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**Datasheet for the decision
of 5 February 2026**

Case Number: T 0528/25 - 3.2.07

Application Number: 21216024.6

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Language of the proceedings: EN

Title of invention:
FOOD CONTAINER

Applicant:
Thaler, Stephen L.

Headword:
Designation of inventor/DABUS

Relevant legal provisions:
EPC Art. 81, 60(1)
EPC R. 19
RPBA Art. 13(2), 12(6)

Keyword:
Designation of inventor - artificial intelligence
Admittance of new request, Art. 13(2), 12(6) RPBA - no

Decisions cited:

J 0008/20, J 0009/20, T 0878/21
Bundesgerichtshof, X ZB 5/22

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0528/25 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 5 February 2026

Appellant: Thaler, Stephen L.
(Applicant) 1767 Waterfall Drive
St. Charles MO 63303 (US)

Representative: Hepp Wenger Ryffel AG
Friedtalweg 5
9500 Wil (CH)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 25 November
2024 refusing European patent application No.
21216024.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Patton
Members: S. Ruhwinkel
A. Beckman
S. Watson
S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The appeal of the applicant (hereinafter "appellant") is directed against the decision of the Examining Division to reject the European patent application No 21 216 024.6 (hereinafter "the application", with publication number EP 4 067 251 A1), filed as a divisional application of EP 18 275 163.6, which was filed on 17 October 2018 (publication number EP 3 564 144 A1). The Examining Division decided that none of the requests on file contained a designation of the inventor that met the requirements of Article 81 EPC and Rule 19 EPC.
- II. In the parent application EP 18 275 163, the applicant had intended to designate the artificial intelligence machine "DABUS" as inventor. This had been refused by the Receiving Section. The appeal against this decision of the Receiving Section was dismissed by the Legal Board of Appeal in J 8/20 (see also decision J 9/20 in the similar case of European application No. 18 275 174.3 with publication number EP 3 563 896 A1).
- III. The decision under appeal is based on the following requests (filed by the appellant with letter dated 4 October 2024):
- (1) Main request** with claims 1-9 and the description, together with EPO Form 1002 and an Addendum to the designation of inventor, as filed on 22 December 2023.

The main request comprises:

- EPO Form 1002 which designates the appellant, i.e. Stephen L. Thaler, as the inventor.

- An Addendum to EPO Form 1002 which contains inter alia the following statements:

Designation of Inventor (EPO Form 1002)

A machine called "DABUS" conceived of the present invention

The invention disclosed and claimed in this European patent application was generated by a specific machine called "DABUS". Dr Thaler owns DABUS, built DABUS, trained DABUS, and used DABUS. Dr Thaler nevertheless submits he is not an inventor under traditional criteria, because in the case of the present invention, the machine only received training in general knowledge in the field and proceeded to independently conceive of the invention and to identify it as novel and salient. If the training Dr Thaler provided DABUS had been given to a person, that person would meet inventorship criteria as inventor. In the present case, DABUS was not created to solve any particular problem, was not trained on any special data relevant to the present invention, and the machine rather than a person identified the novelty and salience of the present invention. A detailed description of how DABUS and a Creativity Machine functions is available in, among others, the following US patent publications: 5,659,666; 7,454,388 B2; and 2015/0379394A1.

- A note on page 1 of the description, which reads as follows:

The invention disclosed in this application is an AI generated invention, which was conceived autonomously by the artificial intelligence machine DABUS, located at 1767 Waterfall Dr, St Charles, Missouri 63303, United States of America. Dr Thaler, the applicant, is the owner of DABUS.

(2) First auxiliary request with claims 1-9 and EPO Form 1002 as filed on 22 December 2023, together with an amended page 1 of the description and an amended Addendum to the designation of inventor, both filed on 4 October 2024.

The first auxiliary request comprises:

- EPO Form 1002 which designates the appellant, i.e. Stephen L. Thaler, as the inventor.

- An Addendum to EPO Form 1002 which contains the following statement:

Designation of Inventor (EPO Form 1002)

A machine called "DABUS" had been caused to conceive of the present invention

Dr. Thaler had caused a specific machine called "DABUS" to conceive of the invention disclosed and claimed in this European patent application. Dr Thaler owns DABUS, built DABUS, trained DABUS, and used DABUS. In the present case, DABUS was not created to solve any particular problem, was not trained on any special data

relevant to the present invention, and DABUS identified the novelty and salience of the present invention.

A detailed description of how DABUS and a Creativity Machine functions is available in, among others, the following US patent publications: 5,659,666; 7,454,388 B2; and 2015/0379394 A1.

- A note on page 1 of the description, which reads as follows:

The file contains information about how the invention was conceived that was submitted after the application was filed and which is not included in this specification.

(3) Second auxiliary request with claims 1-9 and EPO Form 1002 as filed on 22 December 2023, together with the Addendum to the designation of inventor filed on 4 October 2024 and the description as originally filed.

The second auxiliary request differs from the first auxiliary request only in that it contains the description as originally filed, with no amendment. EPO Form 1002 and the Addendum are the same as in the first auxiliary request.

IV. The Examining Division came to the following conclusions:

The main request did not meet the requirements of Article 81 EPC, Rule 19 EPC and Article 60(1) EPC. The appellant designated himself in EPO Form 1002 as the inventor, whereas the Addendum stated that the invention was conceived autonomously by the machine DABUS and that the appellant was not an inventor "under

the traditional criteria". The amended description contained a preamble stating that the invention disclosed in the application was an AI-generated invention, which was conceived autonomously by the artificial intelligence machine DABUS. Thus, the statements presented in EPO Form 1002 on the one hand and in the remaining submissions and documents on the other hand, were mutually exclusive.

The Examining Division was therefore not able to determine who the appellant designated as the inventor (himself or the artificial intelligence system DABUS) and whether the appellant had the right to the invention.

The first and second auxiliary requests did not meet the requirements of Article 81 EPC and Rule 19 EPC either because they contained a similar contradiction as the main request. As regards the wording of the Addendum according to the first and second auxiliary requests, it did not imply that the appellant himself made the invention, but clearly stated that the DABUS system conceived (i.e. made) the invention. The fact that the Addendum stated that it was the appellant who "caused" DABUS to "conceive of the invention" did not change this conclusion. While the word "cause" might suggest some undefined involvement of the appellant, the statement that DABUS conceived of the invention amounted to unambiguously stating that DABUS was the inventor. This was in contradiction to the designation of the appellant as inventor in EPO Form 1002.

- V. With its statement of grounds of appeal, the appellant filed a new third auxiliary request comprising only EPO Form 1002 with the following designation of inventor: *"Stephen L. Thaler der die künstliche Intelligenz DABUS dazu veranlasst hat, die Erfindung zu generieren"*.

- VI. By notification pursuant to Article 15(1) RPBA, the Board informed the appellant of its preliminary opinion on the factual and legal situation, according to which none of the requests on file was considered allowable.
- VII. In response to this communication, with letter dated 12 January 2026, the appellant submitted arguments on the merits and filed a new fourth auxiliary request containing only EPO Form 1002 and designating "Stephen L. Thaler" (the appellant) as the inventor. No Addendum to Form 1002 and no amendment to the description are part of the fourth auxiliary request.
- VIII. On 5 February 2026, the oral proceedings took place before the Board. The decision was announced at the end of the oral proceedings.
- IX. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request, the first auxiliary request or the second auxiliary request on which the contested decision is based, or, alternatively on the basis of the third auxiliary request filed with the statement of grounds of appeal, or, alternatively, on the basis of the fourth auxiliary request filed with letter of 12 January 2026.

Auxiliarily, the appellant requested that the designation of inventor according to the main request, or according to the first, second, third or fourth auxiliary requests, in the order as indicated, be accepted as complying with the requirements of the EPC and the case be remitted to the Examining Division for further prosecution on the merits.

X. In summary, the appellant argues as follows.

In light of the decision J 8/20 (regarding the parent application EP 18 275 163), the mere fact that the applicant owned, used and trained the DABUS machine is sufficient for him to be designated as inventor under the EPC. The appellant clearly set forth what his involvement was (owning, using and training DABUS), and what it was not. There is no case law which would prevent the appellant as the user and the owner of DABUS from designating himself as inventor under European patent law as was done in EPO Form 1002. The Addendum to EPO Form 1002 and the note in the description were submitted to ensure that there is no ambiguity for the EPO or the public about what the appellant's involvement was, and what it was not. Another important reason for the explanations given in the Addendum and the note in the description is that in many jurisdictions (e.g. under US law), misrepresenting oneself as an inventor is a crime.

Regarding the first and second auxiliary requests, the wording in the Addendum has been simplified and shortened, and no longer contains any controversial statements. The wording used has previously been accepted by the German Federal Court of Justice with decision of 11 June 2024 (X ZB 5/22), which was not taken into account by the Examining Division. Contrary to the Examining Division's opinion, there is no need to resort to assumptions about what involvement of the appellant the word "cause" might suggest or not. His extent of involvement is explicitly mentioned in the Addendum, beyond any doubt. In light of J 8/20, the fact that the appellant owns and used DABUS is sufficient for him to be designated as inventor.

The designation of inventor according to the third auxiliary request comprises exactly the same wording as used in the proceedings before the German Federal Court of Justice (X ZB 5/22). This request is filed in conformance with Article 12 RPBA. The appellant trusts that the wording in the Addendum of the first and second auxiliary requests ("caused [...] DABUS to conceive of the invention") is a correct translation of the German original ("DABUS dazu veranlasst hat, die Erfindung zu generieren") that was accepted by the German Federal Court of Justice. The third auxiliary request is submitted to remove any potential misunderstandings based on the translation.

A refusal of the present application would be at odds with the substantive reasoning given in the corresponding national proceedings by the German Federal Court of Justice (decision of 11 June 2024, X ZB 5/22) and the Swiss Federal Administrative Court (decision of 26 June 2025, case No. B-2532/2024).

With regard to the fourth auxiliary request, the appellant argues that there are exceptional circumstances which justify its admittance under Article 13(2) RPBA, as there is no precedent for how the general guidance of J 8/20 should be applied in practice and the admittance of this request is in the interest of legal certainty at large.

Reasons for the Decision

The designation of an inventor in the context of inventions made by using artificial intelligence - legal framework

1. Before dealing with each of the appellant's requests on file, the legal situation under the EPC regarding the designation of inventor in the context of inventions made by using artificial intelligence (AI) is to be considered.
 - 1.1 According to Article 81 EPC and Rule 19(1) EPC, a patent application must designate the inventor. If the applicant is not the (sole) inventor, the designation shall contain a statement indicating the origin of the right to the European patent (Article 81, second sentence, EPC and Rule 19(1), second and third sentences, EPC). This obligation for the applicant to designate the inventor is complementary to the right of the inventor to be mentioned as such before the EPO, as laid down in Article 62 EPC (see J 8/20, reasons 4.2.1).
 - 1.2 Pursuant to Article 60(1) EPC, the right to a European patent belongs to the inventor or his successor in title. Thus, it follows from the designation of the inventor, who is entitled to the right to a European patent.
 - 1.3 The examination whether the requirements of Article 81 EPC and Rule 19 EPC are satisfied is merely a formal assessment. Under Rule 19(2) EPC, the European Patent Office does not verify the accuracy of the designation of the inventor. However, as indicated in J 8/20 (see reasons 4.2.3 and 4.3.8), a formal assessment is required as to whether the request for grant, or the

separate statement, identifies an inventor within the meaning of the EPC.

- 1.4 As also pointed out in J 8/20 (see reasons 4.3.1 ff.; see also J 9/20, reasons 4.3.1 ff.), the designated "inventor" under the EPC must be a person with legal capacity. This follows from the provision of Article 60 EPC, according to which the right to a European patent is vested in the inventor or their successor in title, and is also supported by Rule 19(1), third sentence, EPC, which requires that the designation of the inventor must state the family name, given names and country and place of residence of the inventor. Thus, a machine, such as the artificial intelligence machine DABUS in the present case, cannot be an "inventor" within the meaning of the EPC (see J 8/20, reasons 4.3.9; J 9/20, reasons 4.3.9; see also the respective national patent law: German Federal Court of Justice, decision of 11 June 2024, X ZB 5/22; German Federal Patent Court, decision of 11 November 2021, 11 W(pat) 5/21; German Federal Patent Court, decision of 21 June 2023, 18 W(pat) 28/20; UK Supreme Court, decision of 20 December 2023, Thaler (Appellant) v Comptroller-General of Patents, Designs and Trade Marks (Respondent) [2023] UKSC 49; Court of Appeal (England and Wales), decision of 21 September 2021, Thaler v Comptroller-General of Patents Trade Marks and Designs [2021] EWCA Civ 1374; High Court (England and Wales), decision of 21 September 2020, Thaler v Comptroller-General of Patents, Designs and Trade Marks [2020] EWHC 2412 (Pat); High Court of New Zealand, decision of 17 March 2023, Thaler v Commissioner of Patents [2023] NZHC 554; US Court of Appeal of the Federal Circuit, decision of 5 August 2022, Thaler v Vidal CAFC 2021-2347; Seoul High Court, decision of 16 May 2024, case No. 2023Nu52088; Federal Court of Australia, decision of 13

April 2022, Commissioner of Patents v Thaler [2022] FCAFC 62; Swiss Federal Administrative Court (BVerwG), decision of 26 June 2025, case No. B-2532/2024).

- 1.5 However, these considerations do not necessarily mean that, if an invention is developed using a machine with artificial intelligence (AI), there is no legally capable person who can be designated as the inventor. The decision J 8/20 already argues in this direction by stating under point 4.6.2 (see also J 9/20, reasons 4.6.2):

"Firstly, under Article 52(1) EPC any invention which is novel, industrially applicable and involves an inventive step is patentable. The appellant has argued that the scope of this provision is not limited to human-made inventions. The Board agrees. How the invention was made apparently plays no role in the European patent system.(...)"

and further under point 4.6.6 (see also J 9/20, reasons 4.6.6):

"Firstly, the Board is not convinced that there is a problem of unequal treatment of specific applicants and categories of inventions which is in conflict with the objective purpose of the EPC and calls for an evolutive interpretation of the law. The Board is not aware of any case law which would prevent the user or the owner of a device involved in an inventive activity to designate himself as inventor under European patent law. The EPC, in turn, does not prevent the applicant from providing information in the application which is not relevant for carrying out the invention but may satisfy the fairness concerns identified by the appellant in the addendum of 24 July 2019 (...)."

1.6 It must be considered that patent protection for an invention that was essentially developed using artificial intelligence (AI) would be impossible under the EPC, if natural persons were excluded from being regarded as inventors of AI-generated inventions, since, as indicated above, the EPC requires that a legally capable person is named as the inventor. However, the provisions on patentability under Article 52 ff. EPC do not rule out patent protection for AI-generated inventions. An invention involves an inventive step under Article 56 EPC if it is not obvious to a person skilled in the art in view of the prior art, which may also be the case for inventions developed by using artificial intelligence (AI). If an invention is developed using an AI-machine, this also requires some human input or influence, so that it is in principle not excluded to identify one or more natural persons to whom a causal contribution to the invention is attributable, and who can therefore be regarded as inventors within the meaning of the EPC.

The Board thus concludes that, in principle, the designation of an inventor under the EPC is also possible for inventions developed using artificial intelligence (AI).

1.7 These considerations are in line with the conclusions of the German Federal Court of Justice (decision of 11 June 2024, X ZB 5/22) on the basis of the German Patent Act, which also requires that an inventor is a natural person. The German Federal Court of Justice found that the designation of a natural person as inventor was also possible if a system with artificial intelligence had been used to find the claimed technical teaching (see decision, loc cit., sec. 32). A

human contribution that had significantly influenced the overall success was sufficient, even if the technical teaching had been discovered with the help of an artificial intelligence system. The type or intensity of the human contribution was not of decisive importance (see decision, loc. cit., sec. 38, 39). The fact that an artificial intelligence system had made a substantial contribution to the discovery of a technical teaching did not contradict the assumption that there was at least one natural person who was to be regarded as the inventor on the basis of its contribution, so that it was possible and reasonable for the applicant to name at least one inventor even if, in his view, an artificial intelligence had made the main contribution (see decision, loc. cit., sec. 43, 44). The applicant was responsible for making the required assessment on the basis of his knowledge and for providing truthful declarations, whereas the German Patent Office, in principle, was not responsible for checking the content of the designation of the inventor (loc. cit., sec. 45). The Court further established that adding to a sufficiently clear designation of inventor the statement that the inventor had induced a specified artificial intelligence system to generate the invention was legally irrelevant and did not justify the rejection of the application (see decision, loc. cit., sec. 62).

- 1.8 Also the Swiss Federal Administrative Court, with decision of 26 June 2025 (case No. B-2532/2024), approved the designation of the appellant (Mr Stephen Thaler) as inventor by concluding that the appellant had sufficient influence on DABUS overall to be considered the inventor, as he was at least involved in providing data and training DABUS, accepted the finished solutions and recognised that they constituted

an invention eligible for protection (see decision, sec. 5 and 6.3).

Main request - allowability

2. As explained above (under sec. 1.), the designation of an inventor is in principle also possible for inventions developed by using artificial intelligence (AI). In the examination of the patent application, the European Patent Office shall examine whether the formal requirements of Article 81 EPC and Rule 19 EPC are fulfilled. As regards the designation of inventor according to the main request, the Board agrees with the Examining Division that the statements presented in EPO Form 1002 on the one hand and in the Addendum on the other hand do not contain a clear and unambiguous designation of the inventor as required under Article 81 EPC and Rule 19 EPC.
- 2.1 The designation of the inventor pursuant to Article 81 EPC and Rule 19 EPC must be clear and consistent in content. This is necessary for reasons of legal certainty. The position of inventor determines who is entitled to the right to a European patent according to Article 60(1) EPC.
- 2.2 In the case at hand, considering the patent application as a whole under Article 97 EPC, in EPO Form 1002 the appellant designates himself as the inventor, but in the Addendum to this Form he states that *"A machine called "DABUS" conceived of the present invention"* (see headline) and that the appellant is *"not an inventor under traditional criteria"*, because *"in the case of the present invention, the machine only received training in general knowledge in the field and proceeded to independently conceive of the invention"*

and to identify it as novel and salient. If the training Dr Thaler provided DABUS had been given to a person, that person would meet inventorship criteria as inventor. In the present case, DABUS was not created to solve any particular problem, was not trained on any special data relevant to the present invention, and the machine rather than a person identified the novelty and salience of the present invention."

Thus, the Addendum states that the machine DABUS conceived of the invention independently and that it was DABUS that identified what it produced as being an invention. If the training Dr Thaler provided DABUS had been given to a person, that person (and thus not Mr Thaler) would meet inventorship criteria as inventor. Furthermore, it is stated that Dr Thaler (the appellant) is not an inventor "under traditional criteria".

These formulations in the Addendum do not merely supplement the statement in EPO Form 1002 with information that the invention was devised by using an AI-machine, but rather call into question the statement in EPO Form 1002 that the appellant should be formally indicated as the (only) inventor (see also the corresponding national case of the High Court of England and Wales, decision of 1 September 2025, [2025] EWHC 2202 (Ch), sec. 62 and 63, in which it was concluded that it was apparent from the Addendum that the statement in the Form that Dr Thaler was the inventor was obviously defective).

The appellant further argued at the oral proceedings before the Board that as the box "*Additional inventors are indicated on a supplementary sheet*" in Form 1002 had not been ticked, the Addendum could not change the

actual meaning of Form 1002 with respect to designating the inventor as being Stephen L. Thaler alone.

As put forward at the oral proceedings, the Board does not follow the appellant's view in this respect since it sees the Addendum as forming an integral part of Form 1002 itself, i.e. not as an independent statement. This is clear from the name itself "Addendum", and also from the title given: "Designation of Inventor (EPO Form 1002)".

- 2.3 Thus, the declarations in EPO Form 1002 on the one hand and in the Addendum on the other hand are not clear and consistent, but rather contradictory. In the context of the formal examination under Article 81 EPC and Rule 19 EPC, it cannot be assessed who is in fact being designated as the inventor, the appellant himself, or (also) the artificial intelligence system DABUS.
- 2.4 Therefore, the Board concludes that the main request is not allowable.

First and second auxiliary requests - allowability

3. With regard to the first and the second auxiliary requests, the Board also shares the Examining Division's view that these requests contain a similar contradiction as found in the main request for the following reasons.

- 3.1 The Addendum according to these requests states:

"A machine called "DABUS" had been caused to conceive of the present invention

Dr. Thaler had caused a specific machine called DABUS to conceive of the invention disclosed and claimed in this European patent application. Dr Thaler owns DABUS, built DABUS, trained DABUS, and used DABUS. In the present case, DABUS was not created to solve any particular problem, was not trained on any special data relevant to the present invention, and DABUS identified the novelty and salience of the present invention. (...)"

- 3.2 These statements in the Addendum (identical in both requests, and seen as an integral part of Form 1002) are not consistent with the declaration in EPO Form 1002 (which is also identical in both requests) that the appellant is to be designated as the sole inventor. The Board agrees with the Examining Division (see decision under appeal, reasons 33.4) that the statement in the Addendum that the AI-machine "conceived" the invention can be understood to mean that the AI-machine is essentially still to be regarded as "the inventor". The rest of the Addendum confirms this understanding by stating inter alia that it was the AI-machine "*that identified the novelty and salience of the present invention*" - which represents the core work of an inventor. This statement means that it was DABUS that recognized what it produced as a possible invention, whatever its subsequent fate during the examination procedure before the EPO. Contrary to the appellant's arguments (see letter of 12 January 2026, paragraph bridging pages 3 and 4), the crucial point here is not that a machine can make a substantial contribution to inventions by means of artificial intelligence and yet a natural person can still be designated as the inventor (as pointed out above under section 1. and as already stated in decision J 8/20). In the present case, it is indeed not for the Board to decide what

kind of human contribution is sufficient for an applicant of an AI-generated invention to be regarded an inventor. Rather, the decisive question is how the appellant's declarations as a whole are to be formally understood here. In light of the explanations in the Addendum, it cannot be established clearly and beyond doubt in the context of the formal examination under Article 81 EPC and Rule 19 EPC that (only) the appellant is to be designated as inventor. Therefore, these declarations do not fulfil the requirement of a clear and unambiguous designation of the appellant as (sole) inventor.

In this context the Board has also doubts as to whether the formulation "*caused ...to conceive the invention*" can be equated with the German wording "*dazu veranlasst hat, die Erfindung zu generieren*" used in the case of the German Federal Court of Justice in its decision of 11 June 2024 (BGH X ZB 5/22), which, however, is not decisive for the case at hand.

- 3.3 Thus, the Board concludes that the first and second auxiliary requests do not meet the requirements of Article 81 EPC and Rule 19 EPC either.

Third auxiliary request - allowability

4. The third auxiliary request, which was submitted for the first time with the statement of grounds of appeal, comprises only EPO Form 1002 with the following wording: "*Stephen L. Thaler der die künstliche Intelligenz DABUS dazu veranlasst hat, die Erfindung zu generieren.*"

Irrespective of the question of admittance (Article 12(4) and (6) RPBA) and notwithstanding the issue

whether the use of the German language in EPO Form 1002 is permissible under Article 14(2), (3), (6) and Rule 3(2) EPC, this request is not allowable under Article 81 EPC and Rule 19 EPC for the following reasons.

- 4.1 The Board considers that the declaration in EPO Form 1002 does not clearly and unambiguously identify the appellant as the (sole) inventor. EPO Form 1002 is to be used in cases where the applicant is not the (sole) inventor (see EPO Form 1002 on the top right: *"where the applicant is not the inventor or not the sole inventor"*), i.e. where Rule 19(1), second sentence, EPC applies. While this use of EPO Form 1002 might be unobjectionable if only the name of the applicant appears, the use of EPO Form 1002 together with the statement *"der die künstliche Intelligenz Dabus dazu veranlasst hat, die Erfindung zu generieren"* makes the designation of inventor unclear and inconsistent. Even taking into account the fact mentioned by the appellant (see letter of 12 January 2026, page 4) that no further checkboxes have been ticked on the form, it is not clear with the requisite certainty that only the appellant and not (also) the machine is designated as inventor.
- 4.2 In this respect, the present case also differs from the factual situation underlying the decision of 11 June 2024 of the German Federal Court of Justice (BGH X ZB 5/22), in which a corresponding wording on the form was accepted. The form "Erfinderbenennung", on which the German case was based, generally also applies if the applicant himself is the sole inventor (see the form on pages 8/9 of the previous instance decision of the Federal Patent Court, 11 W (pat) 5/21: on page 1 of the form top left it is indicated: *"Die Erfinderbenennung muss auch erfolgen, wenn der Anmelder selbst der*

Erfinder ist..."). Furthermore, it was expressly added by filling in on page 2 of the form the statement that "*Erfinder ist Anmelder*", i.e. the inventor is the applicant.

- 4.3 As a result, the third auxiliary request is also not allowable.

Fourth auxiliary request - admittance

5. The fourth auxiliary request comprises only EPO Form 1002 in which "Stephen L. Thaler" (the appellant) is indicated as the inventor, whereby the note "where the applicant is not the inventor or is not the sole inventor" has been crossed out at the top right of the Form. No Addendum to Form 1002 and no amendment to the description are part of the fourth auxiliary request.
- 5.1 The fourth auxiliary request was submitted for the first time with the appellant's letter of 12 January 2026, i.e. after notification of the Board's communication pursuant to Article 15(1) RPBA of 25 July 2025. The admittance of this request is therefore subject to the provision of Article 13(2) RPBA. According to Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA, shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.
- 5.2 The appellant argues that exceptional circumstances arise from the fact that there is no precedent for how the general guidance of decision J 8/20 should be applied in practice, i.e. how to draft a designation of a human inventor in case of AI-generated inventions

without running the risk that an admission of involvement of AI might be held to conflict with the designation of the human inventor.

For the reasons set out below, the Board considers that this justification is not sufficient to demonstrate that exceptional circumstances are present that would justify the admission of the new auxiliary request under Article 13(2) RPBA.

5.3 The Board observes that, according to the findings in decision J 8/20 (see reasons 4.6.6), the user or the owner of a device involved in an inventive activity was generally not prevented from designating himself as inventor under the EPC. With this general guidance of decision J 8/20, the filing of a further auxiliary request limited to the designation of Stephen L. Thaler (the appellant) as inventor, without any addendum to the Form 1002, would already have been reasonable and possible in first instance during the examination proceedings.

5.4 In the context of the decision on admission pursuant to Article 13(2) RPBA, the provision of Article 12(6), second sentence, RPBA also applies (see Case Law of the Boards of Appeal (CLB), 11th edition, V.A.4.1.2 and 4.3.1., last paragraph). Article 12(6), second sentence, RPBA expresses and codifies the principle that each party should submit all facts, evidence, arguments and requests that appear relevant as early as possible so as to ensure a fair, speedy and efficient procedure. An appellant is not at liberty to bring about the shifting of its case to the appeal proceedings as it pleases, and so compel the Board either to give a first ruling on the critical issues or to remit the case to the first instance. Conceding such

freedom to an appellant would run counter to orderly and efficient appeal proceedings. As laid down in Article 12(2) RPBA, the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner. To allow a kind of "forum shopping" would jeopardise the proper distribution of functions between the departments of first instance and the Boards of Appeal and would be unacceptable for procedural economy generally (see CLB, loc. cit., V.A. 4.3.1., penultimate paragraph; T 878/21 reasons 4.9).

- 5.5 In the case at hand, the fourth auxiliary request could and should have been filed already during the examination proceedings. During the oral proceedings before the Examining Division, after the Chairman had informed the applicant that the first and second auxiliary requests were not allowable (see minutes, sec. 7), he invited the applicant twice to file a new request. The applicant expressly rejected this. The following is stated in the minutes of the Examining Division (under sec. 8):

"The chairman asked the applicant if he had any further request. The applicant confirmed that he had no further request. He indicated, however, that he would like to discuss all the remaining objections raised in the summons before the oral proceedings be closed and wished that a decision be issued concerning all these objections. The chairman replied that no discussion could take place in the absence of any valid request and invited the applicant again to file a new request. The applicant declined and confirmed that he would not file any further request."

The Board observes that the filing of the fourth auxiliary request would have been reasonable at the

latest during the oral proceedings before the Examining Division.

At the oral proceedings before the Board, the appellant argued that he was surprised by the Examining Division's conclusion on the requests filed. However, the Examining Division did not deviate from its preliminary opinion, so that there was no new, surprising situation in this respect. Also with regard to auxiliary requests 1 and 2, which comprised the amended Addendum filed one month before the oral proceedings on 4 October 2024, the appellant could not rely on them being granted either.

5.6 As no further request was filed during the first-instance oral proceedings, the Examining Division did not issue a decision on the outstanding objections. The Chairman pointed this out at the end of the oral proceedings before the Examining Division, inviting the appellant to file a new request (see minutes of the Examining Division, sec. 8). In the event that the Board were now to grant the new request, the case would be remitted to the Examining Division for further prosecution on the remaining objections. Such a course of action is manifestly contrary to procedural economy. Thus, even if the present request *prima facie* overcomes the issue of designation of the inventor, its admittance would still be detrimental to procedural economy (see the criteria in Article 13(1) RPBA, which are also applicable in the context of Article 13(2) RPBA).

5.7 The Board further observes that the new auxiliary request is also not a justified response to any changed circumstances during the appeal proceedings. Rather, in its Article 15(1) RPBA communication, the Board did not

deviate from the conclusions of the Examining Division. Exceptional circumstances as required by Article 13(2) RPBA are not present.

5.8 The Board therefore decided that the fourth auxiliary request was not admitted into the appeal proceedings according to Articles 13(2), 12(6) RPBA.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated