

AI – The Impact on IP in the Pharma Industry

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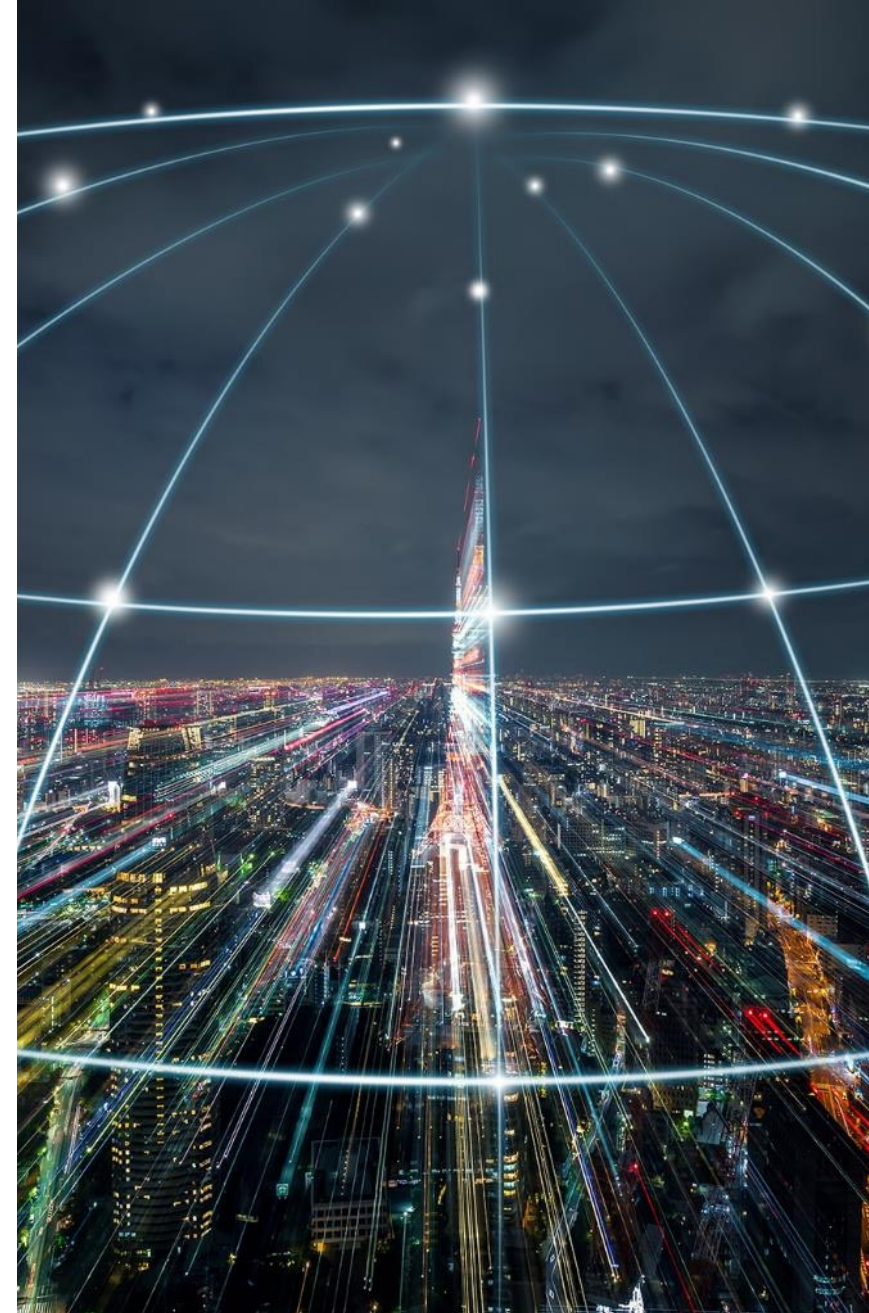
What is AI?

Artificial Intelligence

- Intelligence – Ability to reason, learn and adapt
- AI – The simulation of human intelligence processes by machines
- Generative AI – The branch of AI concerned with developing models and algorithms that may generate unique content

Goal of Generative AI

- Systems that can solve problems and improve
- Systems that can understand language
- Systems that understand concepts
- Systems that can potentially evolve?





Types of Generative AI Outputs

Contracts/Regulatory Documents

Images/Models

Drug Development

Clinical Trial Assistance

Legal Agreements

Marketing Campaigns

Brand Generation



Current Generative AI Tools (& Stats)

- **Examples:** DALL-E-2, Midjourney, ChatGPT (Open AI), GPT-4 and Bard (Google)
- **Adoption**
 - DALL-E, which uses OpenAI to generate images, took about 2.5 months to reach 1 million users
 - ChatGPT exceeded 1 million users 5 days after its launch
- **Forecasts**
 - By 2025, generative AI will account for 10% of all data produced, up from less than 1% in 2021
 - By 2025, more than 30% of new drugs and materials will be systematically discovered using generative AI techniques
- **Pharma Industry**
 - Generative AI is expected to help scientists discover and design new medicines and medical treatments, which has typically been a long and expensive process





ChatGPT

(from OpenAI)

Input – “I am visiting Athens Greece in October and I want song lyrics about my trip in the style of Nina Simone.”

Output –

(Verse 1)

In the ancient land where legends thrive,
Athens, where history comes alive,
The sun paints the ruins in golden hue,
I'm stepping into a tale, oh, so true.

(Chorus)

Under the Grecian sky, I spread my wings and fly,
In Athens, my heart finds a lullaby,
Like Nina's sweet melody, I'll sing in harmony,
A song about Athens, a memory.



Regulatory and Legislative Developments

EU AI Act

On June 14, 2023, the European Parliament voted to adopt a compromise position on the draft text of the proposed EU AI Act, which:

- expands the categories of prohibited AI;
- adds further categories of high-risk systems;
- requires generative AI systems to disclose that content was AI-generated; and
- includes penalties to up to 7% of global revenue.

Ratification possibly in Q4 of 2023.

United States

On June 21, 2023, Senate Majority Leader Chuck Schumer (D-NY) laid out his proposed approach for enacting AI legislation, which includes a framework that:

- encourages safe innovation;
- calls for security, accountability, and explainability; and
- a series of AI insight forums starting this fall.

The Biden administration announced that 7 of the leading AI developers agreed to have their technologies independently tested and to release information about any flaws/risks.



Copyright & Trademark Considerations Generally

Copyright

- Foundation of Copyright Laws
- Copying vs. Learning

Trademark

- Foundation of Trademark Laws
- Interaction Between Brands and Consumers
- Pharmaceutical Marks Linked to Public Health





Copyright Considerations - Authorship

United States – U.S. Copyright Office announced that AI-generated work can be copyrighted if a human can prove that she put a meaningful amount of creative effort into the final work.

European Union –

- A work must be “original” to attain copyright protection and that requirement has been understood as requiring a human’s expression of their free and creative choices in the final output.
- A further requirement for works to receive copyright protection is that they originate from one or more identified “authors.”



Copying vs. Learning for Generative AI

Derivative Works





2023 – Year of AI Lawsuits

Class Action Lawsuit – Filed by Multiple Artists

- Civil Lawsuit in San Francisco and London
- Against Midjourney, Stability AI and DeviantArt
- Claim Unauthorized Use of Works to Create Training Databases Without Permission
- Claim Unauthorized Creation of Derivative Works

Filed by Getty Images

- Lawsuit in US and Seeking Injunction in London
- Against Stability AI
- Claim that the Inclusion of Images Without Authorization Violated Terms of Service and Copyright



Potential Solutions to Copyright Risks



**Creation of Automated Filters
(by AI platforms)**



**Opt-Out Mechanisms
(by copyright owners)**



**Licenses and/or Indemnity
(by AI platforms)**



**“Learnright” Laws
(by governments)**



Impact on Trademark Law

Purchasing

**Specific
Considerations
for Pharma
Industry**

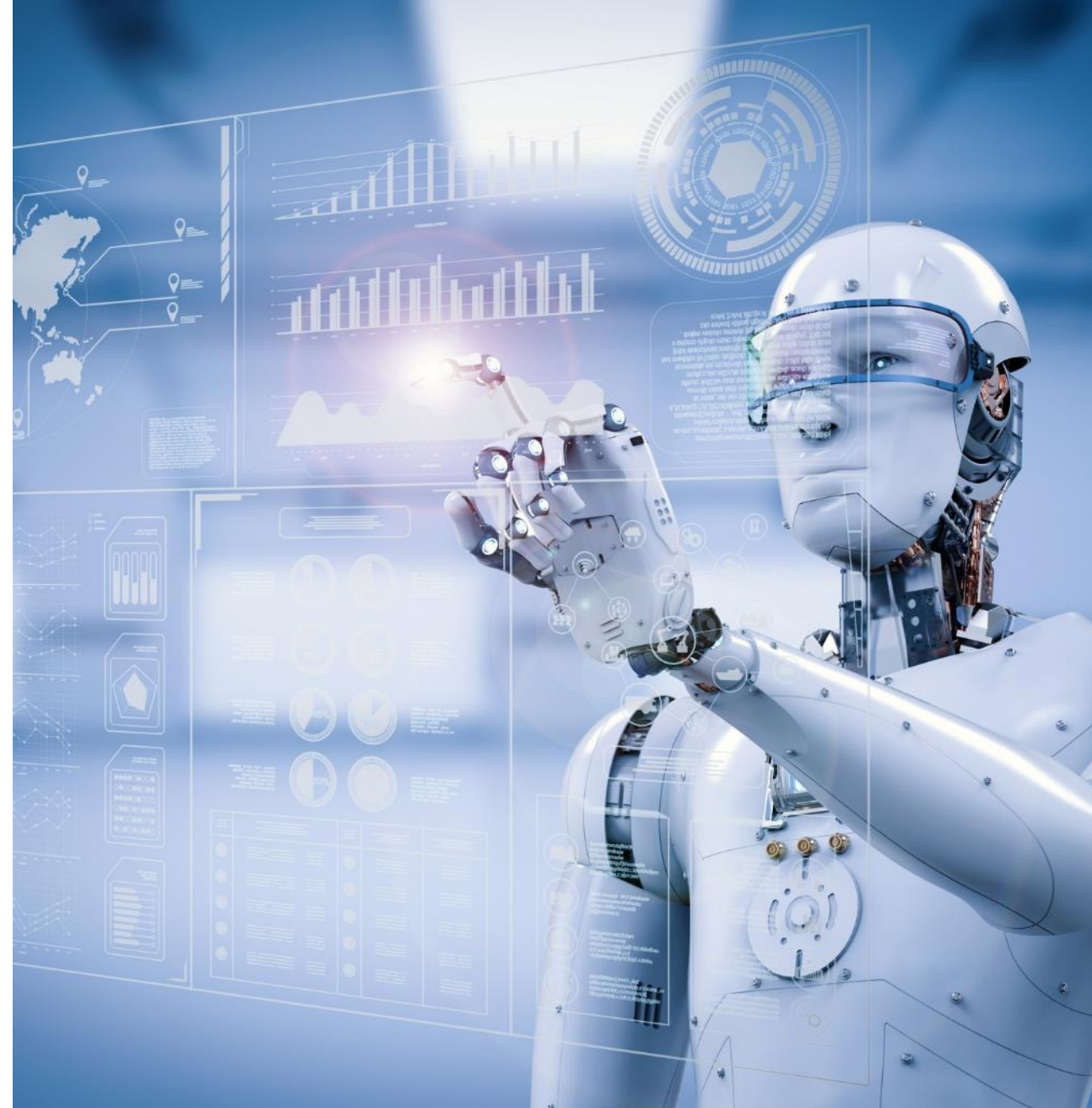
**“Responsive”
vs.
“Predicative”
Retail**

**AI as a
Consumer’s
Personal Shopper**



Trademark Clearance

- Voice Searches
- AI-Powered Search Tools
 - LogoCheck from Corsearch
 - Clarivate Brand Landscape Analyzer
 - Others. . . .



Trademark Enforcement

- Investigate, Analyze and Take Down
- Websites, Marketplaces and Social Media



Marketing/ Consumer Engagement

- Media Content Created and Tailored to Individual Patients
- Marketing Content Generation
- Branding Elements Generation
- Flagging Sensitive Information for Legal and Regulatory Compliance
- Understand Potential Concerns (need for guardrails)



Conclusion

Altering the Legal Profession

- Not Replacing Attorneys 😊
- Increase Productivity
- Create New Roles



Questions?



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