

The logo for FISH, consisting of the word "FISH" in a bold, white, sans-serif font, followed by a small blue square.

Practical Guidance on the Use of AI in Legal Workflows

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Meet the Speakers

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Agenda

- Overview of Generative AI
- Use of AI in Patent Prosecution Workflow
- Use of AI in Litigation Workflow

Overview of Generative AI

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Overview of Generative AI: How do LLMs work?

- Many generative models, e.g., ChatGPT, Claude, etc., use LLMs to generate their outputs
- What is an LLM?
 - An AI model, most commonly based on a transformer architecture, that can process and generate text
- Trained on massive amounts of text data to learn patterns and relationships (i.e., grammar, semantics, context)
- Generates text through sequence prediction

Overview of Generative AI: Hallucinations

- When LLM observes patterns that are nonexistent or imperceptible to human observer
- Similar to how humans imagine seeing figures in clouds
- Resulting in nonsensical or inaccurate outputs
- LLMs do not distinguish between outputs they are confident in and outputs they are not confident in

Overview of Generative AI: Why do LLMs hallucinate?

- Some reasons include:
 - Off the shelf LLM may not perform verification of generated output
 - Insufficient or biased training data
 - Lack of explicit knowledge representation
 - Overfitting

Use of AI in Patent Prosecution Workflow

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USPTO Guidance: Use of AI-based Tools (Apr. 2024)

- USPTO issued guidance Apr. 2024:
[Federal Register :: Guidance on Use of Artificial Intelligence-Based Tools in Practice Before the United States Patent and Trademark Office](#)
- Presently no general duty to inform the USPTO that an AI tool was used in drafting a paper unless specifically requested by the USPTO
- Application of Existing Rules as to the Use of AI, Including Generative AI, Before the USPTO

Potential Uses of AI Tools for Patent Prosecution

- Some examples of potential uses of AI Tools:
 - Drafting response to examiner office action
 - Drafting patent application
 - Collecting prior art references

AI in Drafting Response to Examiner Office Action

- Potential to omit, misstate, or hallucinate
 - Parties “must ensure that all statements in the paper are true to their own knowledge and made based on information that is believed to be true.” (USPTO Guidance, Apr. 2024).
 - Including accuracy of citations, that legal arguments are legally warranted, etc.

AI in Drafting Patent Application

- Introduce alternative embodiments which the inventor(s) did not conceive
 - “if the use of an AI tool is material to patentability as defined in 37 CFR 1.56(b), the use of such AI tool must be disclosed to the USPTO.” *Id.*
 - “[E]ach named inventor must have significantly contributed to a claimed invention of the application as described by the *Pannu* factors.” *Id.*
 - “If there is a question as to whether there was at least one named inventor who significantly contributed to a claimed invention developed with the assistance of AI, information regarding the interaction with the AI system (e.g., the inputs/outputs of the AI system) could be material and, if so, should be submitted to the USPTO.” *Id.*

AI in Drafting Patent Application

- Draft patent claims that are known to be unpatentable
 - Duty to refrain from filing/prosecuting patent claims known to be unpatentable. *Id.*
- Specification and/or drawings drafted may not be all technically accurate
 - Amending “after the initial submission may constitute new matter.” *Id.*
 - Filing amendment to correct technical errors in U.S. application may result loss of priority. *Id.*

AI in Collecting Prior Art References

- Cumulative and irrelevant IDS citations for submission to USPTO
 - “By signing, that person is certifying that they have performed a reasonable inquiry—including not just reviewing the IDS form but reviewing each piece of prior art listed on the form—and determined the paper is compliant with 37 CFR 11.18(b).” *Id.*
 - “Regardless of where prior art is found, submitting an IDS without reviewing the contents may be a violation of 37 CFR 11.18(b).” *Id.*
- Omitted material information in IDS
 - Duty of disclosure applies to 37 CFR 1.56(c) individuals, “cannot be transferred to another person or a computer system such as an AI tool.” *Id.*

Confidentiality and National Security Considerations

- Inadvertent disclosure of client-sensitive or confidential information
 - Data breach
 - Can “implicate national security, export control, and foreign filing license issues.” *Id.*
 - AI tools may use servers outside the US, data may be exported “in violation of existing export administration and national security regulations or secrecy orders.” *Id.*
 - Even if servers are within the US, “certain activities related to the use of AI systems hosted by these servers by non-U.S. persons may be deemed an export subject to these regulations.” *Id.*

Use of AI in Litigation Workflow

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2023 Year-End Report on the Federal Judiciary (2023):

The legal profession “faces the latest technological frontier: artificial intelligence”

- **Benefits of AI**
 - “[P]otential to increase access to justice, particularly for litigants with limited resources”
 - Rule 1 of FRCP – the parties and the court must seek “just, speedy, and inexpensive” resolution of cases; many AI applications “indisputably assist the judicial system in advancing those goals”
- **Dangers of AI**
 - The report cautioned about “[AI]’hallucination,’ which caused the lawyers using the application to submit briefs with citations to non-existent cases. (Always a bad idea.)”
 - There are “concerns about whether entering confidential information into an AI tool might compromise later attempts to invoke legal privileges”



State Bar Associations' Guidance for the Use of AI

California State Bar Associations' Guidance for the Use of Generative AI in the Practice of Law (2023)

- *Duty of Confidentiality*
- *Duties of Competence and Diligence*
- *Communication Regarding Generative AI Use*
- *Charging for Work Produced by Generative AI and Generative AI Costs*
- *Candor to the Tribunal; and Meritorious Claims and Contentions*



The Florida Bar Association

- *Florida Bar Ethics Opinion 24-1 (January 19, 2024)*
- *Guide to Getting Started with AI (January 7, 2025)*



Legal Tasks by AI

- **General administrative tasks**
- **Legal research**
- **Document review**
- **Document drafting**
- **Case preparation**
- **Electronic discovery**

Source: The Florida Bar Guide to Getting Started with AI (January 7, 2025)

FRCP 11(b) - Representations to the Court

- By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, **formed after an inquiry reasonable under the circumstances**:
 - (2) the claims, defenses, and other legal contentions are **warranted by existing law or by a nonfrivolous argument** for extending, modifying, or reversing existing law or for establishing new law;
 - (3) **the factual contentions have evidentiary support** or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

Mata v. Avianca, Inc., 678 F.Supp.3d 443 (S.D.N.Y. 2023)

- Mata’s lawyers filed an opposition to a motion to dismiss
 - The brief “cited and quoted from purported judicial decisions that were said to be published in the Federal Reporter, the Federal Supplement and Westlaw”
 - In the reply, Avianca stated that “the undersigned has been unable to locate most of the case law cited”
- The court uncovered the use of AI by one of Mata’s lawyers
 - One of the attorneys “had used ChatGPT, which fabricated the cited cases”
 - “My reaction was, ChatGPT is finding that case somewhere. Maybe it's unpublished. Maybe it was appealed. Maybe access is difficult to get. I just never thought it could be made up.”
- “[Mata’s lawyers] abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.”
- The court sanctioned Mata’s lawyers (\$5,000)



U.S. v. Cohen, 724 F.Supp.3d 251 (S.D.N.Y. 2024)

- The Court discovered that the motion cites to **multiple non-existing cases**
- Turns out – Cohen used **the AI service called Google Bard**
 - “[D]id not realize ... was a generative text service that, like Chat-GPT, could show citations and descriptions that looked real but actually were not.”
 - “[T]rusted [his counsel] to vet [his] suggested additions before incorporating them into what became the motion.”
- Result:
 - **No sanctions on Cohen:** “He was entitled to rely on his counsel and to trust his counsel’s professional judgment — as he did throughout this case.”
 - **No sanctions on counsel:** “His citation to non-existent cases is embarrassing and certainly negligent, perhaps even grossly negligent. But the Court cannot find that it was done in bad faith.”



Park v. Kim, 91 F.4th 610 (2d Cir. 2024)

- The Court was unable to find one of the cases cited in the reply brief, ordered the appellant to submit a copy
- Attorney for appellant’s response
 - “I encountered difficulties in locating a relevant case.... Consequently, I utilized the ChatGPT service, to which I am a subscribed and paying member, for assistance in case identification. ChatGPT was previously provided reliable information, such as locating sources for finding an antic furniture key.”
- The Court’s holding
 - “We ... REFER Attorney ... to the Court's Grievance Panel pursuant to Local Rule 46.2 for further investigation, and for consideration of a referral to the Committee on Admissions and Grievances.”



Kohls v. Ellison, Case No. 24-cv-03754 (D. Minn. 2025)

- The case concerned **Minnesota Statutes section 609.771**
 - The law prohibits, under certain circumstances, the dissemination of “**deepfakes**” with the intent to injure a political candidate or influence the result of an election
- Plaintiffs moved for preliminary injunction, AG Ellison opposed, submitted expert declarations, one from a professor who was “**a credentialed expert on the dangers of AI and misinformation**”
- Plaintiffs moved to exclude the declarations
 - Alleged “**fabrication**” of materials” in one of them



Kohls v. Ellison, Case No. 24-cv-03754 (D. Minn. 2025)

- **The court excluded the declaration**

- “Professor ... admits that he used GPT-4o to assist him in drafting his declaration but... failed to discern that GPT-4o **generated fake citations to academic articles.**”
- “**The irony.** Professor ..., a credentialed expert on the dangers of AI and misinformation, has fallen victim to the siren call of relying too heavily on AI.”
- “[E]ven if the errors were an innocent mistake, and even if the propositions are substantively accurate, the fact remains that Professor ... **submitted a declaration made under penalty of perjury with fake citations.**”
- The professor’s citations to fake sources “**shutters his credibility with this Court**”



U.S. vs. Hayes, Case No. 2:24-cr-0280 (E.D. Cal. 2025)

- “Submitting fictitious cases and quotations to the court **degrades or impugns the integrity of the Court and interferes with the administration of justice**” in violation of Local Rules and California Rules of Professional Conduct
- “The citation has **all the markings of a hallucinated case created by generative artificial intelligence (AI) tools such as ChatGPT and Google Bard** that have been widely discussed by courts grappling with fictitious legal citations and reported by national news outlets.”
- The court **did not believe** the counsel
 - The counsel claimed that he “did not use and ha[s] never used AI (artificial intelligence) to draft any motions.”
 - “The Court finds this response **inadequate and not credible.**”
 - The federal defender **sanctioned** (\$1,500)



Local Rules on the Use of AI

- E.D. Tex. Local Rules
- LOCAL RULE CV-11 Signing of Pleadings, Motions, and Other Documents
- **(g) Use of Technology by Pro Se Litigants.** Litigants remain responsible for the accuracy and quality of legal documents produced with the assistance of technology (e.g., ChatGPT, Google Bard, Bing AI Chat, or generative artificial intelligence services). Litigants are cautioned that certain technologies may produce **factually or legally inaccurate content**. If a litigant chooses to employ technology, the litigant continues to be bound by the requirements of Fed. R. Civ. P. 11 and **must review and verify any computer-generated content** to ensure that it complies with all such standards. See *also* Local Rule AT-3(m).



Local Rules on the Use of AI

- **E.D. Tex. Local Rules**
- **LOCAL RULE AT-3 Standards of Practice to be Observed by Attorneys**
- **(m)** Attorneys who appear in civil and criminal cases in this court shall comply with the following standards of practice in this district. If the lawyer, in the exercise of his or her professional legal judgment, believes that the client is best served by **the use of technology (e.g., ChatGPT, Google Bard, Bing AI Chat, or generative artificial intelligence services)**, then the lawyer is cautioned that certain technologies **may produce factually or legally inaccurate content and should never replace the lawyer's most important asset – the exercise of independent legal judgment.** If a lawyer chooses to employ technology in representing a client, the lawyer continues to be bound by the requirements of **Federal Rule of Civil Procedure 11, Local Rule AT-3,** and all other applicable standards of practice and must review and verify any computer-generated content to ensure that it complies with all such standards.



Standing Orders on the Use of AI

- **District Judge Araceli Martínez-Olguín (N.D. Cal.)**
- **Civil Standing Order (11/22/2023)**
- **Artificial Intelligence (AI).** Counsel is responsible for providing the Court with **complete and accurate representations** in any submission (including filings, demonstratives, evidence, or oral argument), consistent with Federal Rule of Civil Procedure 11, the California Rules of Professional Conduct, and any other applicable legal or ethical guidance. **Use of ChatGPT or other such tools is not prohibited, but counsel must at all times personally confirm for themselves the accuracy of any content generated by these tools.** At all times, counsel—and specifically designated lead trial counsel—bears responsibility for any submission made by the party that the attorney represents. **Any submission containing AI-generated content must include a certification that lead trial counsel has personally verified the content's accuracy.** Failure to include this certification or comply with this verification requirement will be **grounds for sanctions.** Counsel is responsible for maintaining records of all prompts or inquiries submitted to any generative AI tools in the event those records become relevant at any point.



AI Use by the Judiciary

- *Conduct legal research*
- *Assist in drafting routine administrative orders, generating routine court notices and communications*
- *Search and summarize deposition, exhibits, briefs, motions, and pleadings*
- *Create timelines of relevant events*
- *Assist with transcriptions, translation of foreign-language documents*

Source: Hon. Herbert B. Dixon Jr., et al., *Navigating AI in the Judiciary: New Guidelines for Judges and Their Chambers*, The Sedona Conference Journal, Vol. 26 (February 2025)

Takeaways

- *Current use of AI in legal workflows is limited*
- *Consider exploring available tools to streamline tasks*
- *Know the dangers of AI use*
- *Triple-check the outputs, confirm citations*
- *Read local rules and standing orders*

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Questions?

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