

Should an invention created by machine learning be patentable?

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In order to be patentable, an invention not only requires novelty, inventiveness and utility but also must not fall into the category of unpatentable subject matter and needs provide sufficient disclosure.

Rule-based expert systems and fuzzy logic aside, contemporary AI systems are primarily neural network or machine learning systems.

Machine learning systems essentially analyze vast amounts of data and extract patterns from the data. This has three important implications for patentability.

First, the entire process is not unlike that of making a discovery.

Second, the patterns themselves are expressed as mathematical instructions for a computer – i.e. algorithms.

Third, the way the algorithms work may not be fully understood by the humans running the AI.

The last point may or may not result in a disclosure problem but given that such systems ‘create’ or ‘invent’ what are essentially algorithms using a process not unlike that of discovery throws into question the inherent patentability of inventions produced by machine learning.

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