AI Policy Update

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February 6, 2020
Patent Public Advisory Committee quarterly meeting
AI policy is a priority across the government

- February 2019 Executive Order directs the federal government to pursue five pillars for advancing artificial intelligence (AI): (1) promote sustained AI R&D investment, (2) unleash federal AI resources, (3) remove barriers to AI innovation, (4) empower the American worker with AI-focused education and training opportunities, and (5) promote an international environment that is supportive of American AI innovation and its responsible use.

- [www.whitehouse.gov/ai/](http://www.whitehouse.gov/ai/)
Regulation of AI

• January 7, 2020 White House OSTP draft memorandum regarding regulatory and non-regulatory oversight of AI developed and deployed outside of the federal government (60-day comment period).

• 10 regulatory principles: promote . . . public trust in AI, public participation, scientific integrity and information quality, risk assessment and management, benefits and costs, flexibility, fairness and non-discrimination, disclosure and transparency, safety and security, interagency coordination.

• Goal: “remove impediments to private-sector AI innovation and growth”

Secretary of Transportation Elaine L. Chao inspecting an automated driving system in Ann Arbor, Michigan.
AI policy is a priority at the USPTO

“One of the agency's top priorities is to ensure that the United States maintains its leadership in innovation, especially in emerging technologies such as AI. To that end, the USPTO has been actively engaging with the innovation community and experts in AI to determine whether further guidance is needed to promote the predictability and reliability of IP rights relating to AI technology and to encourage further innovation in and around this critical area.” – USPTO Director Andrei Iancu

Director Iancu visits exhibits showcasing AI technologies at the “Artificial Intelligence: Intellectual Property Considerations” conference on January 31, 2019 at the USPTO. Shown above: A team from University of California, Berkeley demonstrates their patent visualization system, which enables a user to see and manipulate a three-dimensional landscape of similar patents. (Photo by Jay Premack/USPTO)
Number of AI PGPubs by published year

Data from Mar-2001 through 2018
Number of AI patents by grant year

Data from 1976 through 2018
“Obviously we have dealt with patents in the AI space for a long time. **What is new now is that some AI machines are claiming to be creating innovation on their own, to some extent independent of human interaction.**” –USPTO Director Andrei Iancu at **2020 Consumer Electronics Show**, January 8

#USPTO Director Andrei Iancu joins @CTATech’s Michael Petricone at 2 pm PT/5 pm ET to talk patents and #AI. WATCH LIVE: https://bit.ly/35DxR7l. #CES2020
AI raises important policy questions

• Inventorship
• Authorship
• Ownership
• Incentives
• New forms of IP

Two of the images at issue in “monkey selfie” dispute.
The USPTO is engaging with the public on AI policy

• January 31, 2019 USPTO AI Conference
  – Six panels covering patents, copyrights, trademarks, IP enforcement, international perspectives, and economics
  – Over 200 people attended in person with hundreds online

Request for comments

• August 27, 2019 RFC on AI/patents

Twelve questions touching on topics such as inventorship, eligibility, disclosure, enablement, inventive step, etc.

– Over 90 comments were received from industry, academia, foreign stakeholders, and individuals
1. Inventions that utilize AI, as well as inventions that are developed by AI, have commonly been referred to as “AI inventions.” What are elements of an AI invention? For example: The problem to be addressed (e.g., application of AI); the structure of the database on which the AI will be trained and will act; the training of the algorithm on the data; the algorithm itself; the results of the AI invention through an automated process; the policies/weights to be applied to the data that affects the outcome of the results; and/or other elements.
3. Do current patent laws and regulations regarding inventorship need to be revised to take into account inventions where an entity or entities other than a natural person contributed to the conception of an invention?
10. Are there any new forms of intellectual property protections that are needed for AI inventions, such as data protection?
Request for comments

- October 30, 2019 RFC on AI on other IP issues
  - 13 questions touching on topics related to copyright, trademark, trade secret, and data rights
  - Nearly 100 comments were received from industry, academia, foreign stakeholders, and individuals
Request for comments

1. Should a work produced by an AI algorithm or process, without the involvement of a natural person contributing expression to the resulting work, qualify as a work of authorship protectable under U.S. copyright law? Why or why not?
8. How, if at all, does AI impact trademark law? Is the existing statutory language in the Lanham Act adequate to address the use of AI in the marketplace?
10. How, if at all, does AI impact trade secret law? Is the Defend Trade Secrets Act (DTSA), 18 U.S.C. 1836 et seq., adequate to address the use of AI in the marketplace?
USPTO AI policy update

• Next steps:
  – The USPTO is in the process of reviewing the public comments and will issue a report as early as spring 2020
  – Public comments will be published with the report
Questions and comments

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