The Dangers of Using Artificial Intelligence as an Inventor: Disclosure Issues

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While the dangers of artificial intelligence (AI) are widely discussed in the academic space, inventors hoping to protect their intellectual property face unique challenges. As an inventor brainstorms ideas, develops their potential invention, and even writes parts of their patent application, AI can be a very appealing resource.[1] Additionally, AI tools may attract inventors looking to cut costs, helping them eliminate or reduce the need for retaining a patent attorney to assist them in dealing with the United States Patent and Trademark Office (USPTO).[2]

Despite their allure, AI tools can jeopardize some of the most important parts of the patent process.[3] When applying for a patent, inventors must satisfy the disclosure requirement, which serves to help disseminate knowledge about their invention to the public.[4] This requires that a patent applicant describe their invention clearly and completely so that a person skilled in the art can carry out the invention.[5] According to some legal experts, however, the policing of the disclosure requirement is typically not a priority for the USPTO during patent prosecution.[6] While the USPTO has issued guidance to inventors regarding AI-drafted patent submissions and requiring human review, this will not be enough.[7] Without adequate enforcement of the disclosure requirement, patents lacking sufficient disclosures will continue to issue.[8] This in turn leads to further complications when AI is involved.[9]

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[1] Lisa Larrimore Ouellette, Victoria Fang & Nicholas T. Ouellette, *How Will AI Affect Patent Disclosures?*, 43 NATURE BIOTECHNOLOGY 26, 27 (2025), https://www.nature.com/articles/s41587-024-02515-6.epdf [https://perma.cc/CGU7-T7K6].

[2] *Id.*

[3] Monica Schreiber, *Patent Disclosures in the Age of Artificial Intelligence*, STANFORD LAW SCHOOL, https://law.stanford.edu/press/patent-disclosures-in-the-age-of-artificial-intelligence/ [https://perma.cc/7A2W-XVGF].

[4] Ouellette, Fang & Ouellette, *supra* note 1, at 26.

[5] *Id.*; 35 U.S.C. § 112.

[6] Ouellette, Fang & Ouellette, *supra* note 1, at 26 ("a study of the USPTO's initial responses to patent applications in 2018 reveals that, in most technology classes, about 50-60% had some claims rejected for lack of novelty, and 70-80% had some claims rejected as obvious, whereas only about 5% of applications received any disclosure-related rejection").

[7] *Id.*; UNITED STATES PATENT AND TRADEMARK OFF., GUIDANCE ON USE OF ARTIFICIAL INTELLIGENCE BASED-TOOLS IN PRACTICE BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE (2024), https://www.federalregister.gov/documents/2024/04/11/2024-07629/guidance-on-use-of-artificial-intelligence-based-tools-in-practice-before-the-united-states-patent [https://perma.cc/2FM9-QV5N].

[8] Ouellette, Fang & Ouellette, *supra* note 1, at 27.

[9] *Id.*

In practice, patent-drafting AI tools allow inventors to input a short description of their invention, and then AI will produce a full patent specification, including the required disclosures.[10] While AI tools are able to successfully produce text that accurately describes the invention based on the information provided to it by the inventor, they also tend to include erroneous and misleading information in addition to the accurate information.[11] These errors can be corrected by an inventor being exceptionally thorough in their inputs to the AI tool and editing out any superfluous or erroneous information, but the lack of strict enforcement of the disclosure requirement by the USPTO may not entice inventors to be so thorough.[12] As a result, issued patents that were produced by AI tools will flood the technology space with misinformation thereby impacting future innovation and commercialization.[13] A person skilled in the field may not be able to make or use the invention due to the inclusion of such erroneous information in the patent.[14] Furthermore, AI's disruption of the disclosure requirement will dissuade other inventors from inventing a patent that may be more likely to succeed.[15]

In addition to creating inaccurate disclosures, AI may also lead to inventors unintentionally disclosing their patent and making it invalid.[16] The USPTO has established that a patent cannot be issued if it had been "patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date."[17] Currently, many AI tools are trained on publicly available databases and are not a secure communication tool.[18] AI tools will often train themselves off of a conversation and use that information gathered in a future conversation with a new user.[19] Therefore, when one uses an AI tool to help develop their patent idea, they may be inadvertently disclosing their information to the public which could invalidate their patent later on.[20] Accordingly, inventors must also ensure that the AI tool they are using will not train itself off of the conversation, carefully consider how the tool will source its responses, or completely avoid putting any confidential into the tool.[21]

Despite the problems that AI creates regarding the disclosure requirement, it presents an opportunity for the patent space to improve.[22] The USPTO can implement a heightened standard

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[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] 35 U.S.C. § 102.
[17] *Id.*
[18] Arlen Olsen, *Is Using AI Tools Like ChatGPT a Public Disclosure in Patent Applications?*, SCHMEISER OLSEN, https://schmeiserolsen.com/is-using-ai-tools-like-chatgpt-a-public-disclosure-in-patent-applications/ [https://perma.cc/645G-SAF2].
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Ouellette, Fang & Ouellette, *supra* note 1, at 27.

for the disclosure requirement or instruct examiners to pay closer attention to the disclosures in patents, which will in turn incentivize inventors to either use AI more carefully and thoroughly or to return to traditional methods of patent writing.[23] AI may create complications, but when properly implemented AI has the potential to enhance the effectiveness and efficiency of the patent process for both the inventor and the USPTO.[24]

[23] *Id.*
[24] *Id.*