

Patent Your AI, Don't AI Your Patents

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The release of ChatGPT in late 2022 created a tsunami of interest. That tsunami has spawned countless articles about the impending doom of knowledge-based professions extending from teachers to lawyers and doctors to accountants. It is undoubtedly true that ChatGPT, and its sibling generative AI offerings, provide pathways for significant change within many fields, including the legal field. However, it is still far too early to view generative AI as the plug-and-play replacement for your legal staff and outside counsel.

In patent drafting, if you provide ChatGPT with an invention prompt, it is capable of drafting something that looks like a claim set and then using that claim set to draft something that looks very much like an application. Nevertheless, a cursory review of ChatGPT work product immediately reveals several problems. First, ChatGPT is wrong – often. As an example, some unfortunate attorneys have recently learned that ChatGPT is capable of making up entire cases and citations that it claims support a particular legal outcome. This propensity to hallucinate makes using ChatGPT within the legal field a very high-risk venture. Every fact asserted by ChatGPT in a patent application would need to be carefully verified to ensure that it is correct. Failure to do so could place any resulting patent at risk for invalidation.

While future versions of ChatGPT may overcome, or at least minimize, its challenges with the truth, incorrect output is not ChatGPT's most significant shortcoming. ChatGPT's biggest shortcoming is its inability to know what is important. ChatGPT can only predict the most likely next word or words in a phrase that it is generating. It is not able to creatively identify a patent drafting strategy to protect a client's valuable intellectual property – especially in fields with crowded prior art.

As a test, ask ChatGPT to draft a poem about your college or your hometown. Barring a runaway hallucination, it is likely that ChatGPT can generate an acceptable rhyme that describes the topic of your choice. Now ask yourself, does the resulting poem describe what YOU think is important about your college or hometown? If you were to draft the poem or hire a professional poet to write a poem about your college or hometown, would it have focused on other things that are more important to the alumni of the college or the locals of your hometown?

It is this inability of ChatGPT to be creative and think strategically that will prevent the much-discussed doom of knowledge-based professionals. Few knowledge-based professionals are utilized solely as repositories of fact. Instead, knowledge-based professionals provide value in their ability to creatively apply knowledge to a particular need. This is all not to say that ChatGPT will not impact these knowledge-based fields. For example, ChatGPT will undoubtedly become a valuable tool in a patent attorney's legal tool chest. ChatGPT is well suited to speed up portions of patent drafting and to intelligently proofread patents. However, just as ChatGPT generally fails to write poetry that genuinely reflects the meaningful aspects of the subject matter, ChatGPT is not suitable for drafting patent claims and developing patent drafting strategies that protect the important aspects of an invention. While ChatGPT will likely become integral into the future drafting of patent applications, patent attorneys will continue to be the primary source of strategy and creativity driving the patent process.

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