Artificial intelligence
IP policy updates

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November 16, 2022
Patent Public Advisory Committee meeting
AI/ET Partnership – AI & biotech event

• Event took place on September 22, 2022, virtually and in person at the USPTO’s Silicon Valley Regional Office
• Comprised two panels and a USPTO presentation
• Agenda and event video may be found at www.uspto.gov/about-us/events/aiet-partnership-series-2-ai-biotech
First panel discussed prosecution and drafting strategies for AI/biotech inventions

Second panel discussed the intersection of biotechnology and AI and its impact on research and innovation.

USPTO presented data on the diffusion of AI in biotechnology
Thaler v. Vidal - background

- **July 29, 2019** – Thaler files patent applications asserting they were invented by “DABUS.” Thaler petitions the Notices to File Missing Parts.

- **April 22, 2020** – The USPTO issues decisions denying Thaler’s petitions.

- **September 5, 2021** – The Eastern District of Virginia upholds the USPTO petition decisions.

- **August 5, 2022** – The Federal Circuit (CAFC) affirms the USPTO position that an inventor must be a natural person.
Thaler v. Vidal - decision

• Based on Supreme Court precedent, the court finds that an “individual” (35 USC 100(f)) is a natural person unless Congress provides some indication otherwise.

• The court concluded there is no such indication and the Patent Act instead supports the customary meaning that an “individual” is a human.

• The CAFC did not address whether inventions made by human beings with the assistance of AI are eligible for patent protection.
October 20, 2020 – CAFC denied Thaler’s request for rehearing and *en banc* rehearing

- Petition for Certiorari?
- The USPTO is considering the impact of *Thaler* and determining next steps, especially with respect to inventorship issues where an AI plays a significant role in the invention creation process.