

CLIENT ALERT

USPTO Introduces AI Strategy to Drive Innovation and Balance IP Protections

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The United States Patent and Trademark Office (“USPTO”) has released a comprehensive AI strategy geared towards addressing the opportunities and challenges posed by artificial intelligence (“AI”). The strategy outlines key initiatives that promote ethical AI adoption while balancing intellectual property (“IP”) rights. As AI continues to reshape product development in different sectors, notably within the software industry, industry leaders must understand how this strategy and future guidelines like it may impact their businesses and what steps need to be taken to align with these current and future developments.

I. The USPTO’s Framework for the Future.

The USPTO’s strategy is built on five key areas¹ that aim to refine existing IP frameworks and promote responsible AI use. These initiatives directly impact industries that either rely on AI in product development or AI as the deliverable itself.

¹ These five key areas include: *Advancing IP Policies*, *Building AI-Driven Operational Capabilities*, *Promoting Ethical and Responsible AI Use*, *Investing in Workplace Expertise*, and *Fostering Global Connection*.

Advancing IP Policies

The USPTO is actively advancing existing IP policies to accommodate AI-driven innovation. With respect to this focus, the guidelines state:

As appropriate, the USPTO will advocate for the development of balanced and sound judicial precedents and legislation that promote both AI innovation and respect for IP rights, while not unnecessarily constraining future AI innovation. For example, the USPTO would advocate for judicial positions, consistent with existing legal precedent, that would encourage innovation with respect to issues including AI-generated prior art and AI-assisted inventions.²

The rise of AI-assisted inventions raises critical questions about inventorship and patent eligibility. AI is redefining the inventive process and for patent holders and applicants, this strategy signals that the USPTO is contemplating a future where both AI and IP rights can coexist.

The USPTO is also exploring potential uses for AI in helping brand owners enforce trademark rights and mitigate counterfeits, and helping businesses safeguard their IP.

Building AI-Driven Operational Capabilities

The USPTO's integration of AI into its own operations highlights the office's commitment to fostering an AI-friendly future. AI-integrations include:

Enhanced Search and Classification Tools. The USPTO highlighted that AI-powered systems now assist patent examiners in identifying relevant prior art with greater precision, thus expediting the patent review process. This has the potential to shorten wait times in the patent examination process. According to the guidelines:

As of June 2024, nearly 80% of USPTO patent examiners had used AI-powered features such as More-Like-This-Document and Similarity Search across over 480,000 cases.³

Features like this help examiners efficiently locate prior art documents and simplify the process overall.

Open Data Initiatives. The USPTO's datasets, which are currently accessible to the public and machine-readable, create opportunities for businesses to leverage this data to train their own AI models, analyze trends, and guide decision-making regarding product development. For instance, training an AI on the trademark ID manual could help brand owners come up with descriptions of goods and services for trademark applications that would be more likely to be accepted by the USPTO.

² United States Patent and Trademark Office. *Artificial Intelligence Strategy*, pgs. 8-9. (January 2025).

³ United States Patent and Trademark Office. *Artificial Intelligence Strategy*, pg. 16 (January 2025).

Promoting Ethical and Responsible AI Use

The USPTO emphasizes that public trust is needed in order to smoothly integrate AI into its operations and advance AI-forward policies. The USPTO will make efforts to align its AI practices with standards that are critical for stakeholder and consumer trust, including:

- Mitigating bias and ensuring privacy in AI applications; and
- Communicating transparently about AI systems' capabilities and limitations.

Investing in Workplace Expertise

The USPTO will provide its personnel with advanced AI training to make sure its examiners are prepared to address AI-related applications. This initiative intends to improve both the quality and speed of the patent and trademark review process.

Fostering Global Connections

The USPTO will also collaborate domestically and internationally to harmonize AI standards and address shared challenges, with the goal of simplifying compliance and creating a more predictable regulatory environment.

II. Why It's Relevant

The USPTO's recent strategy is significant for industries leveraging AI in their product development or as the deliverables themselves.

As the AI landscape is rapidly evolving, our current IP frameworks are being reshaped in real time. These shifts in technology and law require that businesses stay up to date and adapt quickly to ensure that their assets are protected. For example, organizations using AI-generated code in their algorithms, must ensure that their products meet the evolving criteria for patent eligibility.

The open data initiatives spearheaded by the USPTO are a potential game changer for businesses looking to train their models. Having access to one of the world's most expansive datasets gives software developers the opportunity to refine their products and identify market gaps.

Finally, the strategy's emphasis on responsible AI practice aligns with consumer and regulatory demands for transparency. Businesses that make the effort to integrate ethical considerations into their AI development process and ensure that their personnel are properly trained will not only comply with evolving standards, but also maintain the public's trust.

The USPTO's emphasis on global collaboration will likely reduce compliance issues for international companies. Harmonized AI regulations create consistency and allow companies to focus on innovating instead of navigating conflicting laws.

III. What's Next?

To ensure that your business not only aligns with the USPTO's strategy, but also capitalizes on its initiatives, consider the following:

Audit Your IP Portfolio

Conduct a thorough review of your IP portfolio to make sure it aligns with current and future advancements in technology.

Patents. AI technologies, particularly those involved in machine-learning algorithms, are evolving quickly. Work with legal professionals to craft broad claims in the patent application process so that future advancements are likely to be captured. Consider filing continuation applications as soon as your technology evolves.

Trademarks. Review trademark registrations to confirm that, if applicable, AI-generated assets are included in any applications. If using third-party vendors to assist with generating content such as logos, ensure that your company owns the output and deliverables in the respective service agreements, and that the AI used to generate the logo has not been trained in such a way so as to create output and deliverables that are likely to infringe third-party IP rights.

Copyright. Proactively verify ownership of AI-generated works. Similar to trademarks, make sure that your vendor and customer contracts clearly state who owns any AI-related deliverables, inputs, and outputs, and ensure that proper confidentiality and infringement avoidance protections are addressed.

Assess where your company is weak and proactively communicate any concerns to your legal team.

Leverage USPTO Resources

Tools like the USPTO's AI-powered prior art search engine should be used to assess the likelihood of issuance and rejection in the patent application process. Take advantage of the agency's open data initiatives to refine machine learning, identify gaps in the IP market, and create new developments.

Adopt Ethical Practices

Develop an internal framework to mitigate bias and maintain transparency in AI applications. Regularly audit your models to assess bias and ensure that your data complies with IP law and existing contracts, and is sourced ethically. Prioritize training necessary personnel involved in the management, prototyping, and deployment of the AI systems. This includes training non-technical teams such as marketing, management, and legal so that they are aware of AI's capabilities and limitations and any risks relevant to their domain.

IV. Final Thoughts.

The USPTO's strategy is a signal to businesses and industry leaders to engage and lean into AI-related innovation. By understanding the strategy, its implications, and taking proactive steps, companies can be at the forefront of technological advancements. Reach out to Willkie professionals with questions or concerns regarding your company's current and future IP portfolio and contracts. Our team will continue to monitor this strategy and other steps taken by the USPTO to ensure our clients remain up to date.

If you have any questions regarding this client alert, please contact the following attorney or the Willkie attorney with whom you regularly work.

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