



**osmocosm**

MIT annual scitech olfaction conference  
28-30 October 2021

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## **MIT OLFACTION VIRTUAL LAW SECTION SCHEDULED FOR OCTOBER 29, 2021**

**(10:00 am – 12:00 noon EST)**

**DIMITRIOS IOANNIDIS, ESQ.<sup>1</sup>, Chair**

**“PICKING UP THE SCENT:  
DETECTING THE MENTAL STATE OR THE INTENT OF PARTIES”**

I anticipate having a moot court-style session<sup>2</sup> that will consist of a panel of Justices and 4 law students (Zelda Bank “BU Law”, Madison Bush “BU Law”, Cassandra Nedder “Suffolk Law” and Dionisio Antonio Mulone “Universidad de Buenos Aires”), that will argue the following case and issues:

### **THE FACTS**

In the year 2030, Phelon Tusk was a pioneer focused on space travel and the colonization of Mars. His entire business empire consisted of investments in companies that were building the various aspects of space travel. As he was expanding his “Colonization of Mars” project, Phelon Tusk became aware of BionicSuits, a company that developed space suits made from morphing materials developed at MIT<sup>3</sup>, through a special licensing arrangement. These spacesuits were unique in that they incorporated innovative technology of regenerating oxygen and recycling nutrients from excretions. The inventions by BionicSuits, allowed astronauts and space travelers to survive for weeks without any food, water, or air. Phelon became interested in the technology and began discussions with BionicSuits, ultimately leading to the negotiation of a contract that included payment of BeatMe coins, which Phelon owned. The execution ceremony was arranged by Phelon to take place on his spaceship “Kronos” shortly after exiting the earth’s gravity.<sup>4</sup>

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<sup>1</sup> This is draft of the problem for the Olfaction Conference created and owned by Dimitrios Ioannidis.

<sup>2</sup> Moot court style competitions involve students that argue opposite positions before panels of judges.

<sup>3</sup> Benjamin Jenett, et al, *Digital Morphing Wing: Active Wing Shaping Concept Using Composite Lattice-Based Cellular Structures*, Published by Mary Ann Liebert, Inc. 2017; See <https://www.liebertpub.com/doi/pdfplus/10.1089/soro.2016.0032>.

<sup>4</sup> There is no need to discuss jurisdictional issues.

Phelon wanted to memorialize the moment of the signing of the contract and asked his assistant, Miri, to capture the event on her new mobile device, which incorporated several emerging technologies, including scent sensors and modules. While the parties executing the contract believed at the time that an image was only being taken, Miri also pressed the olfaction button, which recorded the auras of the two individuals signing the contract, along with their mental state footprint.

The information was captured by the mobile device using an application owned by Dabus,<sup>5</sup> an artificial intelligent platform that could generate the “stream of consciousness” content from the scent sensors incorporated into the mobile device<sup>6</sup>. The information was simultaneously uploaded to Miri’s blockchain account, hosted by “Aggli”, an emerging leader in cloud services. Just after pressing the “click” button, Miri also reconfigured the olfaction sensory parameters which allowed an enhanced version of the information to be uploaded, with unique identifying markings. Miri clicked twice but intended for the enhanced version to be uploaded to the personal social media page where Miri often exhibited unique NFTs that were later sold at online auctions.

Upon signing of the contract, and consistent with its terms, Phelon sold his stake in BeatMe Coins and exchanged them for SpecCoin, another cryptocurrency accepted by BionicSuits. The payment was made to BionicSuits in SpecCoins at that time. As a result of the massive transaction, the price of BeatMe Coins dropped significantly within minutes, while the price of SpecCoins increased drastically.

A few days later, Miri displayed both versions on the virtual screen of Miri’s home, which was nothing more than simulated electrons targeted at a certain space in the house. Miri’s dog, Caddy<sup>7</sup>, became agitated when the non-enhanced NFT was revealed, leading Miri to begin carefully looking at both versions. The non-enhanced version showed that the President of BionicSuits did not have the intent to perform the contract when he signed it. More importantly, the content also indicated bad faith and a lack of transparency. In contrast, Miri’s dog, Caddy, became calm when the enhanced version was shown, an indication that the additional enhancements somehow may have distorted the clarity of the mental state of the President of BionicSuits at the time of signing. Miri immediately notified Phelon who filed a complaint in the Federal Court of Cosmos against BionicSuits seeking declaratory relief and damages. During discovery, it became clear that BionicSuits had consistent failures in the space travel suits that were not revealed in the discussions with Phelon.

BionicSuits served a subpoena to the mobile carrier to recover the metadata of the information for both clicks. Phelon filed a request to quash the subpoena on the grounds that the captured enhanced information was an NFT, which could not be produced without Miri’s permission. Miri also intervened and moved to quash the subpoena on the same grounds, claiming Miri owned the rights to the NFT, including the underlying elements placed on the blockchain account hosted by Aggli. BionicSuits also sought relief from the Court to prevent the introduction of any such evidence as it could not subpoena “Dabus”, the artificial intelligence platform that processed the sensory detections. The Court held that Dabus was not a legal entity and the Court had no authority to recognize “personhood” for Dabus, without legislative reform<sup>8</sup>. Thus, the Court declared that it had no authority over technology that did not legally exist.

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<sup>5</sup> Dabus was developed and is owned by Dr. Stephen Thaler. <https://artificialinventor.com/dabus/> On July 30, 2021, an Australian court has ruled that artificial intelligence can be named as the inventor of a patent. See <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2021/879.html> - New Zealand and South Africa -See <https://theconversation.com/in-a-world-first-south-africa-grants-patent-to-an-artificial-intelligence-system-165623> and <https://www.msn.com/en-us/money/other/south-africa-grants-patent-to-an-ai-system-known-as-dabus/ar-AAN6a9o> - are in the same group while the US Trade Office and the EU and UK Trade Offices rejected the application. See <https://www.uspto.gov/sites/default/files/documents/16524350.pdf> and <https://www.epo.org/news-events/news/2019/20191220.html>

<sup>6</sup> For purposes of disclosure, I work with Stephen Thaler on several projects.

<sup>7</sup> See <https://www.medicaldetectiondogs.org.uk/> - For purposes of disclosures, I also worked with Medical Detection Dogs.

<sup>8</sup> See <https://artificialinventor.com/dabus/>

Phelon also requested from the court that only the non-enhanced version be determinative of the intent of the President of BionicSuits, while BionicSuits sought to gain access to the enhanced NFT. The Court allowed only the non-enhanced version and made a finding that BionicSuits did not have the intent to perform at the time of signing and that there was bad faith. The lower Court also allowed Phelon's Motion to quash the subpoena holding that the mobile carrier need not comply with the request and also excluded the introduction of the enhanced version due to Miri's ownership rights. The lower court awarded Phelon damages in an amount equal to the difference in the value of the BeatMe Coins from the time of sale to the time of filing of the case and other damages. BionicSuits appealed and the case is now before the Supreme Court of Cosmos.

### **THE LEGAL ISSUES<sup>9</sup>**

(1) Olfaction - Can the scent NFT that captured the aura of the executives signing the contract and their mental state, be used to prove the "intent" of the parties at the time of the signing of the contract, when one party later breached the contract?<sup>10</sup>

(2) Should the Court recognize "personhood" of the artificial intelligent platform "Dabus"?

#### **Subsidiary Issues**

(3) Can the Court display, view, and analyze the enhanced version of the NFT without the consent of its owner, Miri?

(4) Can a Court order the mobile carrier, Aggli, to provide the metadata of an NFT video/image captured by Miri using a mobile device that incorporated olfaction capabilities? (*Think of the Justice Department obtaining metadata from Apple of communications by Democratic leaders in 2018*). Both clicks include data relative to the mental state and the intent of the signatories to the contract, but the enhanced version appears to contradict the non-enhanced version.

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<sup>9</sup> There is no need to discuss jurisdictional issues.

<sup>10</sup> The CISG rules shall apply for determining Intent (*See Rule 8*).