month from the date of the document, but the appellant has not made corrections within the time limit. The circumstances such as the disciplinary action that the disputed application is not accepted shall be the facts determined by the original judgment. The original judgment held that : the application in dispute did not record the name and nationality of the inventor (natural person), which did not comply with the provisions of Article 16, Paragraph 1, Subparagraph 2 of the Patent Rule. Article 17, Item 1 of the Patent Law stipulates that this article shall not be accepted, and there is no violation or other circumstances. According to the above explanation, there is no inconsistency in the law. The purpose of the appeal is to claim that whether the inventor is a natural person is not the reason for the "lack of application documents" stipulated in the Implementing Rules of the Patent Law. The original judgment went beyond the legal provisions and added the requirements of "inventor (natural person)" without authorization, which violated the laws and regulations. It is therefore difficult to say that the original judgment violated the law.

 (iv) Patents are based on territorialism, and each country's patent legal system and its examination standards are different. Therefore, it is difficult for other countries to grant a patent right for an invention to be a favorable determination for relevant cases. The original judgment stated that the appellant's abridged version of the US, EU or UK regulations, the UK Intellectual Property Office's sanction and the UK court's judgment all failed to acknowledge the appellant's so-called "artificial intelligence system can be an inventor under the patent law" Equal sympathy, there is no violation of the law with contradictory reasons for the judgment. The purpose of the appeal is to claim that the original judgment knew that South Africa had approved the application for this AI invention, but claimed that the United States and other cases of AI invention were not accepted or refuted. The South African and Australian courts agreed that AI artificial intelligence should be the inventor, and the original judgment ignored it. The possibility of such foreign laws as jurisprudence, there are so many violations of laws and regulations that the reasons for the judgment are not prepared and the reasons are contradictory, and it is not acceptable. The purpose of the appeal is that the original judgment cited in the original judgment of Minzhuan Shangzi No. 22 in 2015 is not an opinion on whether the inventor can be a natural person, and it does not apply in this case. The appellant has stated the reasons, but the original judgment did not. The reasons for not adopting, there are cases where the reasons for the judgment are not prepared, and so on.

5. According to the above conclusion, this appeal is unreasonable. In accordance with Article 1 of the Intellectual Property Cases Trial Law and the first paragraph of Article 255 of the Administrative Litigation Law, and the first paragraph of Article 98 of the first paragraph, the judgment is the main text.

August 17, 2022

Third Division of the Supreme Administrative Court

Presiding Judge Hu Fangxin

Judge Li Yuqing

Judge Xiao Huifang

Judge Cao Ruiqing

Judge Lin Huiyu

The above original proof is no different from the original

August 17, 2022

Secretary Lin Yufang