

**THE PATENTS ACT, 1970
(AS AMENDED)
SECTION 15, 25(1) and Rule 55**

202017019068	
"FOOD CONTAINER AND DEVICES AND METHODS FOR ATTRACTING ENHANCED ATTENTION"	
FILING DATE	05/05/2020
PRIORITY DATA	EP 18275163.6 (17/10/2018) EP 18275174.3 (07/11/2018)
INTERNATIONAL FILING DATA	PCT/IB2019/057809 WO 2020/079499 (17/09/2019)
JOURNAL NO. & PUBLICATION NO.	12/2021 & 19/03/2021
RQ NUMBER & DATE	R20211024672 & 18/04/2023
APPLICANT	THALER, STEPHEN L.
AGENT FOR APPLICANT	SATISH KUMAR RANA PRISM IPR A1/306, Orris Carnation, Sector 85, Gurgaon, Haryana – 122004 filings@prismipr.com
INVENTOR(s)	DABUS (DEVICE FOR THE AUTONOMOUS BOOTSTRAPPING OF UNIFIED SENTIENCE)
OPPONENT	DR. KALYAN C. KANKANALA 40, 1st and 2nd Floor, 3rd Main Road, JC Industrial Estate, Near Metro Cash and Carry, Kanakapura Main Road, Bangalore – 560062 kalyanckankanala@gmail.com; patent@bananaip.com


1. The present patent application relates to *“a food container that has a wall with an external surface and an internal wall of substantially uniform thickness. The wall has a fractal profile which provides a series of fractal elements on the interior and exterior surfaces, forming pits and bulges in the profile of the wall and in which a pit as seen from one of the exterior or interior surfaces forms a bulge on the other of the exterior or interior surfaces. The profile enables multiple containers to be coupled together by inter-engagement of pits and bulges on corresponding ones of the containers.”*
The application was filed on 05.05.2020 and originally contained twenty (20) numbers of claims.
2. A pre-grant representation by way of opposition (hereinafter, “**the opposition**”) was filed by **Dr. Kalyan C. Kankanala**, (hereinafter, “**the Opponent**”) on 27.10.2022, under Section 25(1) of the Patents Act, 1970.
3. The opponent raised the following grounds:
 1. **Section 25(1)(f)**: The claimed invention is not patentable under the Act, particularly in view of Sections 3(b) and 3(c).
 2. **Section 25(1)(h)**: The applicant failed to furnish information required under Section 8 or furnished false information.
4. The Applicant subsequently filed their statement and evidence in reply to the pre-grant opposition on 14.03.2024, a hearing was conducted under Section 25 of the Patents Act on 06.11.2024, after which opponent and the applicant filed their respective post-hearing written submissions on 11.11.2024 & 20.11.2024.

ANALYSIS AND FINDINGS ON SECTION 25(1)(h)

5. The Opponent argued that the Applicant attempted to mislead the patent office by withholding material information and furnishing false details regarding the status of corresponding foreign applications, specifically, the Opponent pointed out that the Applicant failed to disclose that no substantive examination regarding inventorship took place in the South African patent grant.
6. The Applicant submitted that there was no attempt to furnish false information. The Applicant supplied all the necessary details regarding corresponding foreign applications, including the status of appeals where DABUS was rejected as an inventor (e.g., in Australia, the US, the UK, and Europe). The Applicant continually updated the patent office by filing Form 3 as required under Section 8(1), with the most recent updates submitted via the online portal in a timely manner (such as on 26.05.2022, and 23.05. 2023).

Form-3 Submitted by the applicant on 23.05.2023:

<p style="text-align: center;">FORM 3 THE PATENTS ACT, 1970(39 of 1970) & THE PATENT RULES, 2003 STATEMENT AND UNDERTAKING UNDER SECTION 8 (See Section 8, rule 17)</p>							
1. Name of the Applicant(s).		I Stephen L. Thaler , of 1767 Waterfall Dr. St Charles, Missouri 63303, United States of America; Nationality: United States hereby declare:-					
2. Name, address and nationality of the joint applicant:		<p>(i) that I/we, who have not made any application for the same / substantially the same invention outside India.</p> <p style="text-align: center;">Or</p> <p>(ii) that We, who have made this application No. 202017019068, dated 05/05/2020, alone/jointly with, made for the same/substantially same invention, application(s) for patent in the other countries, the particulars of which are given below:</p>					
Name of the Country	Date of Application	Application No.	Status of the application	Date of Publication	Publication No.	Date of Grant	Grant No.
Australia	17-Sep-19	2019363 177	LAPSED				
China	17-Sep-19	2019800 061580	Pending				
Germany	17 Oct 19	1020191 28120	Pending	23-Apr-20	DE1020 1912812 0		
Germany	29-Oct-19	1020191 29136	Pending	07-May-20	DE1020 1912913 6		
Germany	17-Sep-19	1120190 05218	Pending				
European Patent Office	17-Oct-18	1027516 3	LAPSED	06-Nov-19	3564144		
European Patent Office	07-Nov-18	1827517 4	LAPSED	06-Nov-19	3563896		
European Patent Office	17-Oct-10	2121602 4.6	Pending	05 Oct 22	4067251		
United Kingdom	17-Oct-18	1816909	Pending	25-Dec-19	2574909		
United Kingdom	07 Nov 18	1818161	Pending	01-Jan-20	2575131		

United Kingdom	17-Sep-19	2105428	LAPSED	08-Sept-21	2592777		
United Kingdom	17-Sep-19	2206827.4	Pending				
Israel	08-Aug-19	263605	Pending				
Israel	08-Aug-19	263604	Pending				
Japan	17-Sep-19	110001519	Pending				
Korea, Republic	17-Sep-19	10-2020-7007394	Pending				
Taiwan	17-Oct-19	10E137438	Pending				
Taiwan	05-Nov-19	10E140133	Pending				
United States	29-Jul-19	16/524532	Pending				
United States	29-Jul-19	16/524350	Pending				
WIPO	17-Sep-19	PCT/IB2019/057809	LAPSED	23-Apr-20	WO2020/079499		
Brazil	17-Sep-19	BR2021103931	Published	10-Aug-21	BR112021008931 (A2)		
Brazil	17-Sep-19	BR112021008931-4	Pending				
Saudi Arabia	17-Sep-19	521422019	Pending	04-Jan-23			
South Africa	13 May - 2021	2021/03242	Granted	24-Jun-2021			
3. Name and address of the assignee	<p>(iii) that the rights in the application(s) has/have been assigned to I Stephen L. Thaler, of 1767 Waterfall Dr. St Charles, Missouri 63303, United States of America; that I/We undertake that up to the date of grant of the patent by the Controller, I/We would keep him informed in writing the details regarding corresponding applications for patents filed outside India within six months from the date of filing of such applications.</p> <p>Dated this the 23rd day of May, 2023</p>						
4. To be signed by the applicant or his authorized register patent agent.							

7. It is observed from the above record that the Applicant has furnished all the details regarding the corresponding foreign applications as required under Section 8 of the Patents Act. Because the Applicant has satisfied the requirements of providing necessary updates and details, the ground under Section 25(1)(h) now stands invalid.

ANALYSIS AND FINDINGS ON SECTION 25(1)(f)

8. The principal contention of the opponent is that DABUS, being a non-human entity, cannot be recognised as an inventor under Sections 2(1)(y), 6 and 7 of the Patents Act, and therefore the application is not maintainable.

However, Section 25(1)(f) permits opposition only on the ground :

*that the subject of **any claim** of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;*

Therefore, the legal arguments must be constrained within the ambit of Section 3 of the Patents Act.

The provisions governing **inventor ship** are contained in Sections 2(1)(y), 6 and 7, which relate to entitlement to apply for a patent and procedural compliance, and not to patentability of the subject of any claim of the complete specification.

The Patents Act does not provide any independent ground under Section 25(1) enabling a pre-grant opponent to challenge the identity or status of the inventor.

Therefore, the objection relating to AI inventorship does not fall within the permissible scope of opposition under Section 25(1)(f).

Accordingly, the submissions of the opponent regarding inventorship are beyond the statutory scope of pre-grant opposition under Section 25(1).

9. Opponent further contended that granting patents to AI-generated inventions would be contrary to public policy and morality and therefore fall within Section 3(b).

However, Section 3(b) excludes inventions:

the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment.

The present invention relates to a food container having a fractal wall profile enabling inter-engagement between containers, which is a packaging improvement and has no demonstrated nexus with public order, morality, or environmental harm.

The opponent has not provided any technical evidence establishing that exploitation of the claimed invention would be contrary to public order or morality or which cause serious prejudice to human, animal or plant life or health or to the environment.

Accordingly, the opposition under Section 3(b) is **not sustainable**.

10. The opponent further argued that the applicant merely discovered the output generated by an AI system and therefore the invention falls within the scope of discovery under Section 3(c).

However, Section 3(c) excludes:

the mere discovery of a scientific principle or formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature.

The present invention relates to a structural configuration of a container wall having a fractal profile enabling coupling and disengagement, which constitutes a technical product feature rather than a discovery of a natural phenomenon.

Accordingly, the opposition under Section 3(c) is also not sustainable.

11. Further, the applicant also contended that each statement of opposition rests solely on the grounds that DABUS the entity that “invented or discovered the subject matter is not human rather than patentability.

12. After considering:

- the pre-grant representation,
- the statement and evidence filed by the applicant,
- written submissions filed by both parties after hearing,
- and the provisions of the Patents Act, 1970,

It is concluded that:

1. the opposition under Section 25(1)(h) is not valid;
2. the opposition relating to AI inventorship does not fall within the statutory scope of Section 25(1)(f);
3. the opposition under Sections 3(b) and 3(c) are not substantiated, hence not valid.

13. In view of the above findings, the pre-grant opposition filed by the opponent under Section 25(1) of the Patents Act, 1970 is **hereby rejected**.

Dated: 15.04.2026

(NEERAJ KUMAR MEENA)
ASSISTANT CONTROLLER OF PATENTS & DESIGNS