

Seoul High Court

7th Administrative Division

Judgment

Case	2023Nu52088 Appeal for revocation against invalidation of a patent application
Plaintiff, Appellant	Stephen L. Thaler
Defendant, Respondent	Commissioner, Korean Intellectual Property Office
1 st instance court decision	Seoul Administrative Court Decision. 2022Guhap89524, Jun. 30, 2023
Heard on	Apr. 18, 2024
Judgment Given on	May 16, 2024

Orders

1. The appeal raised by the plaintiff is dismissed.
2. The plaintiff pays all cost associated with the lawsuit including the cost of service on the defendant.

Intents of the Claim and the Appeal

The appeal is raised to revoke the 1st instance court decision and the invalidation of a patent application filed by the plaintiff Stephen L. Thaler (Appl. No. 10-2020-7007394) decided on Sep. 28, 2022.

REASONS FOR JUDGMENT

1. Confirmation of the 1st Instance Court Decision

The plaintiff's arguments in this Court are not largely different from the ones in the 1st instance court, and even in combination of the evidences submitted to the 1st instance court and arguments made in this Court, the 1st instance court decision is acknowledged to be legitimate. Therefore, the 1st instance court decision is confirmed under Article 8(2) of the Administrative Litigation Act and the body of Article 420 of the Civil Litigation Act, because the reasons for judgment in this Court are the same with the ones of the 1st instance court decision, except for additional judgment in the following paragraph 2 with respect to what the plaintiff emphasized or made new arguments in this Court.

2. Additional judgment

A. The plaintiff claims that there is no basis to interpret that an inventor will be a natural person under the Korean Patent Act, and that legislative void should be addressed through reasonable interpretation of regulation(s), under the presumption

that an AI inventor would not have been considered at the time of the legislation of the Act. In view of interpretations of Articles 33 and 42 of the Act, it is obvious that an inventor refers to a natural person, as stated in the 1st instance court decision. It is beyond the limitations of legitimate legal interpretation to incorporate AI into the inventor, under the regulations set forth in the Act, in view of AI's emergence and development, the current AI level, social perception of AI, etc. If there exists a certain subject matter sufficient to be protected as an AI invention in the future, its legal protection needs to be guaranteed, in a supplemented manner, by legislation to be processed through social discussion.

B. The plaintiff claims that rights and obligations for AI generated outcomes can be attributed to an AI's owner or its operator, by arguing that AI can be recognized as an inventor under the Act, even if AI cannot become a patent right holder. Article 33(1) of the Act adopts the “inventorism”, in other words, the inventor's entitlement to a patent, by providing that a person who makes an invention or his or her successor shall be entitled to a patent. In this respect, the plaintiff's argument does neither, in itself, comply with the Act, nor are there grounds to insist that relevant rights and obligations are attributed to an AI's owner, etc., nor does the argument comply with the applicable system of the Act.

3. Conclusion

Therefore, the plaintiff's claim is dismissed based on no valid grounds. The plaintiff's appeal is dismissed based on no valid grounds because the 1st instance court decision is legitimate.