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The Thaler Decision in India and the Crisis of Anthropocentric Patent Theory: AI, Inventorship and the Future of Innovation Governance

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Abstract

This commentary examines the Indian Patent Office's refusal of Stephen Thaler's DABUS patent application as a significant moment in the legal governance of artificial intelligence and innovation. It argues that the decision is doctrinally defensible under the Indian Patents Act, 1970, but theoretically revealing because it exposes the anthropocentric assumptions on which patent law continues to rest. The Controller's reasoning links inventorship to legal personality, entitlement, assignment and proof of right under Sections 6, 7 and 10, concluding that DABUS cannot be a "true and first inventor" because it cannot hold rights, execute legal instruments or transfer title. The commentary situates this reasoning within wider DABUS jurisprudence in various jurisdictions, where AI inventorship has similarly been analysed through statutory interpretation. Yet this convergence does not resolve the deeper question of how patent law should respond to AI-generated or AI-assisted invention. The case comment further places the Indian refusal against India's broader AI policy ambitions, including its promotion of AI-driven innovation and

technological sovereignty. It argues that this produces a regulatory contradiction between developmental AI governance and a human-centred patent framework, making DABUS a transitional case for rethinking inventorship, entitlement and innovation governance.

Keywords

Artificial intelligence, patent law, Indian intellectual property framework, DABUS.

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1 Introduction

“What we know for certain is that at some point in the early twenty-first century all of mankind was united in celebration. We marvelled at our own magnificence as we gave birth to AI.”¹

Not many cases in contemporary intellectual property (“IP”) law have generated as much theoretical discomfort as The Device for the Autonomous Bootstrapping of Unified Sentience (“DABUS”) litigations.² The controversy appears deceptively simple. Can an artificial intelligence (“AI”) system be recognised as an inventor under patent law?³ Yet beneath this apparently technical question lies a far more profound challenge to the conceptual architecture of modern legal systems. The DABUS applications compel courts, patent offices and policymakers to confront an uncomfortable possibility: what if invention, long regarded as one of the defining expressions of human ingenuity, is no longer an exclusively human activity?

For more than two centuries, patent law has operated on an assumption so deeply embedded that it rarely required explicit articulation; and innovation was understood as the product of human cognition.⁴ The inventor occupied a privileged position within patent jurisprudence because invention itself was viewed as a distinctly human act involving ingenuity and intellectual labour.

¹ Morpheus at The Matrix, *The Matrix* (The Wachowskis, Warner Bros 1999).

² The details of patent applications across multiple countries are available at <https://artificialinventor.com/patent/> (Accessed on 4 June 2026).

³ See, for example, Abbot argues that “more ambitiously, treating computational inventions as patentable and recognizing creative computers as inventors would be consistent with the Constitutional rationale for patent protection. It would encourage innovation under an incentive theory”: Ryan Abbott “I Think, Therefore I Invent: Creative Computers and the Future of Patent Law” (2016) 57(4) *Boston College Law Review* 1079-1126, p. 1104.

⁴ Cheng Lim Saw and Samuel Zheng Wen Chan, “Of Inventorship and Patent Ownership: Examining the Intersection Between Artificial Intelligence and Patent Law” (2023) 1 *Singapore Journal of Legal Studies* 27-51, pp. 27- 29.

Consequently, patent systems evolved around a relatively stable conceptual framework in which inventorship, ownership, entitlement, rights and obligations were all linked to human agency. The emergence of increasingly sophisticated AI systems destabilises this framework by challenging the premise upon which it rests.⁵

DABUS, developed by Stephen Thaler, has become the leading legal test of AI inventorship.⁶ Thaler's litigation campaign sought not merely patent protection but a definitive answer to a fundamental question: if a machine creates an invention, who – or what – is the inventor?⁷ The Indian Patent Office's refusal to recognise DABUS as an inventor provides a significant response.⁸ Although overshadowed by developments in the UK, USA, Australia, South Africa and many more,⁹ the Indian decision warrants independent analysis. As an emerging technological power actively promoting AI, India occupies a distinctive position in the global innovation landscape. Yet when faced with AI inventorship, Indian patent law adopted a traditional approach, maintaining that only human beings can be inventors.

This commentary argues that the Indian DABUS refusal reveals a deeper crisis within contemporary patent theory. The decision is doctrinally correct in the sense that it faithfully interprets the Patents Act 1970.¹⁰ However, it is theoretically inadequate because it exposes the growing inability of patent law to

⁵ Martin Muller, "Issues in Patenting 'Artificial Intelligence' from an EPO Perspective" (2024) 19(3) *Journal of Intellectual Property Law and Practice* 234-249, p.241.

⁶ See Artificial Inventor, <https://artificialinventor.com> (Accessed on 4 June 2026).

⁷ See Jeffrey Wu, "Bridging the AI Inventorship Gap" (2023) 91(6) *Fordham Law Review* 2515-2547.

⁸ In re Patent Application No. 202017019068, Order under Section 15 of the Patents Act, 1970 (Patent Office Apr. 15, 2026), <https://www.intepat.com/wp-content/uploads/2026/04/202017019068-Order-Section-15.pdf> (Accessed on 4 June 2026).

⁹ See Artificial Inventor, <https://artificialinventor.com> (Accessed on 4 June 2026).

¹⁰ Patents Act 1970 (India) (hereinafter Patents Act 1970).

accommodate technological developments that challenge its anthropocentric foundations. The Indian Patent Office successfully defended the existing legal architecture of inventorship, but only by reaffirming assumptions about creativity, agency and legal personality that are becoming increasingly unstable in the age of AI.¹¹

This is not to suggest that the recognition of AI-generated inventions as patentable subject matter, or the attribution of inventorship to AI systems, is an uncontroversial or necessarily desirable development. There remains significant debate over whether patent law should move in this direction at all, including concerns about the purpose of the patent system, the risk of over-protection, and the continuing importance of human creativity within the innovation process. Those broader normative questions fall beyond the scope of this case comment, but they must be acknowledged in order to avoid assuming that legal adaptation to AI-generated invention is self-evidently required.

More fundamentally, the DABUS decision should not be understood merely as a dispute concerning statutory interpretation. It is a conflict between two competing visions of innovation. One vision reflects the traditional patent paradigm in which invention is necessarily linked to human creativity and legal personhood. The other reflects an emerging technological reality in which innovation increasingly emerges from complex interactions between humans, algorithms, datasets and autonomous computational systems. The refusal to recognise AI inventorship therefore represents an attempt to preserve the former against the disruptive implications of the latter.

¹¹ In re Patent Application No. 202017019068 (n 8).

2 The Thaler Decision in India: A Defence of Anthropocentric Patent Theory

2.1 Factual and Procedural Background

The patent application related to a food container.¹² The application was filed in India on 5 May 2020 and originally contained twenty claims.¹³

The application was examined under Sections 12 and 13 of the Patents Act, 1970. A First Examination Report (“FER”) was issued on 26 October 2021.¹⁴ The FER raised standard objections, including lack of novelty under Section 2(1)(j), lack of inventive step under Section 2(1)(ja), non-compliance with unity of invention under Section 10(5), and indefiniteness of claims.¹⁵ In addition to these ordinary patentability objections, the FER raised a special objection because the named inventor was DABUS, an AI system. The FER stated that the existing Indian legal framework permitted only natural persons to be recognised as inventors, and therefore naming an AI-based non-human entity as inventor was impermissible under the Act and Rules.¹⁶ In response, the applicant filed a detailed response to the FER on 25 July 2022, accompanied by amended claims.¹⁷

A hearing under Section 14 was later offered. The hearing notice maintained objections concerning inventive step under Section 2(1)(ja) and objections on inventorship under Sections 6, 7, and 10.¹⁸ The final hearing took

¹² *Ibid.*, para 1.

¹³ *Ibid.*

¹⁴ *Ibid.* para 2; see

<https://iprsearch.ipindia.gov.in/PublicSearch/PublicationSearch/ApplicationStatus> enter application no. 202017019068, complete the captcha, then open View Documents at the bottom of the result page (Accessed on 4 June 2026).

¹⁵ In re Patent Application No. 202017019068 (n 8), para 2.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, para 4.

¹⁸ *Ibid.*, para 6.

place on 12 March 2026,¹⁹ attended by the authorised agent, and post-hearing written submissions were filed on 23 March 2026.²⁰

2.2 Issues for Determination

Apart from the objection of lack of inventive step under Section 2(1)(ja) (not discussed further here), the issues were:²¹

- (1) Whether an AI system, DABUS, could be recognised as a “true and first inventor” under Section 6(1)(a) of the Patents Act, 1970.²²
- (2) Whether the applicant complied with Sections 6, 7, and 10 regarding declaration of inventorship and proof of right.²³
- (3) Whether reliance on a declaration under Patent Cooperation Treaty (“PCT”) Rule 4.17(ii) satisfied the requirements of Indian patent law.²⁴

These issues show that the Assistant Controller treated the case not merely as a formal defect in naming the inventor, but as a deeper question about

¹⁹ *Ibid.*, para 16.

²⁰ *Ibid.*, para 17.

²¹ *Ibid.*, para 18.

²² Section 6(1)(a) Patents Act 1970: “[A]n application for a patent for an invention may be made by any of the following persons, that is to say,— (a) by any person claiming to be the true and first inventor of the invention”.

²³ See in particular Section 7(2) Patents Act 1970 (“Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application, or within such period as may be prescribed after the filing of the application, proof of the right to make the application”), Section 7(3) (“Every application under this section shall state that the applicant is in possession of the invention and shall name the person claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor”) and Section 10(6) (“A declaration as to the inventorship of the invention shall, in such cases as may be prescribed, be furnished in the prescribed form”).

²⁴ PCT Rule 4(17)(ii): “The request may, for the purposes of the national law applicable in one or more designated States, contain one or more of the following declarations, worded as prescribed by the Administrative Instructions:... (ii) a declaration as to the applicant’s entitlement, as at the international filing date, to apply for and be granted a patent...”.

entitlement, legal personality, assignment, statutory construction, and the relationship between international PCT procedure and Indian national law.

2.3 Thaler's Submissions

2.3.1 *Submissions on Inventorship*

Thaler's principal submission was that DABUS had autonomously generated the invention and therefore had to be recognised as the true and first inventor as no natural person qualified as the inventor. This submission appears first in the FER/hearing-notice, where the applicant is recorded as reiterating that DABUS was the "true and first deviser" of the invention.²⁵

The applicant further argued that the Indian Patents Act does not expressly restrict inventorship to natural persons.²⁶ Thaler's position was therefore that, in the absence of an express statutory exclusion of AI inventors, the Act should be interpreted expansively to accommodate technological developments. The submission was essentially purposive and future-oriented: if an AI system in fact generated the invention, then the legal system should not force the applicant to misidentify a human inventor.

Section 2(1)(y) Patents Act was relied upon which defines "true and first inventor" negatively by excluding the first importer of an invention into India or a person to whom an invention is merely communicated from outside India.²⁷ Thaler argued that because Section 2(1)(y) does not affirmatively state that an inventor must be human, the provision should not be read as excluding non-

²⁵ *Ibid.*, para 9.

²⁶ *Ibid.*, para 19.

²⁷ *Ibid.*, para 20; Patents Act 1970, s 2(1)(y) ("true and first inventor" does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India").

human inventors. Section 2(1)(s) Patents Act was also relied upon which defines “person” to include the Government.²⁸ Thaler’s point appears to have been that because Indian patent law recognises Government as a “person”, inventorship should not automatically be confined to human beings.

2.3.2 *Submissions on Proof of Right*

During oral hearing, the applicant’s agent submitted that AI could execute proof of right if required.²⁹ The applicant also submitted that Thaler was the owner of the DABUS source code, the owner of the computer on which DABUS operated, and the person responsible for the maintenance, operation, and costs of DABUS and its underlying infrastructure.³⁰ The core of this argument was that Thaler’s ownership and control of the AI system should be sufficient to ground entitlement to apply for a patent. In other words, even if DABUS was the actual deviser of the invention, Thaler claimed the right to apply by virtue of ownership, control, operation, and responsibility for the AI system.

2.3.3 *Submissions on the Policy Gap for AI-Generated Inventions*

Thaler submitted that if AI-generated inventions were denied protection merely because an AI system could not be recognised as inventor, a genuine category of inventions would fall outside the patent system altogether.³¹ He also argued that the Indian Patents Act does not define “person” and “true and first inventor” in a way that unequivocally excludes non-human inventors, hence the statutory

²⁸ *Ibid.*, para 21; Patents Act 1970, s 2(1)(s) (““person” includes the Government”).

²⁹ *Ibid.*, para 22.

³⁰ *Ibid.*

³¹ *Ibid.*, para 23.

language left room for interpretive flexibility in light of emerging technological realities.³²

This submission was important because it framed the case as one involving a legislative gap. Thaler's argument was not simply that the Assistant Controller should stretch the text. Rather, it was that refusing recognition would produce an undesirable and innovation-hostile consequence that the inventions created by autonomous AI systems might become unpatentable despite being technically genuine.

2.3.4 Reliance on PCT Rule 4.17(ii) and Dow AgroSciences

Thaler relied on a declaration filed under PCT Rule 4.17(ii)³³ and also referred to *Dow AgroSciences LLC v Controller of Patents*.³⁴ The submission appears to have been that PCT-related declarations and previous Indian jurisprudence on proof of right should assist in satisfying the formal entitlement requirements in India.³⁵

2.3.5 Reliance on Report No. 161 of the Rajya Sabha Parliamentary Committee

Thaler highlighted that the Report No. 161 of the Rajya Sabha Parliamentary Committee on the Review of the Intellectual Property Rights Regime in India recognised the economic importance of AI and noted that AI-related innovations could contribute significantly to the Indian economy.³⁶ A portion of the report recommended the creation of a separate category of rights for AI and AI-related

³² *Ibid.*

³³ Patent Cooperation Treaty (adopted 19 June 1970, entered into force 24 January 1978) 1160 UNTS 231, Regulations, r 4.17(ii).

³⁴ *Dow AgroSciences LLC v Controller of Patents* OA/63/2020/PT/DEL (Intellectual Property Appellate Board, 27 October 2020).

³⁵ In re Patent Application No. 202017019068 (n 8), para 25.

³⁶ *Ibid.*, para 25.

inventions and suggested reviewing the Patents Act, 1970 and Copyright Act, 1957 to bring emerging AI technologies within their ambit.³⁷ Thaler used this report to argue that Indian law should adapt to AI-based inventions and that the Patent Office should interpret the Act in a way that does not exclude such inventions from protection.

2.4 Assistant Controller’s Reasoning on AI Inventorship: A Defence of Anthropocentric Patent Theory

2.4.1 Section 6: Only a Legally Recognisable Inventor Can Ground Entitlement

Section 6 of the Patents Act permits a patent application to be made by a person who is the true and first inventor; a person who is the assignee of the true and first inventor; or a person who is the legal representative of a deceased true and first inventor.³⁸ The Assistant Controller reasoned that because an AI system cannot possess rights, assign rights, or have legal representatives upon death, DABUS cannot fall within any of the categories contemplated by Section 6.³⁹

This is one of the most important aspects of the order and the Assistant Controller did not merely say that the word “inventor” ordinarily means a human being. Instead, they looked at the entitlement structure of the Act.⁴⁰ If an applicant claims as assignee, there must be an assignor. If an applicant claims as legal representative, the inventor must be capable of death and succession. These statutory mechanisms make sense only where the inventor is a natural person or

³⁷ *Ibid.*, para 9.

³⁸ *Ibid.*, para 10.1; Patents Act 1970, s 6.

³⁹ *Ibid.*, para 19.

⁴⁰ *Ibid.*

at least a legally recognised person. DABUS, being neither, cannot be the legal source of patent entitlement.

2.4.2 *Section 2(1)(y): “True and First Inventor” Must Be Read Harmoniously*

The applicant had argued that Section 2(1)(y) does not expressly restrict inventorship to humans. The Assistant Controller answered that Section 2(1)(y) must be read harmoniously with Sections 6, 7, and 10, and when these provisions are read together, the term “inventor” presupposes a human actor or legally competent person.⁴¹ The requirements of declaration, assignment, legal representation, and proof of right imply legal capacity, which an AI system does not possess.

Thus, they adopted a contextual interpretation. The absence of the phrase “natural person” in Section 2(1)(y) was not enough to include AI systems. The structure of the Act itself supplied the limitation.

2.4.3 *Section 2(1)(s): Government as “Person” Does Not Help AI Inventorship*

The Assistant Controller rejected the argument that because Section 2(1)(s) includes Government within the definition of “person”, non-human inventorship should be accepted.⁴² They distinguished the Government as a juristic person capable of owning property, assigning rights, and suing or being sued. AI systems possess none of those legal attributes.⁴³

⁴¹ *Ibid.*, para 20.

⁴² *Ibid.*, para 21; Patents Act 1970, s 2(1)(s).

⁴³ *Ibid.*, para 21.

Their reasoning is that Indian law recognises non-natural persons only when it expressly does so.⁴⁴ Since no statutory extension exists for machines, AI systems, algorithms, or technological constructs, DABUS cannot be treated as a person, inventor, or source of assignable rights.

2.4.4 Natural Person, Legal Capacity, and Juristic Personality

The Assistant Controller gave an extended jurisprudential explanation of why DABUS cannot be treated as a natural person or juristic person and held that the expression “natural person” has a settled legal meaning and refers only to a human being recognised by law as capable of holding rights and duties.⁴⁵ A natural person derives legal personality by birth and has inherent capacity to acquire rights, incur obligations, and participate in legal relations.

They then explained that AI systems lack biological existence and therefore cannot be natural persons as they also lack legal capacity: they cannot own property, enter legal relationships, assume responsibility, make enforceable declarations, or be subject to rights and liabilities.⁴⁶

They further referred to Section 3(42) of the General Clauses Act, 1897,⁴⁷ which provides that “person” includes any company, association, or body of individuals, whether incorporated or not. The Assistant Controller treated this as extending personhood to legally recognised entities, not to technological systems.⁴⁸ Similarly, the Assistant Controller referred to Section 2(26) of the Bharatiya Nyaya Sanhita, 2023,⁴⁹ which includes companies, associations, and

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, para 23.

⁴⁶ *Ibid.*

⁴⁷ General Clauses Act 1897 (India), s 3(42).

⁴⁸ In re Patent Application No. 202017019068 (n 8), para 23.

⁴⁹ Bharatiya Nyaya Sanhita 2023 (India), s 2(26).

bodies of persons within the word “person” but does not extend the term to computational entities lacking legal status.⁵⁰

The order also states that artificial or juristic persons exist only because the law recognises them and the corporations, governments, societies, and trusts are treated as persons because legal personality is attributed to them by law.⁵¹ Since no Indian statute attributes legal personality to AI systems, DABUS cannot be treated as a person.

It was also added that persons must be capable of responsibility, intention, and accountability. AI systems operate through algorithmic processes and lack independent volition, intention, or consciousness in the legal sense. They also lack capacity for succession and legal representation. These features confirmed, in the Assistant Controller’s view, that DABUS cannot qualify as inventor.⁵²

2.5 Assistant Controller’s Reasoning on Proof of Right

The Assistant Controller rejected the submission that Thaler’s ownership of the DABUS source code and computer was sufficient.⁵³ Section 7(2) requires proof of right derived from the inventor.⁵⁴ Ownership of a machine does not confer entitlement to inventions allegedly generated by that machine unless the assignment originates from a legally recognised inventor.⁵⁵ This is a crucial distinction. Property ownership in the AI system is not the same as entitlement to the invention. If DABUS is not a legally recognised inventor, it cannot assign rights. If it cannot assign rights, Thaler cannot establish proof of right by claiming

⁵⁰ In re Patent Application No. 202017019068 (n 8), para 23.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*, para 22

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

to be the assignee of DABUS. The Assistant Controller therefore treated ownership, operation, and maintenance of the machine as legally irrelevant to patent entitlement.

The Assistant Controller further rejected reliance on PCT Rule 4.17(ii). The order states that a PCT declaration cannot override Sections 6, 7, and 10 of the Indian Patents Act.⁵⁶ Where the designated inventor is not legally recognisable under national law, procedural declarations cannot cure the defect. The Assistant Controller also distinguished *Dow AgroSciences LLC v Controller of Patents*,⁵⁷ stating that it was silent on Section 138(4) of the Patents Act.⁵⁸ The Assistant Controller referred to an IPAB order, OA/39/2011/PT/CH dated 28 October 2013, for the proposition that formal proof of right by assignment or employment agreement remains mandatory for PCT national phase applications in India.⁵⁹

The point was the reliance on ownership of the machine, PCT declarations, or policy recommendations cannot override the entitlement structure of the Act. Because DABUS lacks legal personality and statutory recognition, the declaration of inventorship and proof-of-right requirements remained unfulfilled.⁶⁰

2.6 Assistant Controller's Reasoning on the Rajya Sabha Parliamentary Committee Report No. 161

The applicant relied on the Rajya Sabha Parliamentary Committee Report No. 161 to show that AI-generated inventions require protection.⁶¹ The Assistant

⁵⁶ *Ibid.*, para 24.

⁵⁷ *Dow AgroSciences LLC v Controller of Patents* OA/63/2020/PT/DEL (Intellectual Property Appellate Board, 27 October 2020).

⁵⁸ In re Patent Application No. 202017019068, (n 8), para 24.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, para 26.

⁶¹ Department Related Parliamentary Standing Committee on Commerce, Review of the Intellectual Property Rights Regime in India, Report No 161 (Rajya Sabha Secretariat 2021) https://files.lbr.cloud/public/2021-07/161_2021_7_15.pdf (Accessed on 4 June 2026).

Controller accepted that the report reflected policy concerns and recommendations.⁶² However, they held that such recommendations do not alter the statutory position as until Parliament amends the law, inventorship must be determined strictly according to Sections 6, 7, and 10.⁶³

This reasoning is significant as the Assistant Controller acknowledged that there may be a policy case for AI-related protection, but separated policy desirability from current legal authority. The order's position is that administrative authorities cannot create a new category of AI inventorship merely because a parliamentary committee recommended legislative review.

2.7 Comparative Jurisprudence Used by the Assistant Controller

The Indian Patent Office did not arrive at its conclusion in isolation. Rather, the DABUS refusal forms part of a broader and still-developing transnational jurisprudence in which most major patent offices and courts have refused to recognise AI systems as inventors, even though a small number of jurisdictions or procedural contexts have produced more permissive outcomes. The dominant trend, however, has been to treat AI inventorship as incompatible with existing patent statutes framed around human legal personality, entitlement and transfer of rights.⁶⁴ Although these decisions arise from different statutory frameworks, they reveal a remarkable degree of conceptual convergence. More importantly, they demonstrate a common judicial strategy of avoiding normative questions concerning AI and innovation by framing the dispute as a narrow problem of statutory interpretation.

⁶² In re Patent Application No. 202017019068 (n 8), para 25.

⁶³ *Ibid.*

⁶⁴ Artificial Inventor, <https://artificialinventor.com> (Accessed on 4 June 2026).

2.7.1 United Kingdom Supreme Court

The UK Supreme Court decision in *Thaler v Comptroller of Patents*⁶⁵ construed Section 7 of the UK Patents Act 1977, which the Assistant Controller considered materially analogous to Section 6 of the Indian Patents Act and mentions that the UK Supreme Court held that an inventor must be a natural person capable of owning and transferring rights and that an AI system cannot qualify as inventor.⁶⁶ The Assistant Controller further relies on this UK Supreme Court decision to reject the argument that the absence of an express statutory prohibition implies inclusion.⁶⁷ It was stated that the UK Supreme Court rejected an identical argument, holding that where the statutory structure presupposes human inventorship, the absence of express exclusion does not bring AI systems within the statute.⁶⁸

The UK decision is therefore used for two propositions: first, that entitlement provisions based on assignment and succession require a natural person inventor; and secondly, that silence in the statute does not amount to permission to name an AI as inventor.

2.7.2 European Patent Office Board of Appeal

The Assistant Controller notes that the EPO Board of Appeal interpreted Article 81 EPC read with Rule 19 EPC, which require designation of the inventor by name and address.⁶⁹ They also noted the EPO decision that those requirements

⁶⁵ *Thaler v Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49.

⁶⁶ In re Patent Application No. 202017019068 (n 8), para 19.

⁶⁷ *Ibid.*, para 23.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, para 20.

necessarily imply human inventorship because only a natural person can be identified in the manner contemplated by the statute.⁷⁰

The Assistant Controller treated the EPC provisions as functionally corresponding to Sections 7(3) and 10(6) of the Indian Patents Act.⁷¹ The EPO jurisprudence was therefore used to support the proposition that formal requirements of identifying and declaring the inventor are not empty procedural requirements; they assume the inventor is a legally identifiable human being.

2.7.3 *Full Federal Court of Australia*

The Assistant Controller refers to the Full Federal Court of Australia in *Commissioner of Patents v Thaler*.⁷² The Australian decision is used for the proposition that entitlement provisions analogous to Section 7 of the Indian Act require derivation of rights from a natural person inventor and this supports the Assistant Controller's rejection of Thaler's argument that ownership of DABUS or its computer infrastructure is enough to establish proof of right.⁷³

2.7.4 *United States, Germany, Japan, Australia, UK, and EPO: General Comparative Consensus*

The Assistant Controller also states that courts in the United States, United Kingdom, Germany, Japan, and Australia have uniformly interpreted "natural person" as referring only to human beings in the context of AI inventorship.⁷⁴ It was also mentioned that the DABUS applications have been rejected across jurisdictions, including the United Kingdom Supreme Court, United States

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Commissioner of Patents v Thaler* [2022] FCAFC 62.

⁷³ *In re Patent Application No. 202017019068 n 8*, para 22.

⁷⁴ *Ibid.*, para 23.

Federal Circuit, German Federal Court of Justice, Japan IP High Court, European Patent Office Board of Appeal, and Full Federal Court of Australia.⁷⁵ This comparative jurisprudence is used not as binding authority, but as persuasive confirmation that patent statutes built around inventorship, assignment, legal personality, and entitlement have generally not been interpreted to permit AI inventorship without legislative amendment.

2.7.5 Comparative Jurisprudence as Statutory Support, Not Policy Determination

The Assistant Controller's use of comparative law is conservative and statutory. The order does not use foreign cases to decide whether AI inventorship should be recognised as a matter of innovation policy. Instead, it uses them to confirm that similarly structured patent statutes have been interpreted as requiring human inventors. The comparative authorities strengthen the Assistant Controller's conclusion that the Indian Act cannot be judicially or administratively extended to AI systems in the absence of legislative change.

3 India's AI Ambitions and the Contradictions of Developmental Governance

The limitations of the Indian DABUS refusal become particularly visible when situated within India's broader technological strategy. Over the past decade, India has embraced AI as a central component of economic development and technological competitiveness.⁷⁶ Through initiatives such as the National

⁷⁵ *Ibid.*, para 25.

⁷⁶ Ashok Panigrahi, Shrinivas C Ahirrao and Arav Patel, "Impact of Artificial Intelligence on Indian Economy" (2024) 11(1) *Journal of Management and Research Analysis* 33-44, p. 33.

Strategy for AI,⁷⁷ Digital India,⁷⁸ the IndiaAI Mission⁷⁹ and the National Data Governance Framework,⁸⁰ the Indian state has explicitly identified AI as a transformative technology capable of reshaping sectors ranging from healthcare and agriculture to manufacturing and public administration.

This commitment reflects a broader developmental vision. India seeks not merely to consume AI technologies developed elsewhere but to become an active participant in the global AI economy. Government reports have emphasised the importance of indigenous innovation, AI-driven entrepreneurship and technological sovereignty.⁸¹ AI is increasingly presented as a strategic resource capable of enhancing economic growth, national competitiveness and geopolitical influence.

Against this backdrop, the DABUS decision reveals a striking contradiction. India's innovation policy assumes that AI will become a significant source of economic value and technological advancement. Yet its patent system continues to operate according to assumptions that innovation originates exclusively from human inventors. This tension may be understood through Mariana Mazzucato's theory of the developmental state where she argues that modern innovation economies depend upon active state participation in shaping

⁷⁷ National Strategy for Artificial Intelligence, NITI Aayog, <https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf> (accessed on 4 June 2026).

⁷⁸ Digital India, Ministry of Electronics and Information Technology, <https://www.digitalindia.gov.in/> (accessed on 4 June 2026).

⁷⁹ IndiaAI Mission, <https://indiaai.gov.in/> (accessed on 4 June 2026).

⁸⁰ National Data Governance Framework (draft), https://www.thehinducentre.com/resources/67557000-National-Data-Governance-Framework-Policy_compressed.pdf (accessed on 4 June 2026).

⁸¹ 161st Report on the Review of the Intellectual Property Rights Regime, Parliament Standing Committee, Rajya Sabha Secretariat, Government of India, https://files.lbr.cloud/public/2021-07/161_2021_7_15.pdf?VersionId=S01fCOEC5DzDqKNyMsGxal6YXmJbUwM (accessed on 4 June 2026).

technological markets.⁸² However, successful innovation governance requires coherence between industrial policy and regulatory institutions where technological ambitions advance more rapidly than legal frameworks, regulatory contradictions emerge.

The DABUS refusal exemplifies such a contradiction. The Indian state actively encourages AI-driven innovation while simultaneously maintaining a patent regime that lacks a coherent response to AI-generated invention. This does not mean that the Indian Patent Office was legally incorrect. Rather, it highlights a broader disconnect between innovation policy and IP policy.

The issue is particularly important because patent systems perform a crucial signalling function within innovation ecosystems. They determine how technological contributions are recognised, rewarded and commercialised. If AI becomes increasingly capable of generating commercially valuable inventions, the continued insistence upon exclusively human inventorship may create uncertainty regarding ownership, disclosure and investment incentives. The DABUS controversy therefore raises questions extending far beyond patent doctrine. It concerns the ability of legal institutions to support the technological ambitions that states themselves actively promote.

Evidence that these tensions are already being recognised within Indian policy circles can be found in the Parliamentary Standing Committee's 161st Report on the Review of the Intellectual Property Rights Regime.⁸³ Although the Committee did not endorse AI inventorship, it acknowledged the growing significance of AI and emphasised the need to reconsider IP frameworks in light of emerging technologies.

⁸² Mariana Mazzucato, *The Entrepreneurial State*, (Harlow: England, Penguin Books, 2018).

⁸³ Department Related Parliamentary Standing Committee on Commerce, Review of the Intellectual Property Rights Regime in India, Report No 161 (Rajya Sabha Secretariat 2021) https://files.lbr.cloud/public/2021-07/161_2021_7_15.pdf (Accessed on 4 June 2026).

The Committee's observations are important because they implicitly recognise that existing IP concepts may prove inadequate for governing AI-generated outputs. While the Indian Patent Office remains bound by the Patents Act 1970, policymakers increasingly appreciate that future technological developments may require legislative adaptation. This divergence between legislative awareness and administrative constraint illustrates a recurring feature of technological regulation. The DABUS refusal therefore represents a transitional moment rather than a definitive resolution. It marks the point at which existing legal categories begin to encounter technological developments they were never designed to accommodate.

4 Beyond DABUS: Rethinking Inventorship in the Age of AI

The ultimate significance of the DABUS litigation lies not in whether Stephen Thaler obtained a patent. Nor does it lie in the relatively narrow question of whether DABUS should be recognised as an inventor. The deeper significance of the case is that it forces patent law to confront assumptions that have long remained unquestioned.

For centuries, patent law has relied upon a relatively stable image of invention. An inventor conceives an idea, applies intellectual effort and receives legal recognition in exchange for public disclosure. This model reflects a world in which invention is inseparable from human cognition. AI challenges this model because it introduces the possibility that invention may no longer require direct human conception. Whether contemporary AI systems have truly reached this point remains contested.

The Indian Patent Office's refusal can therefore be understood as an attempt to defend the anthropocentric foundations of patent law. The decision

preserves the traditional relationship between inventorship, legal personality and entitlement. In doing so, it protects the internal coherence of the patent system. Yet coherence is not the same as adequacy. A legal system may remain internally consistent while becoming increasingly detached from the social and technological realities it seeks to regulate. The history of IP law demonstrates that periods of technological transformation often expose weaknesses within existing legal categories. The printing press transformed copyright. Industrialisation transformed patent law. Digital technologies transformed both.

AI may represent the next such transformation.