RT ProExec

The Next AI Liability Wave:
Patent Infringement Risk Is Accelerating

CONTACT
RT ProExec
rtproexecinfo@rtspecialty.com

Or contact your local RT ProExec broker at rtspecialty.com

INTRODUCTION

It's no secret that AI is raising a range of intellectual property considerations. However, while much of the focus has been on copyright infringement allegations against AI companies, there's another exposure that is emerging for businesses using AI: potential patent infringement tied to AI technologies. As this risk evolves, businesses and their advisors may want to revisit how these exposures are addressed within their existing coverage and risk management strategies.

AI and Patent Infringement Litigation

AI can trigger patent infringement allegations in at least four distinct ways.

1. **The hardware, software and processes used to develop and train AI models may infringe on an existing patent.** In one example, KeeeX, a French company providing file verification, filed a lawsuit against OpenAI, Adobe, Truepic, and the Coalition for Content Provenance and Authenticity (C2PA). According to AI Fray[1], the patent at the heart of the dispute involves digital fingerprints for data blocks and verification, which can be used in identifying deepfakes, among other uses.
2. **AI outputs may infringe on an existing patent.** Businesses are using AI to develop code, build software, create technical processes, or design new pharmaceutical compounds. That activity can raise potential patent infringement exposure if the output is found to fall within the scope of an existing patent's claims.
3. **AI enables patent assertion entities (PAEs).** Sometimes called non-practicing entities or patent trolls, PAEs purchase patents so they can monetize enforcement of the intellectual property. Armed with AI, PAEs can identify targets and file lawsuits with greater speed and efficiency. Fish & Richardson[2] warns that AI lowers the cost to file a lawsuit, making it financially feasible to pursue smaller defendants, while also improving selection of cases. As a result, patent enforcement activity may expand, including against smaller targets, and disputes may become more frequent and complex.
4. **The sheer number of AI-related patents is increasing claim frequency.** According to PatentPC[3], more than 1,000 AI-related patent lawsuits have been filed in the last five years, and 65% of these lawsuits are in the U.S.

The Patent Problem with AI-Fueled Invention

According to Inventors Digest[4], generative AI presents extraordinary opportunities for inventors and creators, but it also creates intellectual property infringement questions. Generative AI models are trained on massive datasets that may include protected intellectual property, including copyrighted and patented material and even trade secrets.

When AI design tools generate product configurations or technical solutions, these outputs may be covered by existing patents, and the individuals or organizations behind the development may not even realize they are infringing on someone's intellectual property.

This is similar to what is happening with copyright infringement allegations right now, such as the lawsuit that The New York Times[5] has brought against OpenAI and Microsoft. According to Michigan State University[6], researchers have found that in certain circumstances it is possible to use generative AI tools to create text, images and video that may implicate copyright protections. These tools do not necessarily provide users with warnings about potential infringement, which can create additional risk.

The Threat of Unwitting Violations

Some infringing outputs may be easy to identify. For example, if AI is used to generate an image of a cartoon mouse, and the outputs resemble Mickey Mouse, users are more likely to avoid using it. But if the output bears a striking resemblance to a lesser known but still copyrighted character, the risk may be less obvious, and users may not realize they are potentially infringing.

The same concern applies to patents. If AI is used to develop a technical solution, and the result is nearly identical to an existing patent, will a user be held liable?

According to a professor at Michigan State University[6], users of generative AI may face potential liability where outputs infringe on intellectual property rights.

AI workflows are still new and developing, so we haven't seen the full impact on claims frequency and severity yet. However, companies on the forefront of AI development are already seeing increased litigation. According to PatentPC3, Nvidia experienced a spike in AI patent lawsuits following the acquisition of smaller AI firms, and Amazon has been involved in a number of AI patent disputes over its cloud AI services.

Intellectual Property Rights for AI-Generated Inventions

In addition to questions surrounding whether inventions infringe on existing patents, there's also the question of whether inventions developed with AI are eligible for protection. The use of generative AI is raising new questions around traditional patent concepts, particularly inventorship, and contributing to ongoing legal uncertainty.

The U.S. Copyright Office[7] has refused to register work generated solely by AI, on the basis that only human-authored material is eligible for copyright protection. Likewise, the United States Patent and Trademark Office[8] (USPTO) has confirmed that "only natural persons can be named as inventors on patent applications."

However, the situation is often murky since few things are created solely with AI. Often, creation is a collaboration between humans and AI tools. In 2025, the USPTO rescinded previous guidance and clarified that AI systems are to be treated as tools, not as inventors or co-inventors.

Reassessing Coverage and Risk Management

The explosive growth in AI patents makes overlapping claims increasingly possible, while the rapid rise of generative AI has caused tremendous disruption in intellectual property rights. Many of these issues are still being addressed through legislation, regulation, and the courts.

In the meantime, organizations may want to reassess their exposures and risk management practices, including the use of patent infringement liability insurance.

Patent violations are typically excluded under general liability, cyber, media and Technology E&O policies. To secure coverage, you may want to consider a stand-alone IP Infringement policy.

According to the Lex Machina Patent Litigation Report 2025[9], annual patent damages consistently surpass $1 billion, and awards have been growing in both frequency and severity. Patent litigation is already common and complex, and as AI-related technologies continue to evolve, these dynamics will continue to develop.

Recently, the patent infringement liability marketplace has become more competitively priced, with broader coverage and more streamlined underwriting.

If you are working with clients for whom this exposure may be relevant, a wholesale broker familiar with this market can help navigate available options.

SOURCES AND CITATIONS

1. https://aifray.com/openai-slapped-with-serious-patent-lawsuit-for-first-time-as-french-company-attacks-c2pa-anti-deepfake-news-mechanism-in-eight-countries/
2. https://www.jdsupra.com/legalnews/the-ai-arms-race-in-patent-litigation-1131936/
3. https://patentpc.com/blog/the-biggest-latest-ai-patent-lawsuits-key-cases-what-the-stats-say
4. https://inventorsdigest.com/ai-intellectual-property-infringement-innovation
5. https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html
6. https://msutoday.msu.edu/news/2024/04/ask-the-expert-how-could-generative-ai-leave-users-responsible-for-copyright-violations
7. https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf
8. https://www.uspto.gov/subscription-center/2025/revised-inventorship-guidance-ai-assisted-inventions
9. https://ptacts.uspto.gov/ptacts/public-informations/petitions/1558358/download-documents?artifactId=3tfFgETWzOc7b92L8B4IyW1PTeN3E1IDR0SIfug2Mx1N6pQ1nEgjrZU