**[Summary of Administrative Court’s Decision of June 30, 2023]**

**I. There was no procedural illegality in the KIPO’s Decision of Nullification.**

The Plaintiff (THALER, Stephen L.) argued that the Korean national phase application (“Subject Application”) complies with the formality requirements since the inventor information is identical to that in the corresponding PCT application. Consequently, the Plaintiff contended that it was improper for the Defendant (Korean Intellectual Property Office, “KIPO”) to issue Notices Requesting Amendment and a Decision of Nullification for the Subject Application. However, KIPO possesses the authority to conduct formality examination according to the Korean Patent Act. Therefore, it is within the KIPO’s rights to request an amendment to the [Inventor] section of the Filing Document of the Subject Application based on Article 203(3) of the Korean Patent Act.

**II. Under the current Korean Patent Act, only ‘natural persons’ can be listed in the [Inventor] section of the filing document, and it is not permissible to list ‘AI’ only as an inventor.**

a. Article 33(1) (a person who is entitled to a patent) of the Patent Act defines an inventor as a ‘person,’ *i.e.*, a natural person, who makes an invention. Moreover, Article 42(1)(iv) and Article 203(1)(iv) of the Patent Act require the indication of ‘the (full) name and address’ of an inventor in a patent filing document. Even in view of the other paragraphs in the same Articles requiring the name and place of business in the case of a corporate applicant, it is evident that the term “inventor” under the aforesaid provisions refers to only a natural person who possesses a ‘(full) name’ and an ‘address.’

b. Based on the current state of technology, there is no substantiated data supporting the existence of strong AI, which can independently make decisions and act without relying on algorithms or data developed or provided by humans. DABUS also does not appear to be strong AI.

c. According to Article 2(1) of the Patent Act, the invention is defined as highly advanced creation of a technical idea utilizing the laws of nature. However, 'technical idea,' not 'technology' itself, ultimately presupposes human thoughts, and 'creation' also presupposes mental activities of a human being.

 In addition, the status of an inventor, in principle, requires legal capacity. The Civil Act clearly prescribes that legal capacity is granted, in principle, only to natural persons (Article 3), but may be granted to legal persons within a limited scope (Article 34). However, as AI does not fall under the category of a natural person nor a legal person under existing laws, it is not possible to attribute legal capacity to AI within the current legal framework.

d. The Plaintiff has argued that allowing AI to be recognized as an inventor aligns with the objective of the Patent Act, which aims to promote industrial development. However, there is no rational basis supporting that allowing AI to be listed as an inventor will encourage AI or its developers to generate more inventions. Moreover, there are concerns regarding the potential negative impact on human innovations, such as undermining human intelligence, potential collapse of research-intensive industries, uncertainty of liability as the human developers of AI may attempt to evade responsibility in legal disputes involving AI inventions or their outcomes, and the risk of monopolization of strong AI by a few entities such as large companies, that may leverage patent law to safeguard their own interests.

**III. It was not improper for the Defendant to provide no other possible measures to granting patent protection for an invention created by AI.**

a. Current AI technologies, such as DABUS, are not considered to have reached a level of technical advancement where they can independently generate inventions without human involvement. In addition, there are other options such as trade secrets to protect AI inventions. Preparing for the emergence of strong AI in the future should be addressed through the improvement of existing systems based on technological or policy-based decisions.

b. The patent applications indicating DABUS as an inventor were filed in a total of sixteen (16) countries including US, UK, Australia, Germany and the Republic of South Africa. While lawsuits were filed in multiple jurisdictions, no jurisdiction has issued a decision in favor of the Plaintiff.