

Using AI to Innovate

Patents, copyrights, and the USPTO's rules for AI-assisted inventions

Andrea L. Arndt

Member, Dickinson Wright PLLC | Registered Patent Attorney

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General information only. Not legal advice.



About Your Speaker



Member, Dickinson Wright (Austin)

Patents, trademarks, copyrights, licensing, and enforcement



Registered to practice before the USPTO

Patent prosecution and post-grant proceedings



Engineer first

Biomedical engineering and computer engineering background



Inventors Digest columnist

"IP Matters" column, including "Using AI to Innovate" (Sept. 2026)

TONIGHT'S GOAL

**Use AI boldly, and
still own what you
create.**

Questions are welcome throughout.

Tonight's Roadmap

1



Who is the inventor?

Human conception and the USPTO's revised guidance

2



Can it be patented?

Eligibility for AI-related inventions and designs

3



Who is the author?

Copyrights, AI outputs, and training data

4



Your AI playbook

Confidentiality, records, contracts, checklist

AI Is Already in Your Workshop



Brainstorm ideas



Search prior art



Generate design variations



Write code and run simulations



Draft documents



Create images and marketing

Every use raises a different question:

- Am I still the inventor?
- Can I patent it?
- Do I own the output?
- Did I just disclose my secret?

PART 1

Who Is the Inventor?

Human conception, DABUS, and the USPTO's revised guidance



The Patent Hurdles Do Not Change for AI



Eligible

35 U.S.C. § 101



Useful

§ 101



Novel

§ 102



Non-obvious

§ 103



Fully described

§ 112



Never patentable on their own

Laws of nature • Natural phenomena • Abstract ideas • Mere suggestions or wishes

An Inventor Must Be a Human Who Conceives



CONCEPTION

A definite and permanent idea of the complete and operative invention



Natural persons only

Companies and universities can be applicants and owners, never inventors.



Claim by claim

Each inventor must contribute to the conception of at least one claim.



Teams are flexible

Co-inventors need not work together, at the same time, or equally.

DABUS: One AI "Inventor," Tested Worldwide

	United States	No	Thaler v. Vidal (Fed. Cir. 2022); Supreme Court denied review (2023)
	United Kingdom	No	UK Supreme Court (2023)
	European Patent Office	No	Legal Board of Appeal (2021)
	Germany	No*	*A human who used the AI may be named (Federal Court of Justice, 2024)
	Australia	Yes, then No	Trial court allowed it (2021); reversed on appeal (2022)
	South Africa	Granted	Issued in 2021 without substantive examination

How Much Did the AI Do?

LESS AI

MORE AI



AI as a Tool

Brainstorming, searching, calculating, testing. You define the problem and conceive the solution.

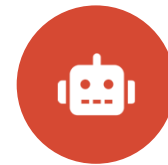
Human inventor



The Middle Ground

AI proposes options. You select, refine, and test. Depends on your contribution to each claim.

Fact-specific



AI Autonomy

You ask a question. The AI produces the solution and you adopt it as-is.

No human inventor

USPTO Inventorship Guidance: Then and Now

FEBRUARY 2024 | RESCINDED

- Applied the Pannu joint-inventor factors to a human working with AI
- Required a "significant contribution" by each human
- Warned that prompts or owning the AI may not be enough



NOVEMBER 2025 | CURRENT

- One conception standard, whether or not AI was used
- AI is a tool, like lab equipment, software, or a database
- Pannu applies only when multiple humans collaborate
- Named human inventors are presumed correct
- Only natural persons can be inventors

Revised Inventorship Guidance for AI-Assisted Inventions, 90 Fed. Reg. 54636 (Nov. 28, 2025)

What the New Guidance Does, and Does Not, Do



It does

- Treats AI like any other research tool
- Avoids inventorship challenges during examination
- Requires no blanket AI-use disclosure
- Keeps the focus on human conception



It does not

- Bind federal courts or a future litigant
- Overrule Thaler: AI still cannot be an inventor
- Define "how much" human input is enough
- Protect a patent that names the wrong inventors

You Be the Examiner: Who Is the Inventor?



The Brainstorm

Maria asks a chatbot for 50 ideas for a better dog leash. She picks one, then designs and tests the locking mechanism herself.



The Generated Bracket

Sam enters loads and limits into generative design software and files the bracket shape exactly as the software produced it.



The Team

Two engineers use AI to screen 10,000 formulas. One sets the target properties; the other sees why one formula works and improves it.

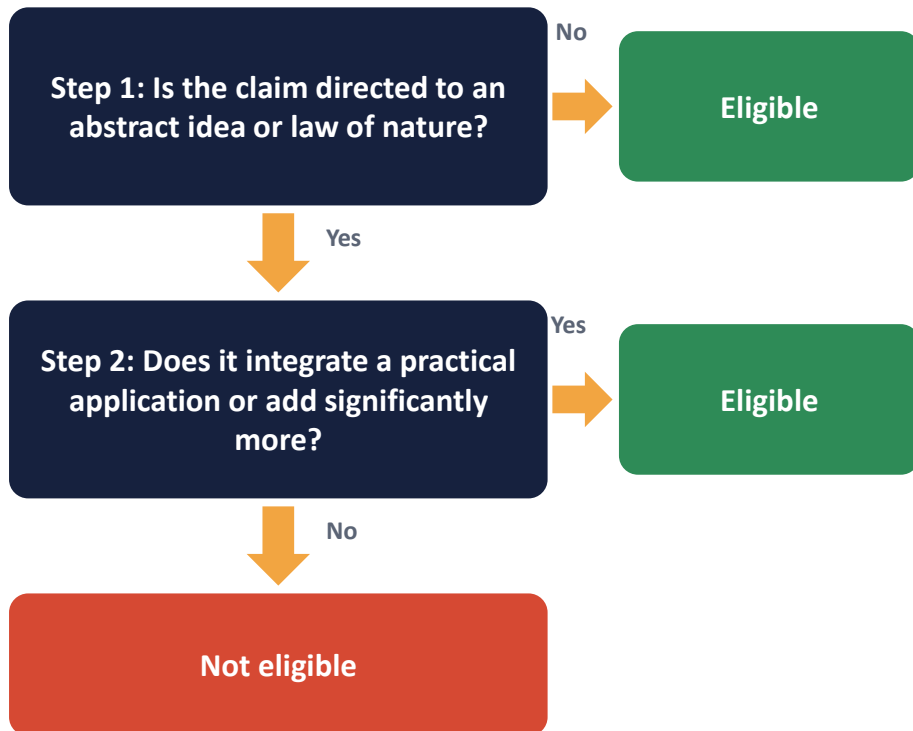
PART 2

Can It Be Patented?

Eligibility for AI-related inventions, and what changed in 2025 and 2026



The Eligibility Gate Is Opening Wider



Ex parte Desjardins (2025)

Precedential: a better way to train a machine learning model is a technical improvement, not an abstract idea.



Close calls go to the applicant

Examiners need more than a 50/50 doubt to reject under § 101.



Eligibility declarations

Applicants may submit sworn evidence of the technical improvement.



"File it"

The USPTO Director urged AI inventors to file (Senate hearing, Sept. 29, 2026).

Claim the Improvement, Not the Buzzword



Risky

"Using artificial intelligence to decide when to water a lawn."

Result-focused. Reads like an idea anyone could have.



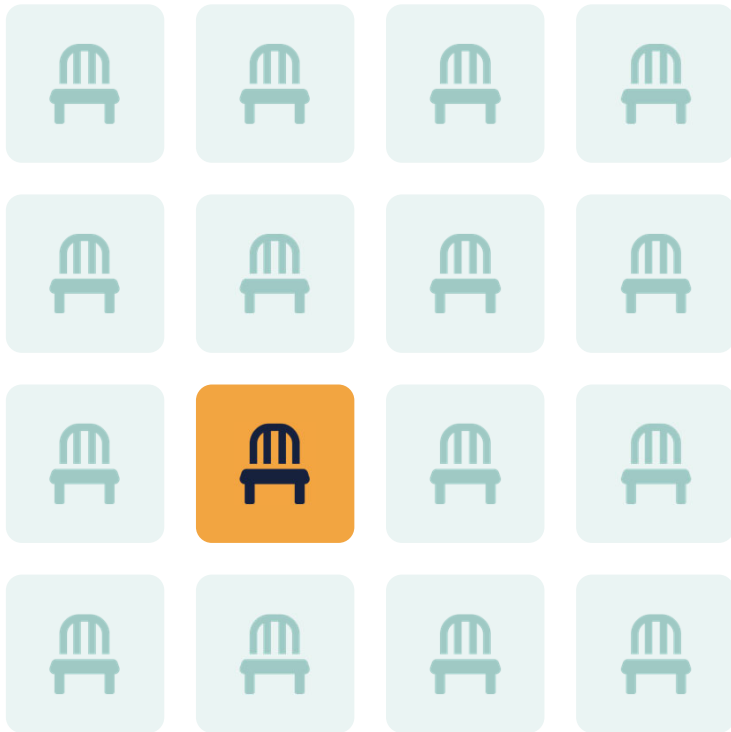
Stronger

"A controller that combines soil-sensor and forecast data in an on-chip model, cutting sensor wake-ups and extending battery life."

Explains how the system itself works better.

Illustrative example only. Describe the technical problem, the specific solution, and the measurable improvement in your application.

Design Patents in the Age of Image Generators



Same human threshold

Only natural persons can be named on a design patent, and the conception standard is the same as for utility patents.



A flood of prior art

Generators create thousands of variations. Whether unpublished AI output counts as prior art is still unsettled.



Obviousness pressure

Designs that only iterate on earlier ones with AI may be attacked as predictable.

Which variation did a human conceive?

USPTO OPIA Bulletin on Generative AI and Design Patents (Mar. 2026)

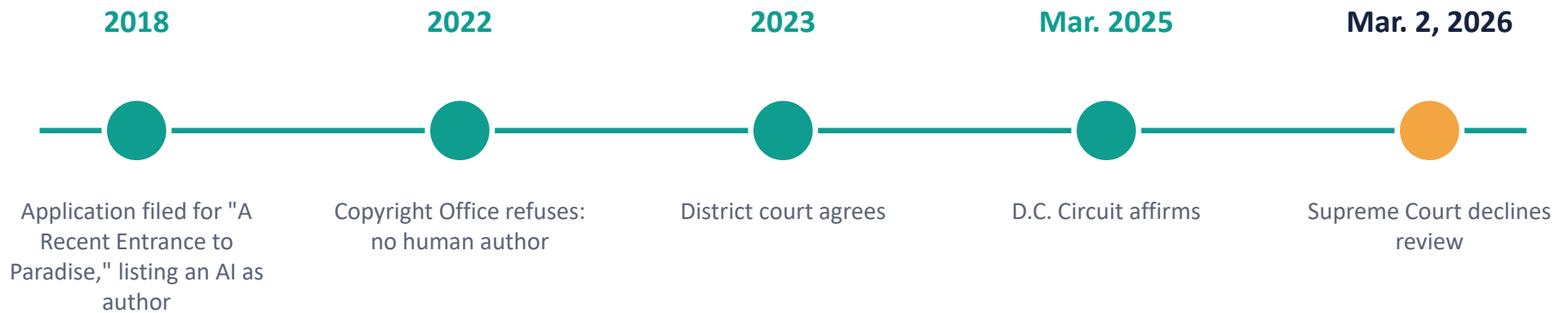
PART 3

Who Is the Author?

Copyrights in AI-assisted work, and the fight over training data



Copyright Requires a Human Author



Bottom line: purely AI-generated material is not protected by copyrights in the United States.

Where Does Protection Begin?



Prompts only

Not protected

Prompts are instructions. The user does not control the expressive output.



Your own input

Your input stays protected

A sketch or text you feed in remains yours where it shows in the output.



Select, arrange, modify

Protected for your contribution

Creative choices and edits you make are protectable. The raw AI material is not.

Zarya of the Dawn (2023)

Text and arrangement registered; Midjourney images excluded

A Single Piece of American Cheese (2025)

Registered for human selection and arrangement of AI-generated parts

Allen v. Perlmutter (pending)

Are 600+ prompts plus edits enough for an AI-assisted image?

Registering a Work That Includes AI

01

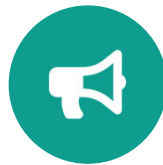


Identify

Which parts did the AI generate?



02



Disclose

Describe AI material that is more than minimal



03



Claim

Claim only your human authorship



04



Preserve

Keep drafts, layers, prompts, and edits



Failing to disclose AI-generated material can put the whole registration at risk.

The Training Data Battles

Thomson Reuters v. Ross

D. Del., Feb. 2025

Not fair use

Copied legal headnotes to build a competing (non-generative) tool

Bartz v. Anthropic

N.D. Cal., June 2025

Split result

Training on purchased books was fair use; pirated library was not. \$1.5B settlement

Kadrey v. Meta

N.D. Cal., June 2025

Fair use (on that record)

Court warned that market dilution could change the result

NYT v. OpenAI and Microsoft

S.D.N.Y.

Pending

News content; discovery into user logs ongoing



Copyright Office, Part 3 Report (2025)

Some training is fair use; some is not. Copying to make outputs that compete with the originals weighs against fair use.

Takeaway: the law of AI training is unsettled. Choose reputable tools and read their indemnity terms.

What This Means for Your Business



Pure AI output may be free to copy

If a competitor copies AI-only images or text, you may have no copyright claim.



Outputs can still infringe

AI can reproduce someone else's work. Check before you launch or print.



Read the tool's terms

Who owns outputs? Does it train on your inputs? Is there an indemnity?



Trademarks work differently

An AI-designed logo can still become your trademark through use, even without copyright.

PART 4

Your AI Playbook

Practical steps to protect what you build with AI



Guard Your Secrets Before You Prompt



- Public chatbots may store, review, or train on what you type
- Use business or enterprise tools with training turned off
- Treat a prompt like talking to a stranger without an NDA
- File a patent application before broad disclosure
- Most countries give no grace period after disclosure

Keep an Inventor's AI Log

Date	Problem I defined	Tool and prompt	What AI returned	What I decided and why	Claim element
10/14/26	Leash lock slips under sudden load	Chatbot: "list 20 locking ideas"	20 generic concepts	Chose cam idea; designed spring-loaded ratchet; tested 3 prototypes	Claim 1: ratchet and cam

Highlighted columns show the human contribution.



Record as you go

Dated entries beat memories later.



Highlight your choices

The human decisions are what make you the inventor.



Tie it to the claims

Map each contribution to a claim element.

Lock Down Ownership in Your Contracts



Employees and contractors

AI-use policy plus written IP assignment



Developers and vendors

Disclose AI use; warrant originality



AI tool terms

Output ownership, confidentiality, indemnity



Investors and buyers

Expect diligence questions about AI use



Your IP

Your Ten-Point AI Checklist

1

Use AI as a tool; you define the problem and the solution

2

Make your contribution to every claim clear

3

Log prompts, outputs, and your decisions

4

Keep confidential details out of public AI tools

5

File before any public disclosure

6

Describe the technical improvement, not just "AI"

7

Name all of the human inventors, and only them

8

Disclose AI material in copyright applications

9

Review AI tool terms and your contracts

10

Revisit your strategy as the law changes

What to Watch Next



Allen v. Perlmutter

How much human input makes AI-assisted art protectable?



Federal Circuit

What conception means when AI does heavy analytical work



Congress

Patent Eligibility Restoration Act (PERA)



Training cases

NYT v. OpenAI and appeals on fair use



Copyright Office

Further reports and registration guidance



Other countries

Diverging rules for AI inventions abroad

Questions?

Andrea L. Arndt

Member, Dickinson Wright PLLC | Austin, Texas

aarndt@dwlaw.com

dwlaw.com/our-people/andrea-l-arndt



This presentation provides general information and is not legal advice. Consult counsel about your specific situation.