

## Episode Summary

**Episode number:** 98  
**Episode name:** The Patent Predicament: Recognise or Relegate AI Patent Inventors?  
**Guest(s):** Alana Hannah

**What area(s) of law does this episode consider?** AI inventorship.

**Why is this topic relevant?** In the *Thaler* decision of the Federal Court, the eponymous provocateur sought to have his creative machine, DABUS, listed as the inventor on an Australian patent application. The Australian push was part of a broader project called The Artificial Inventor Project: “a series of pro bono legal test cases seeking intellectual property rights for AI-generated output in the absence of a traditional human inventor or author”.

In Australia, that push failed. On appeal, a Full Court of the Federal Court held that an AI could not be considered an inventor for the purposes of patent law - an inventor must be a natural person. But the proliferation of creative machines over the last year has brought the concept of artificial inventors ever closer.

**What are the main points?**

- AI is usually not coming up with ideas on its own, but rather is following the instructions or parameters given to it by humans interacting with it.
- However, AI is useful where it is used as a tool to run through different scenarios or possibilities at a much faster rate than humans could.
- This could include predicting how different compounds might interact, and identifying potential drug targets.
- In this example, while the AI is crucial in speeding up and improving the drug discovery process, it is not inventing the end product.
- The human researchers who gave the AI its instructions and used its predictions might be considered inventors.
- Under current patent law, the problem arises when AI is not merely used as a tool, but rather is responsible for coming up with inventive concepts on its own.
- In such cases, it becomes much more difficult to determine who should be listed as the inventor.
- The Artificial Inventor Project is a global initiative that tests whether AI can be listed as an inventor in various countries around the world.
- While most jurisdictions (including Australia) have either rejected or are still considering these applications, South Africa became the first country to grant a patent to an AI inventor.

- However, this can largely be attributed to the fact that South Africa does not examine patent applications but relies on objectors to validate the patent.
- The general consensus among most countries is that patent laws are not designed for non-human inventor entities.
- Organizations can leverage the Patent Cooperation Treaty (PCT), a system for the global recognition of patents, to file patents in multiple jurisdictions at once.
- However, each country has its own case laws and specific exemptions, which can create conflicts when an AI-generated patent is accepted in one jurisdiction and rejected in another - for example, the case with South Africa.
- Patent attorneys can be trusted advisors to litigators working in the patent space - often translating from a technical background.
- A key skill in being a patent attorney, according to Alana, is the ability to clearly communicate complex technical concepts.
- She adds that having a technical degree is necessary for the role and that the innovation around AI creates exciting opportunities in her job.

**What are the practical takeaways?**

**Show notes**

[The Artificial Inventor Project](#)