[Translation]

**SEOUL HIGH COURT**

**7th ADMINISTRATIVE DIVISION**

**DECISION**

**CASE:** 2023 Nu 52088

Suit for Requesting Cancellation of the Decision of Nullification

**PLAINTIFF/APPELLANT:** THALER, Stephen L.

**DEFENDANT/APPELLEE:** Commissioner of the Korean Intellectual Property Office

**FIRST INSTANCE DECISION:** Seoul Administrative Court Case No. 2022 Guhap 89524, issued on June 30, 2023

**CLOSING OF HEARING:** April 18, 2024

**ISSUANCE OF DECISION:** May 16, 2024

**ORDER**

1. The Plaintiff’s appeal is dismissed.

2. Litigation costs shall be borne by the Plaintiff.

**RELIEF REQUESTED**

The First Instance Decision shall be reversed, and the Defendant’s decision nullifying Korean Patent Application No. 10-2020-7007394 filed by the Plaintiff, which was issued on September 28, 2022, shall be cancelled.

**GROUNDS**

**A. The First Instance Decision Affirmed**

The grounds asserted by the Plaintiff in this Court are not substantially different from those asserted in the First Instance case. Even upon a comprehensive review of the evidence submitted to the First Instance Court and this Court, as well as the arguments presented before this Court, the decision of the First Instance Court is deemed proper and reasonable. Thus, except for the additional determination in Section B below regarding the Plaintiff’s arguments emphasized or newly made before this Court, the grounds adopted by this Court are the same as the grounds for the decision of the First Instance Court. Accordingly, the decision of the First Instance Court is affirmed according to Article 8(2) of the Administrative Litigation Act and Article 420 of the Civil Procedure Act.

**B. Additional Determination**

1. The Plaintiff asserted that there is no basis for the interpretation that inventors under the Patent Act are restricted to natural persons and that the legislative loophole should be resolved through a reasonable interpretation of the provisions in view of the point that AI inventors were not considered at the time the Patent Act was enacted. As determined in the First Instance case, it is clear in light of the interpretation of Article 33 and Article 42 of the Patent Act that inventors under the Patent Act refer to natural persons. Considering the emergence and development of AI, the current level of technology and the society's awareness of AI, it is beyond the limits of legitimate legal interpretation to include AI as an inventor under the current provisions of the Patent Act. In the future, if there are matters that should be protected as inventions of AI, it should be supplemented through legislation based on societal discussions.

2. The Plaintiff argued that even though AI lacks legal capacity, AI can be recognized as an inventor under the Patent Act, and the rights and liabilities for the results generated by AI can be attributed to the owner or operator of the AI. However, Article 33 of the Patent Act stipulates that a person who makes an invention or a successor thereof has a right to a patent under this Act, which indicates the Patent Act has adopted inventorism. Therefore, the Plaintiff’s argument itself is not consistent with the Patent Act. In addition, attributing relevant rights and liabilities to the owner of AI, *etc*. lacks any basis and is totally incompatible with the current patent law system.

**C. Conclusion**

 The Plaintiff’s request for relief lacks merit and therefore cannot be granted. In addition, the First Instance Decision is proper and the Plaintiff’s appeal is groundless. Hence, a decision is hereby rendered to dismiss the Plaintiff’s appeal.

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| Presiding Judge |  | Hoe-Geun Koo |
| Judge |  | Sang-Won Bae |
| Judge |  | Da-Eun Choi |