Court File No.:

**FEDERAL COURT**

B E T W E E N:

**STEPHEN L. THALER**

Appellant

- and –

**ATTORNEY GENERAL OF CANADA**

Respondent

**NOTICE OF APPEAL**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

December 5, 2025

Issued by:_____

(Registry Officer)

TO: **The Administrator**
Federal Court
180 Queen Street West
Toronto, ON M5V 3X3

AND TO: **THE ATTORNEY GENERAL OF CANADA**
(service to be effected by filing duplicate copies in the Registry pursuant to Rule 133 of the *Federal Courts Rules* and section 48 of the *Federal Courts Act*)

AND TO: **THE COMMISSIONER OF PATENTS**
Canadian Intellectual Property Office
Place du Portage I
50 Victoria Street, Room C-114
Gatineau, QC K1A 0C9

Konstantinos Georgaras, Commissioner
Tel: (819) 997-1057
Fax: (819) 997-1890

## APPEAL

THE APPELLANT APPEALS to the Federal Court, pursuant to section 41 of the *Patent Act*, from the decision of the Commissioner of Patents (the "Commissioner") dated June 5, 2025, in which the Commissioner concurred with the finding of the Patent Appeal Board that Canadian Patent Application No. 3,137,161 (the "161 Application") should be refused because, in the view of the Commissioner, the artificial intelligence (AI) system, DABUS, listed as the "inventor" on the 161 Application, was not a valid "inventor" under the *Patent Act* and *Patent Rules* (Commissioner's Decision No. 1689, or "the Decision").

**THE APPELLANT ASKS that**:

1. The Decision be set aside, quashed or otherwise declared to be null and void.
2. The Court declare that the 161 Application, with DABUS listed as its inventor, identifies a valid inventor within the meaning of the *Patent Act* and the *Patent Rules*.
3. The Court declare that, as the owner of DABUS, the Appellant is DABUS's legal representative and is entitled to any intellectual property it creates.
4. The Court order the Commissioner to allow the 161 Application.
5. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS OF APPEAL are as follows**:

1. In a decision dated June 5, 2025, the Commissioner refused to allow the 161 Application pursuant to section 40 of the *Patent Act* on the grounds that the 161 Application did not disclose a valid "inventor" within the meaning of that term under subsection 27(2) of the *Patent Act* and section 54 of the *Patent Rules.*
2. The Commissioner erred in determining that the 161 Application, with the AI system DABUS listed as its inventor, did not contain a valid inventor as required by the *Patent Act* and the *Patent Rules*.
3. In deciding that the 161 Application did not contain a valid inventor, the Commissioner purported to apply the modern approach to statutory interpretation to determine the scope of the term "inventor" as it is used in the *Patent Act* and the *Patent Rules.* The Commissioner ultimately found the term "inventor" was limited to natural persons, and, as such, excluded DABUS.

4. In applying the modern approach to statutory interpretation, the Commissioner erred in finding that there was "no evidence that the meaning of "inventor" … has evolved such that both natural persons and machines fall within its scope." The existence of the 161 Application challenges the Commissioner's conclusion, as now is the first time in human history where machines have had the capacity to "invent," and can now reasonably be referred to as "inventors."
5. The Commissioner further erred in its statutory interpretation analysis by failing to properly interpret the *Patent Act* and the *Patent Rules* in light of evolving social, material, and technological realities.
    a. The Commissioner discounted the importance of interpreting legislation in light of evolving social and material realties, as required by the Supreme Court of Canada in *R. v. 974649 Ontario Inc.,* 2001 SCC 81 [*974649*]. Though *974649* was decided in the context of determining the scope of remedial powers under the *Charter,* paragraph 38 of *974649* clarified the meaning of "legislative intention" generally, not only in the context of the Charter, as indicated by the Commissioner at paras 43-45 of the Decision.
    b. The Commissioner's view, at paragraph 46, that there is "no legislative indication" to interpret "inventor" to include AI system is contradicted by evidence in paragraphs 53-55 of the Decision, where the Commissioner acknowledges that the Courts themselves have recognized that proper interpretation of the *Patent Act* requires a dynamic approach, which encourages and recognizes changes in technology,
    c. The Commissioner exhibits hindsight bias by dismissing, in paras 48-51 of the Decision, statutory interpretation for previous advances in technology as less expansive than the inclusion of AI systems within the term "inventor." It is easy to look back at the cited inventions and find it obvious that they would be encompassed by the language of the relevant legislation, though it would not have been so obvious at the times of those decisions.
6. The Commissioner erred in determining that the principle of accession does not apply in this case. In accordance with the principle of accession, the owner of a thing is also the

owner of the fruits of that thing. The intellectual property produced by DABUS, while intangible, has value and is owned by Appellant, as the owner of DABUS.

7. The Appellant therefore requests the relief sought above to correct the Commissioner's errors.

**Place of Hearing**

8. The Appellant requests that the appeal be heard in Toronto, Ontario.

**Request pursuant to Rules 317 and 350**

THE APPELLANT REQUESTS the Commissioner to send a certified copy of the prosecution file history of the 161 Application, that is not in the possession of the Appellant but is in the possession of the Commissioner, to the Appellant and to the Registry.

DATED at Toronto, Ontario, this 5th day of December 2025.


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Counsel for the Appellant

**Court File No.:**

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**BETWEEN:**

**STEPHEN L. THALER**

**Appellant**

**-and-**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

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