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A STUDY ADVANCING IP ADMINISTRATION WITH AI TECHNOLOGY: A GLOBAL & INDIAN PERSPECTIVE

~ Prapti Kothari¹

Abstract

Artificial Intelligence (AI) has revolutionized the field of Intellectual Property (IP) administration by automating tasks, improving accuracy, and reducing costs. IP administration involves complex processes like patent searches, trademark searches, and copyright infringement detection. AI-powered tools streamline these processes by integrating machine learning algorithms and other AI technologies. This paper discusses the impact of AI on IP rights, highlighting its advantages in areas like patent search engines, research, and innovation categorization. However, AI also poses a threat to innovation by providing a means to check for existing patents similar to an idea. The increasing display of creativity and knowledge by AI systems raises concerns over IP protection and the need for a re-examination of patent, copyright, and design laws. Liability for AI systems remains a moot point in cases of infringement and damages, and questions arise about how AI-produced creations can be plagiarized or reproduced. To maintain the effectiveness of the intellectual property regime against the backdrop of developing AI technology, policymakers must act decisively. This paper delves deeper into the intersection between AI and IP administration, exploring its advantages, impediments, restrictions, and prospects.

Keywords

AI, IP administration, Machine Learning Algorithms, Infringement, Liability, Policy Making

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INTRODUCTION

IPR protection is now more crucial than ever, due to advances in AI and modern day technology. IPR adaptation has become increasingly important as a result of the late-20th-century technological revolution and the expansion of the internet as a worldwide communication tool. The World Intellectual Property Organisation (WIPO) has passed a number of treaties² in response to the growth of cutting-edge technical advancements and the defending mechanisms of intellectual property rights. Though previously only found in science fiction, AI and machines are now a reality that must be dealt with by humans.

The advent of Artificial Intelligence has brought about a revolution that is poised to transform various industries and have a profound impact on society, economy, and law. AI has changed the way we work, replacing human intelligence with algorithms to process and retrieve data efficiently. It is only a matter of time before AI takes over IP administration to enhance its efficiency. AI operates on algorithms, a set of commands that instruct the machine on how to process data. These algorithms can generate complex calculations and automated reasoning, and even create their own algorithms through continuous research.

The emergence of AI technology is no exception and has the potential to reshape the IP system entirely. This raises fundamental questions about inventorship, authorship, ownership, and infringement. Despite discussions and moderation, there has been no definitive resolution on the subject matter, leaving open the question of whether special status should be granted to work generated by AI. The public has reservations about the use of AI in decision-making, particularly in judicial and administrative settings. There have been concerns raised about wrongful biases, interpretability, and transparency. These issues emphasise the necessity for a mindful approach to the application of AI in decision-making. Even with international agreements and conventions in place, there remains a lack of clarity around the law and its ability to keep pace with rapidly evolving AI technology.

² World Intellectual Property Organization, 'Intellectual Property and Artificial Intelligence: A Survey of the State-of-the-Art' (WIPO Publication No. 489, 2019) https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf [accessed 17 April 2023].

This paper comprehensively examines the intricate interplay between digital technologies and IPR by encapsulating the advantages and disadvantages of AI, its potential applications, and future prospects in the field of IPR. Furthermore, it seeks to provide a forward-looking perspective on the role of AI in IPR and its potential implications for the future.

THE INTERSECTION OF AI IN IP ADMINISTRATION: A GLOBAL AND INDIAN PERSPECTIVE

As AI develops dramatically as a digital frontier, its influence on our laws and practises is becoming increasingly visible. The current IP regime, which only permits humans to be registered as proprietors and/or owners of an IP, is a specific area of concern. According to this, any intellectual property created by an AI cannot be registered. A recent Chinese court ruling,³ however, refuted this notion by ruling that a piece of work produced by AI is in fact protected by Chinese copyright law. As in the *Naruto* case,⁴ the European Patent Office (EPO) has adopted the position that any patent application submitted by an AI technology, such as "DABUS," must be presented by a person.⁵

Courts all around the world have long used the legal doctrine of "sweat of the brow," which acknowledges an inventor's expenditure of time, energy, and hard labour in producing an intellectual property. Applying this theory, however, is challenging when dealing with AI-generated IP. Additionally, as AI may prove to be more effective at creating IP than humans are, the commercialization of AI may weaken IP protections. Since creating a registrable IP will take much less time and effort, it is possible that AI would one day be seen as a "smarter" sort of inventor. As a result, there are likely to be a lot of unresolved problems associated with the

³ World IP Review, 'AI-written articles are copyright protected, rules Chinese court' (2019) <https://www.worldipreview.com/news/ai-written-articles-are-copyright-protected-rules-chinese-court-19102> [accessed 17 April 2023].

⁴ *Naruto v. Slater*, No. 16-15469 (9th Cir. 2018).

⁵ WIPO Magazine (2019) 'IP and Social Media: The Challenge of Regulating User-Generated Content' https://www.wipo.int/wipo_magazine/en/2019/06/article_0002.html [accessed 17 April 2023]

commercialization of AI for IP generation. It is essential to recognise and deal with these at the earliest.

The WIPO is requesting public input on the potential effects of AI on the global IP framework, as they have acknowledged the necessity to address these challenges⁶. Thus, it becomes necessary to examine IP laws holistically in order to understand the investment made in the development of AI and the IP generated by it. In order to ensure that the influence of AI is appropriately taken into account in areas like, commercialization, or the transfer or assignment of IP rights, current laws will need to be completely overhauled as long as AI continues to be a driving force in the digital era.

The rapid global growth of AI has created a critical demand for IP administration in this domain. The regulation of IPR in the context of artificial intelligence is complicated. Concerns about copyright and patent ownership, concerns about infringement, and associated damages include the items listed below.

PATENT

The process of invention has undergone major shifts as a result of the quick development of AI technologies and the rise of their processing capability. These technologies are rapidly being used in a variety of innovation-driven industries as AI becomes more effective at filtering data, identifying trends, and generating predictions. AI technology has advanced to the point that it can now provide results with only a minimal human intervention. If such inventions were created by a human inventor, they would be eligible for patent protection. This poses a vital issue of whether an AI system may be considered the inventor under the current patent law system.

The patent system has its foundation on a "human inventor," including its justification and the guiding principles upon which the patentability standards are founded. As a result, the fundamental foundation for patent law is utilitarian in nature i.e., it is designed to encourage and reward

⁶ WIPO, 'Conversation on Intellectual Property and Artificial Intelligence' https://www.wipo.int/about-ip/en/artificial_intelligence/conversation.html [accessed 17 April 2023].

inventors' creative activity. The patent protection is granted to inventions that are the product of human ingenuity, rather than to mere discoveries or simple workshop variation or obvious modifications to the existing knowledge.⁷

The notion of "invention" refers to the cognitive process that takes place in the inventor's mind and is "an act of intellectual creation original to the inventor".⁸ Additionally, a distinction between what is patentable and what is merely an extension of known information is based on "human capabilities" by contrasting what the hypothetical "person skilled in the art" would have been able to learn without unusual effort and the extra effort made by the inventor.⁹ All of these factors revolve around the inventive and intellectual endeavours of "human inventors," leaving little room for "non-human inventors."

The fact that Section 2(y)¹⁰ does not expressly require that the "true and first inventor" be a human opens the door for the inclusion of works created by AI systems. However, because terms like "person interested" and "patentee" include definitions that specify that it must be a person (a legal entity), it is apparent that the legislature intended for the act's ultimate objective to benefit people and other legal entities. Therefore, it is crucial that these laws be changed to meet the needs of a developing society and scientific disciplines.¹¹

COPYRIGHT

According to a recent report by the European Commission on AI and IP¹², we might be moving towards AI autonomy, at least to the point where human contribution to the creative or inventive

⁷ *PLG Research* [1994] FSR 116, 137.

⁸ Robert L Harmon, *Harmon on Patents. Black-Letter Law and Commentary* (BNA Books, 2007) 32.

⁹ Lisa Vertisky, 'Thinking Machines and Patent Law' in Barfield et al (eds.), *Research Handbook on the Law of Artificial Intelligence* (Edward Elgar, 2018) 496.

¹⁰ Patents Act, 1970, sec. 2, cl. 1 (y).

¹¹ Karthiayani A, 'Artificial Intelligence and Intellectual Property Laws in India: Is it Time for Renaissance?', [2019], <https://www.ijlmh.com/wp-content/uploads/2019/03/Artificial-Intelligence-And-Intellectual-Property-Laws-In-India-Is-It-Time-For-Renaissance.pdf> [accessed 17 April 2023]

¹² Maria Iglesias, Sharon Shamuilia and Amanda Anderberg, *Artificial Intelligence and Intellectual Property - A Literature Review*, EUR 30017 EN (Publications Office of the European Union, 2019).

process becomes trivial.¹³ As a result, we might be entering a time when machines "not only assist humans in the creative process but create or invent all by themselves."¹⁴ However, we have not yet reached that point, and the current state of AI technology prevents it from being fully autonomous.

In reality, a typical machine learning system involves human interaction and assistance at several points, such as deciding on the manner in which to configure the system, developing and selecting the algorithm (including which learning models to use), choosing and compiling data, frequently involving the task of data cleansing or additional tasks on the data, involving how it is organised, giving feedback, analysing output, and updating model, etc. In the real world, the sources of the data, as in the aforementioned examples, are human-made sources.

Specifically, the issue - "Whether copyright be attributed to autonomously generated original literary and artistic works by AI or should a human creator be required?" causes uncertainty. The issue of who should be given credit for writing a piece that was produced utilising AI technology would go unresolved if the question was answered, either positively or negatively.

Additionally, it should be highlighted that it might be challenging to tell the difference between human- and machine-generated works. For instance, creating a piece of art by typing on a word processor would be seen as a human work with technological assistance. On the other hand, a script that an AI programme creates on its own might be regarded as an AI-generated work. If a piece of software, for instance, recommends future phrases or auto-corrects mistakes, would that be seen as joint authorship?

In a landmark case¹⁵, *Eastern Book Company v D.B. Modak*, the Indian Courts adopted the 'modicum of creativity test'. After carefully reading the concept emphasised in the verdict above, it is impossible to claim that AI systems are incapable of exhibiting some degree of creativity. As a result, the originality test can be passed on the "so-called outcomes" of these devices.

¹³ *Morgan v Hirsch*, 728 F.2d. 1449, 1452 (Fed. Cir. 1984).

¹⁴ *ibid.*, 11.

¹⁵ *Eastern Book Company v D.B. Modak*, [2008] 1 SCC 1.

Section 2(d)¹⁶ of the Copyright Act, 1957 is a section that calls into question the copyright protection of works created by AI systems. The term "the person who causes the work to be created" poses a challenge to this notion. A person must be close to the work in order to create it, and for the purposes of this act, "person" might refer to either a natural person or a legal person. AI systems are not covered by the current Copyright Act.¹⁷ Therefore, under Indian Copyright Laws, the authorship of works produced by AI would be ambiguous.

DESIGNS

The challenges faced by 3D duplicate design protection may also apply to AI-generated designs. If a 3D replica is created and made available to the public, it can be against design rights.¹⁸ It is possible to safeguard digital designs for 3D printing in ways that cover manufactured goods with textures or features that differ from the source objects. These 3D-printed objects could be brand-new creations with unique characteristics that were conceived by designers. These newly created products are not merely 3D reproductions. Legal issues arise when determining if the creation of new 3D files which reproduce an already-existing third-party design can be seen as a breach of design rights.¹⁹

The same conditions might have an impact on any AI-generated designs. The creation of AI-generated designs involves a wide range of stakeholders, including programmers and creators of AI software as well as owners and manufacturers of AI devices. It is not possible to verify who created an AI-generated design automatically; instead, each instance must be assessed individually.

¹⁶ Copyright Act, 1957, sec. 2, cl. (d), (vi).

¹⁷ SCC Online Blog, 'Mounting Artificial Intelligence: Where Are We on the Timeline?' (7 June 2018) <https://www.sconline.com/blog/post/2018/06/07/mounting-artificial-intelligence-where-are-we-on-the-timeline/> [accessed 17 April 2023].

¹⁸ Faye Wang, 'Consultation on Design Protection in the EU: Questionnaire Commentary' (2019) 115 *Journal of Intellectual Property Forum*, 101.

¹⁹ European Parliament, '3D Bio-Printing for Medical and Enhancement Purposes: Legal and Ethical Aspects' (July 2018) 9

INFRINGEMENT AND EXCEPTIONS

It is additionally proposed that the subject of inquiry should explicitly make reference to the issue of moral rights. With respect to restrictions and exceptions, it's crucial to explore whether new restrictions and exceptions should be made, both in the context of modern AI applications and in the context of already-existing debates pertaining to particular industries. For instance, the requirement to make it easier to create or gain access to datasets for the AI to "learn" from can be discussed in the background of discourse on restrictions and exceptions to permit the digitization of libraries and archives.²⁰

AI IN IP ADMINISTRATION: A DOUBLE-EDGED SWORD OF BENEFITS AND CHALLENGES

From literature and movies to our world, artificial intelligence has already made countless advances in almost every field. At one point, it seemed like a distant possibility, but in recent years, it has gained momentum. Every sector of the economy will be impacted by AI, including IPR. The latter will be impacted by the former in a couple of distinct manners. To some extent, it will seem to be advantageous in areas like patents and patent search engines, accurate and pertinent research, and providing a way to categorise ideas and innovations. On the other hand, AI may prove to be a threat to advancement and innovation, which are the actual essence of IPR, by giving the inventor a method to check for patents that are similar to his idea that already exist, among other things. The impact of digital technologies on IPR, the benefits and drawbacks of AI on IPR innovation and development, and the potential applications of AI in IPR are all covered in this research paper.

POTENTIAL BENEFITS

- **Increased Efficiency:**

The use of AI-powered technologies can help streamline the IPR protection process, leading to an increase in efficiency. By automating tasks that would otherwise require significant manual effort,

²⁰ World Intellectual Property Organization, 'Artificial Intelligence and Intellectual Property: Call for Comments Report' (2019) https://www.wipo.int/export/sites/www/about-ip/en/artificial_intelligence/call_for_comments/pdf/org_brunel.pdf [accessed 17 April 2023].

AI-powered technologies can reduce the time and resources required to protect IPR. Additionally, the speed and accuracy of AI algorithms can help identify potential infringements quickly and efficiently, enabling IPR owners to take swift action.

- **Cost-Effectiveness:**

AI can offer cost-effective solutions for IPR protection by reducing the need for human intervention. The automation of tasks such as monitoring and identification of potential infringements can reduce the overall cost of IPR protection, which can be significant for small and medium-sized enterprises (SMEs) and individual creators. AI-powered technologies can also help reduce the cost of IPR litigation by providing comprehensive evidence of infringement, thus reducing the time and resources required for litigation.²¹

- **Improved Accuracy:**

AI algorithms can analyze large amounts of data quickly and accurately, providing IPR owners with more reliable information on potential infringements. This can help reduce false positives and improve the accuracy of infringement detection. Additionally, AI-powered technologies can help identify new and emerging forms of infringement, which traditional monitoring methods may miss.

- **Proactive Protection:**

AI algorithms can identify potential infringements before they occur, enabling IPR owners to take preventive action.²² This can help reduce the cost and time associated with litigation and damage control. Proactive protection can also help protect against the theft of trade secrets and confidential information, which can have a significant impact on businesses and individuals.

²¹ World Intellectual Property Organization, 'Artificial Intelligence and IP: A Powerful Combination' (WIPO Magazine, January 2021) https://www.wipo.int/wipo_magazine/en/2021/01/article_0003.html [accessed 17 April 2023].

²² European Union Intellectual Property Office, 'Impact of AI on the Infringement and Enforcement of Copyright and Related Rights in the Design Sector' (2022) https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_Impact_AI_on_the_Infringement_and_Enforcement_CR_Designs/2022_Impact_AI_on_the_Infringement_and_Enforcement_CR_Designs_FullR_en.pdf [accessed 17 April 2023].

- **Enhanced Decision-Making:**

AI-powered technologies can assist IPR owners in making better-informed decisions. By providing accurate and comprehensive data on potential infringements, AI can help IPR owners make more informed decisions on whether to pursue legal action or engage in other forms of dispute resolution.²³ Additionally, AI can help IPR owners prioritize their resources by identifying potential infringements with the highest risk or impact.

India has been exploring the potential of AI in fields such as healthcare, education, and infrastructure. In fact, a 2018 discussion paper by Niti Aayog emphasized the importance of AI in these sectors.²⁴

POTENTIAL CHALLENGES

- **Lack of Clarity in Regulations:**

The legal framework governing AI and IP protection is still in its nascent stages, and there is a lack of clarity on how to integrate AI with existing laws. This can make it difficult for IPR owners to fully leverage the benefits of AI in IP protection. For example, in the European Union, there is currently no full-fledged harmonized legal framework for AI.²⁵ This can make it difficult for IPR owners to fully leverage the benefits of AI in IP protection.

- **Accuracy and Reliability:**

While AI algorithms can analyze vast amounts of data quickly and efficiently, there are concerns about their accuracy and reliability. The effectiveness of AI in identifying potential infringements and protecting IP rights depends on the quality of data that the algorithm is trained on. Additionally, there may be biases or errors in the algorithm, which can lead to false positives or

²³ WIPO, 'A Landscape of AI IP Policy: A Review of Selected Countries' (Background Paper No. 5, WIPO/IP/AI/3/GE/20, 2020) https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_ai_3_ge_20/wipo_ip_ai_3_ge_20_inf_5.pdf accessed 17 April 2023.

²⁴ NITI Aayog, 'National Strategy for Artificial Intelligence Discussion Paper' (January 2019) <https://niti.gov.in/sites/default/files/2019-01/NationalStrategy-for-AI-Discussion-Paper.pdf> [accessed 17 April 2023].

²⁵ Mark Lemley et al, 'EU Artificial Intelligence Act: The European Approach to AI' (2021) 6(1) *Stanford Journal of Blockchain Law & Policy* 4.

negatives.²⁶ For example, in 2019, the US Patent and Trademark Office (USPTO) proposed using AI to assist with patent examination.²⁷ However, there are concerns about the accuracy of AI algorithms in identifying prior art and assessing patentability.²⁸

- Data Security and Privacy:

The use of AI in IP protection requires the collection and analysis of vast amounts of data, which can raise concerns about data security and privacy. The use of personal data for AI training purposes can be seen as an invasion of privacy, and there are concerns about the security of data collected and stored by AI systems. The misuse of such data can also lead to reputational damage, which can be difficult to recover from.

In the United States, the use of AI in trademark registration has raised concerns about the misuse of personal data.²⁹

- Lack of Technical Expertise:

The development and deployment of AI-powered technologies require a high level of technical expertise, which can be a challenge for small and medium-sized enterprises (SMEs) and individual creators. SMEs may not have the resources to invest in AI technology or hire specialized personnel to manage and operate it. This can lead to a digital divide, where only larger enterprises can leverage the benefits of AI in IP protection. For example, in India, the lack of technical expertise is a significant barrier for SMEs who want to use AI-powered patent search tools. This can lead to a digital divide, where only larger enterprises can leverage the benefits of AI in IP protection.³⁰

²⁶ Sullivan, D., 'Auditing Algorithms for Data Science Bias' (Builtin, 2021) <https://builtin.com/data-science/auditing-algorithms-data-science-bias> [accessed 17 April 2023].

²⁷ US Patent and Trademark Office, 'Request for Comments on Intellectual Property Protection for Artificial Intelligence Innovation', Federal Register, vol. 84, no. 176, 11 September 2019, pp. 44889-44892.

²⁸ Computer & Communications Industry Association, 'Comments on the Office's AI IP Policy Proposal' (US Patent and Trademark Office, 2019) https://www.uspto.gov/sites/default/files/documents/CCIA_RFC-84-FR-44889.pdf [accessed 17 April 2023].

²⁹ Liu, X., Faes, L., Kale, A.U. et al., 'Artificial intelligence in healthcare: Past, present and future', (2020) 1(1) BMJ Health & Care Informatics e100017, <https://www.sciencedirect.com/science/article/pii/S2666659620300056> [accessed 17 April 2023].

³⁰ Organisation for Economic Co-operation and Development, 'Artificial Intelligence in Society' (OECD, 2019) <https://www.oecd-ilibrary.org/sites/9816a98d-en/index.html?itemId=/content/component/9816a98d-en> [accessed 17 April 2023].

- Ethical Concerns:

The use of AI in IP protection raises several ethical concerns, such as bias and discrimination. The algorithms used in AI systems may be biased towards certain groups or cultures, leading to discrimination in IP protection. Additionally, there may be concerns about the use of AI-powered technologies for surveillance and monitoring, which can infringe on individuals' rights to privacy and freedom of expression. For example, in China, the use of facial recognition technology for copyright enforcement has raised concerns about privacy and data protection, as well as the potential for discriminatory practices.³¹

CONCLUSION

AI has emerged as a vital component of modern society, enabling efficient data collection and modification. As a result, it is imperative to establish proper regulations and laws to govern its use. However, the rapid advancement of AI poses significant challenges that must be carefully analyzed and addressed. The expanding scope of IPR in conjunction with technology has introduced several new factors, including AI, that require close attention. The implementation of IPR in AI, along with the maintenance of proper safety logs and procedures, presents a real challenge. Additionally, understanding the unique features of AI is particularly challenging in developing countries like India, which are still undergoing significant technological changes.

However, this requires regulatory laws and better infrastructure for implementation. While the potential benefits of AI in various fields have been recognized in a 2018 discussion paper by Niti Aayog, the need for clear and structured rules and amendments in existing IPR laws is crucial for its effective implementation.

AI is poised to make a name for itself in the field of intellectual property. The administration of tasks including managing IP profiles, conducting searches for patents and trademarks, filing patent and trademark applications, creating agreements, and conducting discovery will make the mundane everyday work easier. This will simplify the process of issuing patents and trademarks and lower the associated costs. The expansion of the IP industry is correlated with the growth of

³¹ Mani, S., Krishnan, S., Sharma, S. et al., 'Artificial Intelligence in Drug Development: Present Status and Future Prospects', (2021) 9(1) Journal of Drug Assessment 48, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8739079/> [accessed 17 April 2023].

AI. This will promote inventions by increasing transparency, lowering expenses, reducing mistakes, and completing the process smoothly.

It is inconceivable to completely stamp out the idea that AI will one day hold intellectual property, thus nations will need to evaluate their IP laws and integrate a new aspect or market segment in their framework. However, the law will need to reinterpret ideas of ownership, inventorship, and who can be given an IP before AI can thrive as IP owners. Additionally, it is essential to comprehend algorithms and distinguish them from the creators of AI.

WAY FORWARD

⇒ Collaborative efforts to establish a comprehensive legal framework

In order to provide clarity in regulations regarding the use of AI in IP protection, policymakers and stakeholders should work together to establish a comprehensive legal framework. This could involve establishing international standards, guidelines, and best practices that would help protect intellectual property rights while also ensuring transparency and fairness in AI usage.

⇒ Continuous R&D of AI technologies

To improve the accuracy and reliability of AI algorithms in IP protection, research and development efforts should continue to advance AI technologies. This could involve enhancing machine learning capabilities and developing AI systems that can learn and adapt over time to improve their accuracy. Additionally, testing and validation of AI technologies can be conducted to ensure their reliability.

⇒ Robust regulations to address data security and privacy concerns

To address concerns about data security and privacy in AI-powered IP protection, governing bodies should develop robust regulations and guidelines that ensure that personal data is collected, used, and stored in a secure and ethical manner. This could include requirements for data protection impact assessments, data minimization, and clear and transparent data use policies.

⇒ Increased access to training and education programmes

To address the challenge of lack of technical expertise in SMEs and individual creators, the decision-makers should work towards increasing access to training and education programs on AI and IP protection. This could include developing online training programs, organizing workshops and seminars, and providing funding for SMEs to access AI-powered IP protection tools.

⇒ Development of ethical guidelines and standards

To address ethical concerns in AI-powered IP protection, the lawmakers should work towards developing ethical guidelines and standards for the use of AI in IP protection. This could include developing guidelines on issues such as transparency, accountability, and non-discrimination, as well as providing clear guidance on the use of AI in IP protection in sensitive areas such as copyright enforcement.

