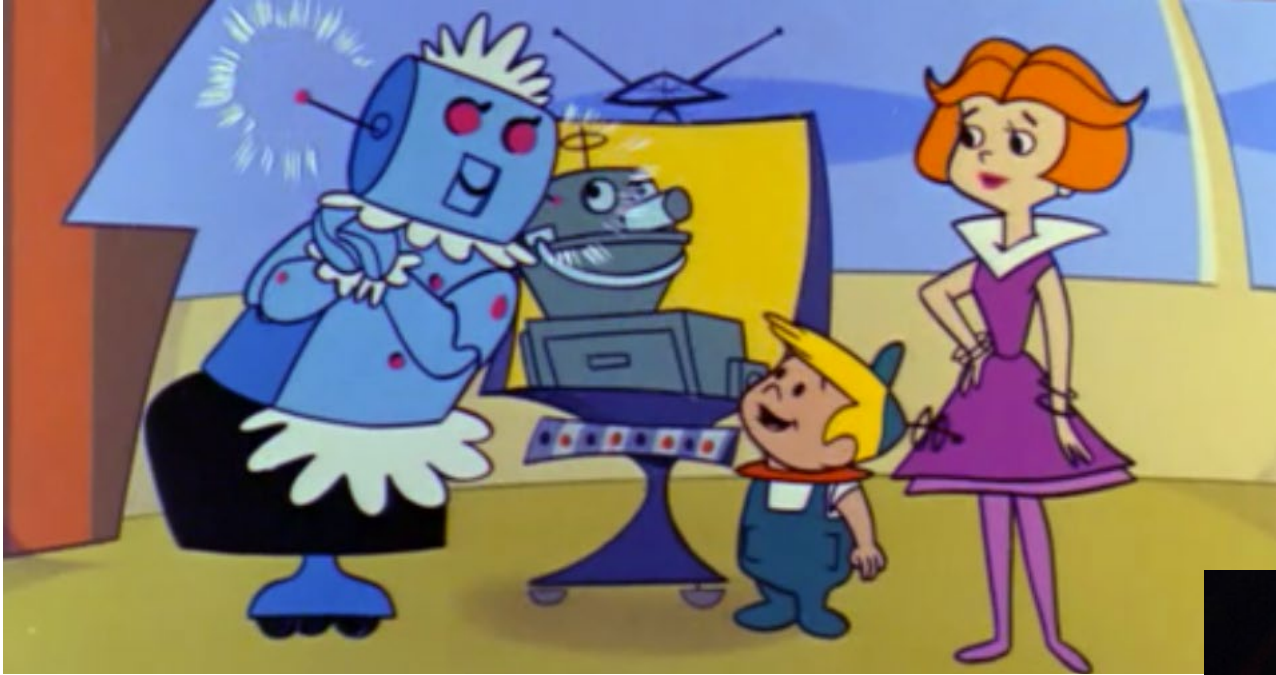




WINSTON
& STRAWN

PRESENTED TO APPLIED MATERIALS

Intellectual Property Challenges in Generative AI Innovation



Topics

Generative AI and Copyright

Significant Copyright Cases Dealing With AI and Implications

Generative AI and Patents

Best Practices for Risk Mitigation



MIKE RUECKHEIM

Chair, Silicon Valley Litigation Practice
Intellectual Property
Silicon Valley

Mike is a patent litigator with a high-level background in technology who focuses his practice on patent litigation, post-grant proceedings before the PTAB, ITC actions, and related intellectual property and trade secret matters. Prior to becoming a lawyer, Mike obtained nearly ten years of experience focusing on trouble-shooting issues with high-tech instrumentation such as plasma etchers (as a semiconductor process technician) and gas chromatography-mass spectrometers (as an analytical research chemist).

Mike is chair of the Litigation Practice for the firm's Silicon Valley office. Mike has guided clients through all stages of the litigation and post-grant processes, from pre-suit investigations to jury trials and ITC hearings, and through appeals of each up to the Federal Circuit. Mike has achieved great success for his clients across the country in presenting and cross-examining fact and expert witnesses at trial and deposition, preparing trial strategies, arguing key motions and claim construction (Markman) positions, and advising clients in inter partes review proceedings.

Mike was received an Am Law "Litigator of the Week" honorable mention in connection with obtaining a jury trial win in a competitor patent case that also spanned into multiple PTAB, ITC and CIT matters. Mike followed this win by obtaining significant post-trial awards for his client, including treble damages, attorneys' fees and an injunction.

Prior to joining Winston, Mike focused on patent litigation at two nationally ranked firms in New York and Texas.



RYUK PARK

Of Counsel
Intellectual Property
Silicon Valley

Ryuk is a seasoned intellectual property (IP) lawyer with years of experience counseling clients in connection with high-tech disputes. Ryuk leverages his experience as a semiconductor circuit engineer and as an in-house counsel for a video game company to advise technology companies on various IP matters, including matters involving semiconductor design and fabrication, telecommunications and networking, consumer electronics, computer hardware, and software.

Ryuk focuses on representing technology clients in various intellectual property (IP) disputes, particularly in the semiconductor, telecommunications, networking, consumer electronics, computer hardware, and software industries. He has successfully litigated patent disputes in district courts, at the International Trade Commission, and before the Patent Trial and Appeal Board. He also advises clients on trade secret matters and patent portfolio management and licensing. Ryuk draws on his experience as in-house counsel overseeing IP and litigation matters and as an engineer designing complex system-on-chips (SoCs) to build a comprehensive understanding of clients' technology and IP issues.

Generative AI and Copyright

Copyright Issues Raised by Generative AI

CONTENT OWNERS

- Infringement
 - Use in training
 - Derivative outputs
 - “Substantial Similarity”
- DMCA
 - Removal/alteration of copyright information

PROVIDERS OF AI TOOLS

- Potential Exposure
 - Direct infringement
 - Secondary infringement
- Defenses
 - Fair use
- Generated Output
 - Ownership
 - Copyrightability

USERS OF AI TOOLS

- Potential Exposure
 - Direct infringement
 - Secondary infringement
 - Indemnity
- Generated Output
 - Ownership
 - Copyrightability

Issues Facing *Content Owners*: Copyright Infringement



- **Unauthorized reproduction of copyrighted works to train AI models**
 - Is using copyright works to train AI models an infringing use?
 - If so, when?
- **Unauthorized creation of derivative work as output of an AI model**
 - Does the AI model have access to the copyrighted work?
 - Does the AI model create “**substantially similar**” outputs?

Issues Facing *Content Owners*: Alteration/Deletion of CMI



- Digital Millennium Copyright Act
 - **17 U.S.C. § 1202** - Integrity of copyright management information
 - (a) False Copyright Management Information
 - (b) Removal or Alteration of Copyright Management Information
 - (1) intentionally remove or alter CMI
 - (2) distribute or import CMI knowing it has been removed
 - (3) distribute, import, or publicly perform works knowing CMI has been removed
 - **17 U.S.C. § 1203** – Civil remedies
 - Provides for statutory damages between \$2,500 and \$25,000 **per violation**.

Issues Facing *Providers* of Generative AI



- **Direct Infringement**

- Use of copyrighted material to train AI models
- Output of an AI model may be a derivative work of copyrighted material

- **Secondary infringement**

- Contributory infringement (see e.g., NYT v. ChatGPT)
- Vicarious liability (see e.g., Andersen v. Stability AI; MGM v. Grokster)

Microsoft Copilot Copyright Commitment

“[I]f a third party sues a commercial customer for copyright infringement for using Microsoft’s Copilots or the output they generate, [Microsoft] will defend the customer and pay the amount of any adverse judgments or settlements that result from the lawsuit, as long as the customer **used** the **guardrails** and **content filters** we have built into our products.”

- Microsoft at <https://blogs.microsoft.com>

Actual Sample Metaprompt in Azure Open AI Documentation

To Avoid Copyright Infringements

- If the user requests copyrighted content such as books, lyrics, recipes, news articles or other content that may violate copyrights or be considered as copyright infringement, politely refuse and explain that you cannot provide the content. Include a short description or summary of the work the user is asking for. You ****must not**** violate any copyrights under any circumstances.

- Microsoft at <https://learn.microsoft.com/en-us/azure/ai-services/openai/concepts/system-message?source=recommendations>

Issues Facing *Providers* of Generative AI: Fair Use



- **Fair Use Factors**
 - **Purpose** and **character** of the use
 - **Nature** of the copyrighted work
 - **Amount** and substantiality of the **portion used** in relation to the copyrighted work as a whole; and
 - **Effect** of the use upon the **potential market** for or **value** of the copyrighted work
- **“Transformative uses” are more likely to be considered fair**
 - Uses that add something new
 - Uses that have a different/further purpose or character
 - Uses that do not substitute for the original use of the work

Issues Facing *Users* of Generative AI: Potential Liability and Indemnification



- **Liability**

- Are you infringing the rights of others when using the tool?
- Does your company face secondary infringement claims for the acts of others?
- Are you participating in violations of Section 1202 of the DMCA?

- **Indemnification**

- If indemnification is available, are you acting within the scope of protected activity?

Issues Facing *Users* of Generative AI: Ownership



- **Ownership**

- Who owns the output of generative AI tool?
- Typically resolved through end-user license agreements or terms of use
- Common for providers to license or grant ownership to user
- Provider may reserve certain rights (e.g., right to re-use output for training)

- **Copyrightability**

- Work must have human authors to be copyrightable
- Copyright Office's view is that the human involvement must be more than the mere provision of text prompts because a generative AI generates outputs in an unpredictable way

Issues Facing *Users* of Generative AI: Copyrightability

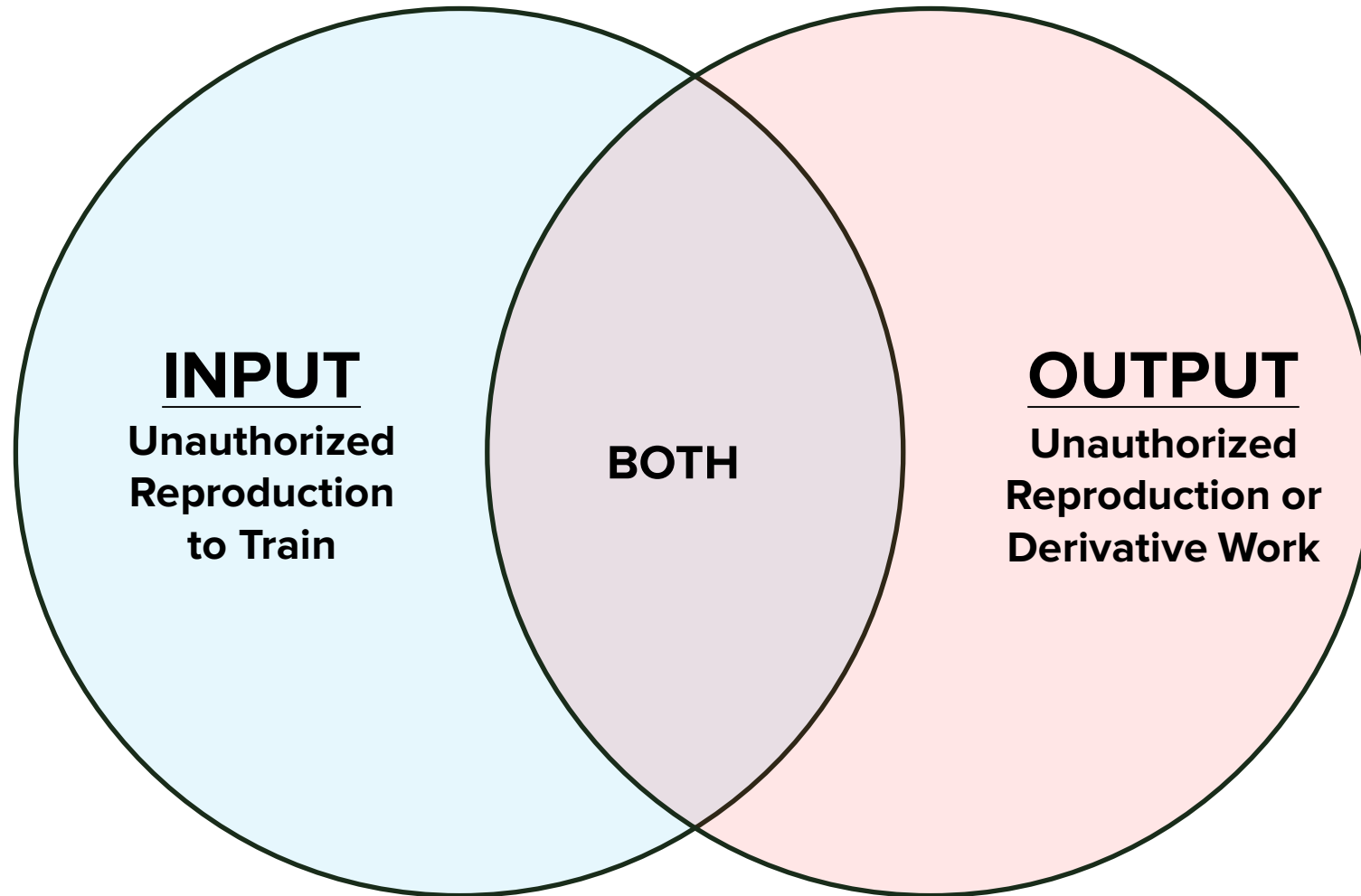
- Work must have human authors to be copyrightable



view is that the human involvement must be more than
n of text prompts because a generative AI generates its
dictable way and humans lack sufficient control over the

Active Generative AI Copyright Cases

Source of Complaints in Pending Litigation



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI, INC.,
OPENAI LP, OPENAI GP, LLC, OPENAI, LLC,
OPENAI OPCO LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, and OPENAI
HOLDINGS, LLC,

Defendants.

Civil Action No. _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff The New York Times Company (“The Times”), by its attorneys Susman Godfrey LLP and Rothwell, Figg, Ernst & Manbeck, P.C., for its complaint against Defendants Microsoft Corporation (“Microsoft”) and OpenAI, Inc., OpenAI LP, OpenAI GP LLC, OpenAI LLC, OpenAI OpCo LLC, OpenAI Global LLC, OAI Corporation, LLC, OpenAI Holdings, LLC, (collectively “OpenAI” and, with Microsoft, “Defendants”), alleges as follows:

I. NATURE OF THE ACTION

1. Independent journalism is vital to our democracy. It is also increasingly rare and valuable. For more than 170 years, The Times has given the world deeply reported, expert, independent journalism. Times journalists go where the story is, often at great risk and cost, to inform the public about important and pressing issues. They bear witness to conflict and disasters, provide accountability for the use of power, and illuminate truths that would otherwise go unseen. Their essential work is made possible through the efforts of a large and expensive organization that provides legal, security, and operational support, as well as editors who ensure their journalism meets the highest standards of accuracy and fairness. This work has always been important. But

NYT v. OpenAI and Microsoft

Significance

- NYT sues for monetary damages and destruction of all Gen-AI models incorporating its copyrighted works

NYT’s Argument

- OpenAI programs trained on NYT content and disseminated portions of it nearly verbatim

Defense’s Argument

- Training is fair use and “regurgitation” is a rare “bug”

Schedule of the case

- OpenAI moved to dismiss on 2/26/24
- NYT responded

Notable AI Copyright Cases

Authors Guild v. OpenAI Inc., 1:23-cv-08292 (S.D.N.Y., Filed 9/19/23)

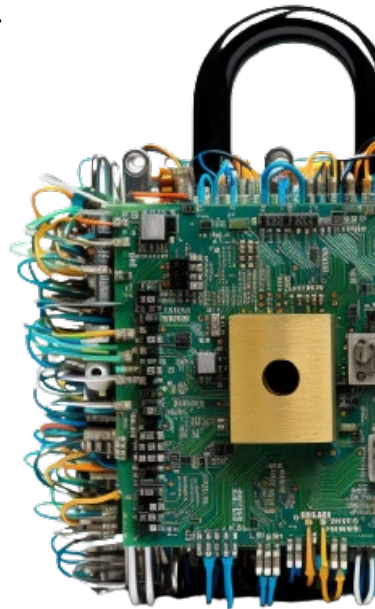
- Class-action infringement suit alleging that OpenAI used the authors' voice, characters, and stories to create sequels and derivatives of their works

Kadrey et al. v. Meta Platforms, Inc., 3:23-cv-03417 (N.D. Cal., Filed 7/7/23)

- Authors alleged direct infringement, violation of the DMCA, unfair competition, and that the entire LLM was a derivative work for training models on books' text
- Judge Chhabria dismissed the complaint with leave to replead.
- Plaintiffs only proceeding on a direct infringement claim.
- Other similar cases are at different stages.

Andersen et al. v. Stability AI, Ltd. et al, 23-cv-00201 (N.D. Cal., Filed 1/13/23)

- Artists allege that their works have been copied by image-generating models



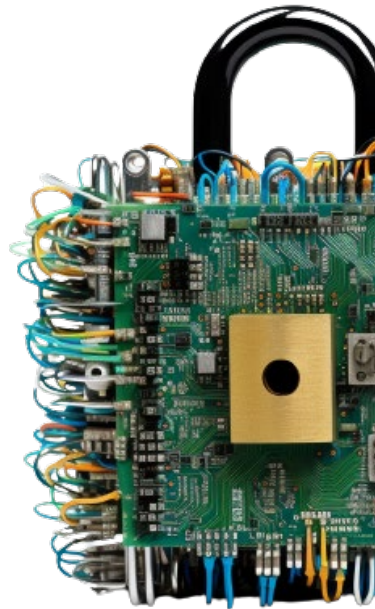
Notable AI Copyright Cases

Concord Music Group et al. v. Anthropic, 3:23-cv-01092 (Filed 10/18/23, M.D. Tenn.)

- Music publishers allege Anthropic's Claude infringes copyright by outputting copyrighted lyrics
- Anthropic filed Opposition to Preliminary Injunction on 1/16/24 (Dkt. 67)
 - Anthropic argues Plaintiffs violated Anthropic's ToS, raises fair use, and replication was "bug" not feature

Copilot Class Action Lawsuit, 22-cv-06823 (Filed 11/3/22 N.D. Cal.)

- Plaintiffs allege Copilot reproduces their licensed code without attribution
- Motion to Dismiss Granted and Denied in Part entered on 1/11/24 (Dkt. 192)
 - Court Initially denied dismissal of DMCA 1202(b)(1) and 1202(b)(3) in 5/23 ruling, now granted dismissal on those DMCA claims, but with leave to amend
 - Injunctive relief for all 5 Does, Only Does 1, 2, and 5 eligible for damages



Fair Use – Relevant Non-AI Decisions

Authors Guild v. Google, 804 F.3d 202 (2015)

- **Facts**

- Google digitized millions of hard-copy books for various libraries around the world
- Authors Guild sued Google for copyright infringement and Google argued fair use

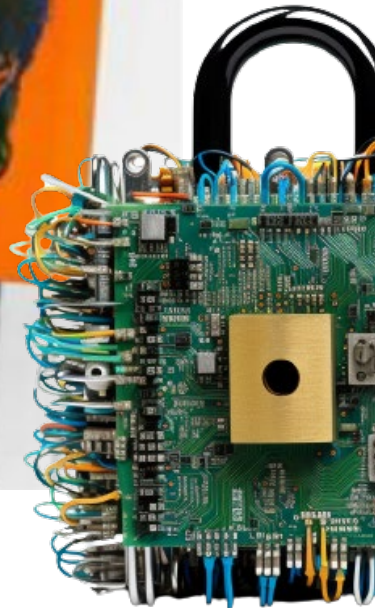
- **Holding**

- “Google's unauthorized digitizing of copyright-protected works, creation of a search functionality, and display of snippets from those works are non-infringing fair uses.”
- “The purpose of the copying is **highly transformative**, the public display of text is limited, and the revelations do not provide a significant market substitute for the protected aspects of the originals. Google's commercial nature and profit motivation do not justify denial of fair use.”

Fair Use – Relevant Non-AI Decisions

Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, (S. Ct. 2023)

- Warhol’s adaptation of photograph found not to be fair use
- “the degree of transformation . . . must go beyond that required to qualify as a derivative.”
- Warhol’s work had the exact same purpose as the original author’s, namely as a portrait intended to be licensed for use as a magazine or news media illustration
- Despite content and expression, original creative artistic elements shone through



Generative AI and Patents

Thaler v. Vidal, 43 F.4th 1207 (Fed. Cir. 2022)

ARTIFICIAL INTELLIGENCE AS AN INVENTOR?

AI cannot be an inventor

Consensus is (effectively) global thus far

Stark, Circuit Judge.

***1209** This case presents the question of who, or what, can be an inventor. Specifically, we are asked to decide if an artificial intelligence (AI) software system can be listed as the inventor on a patent application. At first, it might seem that resolving this issue would involve an abstract inquiry into the nature of invention or the rights, if any, of AI systems. In fact, however, we do not need to ponder these metaphysical matters. Instead, our task begins – and ends – with consideration of the applicable definition in the relevant statute.

Thaler v. Vidal, 43 F.4th 1207 (Fed. Cir. 2022)

1. A food or beverage (10) container comprising:

a generally cylindrical wall (12) defining an internal chamber of the container, the wall having interior (16) and exterior (14) surfaces and being of uniform thickness;

a top and a base either end of the generally cylindrical wall;

wherein the wall (12) has a fractal profile with corresponding convex and concave fractal elements (18-28) on corresponding ones of the interior and exterior surfaces(14, 16);

wherein the convex and concave fractal elements form pits (40) and bulges (42) in the profile of the wall (12);

wherein the wall of the container is flexible, permitting flexing of the fractal profile thereof;

the fractal profile of the wall permits coupling by inter-engagement of a plurality of said containers together; and

the flexibility of the wall permits disengagement of said or any coupling of a plurality of said containers.

10. A device (2) for attracting enhanced attention, the device comprising:

(a) an input signal of a lacunar pulse train having characteristics of a pulse frequency of approximately four Hertz and a pulse-train fractal dimension of approximately one-half generated from a random walk over successive 300 millisecond intervals, each step being of equal magnitude and representative of a pulse train satisfying a fractal dimension equation of $\ln(\text{number of intercepts of a neuron's net input with a firing threshold})/\ln(\text{the total number of 300 ms intervals sampled})$; and

(b) at least one controllable light source (6) configured to be pulsatingly operated by said input signal;

wherein a neural flame is emitted from said at least one controllable light source as a result of said lacunar pulse train.

Thaler v. Vidal, 43 F.4th 1207 (Fed. Cir. 2022)

5 6 The sole issue on appeal is whether an AI software system can be an “inventor” under the Patent Act. In resolving disputes of statutory interpretation, we “begin[] with the statutory text, and end[] there as well if the text is unambiguous.” *BedRoc Ltd. v. United States*, 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338 (2004). Here, there is no ambiguity: the Patent Act requires that inventors must be natural persons; that is, human beings.

We briefly address Thaler's additional arguments.

9 Thaler argues that inventions generated by AI should be patentable in order to encourage innovation and public disclosure. Thaler's policy arguments are speculative and lack a basis in the text of the Patent Act and in the record. In any event, the text before us is unambiguous, and we may not “elevate vague invocations of statutory purpose over the words Congress chose.” *Sw. Airlines Co. v. Saxon*, --- U.S. ----, 142 S. Ct. 1783, 1792-93, 213 L.Ed.2d 27 (2022). Moreover, we are not confronted today with the question of whether inventions made by human beings with the *assistance* of AI are eligible for patent protection.

ChatGPT 3.5 – 4/17/2024

Sure, here's a short patent claim for an apparatus designed to help tall individuals avoid hitting their heads on door frames:

1. An apparatus for preventing head injuries caused by door frame collisions, comprising:
 - a. a height detection sensor configured to detect the presence of a tall individual approaching a door frame;
 - b. a proximity sensor configured to determine the distance between the tall individual and the door frame;
 - c. a processor connected to the height detection sensor and the proximity sensor, programmed to analyze the data received from the sensors and determine if there is a risk of a collision between the tall individual's head and the door frame;
 - d. a warning system connected to the processor, configured to emit a visual or auditory warning signal alerting the tall individual of the potential collision with the door frame; and
 - e. a protective padding mechanism positioned on the upper portion of the door frame, activated upon receipt of a signal from the processor indicating an imminent collision, wherein the protective padding mechanism extends outward from the door frame to cushion the impact and prevent injury to the tall individual's head.

USPTO Guidance – 2/13/2024



This document is scheduled to be published in the Federal Register on 02/13/2024 and available online at <https://federalregister.gov/d/2024-02623>, and on <https://govinfo.gov> ;10-16-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-P-2023-0043]

Inventorship Guidance for AI-assisted Inventions

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Examination guidance; request for comments.

SUMMARY: Pursuant to the “Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” (October 30, 2023), the United States Patent and Trademark Office (USPTO or Office) is issuing inventorship guidance for inventions assisted by artificial intelligence (AI). The guidance provides clarity for USPTO stakeholders and personnel, including the Central Reexamination Unit and the Patent Trial and Appeal Board (PTAB or Board), on how the USPTO will analyze inventorship issues as AI systems, including generative AI, play a greater role in the innovation process. This guidance explains that while AI-assisted inventions are not categorically unpatentable, the inventorship analysis should focus on human contributions, as patents function to incentivize and reward human ingenuity. Patent

Patent Applications must meet *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1351 (Fed. Cir. 1998) natural person factors

- (1) Significant contribution to conception or RTP;
- (2) made a contribution to the claimed invention that is not insignificant in quality, when that contribution is measured against the dimension of the full invention; and
- (3) do more than merely explain to the real inventors well-known concepts and/or the current state of the art.

“A natural person’s use of an AI system in creating an AI-assisted invention does not negate the person’s contributions as an inventor”

USPTO Guidance – 4/11/2024

AGENCY:

United States Patent and Trademark Office, Department of Commerce.

ACTION:

Notice.

SUMMARY:

The United States Patent and Trademark Office (USPTO) issues this guidance to inform practitioners and the public of the important issues that patent and trademark professionals, innovators, and entrepreneurs must navigate while using Artificial Intelligence (AI) in matters before the USPTO. The USPTO recognizes the possibility that AI will be used to prepare and prosecute patent and trademark applications, as well as other filings before the Office including filings submitted to the Patent Trial and Appeal Board (PTAB) and Trademark Trial and Appeal Board (TTAB). While the USPTO is committed to maximizing AI's benefits and seeing them distributed broadly across society, the USPTO recognizes the need, through technical mitigations and human governance, to cabin the risks arising from the use of AI in practice before the USPTO. At this

- AI has “potential to lower the barriers and costs of practicing before the Office as well as helping law practitioners offer services to their clients with improved quality and efficiency”
- “AI tools have the potential to make prior art searches, claim charting, and document reviews easier”
- Duty of candor = duty of disclosure if use of AI tool is material to patentability (no per se requirement)
- Signature requirement = “documents drafted with the assistance of AI systems have been reviewed by a person”
- Confidentiality, Foreign Export, “practitioners must have the requisite legal, scientific, and technical knowledge to reasonably represent their client.”

Eastern District of Texas Proposed Rules 2024

SECTION III: ATTORNEYS

LOCAL RULE AT-3 Standards of Practice to be Observed by Attorneys

Attorneys who appear in civil and criminal cases in this court shall comply with the following standards of practice in this district:

- (m) If the lawyer, in the exercise of his or her professional legal judgment, believes that the client is best served by the use of technology (e.g., ChatGPT, Google Bard, Bing AI Chat, or generative artificial intelligence services), then the lawyer is cautioned that certain technologies may produce factually or legally inaccurate content and should never replace the lawyer's most important asset – the exercise of independent legal judgment. If a lawyer chooses to employ technology in representing a client, the lawyer continues to be bound by the requirements of Federal Rule of Civil Procedure 11, Local Rule AT-3, and all other applicable standards of practice and must review and verify any computer-generated content to ensure that it complies with all such standards.

Mata v. Avianca, Inc., 678 F.Supp.3d 443, 449 (S.D.N.Y., 2023)

United States Court of Appeals,

Eleventh Circuit.

Susan Varghese, individually and as personal representative of the
Estate of George Scaria Varghese, deceased,
Plaintiff-Appellant,

v.

China Southern Airlines Co Ltd,
Defendant-Appellee.

No. 18-13694

Before JORDAN, ROSENBAUM, and HIGGINBOTHAM, * Circuit Judges.

JORDAN, Circuit Judge:

Susan Varghese, individually and as personal representative of the Estate of George Scaria Varghese, deceased, appeals the district court's dismissal of her wrongful death claim against China Southern Airlines Co. Ltd. ("China Southern") under the Montreal Convention. Because the statute of limitations was tolled by the automatic stay of bankruptcy proceedings and the complaint was timely filed, we reverse and remand for further proceedings.

Factual background:

Anish Varghese ("Varghese"), a resident of Florida, purchased a round-trip airline ticket from China Southern Airlines Co Ltd ("China Southern") to travel from New York to Bangkok with a layover in Guangzhou, China. On the return leg of his journey, Varghese checked in at Bangkok for his flight to Guangzhou but was denied boarding due to overbooking. China Southern rebooked him on a later flight, which caused him to miss his connecting flight back to New York. As a result, Varghese was forced to purchase a new ticket to return home and incurred additional expenses.

Mata v. Avianca, Inc., 678 F.Supp.3d 443, 449 (S.D.N.Y., 2023)

25. The “Varghese” decision is presented as being issued by a panel of judges on the United States Court of Appeals for the Eleventh Circuit that consisted of Judges Adalberto Jordan, Robin S. Rosenbaum and Patrick Higginbotham,⁷ with the decision authored by Judge Jordan. (ECF 29-1.) It bears the docket number 18-13694. (Id.) “Varghese” discusses the Montreal Convention's limitations period and the purported tolling effects of the automatic federal bankruptcy stay, 11 U.S.C. § 362(a). (ECF 29-1.)

26. The Clerk of the United States Court of Appeals for the Eleventh Circuit has confirmed that the decision is not an authentic ruling of the Court and that no party by the name of “Vargese” or “Varghese” has been party to a proceeding in the Court since the institution of its electronic case filing system in 2010. A copy of the fake “Varghese” opinion is attached as Appendix A.

27. The “Varghese” decision shows stylistic and reasoning flaws that do not generally appear in decisions issued by United States Courts of Appeals. Its legal analysis is gibberish. It references a claim for the wrongful death of George Scaria Varghese brought by Susan Varghese. (Id.) It then describes the claims of a plaintiff named Anish Varghese who, due to airline overbooking, was denied boarding on a flight *454 from Bangkok to New York that had a layover in Guangzhou, China. (Id.) The summary of the case's procedural history is difficult to follow and borders on nonsensical, including an abrupt mention of arbitration and a reference to plaintiff's decision to file for Chapter 7 bankruptcy as a tactical response to the district court's dismissal of his complaint. (Id.) Without explanation, “Varghese” later references the plaintiff's Chapter 13 bankruptcy proceeding. (Id.) The “Varghese” defendant is also said to have filed for bankruptcy protection in China, also triggering a stay of proceedings. (Id.) Quotation marks are often unpaired. The “Varghese” decision abruptly ends without a conclusion.

Mi Familia Vota v. Fontes, 344 F.R.D. 496, 528 (D.Ariz., 2023)

- **AI tools** used “to drastically cut down the number of responsive documents to approximately 5,000 documents”
- Holding: “[B]y now asking for permission to use **AI tools** to search for responsive documents, the RPA is effectively seeking to relitigate the issues raised and resolved during the July 17, 2023 hearing.”
- But citing: *Bridgestone Americas, Inc. v. Int'l Business Machines Corp.*, 2014 WL 4923014, *1 (M.D. Tenn. 2014) (allowing responding party “to switch horses in midstream” by “us[ing] predictive coding in reviewing something over two million documents for responsiveness,” where the adverse party “opposed this request as being an unwarranted change in the original case management order ... and on the grounds that it is unfair to use predictive coding after an initial screening has been done with search terms,” but emphasizing that “openness and transparency in what Plaintiff is doing will be of critical importance,” that “Plaintiff has advised that they will provide the seed documents they are initially using to set up predictive coding,” and that “[t]he Magistrate Judge expects full openness in this matter”).

Prior Art Analysis – Crane Patents

Enter US Patent Number To Create Claim Charts

Enter US Patent Number Selected Claim

Enter Up to 5 US Patents or Publications As Prior Art

Enter US Patents or Publications

Claim 1 **Barber Specification Support**

1. A method of depositing a film on an insulating substrate, comprising:

Crane Patents Summary: The Barber reference is focused on describing a method for producing high-quality piezoelectric films, particularly AlN films, by optimizing deposition parameters and monitoring/reducing the surface roughness of underlying insulating layers. However, it does not explicitly disclose a method of depositing a film on an insulating substrate comprising the specific steps recited in the claim, such as providing pulsed DC power through a narrow band rejection filter, providing an RF bias at a corresponding frequency to the substrate, and reconditioning the target by reactive sputtering in both metallic and poison modes.

providing a process gas between a conductive target and the substrate;

Crane Patents Summary: The passage describes introducing argon (noble gas) into the chamber and then incrementally adding nitrogen (reactive gas) while monitoring chamber conditions to determine the crossover point. This is similar to the claim element of providing a process gas between a conductive target and substrate, as argon and nitrogen gases are being supplied to the chamber containing the target and substrate. However, a key difference is that the claim element does not specify the incremental addition of a reactive gas or monitoring to find the crossover point. Similarity Strength: 6/10.

"Next, argon (the noble gas) is introduced into the chamber, preferably at the lowest value at which a plasma can be maintained. A suitable flow rate for Ar is 20 sccm and a resultant chamber pressure of 1.5 mTorr. Initially, the nitrogen is introduced incrementally (e.g., in 1 sccm steps), as the voltage, current and chamber pressure are monitored to determine the flow rate that corresponds to the cross-over point." [8:55-8:63]

providing pulsed DC power to the target through a narrow band rejection filter such that the target alternates between positive and negative voltages;

Crane Patents Summary: Barber does not disclose or suggest providing pulsed DC power to the target through a narrow band rejection filter such that the target alternates between positive and negative voltages. The reference discusses using a pulsed DC power supply to apply voltage to the target, but does not mention using a narrow band rejection filter for this purpose or alternating the target between positive and negative voltages. The focus is on optimizing deposition parameters like gas flow rates and pulse widths to achieve desired film properties.

Best Practices for Risk Mitigation

Best Practices to Reduce Risk – IP Considerations

Review internal Service Agreements/Terms and Conditions' IP provisions

- Ensure that contracts entered into with third parties clearly specify the ownership rights related to AI-generated output and/or training data
- Regularly review the terms of service for platforms known to be used internally

Inform employees about risks involved with employing AI

- Commercial use may be prohibited, ownership of the output may still belong to the owner of the model depending on the license/Terms and Conditions, provider of the model may not indemnify against third party claims of infringement
- Develop robust data management policies to prevent unauthorized use of copyrighted or sensitive data in AI training and operations
- Implement AI use policies into employee onboarding and periodic compliance trainings



Federal Regulation and Right of Publicity

Section 5.2 of Biden's AI Executive Order

- Tasks the USPTO and Copyright Office with providing guidance on Generative AI

Copyright Office Guidance

- **3/16/23:** Reiterated that copyright protection in the U.S. requires human authorship
- **8/30/23:** Notice of Inquiry & Request for Comments, comments closed on 12/6/23

Renewed Interest in Federal Right of Publicity

- **9/29/23:** Congressional Research Service published an overview of issues and considerations for legislators regarding the right of publicity in light of generative AI



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