**Federal Administrative Court Tribunal administratif federale Tribunale amministrativo federale Tribunal administrativ federal**

Division II

B-2532/2024

**Judgment of June 26, 2025**

|  |  |
| --- | --- |
| Panel | Judge David Aschmann (presiding),Judge Vera Marantelli, Judge Chiara Piras,court clerk Laura Rikardsen. |
| Parties | Stephen L. **Thaler,**1767 Waterfall Dr., US-MO 63303 St. Charles,represented bylic. iur. Andrea Mondini, attorney at law,TIMES Attorneys, attorneys at law,Feldeggstrasse 12, 8024 Zürich,Appellant, |

against

**Swiss Federal Institute of Intellectual Property IGE,**

Stauffacherstrasse 65/59g, 3003 Berne,

Lower instance.

|  |  |
| --- | --- |
| Subject matter | Patent application CH000408/2021 Food container Designation of the inventor. |

B-2532/2024

**Facts of the case:**

1.

On April 13, 2021, the appellant filed with the lower instance Swiss patent application No. 0408/21 for food containers and devices and methods for attracting increased attention, based on the PCT application of September 17, 2019 IB2019/057809 (publication number WO 2020/079499) with priority date October 17, 2018. The PCT application names the following inventors*: "DABUS, The Invention was autonomously generated by an artificial intelligence."* and the Swiss patent application: *"DABUS, die Erfindung wurde durch eine künstliche Intelligenz autonom generiert."*

1.

**B.a** In a letter dated June 10, 2021, the lower instance pointed out to the appellant that only natural persons could be named as inventors and requested him to indicate the inventor.

**B.b** In a submission dated August 3, 2021, the appellant requested that the patent be granted on the basis of the original designation of the inventor, in the alternative without naming the inventor and further in the alternative naming himself as the inventor.

**B.c** By email dated May 31, 2022, the appellant requested that the substantive examination proceedings be suspended.

**B.d** On February 6, 2023, the lower instance lifted the suspension of the proceedings.

1.

By decision dated March 12, 2024, the lower instance rejected the patent application and essentially stated that the relevant provisions only allowed natural persons to be registered as inventors. Consequently, an invention with an artificial intelligence as an inventor designation could not be registered.

1.

The appellant filed an appeal against this decision with the Federal Administrative Court on April 24, 2024 and submitted the following prayers for relief:

Page 2

B-2532/2024

"1. Main request: The decision of the lower instance dated March 12, 2024 concerning patent application CH00408/2021 - Food containers and devices and methods for attracting increased attention (hereinafter "patent application 0408/2021") shall be revoked and the patent shall be granted on the basis of the original designation of the inventor.

1. First auxiliary request: In the alternative to request 1, the decision of the lower instance dated March 12, 2024 concerning patent application 0408/21 shall be revoked and the patent shall be granted on the basis of a corrected designation of the inventor such that *no* inventor is named.
2. Second auxiliary request: In the alternative to request 2, the decision of the lower instance dated March 12, 2024 regarding patent application 0408/21 shall be revoked and the patent shall be granted on the basis of a corrected designation of the inventor such that Mr. Stephen L. Thaler is named as the inventor.
3. Third auxiliary request: In the alternative to request 3, the decision of the lower instance dated March 12, 2024 concerning patent application 0408/21 shall be revoked and the patent application shall be remitted to the lower instance for reassessment in accordance with the considerations.

All with costs and compensation to be borne by the lower instance. "

In support of the main request, the applicant essentially argues that the artificial intelligence system (AI system for short) known as Device for the Autonomous Bootstrapping of Unified Sentience (DABUS) generated the invention without a natural person contributing to it as a conventional inventor. Consequently, DABUS should be registered as the inventor. Since there is no reason to protect the inventor's personality rights without an inventive contribution by a natural person, the designation of the inventor could otherwise be waived (1st auxiliary request). In the alternative, the appellant shall be named as inventor because he is the owner of the DABUS software (2nd auxiliary request), or the case should be remitted back to the lower instance for reassessment (3rd auxiliary request).

**E.**

In its hearing of May 30, 2024, the lower instance requested that the appeal be dismissed in its entirety with costs to be borne by the appellant. It referred to its arguments in the decision and added that an entry without naming the inventor was not provided for by law, nor could the appellant be named as an inventor as the mere owner of the AI system.

Page 3

B-2532/2024

1.

In a submission dated June 6, 2024, the appellant submitted an unsolicited response to the consultation and basically maintained his request.

1.

At the request of the appellant, an oral and public hearing was held at the seat of the Federal Administrative Court on October 15, 2024, at which the parties to the proceedings confirmed their requests.

1.

At the request of the court, the appellant submitted further evidence in a submission dated October 29, 2024, including a statement dated October 28, 2024 on the question of how the DABUS software had been induced to be invented. The lower instance commented on this in a letter dated November 14, 2024, to which the appellant responded again in a submission dated November 28, 2024.

1.

Further submissions by the parties and the files submitted will be referred to, if necessary, in the following considerations.

**The Federal Administrative Court considers:**

1.

The Federal Administrative Court has jurisdiction to hear appeals against rulings of the lower instance in patent matters (Art. 31 and 33 let. e VGG). As the patent applicant and addressee of the ruling, the appellant has the right to appeal and is adversely affected (Art. 48 para. 1 VwVG). The appeal was filed in due time and form (Art. 50 para. 1, Art. 52 para. 1 VwVG) and the advance on costs was paid in due time (Art. 63 para. 4 VwVG).

The appeal must therefore be upheld.

1.

From a formal point of view, the appellant claims a violation of the right to be heard on two grounds. Firstly, the lower instance failed to deal with his submissions,

Page 4

B-2532/2024

according to which it may not object to the designation of the inventor in a PCT application (appeal para. 25 et seq.). Secondly, the lower instance did not deal with his auxiliary requests (entry without designation of the inventor or entry with the appellant as inventor) (appeal para. 45 et seq.).

**2.1** The right to be heard requires the authority to actually hear the submissions of the person concerned, to examine them seriously and to take them into account appropriately in its decision-making process (BGE 123 131 E. 2c p. 34). It is not necessary for the statement of reasons to deal with all of the parties' points of view in detail and to expressly refute each individual argument. However, it must be possible to challenge the decision properly if necessary (Art. 35 para. 1 VwVG, Art. 29 para. 2 BV; BGE 149 V 156 E. 6.1; 142 III 433 E. 4.3.2; judgment of the BVGer B-6752/2023 of December 23, 2024 E. 1.3.2).

**2.2** In the present case, the lower instance states in its decision that it can examine the designation of the inventor as a designated office and refers to treaty provisions and the practice of other contracting states (decision para. 45). Although it did not address the individual arguments of the appellant, it took his submissions into account in an appropriate manner.

Furthermore, the lower instance answered the auxiliary requests, albeit not explicitly, but in terms of content and justified them by analogy by stating that, according to Art. 35 para. 3 PatV, it was no longer allowed to admit the patent application if the designation of the inventor had not been made within 16 months of the filing or priority date (decision para. 46 and 48). It thus explained why it did not deal further with the auxiliary requests.

**2.3** The applicant may request the correction of the designation of the inventor (Art. 37 para. 1 PatV). The appellant also asserted such a request in his submission of August 3, 2021, but the time limit for the designation of the inventor, measured by the priority date of October 17, 2018, had in fact long since expired at that time. The lower instance correctly concluded from this for both auxiliary requests that there was no longer any question of deviating from the priority application (contested decision, para. 48), which answered the auxiliary requests by analogy. There was no need to mention the non-consideration.

There was therefore no violation of the right to be heard.

Page 5

B-2532/2024

**3.**

**3.1** From a substantive point of view, the appellant first submits that the lower instance would have been obliged to accept the designation of the inventor in the PCT application without further clarification. It must therefore be decided whether the lower instance wrongly examined the content of the designation of inventor.

**3.2** In the context of international harmonization efforts, the Patent Cooperation Treaty of 19 June 1970 (Cooperation Treaty, PCT, SR 0.232.141.1) entered into force for Switzerland on 24 January 1978. The aim of this treaty was to create a system of an international application that can be filed with an office with legal effect for the desired contracting states, whereby the application is subject to an entry and formal examination. The PCT Treaty is limited to this procedural rationalization and does not interfere with the examination and patent granting sovereignty of the national offices or with the substantive patent law of the contracting states (Federal Council Message to the Federal Assembly on three patent conventions and the amendment of the Patent Act of 24 March 1976, BBI 1976 II 1, 8 ff.). If the application contains information about the inventor or a declaration regarding the identity of the inventor, the designated office may not request any documents or evidence in this regard unless it has reasonable doubts about the accuracy of the information or declaration in question (Rule 51 *bis.2* number 1 of the Implementing Regulations to the Patent Cooperation Treaty of June 19, 1970 (PCT Implementing Regulations, SR 0.232.141.11). There are no other relevant (binding) provisions on the designation of inventors in the PCT Treaty or the Implementing Regulations.

**3.3** In the present case, the appellant names "DABUS, The invention was autonomously generated by an artificial intelligence." as the inventor in the PCT application. The Swiss patent application based on this reads "DABUS, die Erfindung wurde durch eine künstliche Intelligenz autonom generiert" in accordance with the text in the PCT application. Since the designation of the inventor in the PCT application is not binding due to the lack of corresponding provisions and there are also reasonable doubts that DABUS as an AI system is the inventor, the lower instance was right to examine the designation of the inventor. The appelant’s objections in this respect are therefore unfounded.

Page 6

B-2532/2024

**4.**

**4.1** Furthermore, the appellant claims that the lower court did not interpret Art. 5 PatG correctly. The law would not stipulate that a natural person must be registered as an inventor. Therefore, the AI system "DABUS" could also be named (main request). A patent application without naming an inventor would also be possible (auxiliary request 1), as no personal rights need to be protected without the involvement of a natural person. Finally, the appellant could also be registered as the inventor because he is the owner of the AI system (auxiliary request 2) or the case should be remitted back to the lower instance for reassessment (auxiliary request 3). Thus, the lower instance would have wrongly rejected the application.

In contrast, the lower instance is of the opinion that a natural person must be registered as the inventor in accordance with Art. 5 PatG. The naming would be necessary and an entry without naming the inventor would not be admissible. However, mere ownership of the AI system would not be sufficient as a contribution to the invention.

**4.2** The right to the patent belongs to the inventor, his legal successor or the third party to whom the invention belongs on another legal basis (Art. 3 para. 1 PatA). If several persons have jointly made an invention, they are jointly entitled to the right (Art. 3 para. 2 PatA). In proceedings before the Swiss Federal Institute of Intellectual Property, the patent applicant is deemed to be entitled to apply for the grant of the patent (Art. 4 PatA). The patent applicant must name the inventor in writing to the IGE (Art. 5 para. 1 PatA). The inventor must be named in a special document with their surname, first name and place of residence (Art. 34 para. 1 PatV). The person named by the patent applicant is listed as the inventor in the patent register, in the publication of the patent application and the patent grant, and in the patent document (Art. 5 para. 2 PatA).

**4.3** The term *inventor* is not defined in the law. The Federal Patent Court describes the inventor as a person who is the author of the claimed invention, i.e. who has recognized the inventive concept and developed it into an instruction for technical action through creative activity (Federal Patent Court judgment 02015\_009 of 21 March 2018, E. 5.1 - Heat exchanger element). The prevailing doctrine also advocates a concept of inventor limited to natural persons on the grounds that the development of an invention requires an intellectual

Page 7

B-2532/2024

act of creation (TOBIAS BREMI, in: SHK, Schweizer/Zech [eds.], Art. 3 para. 25; HILTI/KÖPF/STAUBER/CARREIRA, Schweizerisches und europäisches Patent- und Patentprozessrecht, 4th ed, p. 170 f.; PETER V. KUNZ, Wirtschaftsrecht, 2019, 5,464 f.; MARBAcH/DucREY/WILD, Immaterialgüter-und Wettbewerbsrecht, 2017, para. 103, CYRIL DÖRFLER, Das Schöpferprinzip im Immaterialgüterrecht, 2024, 20 f.; cf. also THIERRY CALAME, in: Schweizerisches Immaterialgüter- und Wettbewerbsrecht, IV, Von Bü-ren/David [ed.], p. 176, who speaks of *independent intellectual work*; in contrast, skeptical or critical, because this excludes business inventions: HEINRICH PETER, PatG/EPÜ, 3rd ed., Art. 3 para. 4 and BLUM/PEDRAZZINI, p. 321 f.). According to the case law of the Federal Supreme Court, the development of an invention also requires a so-called intuitive-associative activity (BGE 138 III 111 E. 2.1), by which the court characterizes the activity of a natural person.

**4.4** There is no generally valid and accepted definition of AI. According to the Council of Europe's AI Convention, an AI system is any machine-based system that derives results such as predictions, content, recommendations or decisions that can affect the physical or virtual environment based on explicit or implicit objectives. In use, different AI systems differ in their degree of autonomy and adaptability (Auslegeordnung zur Regulierung von künstlicher Intelligenz, Bericht des BAKOM an den Bundesrat vom 12. Februar 2025, S. 6, [https://www.bakom.admin.ch/bakom/de/home/digital-und-internet/strate-gie-digitale-schweiz/ki\_leitlinien.html;](https://www.bakom.admin.ch/bakom/de/home/digital-und-internet/strate-gie-digitale-schweiz/ki_leitlinien.html) last visited on May 14, 2025; Art. 2 of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law [CETS No. 225] of September 5, 2024; see also OECD Council Recommendation on Artificial Intelligence of May 22, 2019, adapted on March 3, 2024).

With regard to *autonomy*, it is widely held that AI systems are not (yet) capable of recognizing problems or tasks and developing solutions without human input (see DANIEL KOHL, Autonome KI-Programme als Erfinder im Patentrecht, GRUR 9/2025, p. 629 et seq.; p. 632; NOAM SHEMTOV, A study an inventorship in inventions involving Al acitvity, 2019, p. 9 et seq, available at https://link.epo.org/web/Concept\_of\_Inventorship\_in\_inventions\_involving\_Al\_Activity\_en.pdf; NIKLAS MAAMAR, Computer als Schöpfer, 2021, p. 220; TIM DORNIS, Künstliche Intelligenz und Patentrecht - Klarstellungen zur "Erfindung ohne Erfinder", GRUR Patent 2023, p. 14 para. 12 f.; ELIANE KUNZ, Künstliche Intelligenz als

Page 8

B-2532/2024

Erfinder im Sinne des Patentrechts, p. 19 f.). The human contributions in the data processing of an AI regularly include the provision of data and the training of the AI, the use of the AI and finally the recognition of the output of the AI (OSKAR PAULINI, Die KI-generierte Erfindung, Munich 2023, p. 27 ff; KÖHL, loc. cit. p. 630). As the autonomy of an AI system increases, human influence decreases and it becomes more difficult to identify a human contribution (MAAMAR, op. cit., p. 217).

In terms of their *adaptability*, however, AI-supported systems are already making important contributions today in order to generate new solutions based on existing knowledge, measurement results and data, which may be patentable by their nature (NÄGERLJNEUENBURGER/STEINACH, Künstliche Intelligenz: Paradigmenwechsel im Patentsystem, GRUR 2019, p. 336; ALESCH STAEHELIN, Begriff und Wesen der Künstlichen Intelligenz, GRUR 2022, p. 1569).

**4.5** Whether the term "inventor" in Art. 5 PatA also includes AI systems must be determined by means of interpretation.

**4.5.1** The starting point for any interpretation is the wording (grammatical interpretation). If the text is not clear and various interpretations are possible, its true meaning must be sought (ratio legis), taking into account all elements of interpretation (BGE 145 II 182 E. 5.1 and 141 II 262 E. 4, each with emphasis; TSCHANNEN/MÜLLER/KERN, Allgemeines Verwaltungsrecht, 5th ed. 2022, § 25 para. 572). In systematic interpretation, the meaning of a legal norm is determined by its relationship to other legal norms and by the systematic context in which it is presented in a law (instead of many BGE 145 III 133 E. 6.5). The historical interpretation is based on the meaning that was given to a norm at the time of its creation. A norm should apply as it was intended by the legislator (instead of many BGE 145 III 133 E. 6.4; HÄFELIN/MÜLLER/UHLMANN, Allgemeines Verwaltungsrecht, 8th ed., 2020, para. 181). Finally, the teleological interpretation is based on the purpose associated with a legal provision (instead of many BGE 142 II 399 E. 3.3.4 and 3.3.5; judgment of the Federal Administrative Court B-6727/2019 of August 5, 2020 E. 5.4.3 et seq.; HÄFELIN/MÜLLER/UHLMANN, loc. cit. para. 179).

**4.5.2** Art. 5(1) PatA, which regulates the naming of the inventor, refers only to the *Erfinder* resp. *inventeur* (French version) and *inventore* (Italian version). Paragraph 2 of Art. 5 PatA refers in a differentiated manner to

Page 9

B-2532/2024

*Person* or *personne* (French version) and *persona* (Italian version) named by the patent applicant as the inventor. In order to assess whether the term inventor also refers to AI systems, further elements of interpretation must be taken into account.

**4.5.3** With regard to the systematic interpretation element, it must be taken into account that the inventor must be named by surname, first name and domicile (Art. 34 para. 1 PatV). According to the lower instance, these characteristics only apply to natural persons. Processes that only apply to natural persons are also described in Art. 38 para. 2 PatV, according to which the waiver of naming the inventor within the meaning of Art. 6 para. 1 PatG must be declared with the inventor's signature, and Art. 33 para. 1 PatG, according to which the right to the patent and the rights in the patent are transferred to the heirs.

The fact that inventors are not objects is also clear from the legal system, as Art. 5 para. 2 PatG (as well as Art. 3 para. 2 and 3 of the French and Italian texts) *refers* to *Person, personnes* and *persone*. The Civil Code only recognizes persons as natural persons and legal entities (see Art. 11 CC et seq. and Art. 52 et seq. CC).

**4.5.4** From a historical perspective, the provisions on the designation of inventors (Art. 5 and 6 PatA) were introduced in the 1954 Act implementing Art. 4ter of the Paris Convention, London Text. According to the dispatch, this was in response to a postulate to which inventors working as employees in particular attached importance (dispatch of the Federal Council to the Federal Assembly on the revision of the Federal Law on Invention Patents of April 25, 1950, BBI 5877, 977 1009). The designation of the inventor was intended to preserve the so-called inventor's honor (dispatch of April 25, 1950, BBI 5877, 977, 983).

In the German-language text of the 1954 Act, Art. 5 para. 1 PatG referred to the "Person des Erfinders". As part of the amendment to the Patent Act in 1976, Art. 5 para. 1 was adapted to the effect that today only the term "Erfinder" is used (version according to No. I of the Federal Act of Dec. 17, 1976, in force since Jan. 1, 1978). The amendment was intended to bring the time limit, form and content of the designation of inventors in line with international law. However, there is no evidence of any specific intention on the part of the legislator to no longer restrict inventor status to natural persons. Rather, the legitimate interest of the inventor in maintaining the right to be named as the inventor was again taken into account.

Page 10

B-2532/2024

(Dispatch of 24 March 1976, BBI 1976 111, 69).

Because AI systems did not yet exist at the time of the legislative process, the legislator did not have inventions in connection with AI in mind. The fact that the appellant demands an interpretation of the provision in terms of the time of application appears justified against the background of the extensive technical developments (see judgment of the FAC A-615/2023 of July 10, 2024 E. 6.10).

**4.5.5** From a teleological perspective, caution is nevertheless required:

The protection of personality may not play a role for an AI system and in this respect the benefit of naming the inventor may be low or obsolete. However, the use of AI still involves various actors, including natural persons, who have or deserve an interest in the protection of personality or even in the claim to the patent (see ANA RAMALHO, Patentability of Al-generated Inventions [2018], p. 26; PAULINI, loc. cit. E. 4.4). Nothing else arises in view of the current legislative efforts in connection with AI. As Switzerland does not yet have any legislation specifically on AI, on November 22, 2023, the Federal Council commissioned the UVEK and the EDA to draw up an overview of possible regulatory approaches for AI. The analysis concluded that there is currently no need for regulation in patent law. The exponentially increasing number of patent applications for AI-based inventions indicates that the system is functioning satisfactorily (Auslegeordnung zur Regulierung von kunstlicher Intelligenz, Bericht an den Bundesrat vom 12. Februar 2025, BAKOM, S. 11, <https://www.bakom.admin.ch/bakom/de/home/digital-und-internet/strategie-digitale-schweiz/ki_leitlinien.html>; last visited on May 14, 2025).

**4.6** Therefore, a justified and broad lack of interest in naming inventors for AI-based inventions cannot be established. In this consideration, the interest of the person who applies for protection of the patent and who is burdened by the obligation to name the inventor cannot play a role from the outset. The fact that an inventor must be named or that a patent application is not admissible without naming the inventor is clear from the wording of Art. 5 para. 1 PatA: " Der Patentbewerber hat dem IGE den Erfinder schriftlich zu nennen". This

Page 11

B-2532/2024

legal text leaves no room for interpretation. The inventor may waive the right to be named in the patent register, in the publication of the patent application and the patent grant as well as in the patent document (Art. 6 para. 1 PatA, Art. 5 para. 2 PatA). However, this does not mean that the inventor does not have to be named in the application.

**4.7** A natural person can be considered a (co-)inventor by contributing to the data processing of an AI that leads to an AI-generated invention (see E. 4.4 above). The doctrine seems to agree on this. Which person has a decisive influence on the creation process and thus qualifies as a (co-)inventor is the subject of controversial debate. One part of the doctrine considers the person who, as the data provider, combines various data sets and develops a special experimental setup for data collection to be the inventor (VIKTORIA SCHRON, Künstliche Intelligenz im Patentrecht, 2023, p. 178). Another part of the doctrine holds the view that the person who, as the user, uses the AI system to solve a problem and enters certain tasks is deemed to be the inventor (KOHL, loc. cit., p. 631; DÖRFLER, loc. cit., p. 231). According to the prevailing opinion, however, the person who perceives the output of the AI-generated invention and recognizes it as a patentable invention is deemed to be the inventor (PAULINI, op. cit. p. 70; MAAMAR, loc. cit., p. 216; VOLMER, Die Computererfindung, in: Mitt. 1971, 256 ff., 263). This view is understandable insofar as it is not the path to an invention but the result that is decisive for patent law and thus even chance inventions are patentable without further ado (see HILTI/KÖPF/STAUBER/CARREIRA, loc. cit., pp. 94 f. and 170; see also CALAME, loc. cit., p. 175, according to which the inventor's right arises as soon as the inventor has recognized the completed inventive concept).

Furthermore, inventor status based on the economic entitlement to the AI system is discussed in the doctrine with reference to the fact that the economic contribution creates the basis for the development of inventions (NÄGERLJNEUENBURGER/STEINACH, loc. cit., 340; ELIANE KUNZ, loc. cit., p. 51). DÖRFLER rejects this approach, arguing that the qualification based on an economic contribution is contrary to the creator principle (DÖRFLER, loc. cit., p. 228 f.). This negative opinion is understandable because the investment in means for the development of an invention does not establish inventor status (for service inventions, see BREMI, loc. cit., Art. 3 para. 42).

**4.8** Furthermore, it should be noted that the appellant has applied to patent offices worldwide for protection for the invention with DABUS as inventor.

Page 12

B-2532/2024

For the most part, the applications were rejected on the grounds that a natural person was required as the inventor (including by the European Patent Office [EPO, decision of January 27, 2020 - 18 275 174.3 = GRUR-RS 2020, 653, EPO decision of January 2020 - 18 275 174.3 = GRUR-RS 2020, 647, confirmed by the Board of Appeal with EPO decision of December 21, 2021 - J 008/20 - 3.1.01 = GRUR-RS 2021, 54931], the German Patent and Trademark Office [DPMA] and the UK Patent Office [UKIPO, decision of December 4, 2019 - BL O/741/19]). The courts supported the rejections (BPatG decision of November 11, 2021 - 11 W (pat) 5/21 = GRUR 2022, 1213 (1216) and BGH decision of June 11, 2024 Ref. X ZB 5/22; England and Wales High Court of Justice, judgment of September 21, 2020 - EWHC 2412 (Pat) and England and Wales Court of Appeal, judgment of September 21, 2021 - [2021] - EWCA - [2021]). September 2021 - [2021] EWCA Civ 1374; Intellectual Property and Commercial Court of Taiwan, administrative judgment of August 19, 2021 - GRUR Int. 2022, 240; High Court of Australia, Thaler v Com-missioner of Patents [2022] HCATrans 199 of November 11, 2022; for an overview, see also PAULINI, loc. cit, p. 4 f.).

**4.9** The interpretation thus shows that an AI system cannot be registered as an inventor and a patent application cannot be admitted without naming the inventor. The specific contribution by which a natural person is deemed to be a (co-)inventor can largely be left open. However, at least in constellations in which they influence the AI system through several relevant contributions in the data processing process of an AI system, their qualification as a co-inventor is obvious.

**5.**

It must therefore be examined below whether the invention with the naming of the applicant can be registered as inventor.

**5.1** On the question of the extent to which the appellant actually influenced DABUS and contributed to the development of the invention, the statements of the appellant do not agree with the findings of the lower instance. However, it is undisputed that the appellant was involved in providing data and training DABUS and ultimately submitted the invention to his patent attorneys (declaration of the appellant dated October 28, 2024, p. 1, Exhibit 8).

**5.2** There is essentially disagreement as to whether the appellant influenced DABUS through further contributions.

Page 13

B-2532/2024

Based on his own publication, the appellant argues that DABUS developed solutions independently of input from a user, resp. produced the invention without the appellant naming problems or tasks (Vast Topological Learning and Sentient AGI, 2021, p. 4 below and p. 5 above, appendix 9). In contrast, the lower instance states that it is technically impossible for DABUS to have made the invention without further human contributions and doubts the scientific soundness of the appellant's publication. However, it does not describe - nor can it be inferred from the evidence submitted - which human contributions it believes are necessary (statement of the lower instance of November 14, 2024; evidence for the hearing 2 to 5).

**5.3** Whether it is technically possible that DABUS produced the invention without input from a user is questionable in light of the widespread opinion (see above E. 4.4). However, the question can remain unanswered. In the present case, the appellant was not only involved in providing data and training DABUS, but also personally submitted the invention to his patent attorneys. In his declaration, he describes this last step as follows: "In turn, these [juxtapositional] chains were converted by the system into natural language which I then provided to my attorneys" (declaration of the appellant dated October 28, 2024, p. 2, Exhibit 8 to the appeal). He thus received the finished solutions from his AI and then recognized himself that this was a protectable invention. Overall, he thus had sufficient influence on DABUS to be an inventor (see E. 4.7 above).

**6.**

**6.1** Consequently, with regard to the main request (naming DABUS as inventor) must be concluded: Because the interpretation of the relevant provisions shows that an AI system cannot be named as inventor (see above E. 4.5), the invention (food containers and devices and methods for attracting increased attention) cannot be registered with the AI system DABUS as inventor. The lower instance therefore rightly rejected the patent application insofar as it concerns the naming of DABUS as inventor.

**6.2** Regarding auxiliary request 1 (no designation of inventor): Because the legal text of Art. 5 para. 1 PatG clearly requires the naming of an inventor (see above E. 4.6), the invention cannot be registered without naming an inventor.

Page 14

B-2532/2024

The lower instance was therefore right to reject the patent application insofar as no designation of an inventor was concerned.

6.3 Regarding auxiliary request 2 (naming the appellant as inventor): In the present case, the apellant was at least involved in providing data and training DABUS, received the finished solutions and recognized that this was an invention eligible for protection. Thus, he had a sufficient overall influence on DABUS to be considered an inventor (see above E. 4.7). Consequently, the lower instance wrongly rejected the patent application insofar as it concerns the naming of the appellant as inventor.

6.4 As a result, the appeal with regard to auxiliary request 2 must be upheld. There is therefore no need to examine auxiliary request 3. Otherwise, the appeal proves to be unfounded and must be dismissed.

7.

7.1 As a rule, the procedural costs are to be borne by the losing party (Art. 63 para. 1 VwVG). As a federal authority, the lower instance does not bear any procedural costs from the outset (Art. 63 para. 2 VwVG). If the second auxiliary request is approved, the appellant is deemed to have won one sixth (1/6) of the case, the patent will be registered, but with details that are only intended to be of third rank. Consequently, five-sixths (5/6) of the costs of the proceedings are to be awarded against the appellant. The costs of the present proceedings are to be set at a total of CHF 4,200, taking into account all relevant assessment criteria. The appellant's share of CHF 3,500 is to be taken from the advance on costs of CHF 4,200 paid by him; the difference of CHF 700 is to be reimbursed to him from the court cashier's office.

7.2 Parties that win in whole or in part must then be awarded compensation for the necessary costs incurred ex officio or upon request (Art. 64 para. 1 VwVG in conjunction with Art. 7 et seq. of the Regulations on Costs and Compensation before the Federal Administrative Court [VGKE, SR 173.320.2]). The compensation includes the costs of representation and any other expenses incurred by the party; unnecessary expenses are not compensated (Art. 8 et seq. VGKE). The party compensation is to be determined on the basis of the detailed bill of costs submitted (Art. 14 VGKE). In the absence of a (detailed) bill of costs, the compensation shall be determined on the basis of the files (Art. 14 para. 2 VGKE).

Page 15

B-2532/2024

The appellant is entitled to reimbursement of one sixth (1/6) of his reimbursable party costs. The appellant's legal representative did not submit a bill of costs to the Federal Administrative Court. In consideration of the record (simple exchange of documents, participation in the party hearing and two statements with supporting facts), a reduced party fee of CHF 1,200 (including expenses and VAT surcharge within the meaning of Art. 9 para. 1 let. c VGKE) appears to be appropriate for the appeal proceedings.

**Therefore, the Federal Administrative Court rules:**

1.

**1.1** The appeal is granted based on the second auxiliary request. The lower instance decision of 12 March 2024 concerning patent application CH000408/21 is set aside and the lower instance is instructed to continue the patent examination on the basis of a corrected designation of the inventor such that Mr. Stephen L. Thaler is named as the inventor.

**1.2** The remainder of the appeal is dismissed.

1.

The appellant is ordered to pay the costs of the proceedings in the amount of CHF 3,500 and the amount of CHF 4,200 is taken from the advance on costs paid. The remaining amount of CHF 700 will be refunded to the appellant once the decision has become final.

1.

The appellant is awarded compensation of CHF 1,200 at the expense of the lower instance. This amount is to be transferred to the appellant after the present judgment becomes final.

Page 1



B-2532/2024

**4.**

This judgment is sent to the appellant and the lower instance.

The presiding judge: The clerk of the court:

Laura Rikardsen

David Aschmann

**Notice of appeal:**

An appeal against this judgement may be lodged with the Federal Supreme Court, 1000 Lausanne 14, in civil matters within 30 days of notification (Art. 82 ff., 90 ff. and 100 BGG). The deadline is deemed to have been met if the appeal has been submitted to the Federal Supreme Court or handed over to the Swiss Post Office or a Swiss diplomatic or consular representation for its attention by the last day of the deadline at the latest (Art. 48 para. 1 BGG). The legal document must contain the request, the grounds for the request, the evidence and the signature. The contested judgement and the evidence must be enclosed if the appealing party has it in its possession (Art. 42 FSCA).

Dispatch: July 2, 2025

Page 17