

Advancements in AI for Trademark Lawyers: Beyond Search to Enhance Legal Work



Artificial intelligence (AI) has been revolutionizing various industries, and the field of trademark law is no exception. Trademark attorneys already use AI to help check the availability of trademarks and identify threats. However, some attorneys predict that AI could fundamentally change the nature of their practices. They envision a world where AI enables them to add value to clients earlier in the process, particularly in the brand idea-generation phase.

Trademark attorney Ashley G. Kessler of Cozen O'Connor recently used ChatGPT to search for available cannabis brand names. She was impressed with the results and noted that eight out of 10 did not conflict with registrations at the US Patent and Trademark Office. While some of those names appeared to be in use in web searches, indicating possible common law rights, she believes that attorneys should start incorporating AI into how they perform availability searches in the future. The technology will raise expectations, with even marketing departments looking to attorneys to help find available brand ideas. Kessler anticipates a system where clients expect more from lawyers than they already do and envisions that it will push lawyers to become a one-stop-shop for clients.

The debate over whether AI can create intellectual property has generated legal questions and controversy in the fields of copyright and patents. However, who created a trademark is legally irrelevant, as the core issues are generally who used it first in commerce and on what product. Trademark attorneys still need to apply legal principles and context to fine-tune AI analysis, as the determination of whether a mark has been infringed and whether a mark's registration should be blocked at the PTO turn on whether there's a likelihood that consumers would be confused, context- and fact-dependent legal standards difficult for a computer to evaluate, trademark attorney Britt L. Anderson of Perkins Coie LLP said.

AI has already carved out a niche in trademark law, and companies like CoreSearch use AI to instantly comb the PTO's trademark registry for existing marks that could conflict with a client's idea. They prioritize lists of marks that could stand in the way, even if not an exact match, by the degree of risk based on the similarity of the marks and covered products. The companies also use AI to help police their registered marks by monitoring the internet and flagging potentially infringing brands or counterfeit products.

AI tools help with some of the more labor-intensive tasks that trademark attorneys do. The tools save time and provide pretty accurate results, according to attorney Jennifer Van Kirk of Lewis Roca Rothgerber Christie LLP. The use of AI in trademark law is somewhat invisible, and attorneys do not think about it too much. Even web browser searches for marks incorporate AI.

Attorneys expect existing tools to continue to improve, and Kessler's experience with ChatGPT to generate brand ideas adds a fundamentally different dimension to using AI. It's a short technical leap from general AI tools like ChatGPT to imagine incorporating access to the PTO's trademark registry, allowing an AI program to simultaneously create brand ideas and check whether the trademarks are available effectively instantly. Attorneys could use AI to generate client ideas and become a one-stop shop for branding. Van Kirk thinks the most significant potential of AI is helping smaller clients without marketing budgets brainstorm a brand or find a new one after losing theirs in a legal fight.

However, trademark law is not immediately amenable to humans leaving the process entirely, Anderson said. There is still a lot of subjectivity to it, and human creativity will always be a factor. While AI technology may continue to alter the work of trademark attorneys as well as their toolkits, it cannot replace them entirely.

REFERENCES:

AI for Trademark Lawyers Moving Beyond Search to Expanding Work