

TRADEMARK, PATENT AND COPYRIGHT REGISTRATIONS REQUIRE SIGNIFICANT, SUBSTANTIAL HUMAN INVENTION; NOT AI



The United States administrative entities and courts are all aligned in requiring significant, substantial human (natural persons) involvement for issuance of a trademark, patent or copyright. AI systems can be supportive; they cannot be listed as an applicant. “Inventors” are to be natural persons, humans. Fed. Regs 10043.

Trademarks and Patents. The United States Patent Trademark Office has issued guidelines on how to allow registrations of AI- assisted inventions. It followed an Executive Order of the Biden Administration issued on October 30, 2023 as well as the Federal Circuit’s case of *Thaler v. Vidal*, Thaler had tried to register an invention for a flickering light which was created by his AI system and was listed as the inventor, both of which the USPTO and court did not accept.

Copyrights. The United State Copyright Office (USCO) has stated that “A work must have human authorship in order to be protected by copyrights”. Creative works with small portions created by AI may be protected if there is sufficient human authorship, however, the push in created by AI will be excluded from copyright protection.

The legal system is attempting to keep up with the development of AI in many, many ways. Interestingly, the precedent for these determinations came from the United States Supreme Court case of *Burrow-Giles Lithographic Company v. Sarony*, 111 U.S. 53 (1884). We now have guidelines; they require significant and substantial human involvement in the process. One cannot simply put a term into an AI platform, such as ChatGPT , and then copyright the resulting product that the system provides. As a practice tip, please be sure to properly state the substantial human inventor’s involvement in the intellectual property developed; don’t follow the missteps of Dr. Thaler (from the case above), who ascribed everything to his AI system.

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