Generative AI: How Is It Changing the Role of the Patent Attorney?

Institut de Formació Contínua
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About Two IP

Who we are

Two IP was formed by a group of hugely experienced UK and European patent and trade mark attorneys who have earned excellent reputations not only as attorneys but as entrepreneurs who have built or run a series of successful IP firms.

Our founding team and our consultants all have the experience we need but we are all also committed to forming long-term mutually beneficial partnerships with our own select group of clients.

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Presentation Overview

- Key features of AI tools available for patent attorneys
- Impact on client confidentiality and invention novelty
- From originator to checker? The new roles in patent, response and opposition drafting
  - Avoiding the plausibility trap
- We're all fluent in English (or Chinese, or Spanish) now (and we can produce our own drawings)
  - Is that what AI in IP is good at?
- Are our clients now our competitors?
- Firm structures and organisational aspects:
  - How many paralegals do we need?
  - Will we ever hire another trainee?
- How much should we charge for AI-generated work?
- How green is AI?

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Key Features of AI Tools Available for Patent Attorneys

- Generative AI – a step beyond machine learning
    - AI tools create new content based on weighted predictions of likely outputs, in turn based on vectorisation of tokens
    - Outputs can be text, speech, images, code, music, etc.
    - Outputs usually *"most likely"* - not necessarily *"best"*

- Predictions require scraping of Internet information
    - Hence public AI tools inherently lack confidentiality
    - Node weightings can add unseen bias
    - Hallucinations a constant problem
    - Energy consumption very high – see later slide

- AI tools sold on basis of ability to draft claims, prior art descriptions, responses etc
    - Is this its best use?

- Confidentiality a major problem for new inventions
    - Anyway, drafting is the best bit of the job (for me)
    - So perhaps don't use AI for drafting specifications

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Some Things AI Can Do for

Task	Comments	Characteristic
Pre-filing searching/FTO	In use at the EPO; human-centric approach strongly desirable	Generative AI
Drafting claims	Confidentiality risk! How to address?	
Drafting descriptions		
Drafting prior art summaries	Reduced confidentiality risk, but not zero	
Drafting responses, pleadings, etc.		
Completing forms	Is AI needed for this?	Machine learning/automation
Creating formal drawings post-filing	Seems a good use of the technology	Generative AI; checking reference numerals, invention disclosures probably not generative
Capturing meeting content; checking invention disclosures for consistency	Confidentiality risk! Some AI struggles with specialist vocabulary, accents	
Translating documents	Seems a good use	
Seeking patterns in prior art	Useful in oppositions, validity litigation	Machine learning/automation?
Searching records systems, manuals; conflict checking	Helpful for client management, etc.	

Problems: Confidentiality

CONFIDENTIALITY:

- AI drafting tools access the Internet to perform their tasks
    - They release the prompts they are given to the Internet
    - They can regurgitate the prompts in part or in full in response to future enquiries

- Anyhow, releasing an invention to a generative LLM surely is a non-confidential disclosure
    - It is only a matter of time before a court somewhere rules that this is the case

- Counter-argument is that we all use cloud servers, and the use of AI is no different
    - But the cloud space is the subject of a specific contract (which should ensure confidentiality) and the contents are not made available generally

Problems: Obscurity

OBSCURITY

- AI providers are reluctant to reveal how their systems are set up. In particular the node biases often are confidential.
    - Hence you don't know how accurate the output of an LLM is going to be; and the efforts of other users may skew the outputs in an undesirable way

Problems: Confidentiality and Obscurity

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CONFIDENTIALITY: What can we do?

- Insist on rigorous confidentiality terms from AI providers
    - Don't sign up unless this is clearly available
    - Draft new applications without using generative AI

DATA SECURITY

- ISO 27001 more desirable than ever

- AI suppliers should comply too

- EU AI Act will impose strict conditions
    - But may be watered down

Problems: Confidentiality and Obscurity

OBSCURITY: What is **epi** doing?

- Round table of providers

  - They will be put on the spot over confidentiality, hallucinations, accuracy and unfavourable node weightings

  - First meeting imminent (November 2025)

From Originator to Checker?

New Roles in Patent Attorneyship?

- **Drafting**

    - **The whole document should be checked for hallucinations, errors and poor style**
    - **Check for what's missing, as well as what's present**
        - The checking standard should be as rigorous as if one had originated the draft
            - But checking is less interesting (and hence more error-prone?)

    - **This applies to all types of draft.** LLMs will get the structure right as long as it is familiar; but the content usually needs careful scrutiny
        - Opposition statements have less of a predetermined format
            - LLMs a bit less likely to cover everything
            - Checking for missing elements therefore becomes more important

    - Is there a real increase in productivity?

    - Regardless, patent attorney *must* understand something of how the AI tool works

Avoiding the Plausibility Trap

- **LLM texts are often plausible, like the work of a trainee**

    - The checking stage requires **reflection**
        - Hence the checking stage may be time-consuming

    - Hallucinations may be convincing (or may not – travel booking example)

    - **Checking for what's missing** is one way of minimising the risk that plausible but inaccurate work has been created

    - **Referring to the client's instructions also helps** – keep the instruction handy

    - Overall a very significant aspect in my view

        - The mindset is important – don't accept any risk of compromise

We're All Fluent in English/Chinese/Spanish Now

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- **And we can produce our own drawings**

  - Is this the kind of thing that AI in IP is really good at?

    - Example: produce a response in Spanish
    - Use AI to translate to Chinese
    - Send it to the Chinese attorney & tell him/her to file it

  - But the Chinese attorney wants to check the response before filing
    - So no real advantage to using AI? Maybe even some downsides? Or not?

  - A repeating problem: the checking requirement skews inherent cost of AI

  - Will clients eventually ask for non-checked, AI-produced work? What will qualified attorneys say in response? (Professional standards point) Swiss watch argument?

Are Our Clients Now Our Competitors?

- **Can industrial departments escape the orbit of private practice?**

    - They can draft many more applications per year, at less cost

    - They can keep the drafting process entirely in-house

    - It may be hard to convince clients that traditional patent attorneyship remains desirable

        - But they must consider the confidentiality and hallucination risks too

        - Will their checking burden increase as well?

        - What will happen when validity is challenged?

            - Low-cost drafting models of the 1990s a salutary illustration

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Firm Structures and Organisational Aspects

- **Many paralegal & secretarial jobs under threat**

    - Reviewing records systems, completing application forms, searching manuals, conflict checking, document error-checking

        - AI should be good at these tasks

    - AI also (mostly) good at searching/booking flights, hotels, trains

    - Producing meeting minutes (subject to confidentiality)

- But use of AI must be subject to consent of clients – some may not like AI

    - Such consent in my view (& in the Guidelines!) should not be generalised and must be kept up to date e.g. when the relationships OR the AI tools change.

Will We Ever Hire Another Trainee?

- **In my view, the profession must retain the element of skill**

    - Where are our key skills?

        - Drafting (specifications, responses, pleadings); lateral thinking in dispute strategy

    - Trainees should resist using AI for these types of task

        - Otherwise they may not have a job in the future

How Much to Charge for AI-Generated Work?

- **Clients will expect some tasks to become cheaper**

- **And the average value of some aspects will inherently reduce**

  - We would be fools to continue charging at our old rates for such work

    - If a task time estimate reduces from (say) 6 hours to 1, it would be dishonest to continue charging for 6 hours' work

    - But we can charge for checking, even if we did not originate the work product

    - Perhaps checking is harder (more error-prone) than originating a piece of work

      - So maybe checking rates will be healthy

- **Also we should consult with clients on whether there is a net productivity gain from AI**

How Green is AI?

- **Not very!**

- **Massive power consumption of AI data/processing centres**

    - Clients likely to have environmental agendas

        - Maybe these will encourage outsourcing of use of AI

    - Speaking as an optimist, the green credentials of AI may not be a problem for long

        - **We are entering an era of abundant, cheap (or free) renewable electricity**

            - **Spain is a great example of a country seizing the green power opportunity**

                - **A good note on which to end!**

Summary

- AI is here, and we cannot ignore it

- We should however adopt responsible use policies

- Confidentiality a major issue in my view

- The role of the patent attorney is changing from *"originator"* to *"checker"*

    - Our profession should resist the use of AI in the high-skill areas

- Checkers must be alert to the plausibility trap & how AI works

- As professionals we must ask for transparency on the part of providers

- We must be aware of the changing nature of client relationships

- Power shifting to in-house attorneys?

- Private practice firm structures are already changing

    - Patent attorney more of a strategist in future

- Charges must be defensible

- Environmental concerns significant (for now)

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Questions?

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