DRAFT ISSUE PAPER ON IP POLICY AND ARTIFICIAL INTELLIGENCE.

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ABSTRACT

We have entered an era in which computers are not just electronic machine who do all calculation in a fast run, but now it has become a handy tool which covers multiple scale of expertise, also generating works of a sort that was beyond our expectations such as virtual recognition, facial recognition, robotics, machine learning, deep learning; However the extra influence of these technological aspects of computers and algorithms into the sectors which previously were under full grasp of human kind now emerge as a deep cause of concern and also spotted the attention towards upgrading, the intellectual property rights policy and guidelines.

INTRODUCTION

To get familiar with intellectual property and artificial intelligence it is important for a layman to understand the meaning of above stated terms; Intellectual property basically is a creation of human mind, it reflects the idea that its subject matter is the product of the mind. IP provide exclusive rights to the creator over their creation for limited period of time. Idea is the king but knowing your skill and getting it protected is the best way to get benefited from the invention, only the idea cannot generate technological ecosystem but awareness about rights and duties related to intellectual property technological aspects does.

Lets talk about,'Infinite monkey theorem', proposed by emile borel states that, given enough time, monkey randomly striking keys on a typewriter would reproduce complete work of Shakespeare. This is the reason why the need of the hour is to reevaluate the aspects on intellectual front to understand the need of protection of original idea from machine generated information backed by data.

Intellectual property rights constitute patents, copyright, trademark, geographical indications etc., when raise concern about patents its subject matter, novelty, specification, non-obviousness, and utility are five factors which is important for any claim to get patented.

While drafting a claim various specification are required which can only be possible by human touch, as it require great expertise of laws and rules. Computer generated claims in their current forms may be extraordinarily difficult to locate and, if located, may not be instructive to person skill in art.

The advent of computerized inventing leads to an additional set of questions regarding the patentability of innovations., if an invention described by computer-generated claims is patentable and distinct from original seed claims, then a patent applicant can apply for patent protection on the invention first described by software.62 The concept of computer-generated invention is not novel.

Prior Art

• The computer-generated claims may serve as prior art to help invalidate other patents.

• Companies can use the computer-generated claims to saturate the technical space around their own patents to prevent competitors from obtaining improvement patents in the same area.

• Companies can also saturate the technical space around competitors' patents to prevent the competitors from subsequently patenting improvements on the competitors' own inventions. Patenting

• Inventors may improve, broaden, or diversify claims already drafted by a human, using alternative wording and approaches suggested by the software.

• Patent prosecutors can use computer-generated claims as guides for broadening existing specifications to support broader and more diversified sets of claims.

• Applicants can file new or broadened patent applications based directly on the alternative claims generated by the software, or leverage the computer-generated claims as a source of inspiration for new inventions.20

ISSUE 2:

Should the law exclude from patent eligibility inventions that are autonomously generated by an AI application?

To serve as prior art under 35 U.S.C. Section 102(b), automatically generated claims would, as a threshold matter, need to constitute a "printed publication''. Public accessibility has long been the critical determinant of whether a document qualifies as a "printed publication." Public accessibility requires a showing that the document was "made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence can locate it.

The current state of the art in computerized inventing produces mere claims—no specification or other background information. Such limited disclosure is likely to cut against the utility of the mechanically generated claims as prior art, since these disclosures will often not be enabled. On the other hand, both patent applicants and patentees confronted with an invalidity challenge still do face a presumption that such prior art is enabled, whether that prior art is an issued patent or non-patent literature. Patent applicants and infringement plaintiffs might therefore have difficulty overcoming an on-target claim produced by software, especially if used in combination with a more detailed, operational reference in an obviousness context.

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Should specific provisions be introduced for inventors assisted by AI or should such inventions be treated in the same way as other computer assisted inventions.?

According to me it is not ethical to give the ethical way to give entire credit to single machine of for the product which is the result of human expertise.

The applicant for a patent is required by law to identify and provide a declaration from the inventor or inventors of the advances for which a patent is sought.

The patent statutes on their face do not allow for a computer to be listed as an inventor.

The patent statutes define "inventor" to mean "the individual'' who invented or discovered the subject matter of the invention.

The statutes also describe joint inventors as the "two or more persons" who conceived of the invention.

In accord with these statutes, the courts have long cited to Congressional intent when describing patentable subject matter as conceivably extending to "anything under the sun that is made by man.''

An inventor is one who "conceives" of an invention, and conception requires a "definite and permanent idea of the complete and operative invention." In the case of multiple entities working together to collectively conceive a single invention, each entity is considered a co-inventor even if he or she "did not make the same type or amount of contribution" to the ultimate invention.

All that is required to be a joint inventor is that the person contributed to the conception of an important or necessary component of the claimed invention in a manner that required more than just the exercise of ordinary skill.

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<u>Do amendments need to be introduced in patent examination guidelines for AI assited inventions?</u>

Yes it is important to because, with respect to patenting computer-generated inventions, according some protections would be consistent with the Constitutional objective of advancing the progress of the useful arts; however, it would be helpful to have clearer standards delineating when such protections are and are not available (and, when available, who the beneficiaries of such protections would be). The good news is that our present system remains reasonably well-suited to adjudicating the patentability questions of our time. Despite the unprecedented pace of recent technological progress, the majority of newly arising issues can still be resolved under longstanding principles of law.