

AI2IP Dr. Serge Rebouillat. Copyrighted comments 2019.

Identification should include.

- Author and related information: Serge REBOUILLAT, associated alias extension STEPI'nd ("SCIENCE TECHNOLOGY ETHIC INTELLECTUAL PROPERTY & related"); IP & Innovation Strategist, ex-DuPONT.

Comments:

- I have noticed that no mention of the words « moral rights » and « emotional intelligence » is made in the draft for feedback. Should there be AI relationships to these words be mentioned for the sake of completeness? Should there be sui generis aspects associated with these?

End of comments AI2IP SR I 120

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Comments:

- II Epo has recently opposed applications since the inventor was a machine, namely:

<https://www.epo.org/news-issues/news/2020/20200128.html>

28 January 2020,

“The EPO has published its decision setting out the reasons for its recent refusal of two European patent applications in which an AI system was designated as the inventor. Filed by an individual in autumn 2018, the applications EP 18 275 163 and EP 18 275 174 were refused by the EPO following oral proceedings with the applicant in November 2019, on the grounds that they do not meet the legal requirement of the European Patent Convention (EPC) that an inventor designated in the application has to be a human being, and not a machine.”

We recommend to site this case and offer the opportunity to discuss pros and cons ?

End of comments AI2IP SR II 220

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Comments:

inventorship issue : If a machine is to be nominated as inventor, should at least one human co-inventor (collaborative inventor and/or contributing inventor) be compulsorily nominated as per recordable and traceable adapted criteria similar to the ones traditionally and currently applicable ?

Inventors are essential in court related actions. Judges may appreciate to address to a human rather than to a machine. The idea of co-inventor may entail his ability and duty to decipher the machine interpretation of the human contribution, role and responsibility

End of comments AI2IP SR III 220

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Comments:

Indeed, in the context of AI, information sharing shall be a prime main focus enabling individuals, SMEs and smaller organizations reduce the gap engendered by AI players with gigantic means to access data.

Should a measurable progress be achieved in that domain while reflecting on AI to IP dimensions? Which metrics should be in place? Should the unfair competition approach be revised, specifically?

Furthermore, should defacto any AI automated IP's owner be penalized if a voluntary hindrance to information access, relevant to said IP, is observable.

The machine can also be « algorithmized » to « fake » the real information being useful to the invention identification and recognition process? Shall the invention be nullified in such case?

Should reverse engineering, assisted by machine's IP producer, be integrated in order to improve prior art detection.

Should sui generis data authenticity be integrated to current protection?

End of comments AI2IP SR IV 220

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Comments:

Prior to considering inventorship and ownership attribution, one may relate to the citation, by Turing, 1912-1954, an influential visionary AI pioneer, recently paraphrased by McEvan regarding his new novel, « Machines Like Me » :

‘Alan Turing himself had said and written in his youth that the moment we couldn't tell the difference in behaviour between machine and person was when we must confer humanity on the machine.’

<https://www.dailymail.co.uk/home/event/article-6933049/In-Ian-McEwans-new-novel-1982-definitely-DONT-remember-it.html>

One may wonder whether extended deepfake current trend may not be the barrier to the determination of who can be identified as the inventor ?

We would then recommend to formulate this aspect in the AI2IP WIPO draft.

Shall the human inventor formally further testify to consolidate their nomination and contribution?

Shall the owner formally further testify, e.g. the relative proportion of machine to human contributions?

Testimonies shall entail ,patent revocability?

End of comments AI2IP SR V 220

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Comments:

Adding to the handicap to discern AI contributions vs. human contributions, given the close to unlimited data, information, cross referencing and new matter creation that AI will ultimately encompass, wouldn't it be more preventive to accept the AI autonomous invention to be hybrid by its nature and recognize it as such with legal and moral right's environment to be progressively defined and ever-greenly adapted. Human responsibility for the latter rights being the ultimate enforceable one.

Wouldn't the formal recognition of a combined, and/or distinguishable contribution of human vs AI, be a better accompaniment to the necessity to not only encourage human creative dignity and the betterment of life in general, but to also adopt ways to recognize the economic and the ecological merits of the endeavor associated with such creativeness while keeping an eye on the societal and legal ever changing counter-effects?

What are the practical implications of the above?

Here is a list of questions that may improve the current AI2IP WIPO draft.

- should cited references be more elaborate than traditional invention ones towards recognizing the machine contributions and the human contributions? In a way that the preferred mode of the invention be easier to reproduce. In a way that specific prior art is attributable to each claim. In a way that AI autonomous invention be globally easier to reproduce. In a way that infringement can't be biased. In a way that copyright can be easily identified and revendicated. In a way that the cited references be readily opposed to the inventor/owner in the course of any litigation. Referencing unsufficiency shall be a key factor in the granting likelihood.
- bias are unavoidable and intrinsic to AI approach. Shall a post- granting invention bias corrections, for a significant period of time, be legally defined and framed?
- shall examiners have a total freedom of access and « probation » of the AI engine within the invention frame.
- shall the responsibility to maintain the original AI approach lie with the owner who shall take any reasonable action therewith.
- above referencing shall take care of the identification of input data used to initially calibrate/ engineer the AI machine and to identify copyright, moral rights...? Within reasonable precision and retrieval efficiency ?

Emotional intelligence, either the process to manage emotions or the agility and inspiration/ creativity deriving from significant emotional events, is being used in AI autonomous inventions.

In terms of AI autonomous hybrid invention referencing, as described above, should one reinforce the private data protection, moral rights and the authorizations therewith.

End of comments AI2IP SR VI 220

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Comments:

A large part of the AI2IP WIPO draft refers to invention, creative works and designs in the rather new context of autonomous AI.

Numerical modelling was instrumental to AI, with a key difference in the end result validation; i.e. boundary conditions are used to test and surround the numerical modelling approach. The lack of convergence with the anticipated reality under given boundary conditions is a key rejection factor of the approach.

The AI autonomous creations, being any of the three previously mentioned, lack natural human efficient supervision once the liminary algorithm is established, generally by a natural human.

However machine learning process and/or learning machine process are subject to biais induced by those processes inherency and genesis.

Typically, a biased algorithm will preferably be abandoned than be corrected given the complex intrinsic and explicit intrication of biases. Furthermore, what about the safe disposal and potential catastrophic digital failure?

This raises one of the most fundamental ethical issues of autonomous AI, in particular with regard to IP rights at large.

This aspect is here treated as a quintapolar simplifying proposal towards improving the AI2IP WIPO draft.

Acronymised as @LEAST, it covers the following specificities :

- Legal
- Ethical
- Advanced & Accountable
- Safe
- Tolerable

Should a legal person be associated « responsibly » to the inventors' tandem such as AI and at least one natural human coinventor or collaborative inventor as proposed earlier in my comment series?

Should AI-IP watchers be instituted as a group of AI-IP experts available at for example a WIPO level to assist applicants and examiners in the bias avoidance improvement? This preserves AI-IP ethic in general, creators moral rights recognition, patent incentivizing innovation, its validity, enforceability and infringement lowest rate...

Should a WIPO driven AI ethic charter be in place ? One can usefully refer to the Canadian December 2018 initiative ; easily « googled » under « The Montreal Declaration for the Responsible Development of Artificial Intelligence Launched. »

Should one expect an advanced and accountable posture of IP institutions ? Is keeping on top of the AI-IP aspects not a prime expectation of societies in general?

Should the cutting edge of AI-IP be led by IP leading institutions and supported by additional proportioned funds.

IP rights in general have largely contributed to the global and ethical safety. The fact that an invention must be reproducible under its preferred mode at least, at the risk of not being granted or later invalidity, is a tremendous safety factor.

As covered in one of my previous comments should the examiner or ad hoc person interactive access to the AI machine and testing therewith be implemented with proper means?

Should the owner of the AI autonomous invention be accountable for keeping track of the AI invention generator during the patent validity? Which would strengthen enforceability, moral rights, infringement dissuasion and possibly limit the giant data accounting for the invention essential prior art...

Should a tolerable consensus be monitored and maintained?

Should WIPO mission or equivalent, on IP rights and access gap tolerability related factors , be asked for a follow up test of the AI IP technology access gap reduction?

Should a Consensus Interest Test be established? This would promote or demote eventual AI pressure and may favor research of consensus and innovation.

End of comments AI2IP SR VII 220