



IP ITeasers Post 013:

Arty AI

The emergence of a new technology often forces lawyers to confront difficult questions as to the scope of settled legal rules and doctrines. In the early 2000s, the widespread adoption of email prompted queries as to the application of the postal acceptance rule to electronic communications. More recently, the emergence of blockchain technology has given rise to the difficult question of whether cryptocurrency can be the subject of a trust (see, eg, *Wang v Darby* [2021] EWHC 3054 (Comm)).

The development of increasingly sophisticated artificial intelligence systems poses a number of challenges for the law of intellectual property. Some of these challenges are highlighted by the work of *The Artificial Inventor Project*, which is dedicated to "*seeking intellectual property rights for inventions generated by an AI without a traditional human inventor.*"

The work of *The Artificial Inventor Project* has had mixed results thus far. In 2021, proceedings brought by Dr Stephen Thaler in the Federal Court of Australia resulted in the decision in *Thaler v Commissioner of Patents* [2021] FCA 879, which represented a landmark in the development of Australian patent law. Beach J concluded at [226] that "*an inventor as recognised under the [Patents Act 1990 (Cth)] can be an artificial intelligence system or device. But such a non-human inventor can neither be an applicant for a patent nor a grantee of a patent. So to hold is consistent with the reality of the current technology. It is consistent with the Act. And it is consistent with promoting innovation.*" In *Thaler v Comptroller General of Patents Trade Marks And Designs* [2021] EWCA Civ 1374, however, the Court of Appeal held that only a person

could be an "inventor" for the purposes of the Patents Act 1977.

Should the law permit the recognition of an artificial intelligence system or device as an inventor for the purposes of patent law? If so, should the law be developed in this way by the courts, or must the legislature step in?