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Potential Pitfalls of Using Generative Artificial Intelligence Tools for Drafting Patent Applications

Daniel H. Golub

Inventors often seek out patent attorneys who are well-versed in the technical field of the invention. In some cases, such clients will provide a patent attorney with a brief invention disclosure, perhaps only a few paragraphs long. Such disclosures can be prophetic and may even lack a description of a single embodiment.

While the patent attorney will typically be given a limited time window to interview the inventor and receive some further details to better understand and round out the description of the invention, the patent attorney is expected to use their own understanding of the technology to flesh out comprehensive details about the invention in order to make the application robust. In doing this work, the attorney is expected to draw on their own knowledge and understanding of the technology to identify and describe embodiments that the inventor may not have explicitly mentioned. It is common for some of the details originating from the patent attorney to make their way into the claims, either as an element of an independent claim or as a dependent claim. Patent attorneys have long functioned in the role of providing expanded content for patent applications without being named as inventors in connection with the applications they prepare.

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For decades, patent attorneys have used automated tools to aid in the process of drafting patent applications. For example, patent attorneys routinely use automated search tools to identify prior art and to locate background information necessary to better understand an invention or define technical terms. Patent attorneys also use automated tools to identify instances where there is a lack of antecedent basis for a claim term or to confirm that the numerical labels applied within the drawings match those used in the specification.

Artificial intelligence (AI) tools represent the latest addition in a steady progression of increasingly sophisticated tools that assist in patent drafting. Patent attorneys, like others in the legal field, are embracing AI to improve the quality of the patent applications they draft and to make the drafting process faster and less costly for their clients.

Unlike earlier automated tools, patent drafting tools that incorporate generative AI can at times create what may be considered to be new, original content by learning from massive datasets. Proponents of these tools argue that the use of generative AI to originate new content for patent applications in this way simply automates what patent attorneys have done for years in preparing original content for patent applications, by making the process faster and more efficient. Others urge a more cautious approach and argue that the application of generative AI to generate original content for patent applications is not just different in degree—but different in kind—from a patent attorney who originates content in their own mind based on the information provided by the inventors.

This article examines these positions for the purpose of identifying and minimizing potential patent invalidity risks associated with the use of generative AI tools to create original content for patent applications.

Only Natural Persons Can Be Inventors

Several decisions from the Federal Circuit are pertinent to understanding the potential patent invalidity risks posed by the use of generative AI tools to draft patent applications. By far, the clearest decision is *Thaler v. Vidal*.[1] In that case, the U.S. Patent and Trademark Office (USPTO) rejected a patent application that listed an AI tool as the sole inventor. The Federal Circuit upheld the rejection, finding that an "inventor" under the Patent Act must be a natural person and cannot be an AI tool.

Separate and apart from the holding, the reasoning of the Federal Circuit in that case is important. The Federal Circuit based its decision on the provisions of the Patent Act that define an "inventor" and require that such inventor provide an oath or declaration attesting to the fact that such individual believes "himself or herself" to be the inventor.

The Federal Circuit began its analysis by examining 35 U.S.C. § 100(f), which defines an "inventor" as "the *individual* or, if a joint invention, the *individuals* collectively who invented or discovered the subject matter of the invention."[2] The Federal Circuit found that, when used as a noun, the term "individual" in everyday parlance and dictionaries means a human being.

The Federal Circuit also relied on the interpretation of the Dictionary Act articulated in *Mohamad v. Palestinian Authority*.[3] The Dictionary Act provides that the legislative use of the words "person" and "whoever" broadly includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, *as well as individuals*."[4] In *Mohamad*, the U.S. Supreme Court found that the phrase "as well as" marks "individual" as distinct from the list of artificial entities that precedes it, showing that Congress understood an "individual" to indicate a natural person.[5]

The Federal Circuit also focused on the use of the personal pronouns "himself" and "herself" to refer to an "individual" in 35 U.S.C. § 115(b)(2), which requires an oath or declaration from each inventor containing statements that "*such individual believes himself or herself* to be the original inventor or an original joint inventor of a claimed invention in the application."[6] The Federal Circuit reasoned that if Congress had intended to permit nonhuman inventors, the statute also would have referred to "itself."

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At the end of its analysis, the Federal Circuit stated unequivocally that AI cannot be an inventor: "When a statute unambiguously and directly answers the question before us, our analysis does not stray beyond the plain text. Here, Congress has determined that only a natural person can be an inventor, so AI cannot be."[7]

In *Thaler*, the question presented was limited to whether an AI tool could be named as a sole inventor, and the decision may be limited to those facts. In this regard, the Federal Circuit stated: "we are not confronted today with the question of whether inventions made by human beings with the *assistance* of AI are eligible for patent protection."[8]

Must All Elements of a Claimed Invention Be Conceived in the Mind of a Human?

The extent to which a generative AI drafting tool can originate part of the content included in a claimed invention remains an open question after *Thaler*, and there is substantial uncertainty as to how the courts will rule on this issue. A hypothetical is useful for exploring the extent to which a generative AI drafting tool can "assist" an inventor before destroying the validity of the resulting patent.

Consider a case where a patent attorney begins with a brief invention disclosure and then provides that disclosure to a generative AI tool that, based on the attorney's prompts, drafts a patent application that includes embodiments that were not present in the original invention disclosure. For simplicity, the patent application includes only a single claim with many elements, and all of the elements in the claim as filed can be mapped back to the brief invention disclosure originally provided to the patent attorney. However, during prosecution, the original claim is rejected over prior art. To overcome the rejection, the patent attorney must add one additional limitation to the claim that is supported only by an embodiment developed by the generative AI drafting tool, resulting in an allowance. Thus, the majority of the elements of the claimed invention were conceived in the mind of a human inventor, but the element necessary to overcome the prior art originated from the generative AI drafting tool.

Conception has long been the touchstone of invention but has been defined in different ways. In some cases, conception has been defined as "the complete performance of the mental part of the inventive act," and it is "the formation *in the mind of the inventor* of a definite and permanent idea of the *complete* and operative invention as it is thereafter to be applied in practice."[9] That definition of conception requires the totality of the invention to be conceived in the mind of a human, which would leave a claim like the one in the hypothetical that is only partially conceived in the mind of a human inventor outside the scope of patentable inventions. That definition of conception is consistent with Supreme Court decisions interpreting 35 U.S.C. § 101 that characterize the protection of "human-made" inventions and "human ingenuity" as the purpose of the Patent Act.[10]

Other definitions of conception may leave room for subject matter like that in the hypothetical that is partially conceived in the mind of a human inventor and partially originated by a generative AI drafting tool. For example, some decisions define conception "as a disclosure of an invention which enables one skilled in the art to reduce the invention to a practical form without 'exercise of the inventive faculty.'"[11] Other decisions characterizing conception focus on possessing "a firm and definite idea" of the claimed combination as a whole.[12] Proponents of AI tools would argue that any requirement that the AI tool have "a firm and definite idea" of the claimed combination as a whole would be satisfied in the hypothetical. More specifically, since the original invention disclosure was provided as part of the prompt to the AI tool, and the AI tool built on that information when originating the limitation that led to patentability, the tool could be said to have had "a firm and definite idea" of the claimed invention as a whole at the time it generated the subject matter in question.

The USPTO appears to have taken a middle-of-the-road approach. Under recent guidance, so long as a natural person "*significantly contributed* to each claim in a patent application or patent," the rules of inventorship are satisfied even if the AI drafting tool also contributed to each claim.[13] The guidance further provides that inventorship "is improper in any patent or patent application that includes a claim in which at least one natural person did not significantly

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contribute to the claimed invention, even if the application or patent includes other claims invented by at least one natural person."[14]

While the USPTO's guidance is interesting, it is not the law, and it may or may not hold any sway before a court addressing the extent to which a generative AI drafting tool can "assist" an inventor before destroying the validity of the resulting patent. That question remains open and carries substantial risk because there is no clear indication one way or the other how the courts will rule when they address the issue.[15] If the courts decide that the totality of a claimed invention must be conceived in the mind of a human, any patent where the claimed subject matter originated in part from a generative AI tool will be at risk of being rendered worthless.

How Does the Inclusion of Original Content Generated by AI Impact Patent Validity?

In the hypothetical, the majority of the elements of the claimed invention were conceived in the mind of a human inventor, but the element necessary to get over the prior art was originated by the generative AI drafting tool. Assume that the patent owner later asserts the patent in litigation, and, during discovery, it is revealed that the limitation added to gain allowance originated from a generative AI tool used to draft the application rather than the mind of the inventor. Based on these facts, the defendant moves for summary judgment that the patent is invalid because the novel aspect of the claimed invention was conceived by an AI tool. Since the named inventor did not conceive of the novel aspect of the claim and an AI tool cannot be a named inventor, the defendant's motion maintains that the patent must be declared invalid.

Proponents of generative AI would argue that the motion for summary judgment is baseless. As mentioned above, long before generative AI tools ever existed, patent attorneys used their own understanding of technology to turn original invention disclosures into robust patent applications, and in many cases aspects of the application originating from the patent attorney undoubtedly made it into the claims.[16] AI proponents would argue that, since courts have not invalidated patents where the claimed invention was originated by a patent attorney who was not named as an inventor, the same result should hold when the content originated from an AI tool that also was not named as an inventor.

However, there are distinctions between the case where the patent attorney originated (in their head) subject matter that makes its way into the claim and the case where such content originated from a generative AI tool. First, in the case where the patent attorney originated the content, the failure of the attorney to be named as an inventor on the patent could be viewed as a trivial formality that is easily corrected following normal patent rules.[17] The patent attorney has ethical duties to the client that would require the patent attorney to execute an inventorship declaration and assign all rights back to the patent owner. That defect is easily corrected by having the patent attorney execute an oath and assignment and adding them as a named inventor on the patent. By contrast, in the case where a generative AI tool contributed to the claimed invention, the defect is not easily corrected. In fact, in theory, it cannot be corrected at all because an AI tool cannot execute an inventorship oath or be added as an inventor to the patent.

The other distinction relates to the duty of disclosure that applies to the patent attorney when they make an inventive contribution to a claimed invention, but not to a generative AI tool that generates the same contribution. For example, if the subject matter contributed by the patent attorney had, as its stimulus, work done by the attorney on a prior patent or research materials that the attorney uncovered in the course of preparing an application, the attorney would have a duty to disclose the earlier patent or research materials to the USPTO during prosecution. By contrast, no such duty attaches to a generative AI tool. In fact, given the vast datasets used to train an AI tool, the totality of materials that the AI tool used as its basis for generating the subject matter in question would likely be difficult if not impossible to discern by working backward. Even if such information were knowable, there is no duty for a patent attorney using a generative AI tool for patent drafting to prompt the AI tool to list such information. The fact that no duty of disclosure attaches to the work of a generative AI tool sets it apart from inventive contributions made by a patent attorney who is bound by the duty of disclosure.

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Given the arguments on both sides, it is far from certain how a court would rule on the summary judgment motion seeking to invalidate the patent in the hypothetical. In fact, given the lack of precedent and the points discussed above, a court could plausibly rule either way.

The fact that there is a plausible scenario where a patent is invalidated based on improper inventorship should give pause to anyone using generative AI tools for drafting patent applications. While many clients are actively encouraging their patent attorneys to use generative AI to reduce the costs of drafting patent applications and increase the robustness of patent applications, those positives need to be carefully balanced against the risk that the resulting patent will be invalid. Quantifying and managing that risk may in turn depend on the yardstick used to measure inventorship.

How Significant a Contribution Would a Generative AI Tool Need to Make to Impact Patent Validity?

Continuing with the hypothetical, the question is not whether the person who authored the invention disclosure is *an* inventor; rather, the question is whether that person is the *sole* inventor. Thus, the Federal Circuit's decisions on what constitutes a joint inventor will be highly pertinent. Those decisions are fact-specific but nonetheless provide helpful guidance on the type and magnitude of a contribution that rises to the level of inventorship.

As restated in *Dana-Farber Cancer Institute, Inc. v. Ono Pharmaceutical Co.*, to be a joint inventor, one must:

> (1) contribute in some significant manner to the conception or reduction to practice of the invention, (2) make a contribution to the claimed invention that is not insignificant in quality, when that contribution is measured against the dimension of the full invention, and (3) do more than merely explain to the real inventors well known concepts and/or the current state of the art.[18]

Applying this standard to the hypothetical, the first factor could be met by the AI tool because it originated the limitation that led to patentability. In addition, with respect to the third factor, by originating new content, the generative AI tool clearly did more than merely explain well-known concepts or the current state of the art to the human inventor. The second factor—i.e., whether the AI tool made a contribution that was not insignificant when measured against the dimension of the whole invention—seems to be a much closer call. The original claim included many limitations, all of which were conceived first by the named inventor. Whether or not the single limitation, when measured against the dimension of the full claimed invention that includes many limitations, is "not insignificant" will be a fact-specific question that depends on the details of the claim in question.

Focusing still on the second factor, even though all of the claim limitations conceived by the named inventor standing alone were obvious in view of the prior art, it does not automatically follow that the additional limitation originating from the AI tool is "not insignificant." That is because inventorship and patentability over the prior art are different inquiries, and joint inventors need not contribute to all aspects of conception.[19] As the Federal Circuit has found, "joint inventorship does not depend on whether a claimed invention is novel or nonobvious over a particular researcher's contribution."[20] The Federal Circuit also rejected the argument that "research made public before the date of conception of a total invention cannot qualify as a significant contribution to conception of the total invention."[21] While "[e]arlier publication of an invention is obviously a potential hazard to patentability, . . . publication of a portion of a complex invention does not necessarily defeat joint inventorship.[22]

While the Federal Circuit's decisions on joint inventorship provide some guidance on the topic, on balance they add another layer of uncertainty as to how a court would rule on the summary judgment motion seeking to invalidate the patent in the hypothetical. It would appear that, in the context of that motion, there will be ample reasoning from prior cases for both sides to rely on in support of their respective positions. As a result, the Federal Circuit's decisions on joint inventorship are not dispositive in further quantifying the risk that the use of the AI tool would result in an invalid patent.

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Will a Patent Challenger Be Able to Demonstrate That a Claimed Contribution Originated from an AI Tool?

In the hypothetical, it would have been unlikely that the inventor would have admitted during a deposition that the limitation added to gain allowance originated from a generative AI drafting tool. As a practical matter, such admissions might rarely occur. Therefore, some might argue that while the debate about whether an AI tool qualifies as a joint inventor poses an interesting academic or theoretical question, it does not matter because, as a practical matter, a patent challenger will never be able to garner enough proof to demonstrate in the first place that a claimed contribution originated from an AI drafting tool. However, as discussed below, there are other types of proof besides a direct admission from the inventor that a patent challenger can rely on to make a case for invalidity.

In parallel with the development of generative AI tools for drafting patent applications, automated tools are being developed for detecting whether content was generated using AI. For example, GPTZero is a tool widely used by educators to identify whether students are submitting their own work or material generated by AI.[23] Similarly, Originality.ai provides a way to detect content generated by large language models.[24] It is only a matter of time before patent challengers in litigation use such tools in attempts to detect AI content. If a challenger is able to proffer an expert opinion based on the output of a tool designed to detect AI-generated content evidencing that material portions of the specification were originated by a generative AI tool, that evidence may well suffice to meet a challenger's burden of production. And if the totality of the evidence used by the patent owner to counter is simply the word of the inventor that they conceived of everything themself, it would be plausible for the fact finder to find against the patent owner, especially if the inventor lacks a sufficient memory to explain the origin of each portion of the specification filed.

That is just one scenario for garnering the proof necessary to support an invalidity case. Patent challengers will find other ways to make their case as well. Accordingly, it would be unwise to dismiss as a purely academic question whether the use of a generative AI patent drafting tool could negatively impact patent validity. The issue will undoubtedly be litigated, and, when that happens, the outcome will be both uncertain and groundbreaking.

How Else Could Using Generative AI Tools to Draft Patent Applications Impact the Patent Field?

"Backcasting" is a strategic process where one starts with a failure event and then works backward to identify possible scenarios that could result in the failure. Any patent practitioner embracing AI patent drafting tools should, on their own and in conjunction with their clients, seriously consider potential scenarios where the use of an AI tool for patent drafting could be detrimental, and then work backward to minimize the risk of each such scenario. Below are a few of the many possible scenarios:

First, there could be changes within the USPTO to adjust how patent applications are examined as the content of applications shifts from being solely originated by human inventors and patent practitioners to a mixture of human and AI-generated content. As that shift occurs, it would not be surprising to see the USPTO adopt automated tools for identifying AI-generated content, and when such content is identified in an application, requiring a supplemental oath or declaration from the named inventors, and perhaps even the patent attorney who filed the application, that the subject matter being claimed was not conceived by AI. A patent practitioner working backward from that result may consider developing a pattern and practice in connection with the use of AI tools for patent drafting that the practitioner could rely on in executing such an oath and counseling the named inventors regarding the same.

Second, risks could also materialize in the licensing context. For example, potential licensees who are being asked to take a license may push back by using automated tools for identifying AI-generated content to demonstrate that the patent being asserted is vulnerable to challenge because it was largely created using generative AI rather than by the mind of a human. A client might want to work backward from that potential scenario by providing guidelines to practitioners who prepare their applications using generative AI, specifying the type of AI content that can (and cannot) be included in the client's applications.

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Third, there is a risk that patent practitioners who rely too heavily on AI patent drafting tools will lose their edge. Our brains naturally reorganize over time by strengthening frequently used neural pathways and allowing less used ones to weaken or even be pruned. Patent practitioners need to incorporate AI drafting tools into their practices in a way that maintains their core competencies and ability to identify potentially patentable subject matter in a human-generated invention disclosure and how best to claim it. That skill is what adds value and should not be allowed to atrophy. Critically reviewing and analyzing the output of AI drafting tools is an important practice that will help patent practitioners stay sharp.

Fourth, even if the courts find that an AI drafting tool can make a contribution to a claimed invention without destroying validity, a question may still remain as to ownership of the contribution that originated from the generative AI tool. Absent an assignment from, for example, the provider of the generative AI tool that transfers ownership of the AI-generated contribution to the party who filed the patent application, the party filing the application may not have sole title to the resulting patent. While the terms and conditions of some AI tools expressly assign ownership of the output of the tool to the user, others do not. And of course an assignee can only transfer rights that the assignee possesses. So if during training an AI tool ingests an idea set forth in an academic paper and then later regurgitates that same concept when assisting with the draft of a patent application, it is questionable whether the provider of the AI tool even has any ownership rights in the subject matter that would be capable of being transferred. It would be wise for a practitioner using a generative AI drafting tool to review the terms and conditions associated with the tool to understand the extent to which they will vest ownership rights in the output with the client. In addition, it would be prudent to look for ways to document the assignment provisions of those terms and conditions so that if a question arises down the road whether the client has all right, title, and interest in the patent, proof of ownership will exist in the file.

Finally, separate and apart from backcasting, it would be unwise for patent practitioners to assume that all of the details involving the use of generative AI tools for patent drafting will work out well for patent owners because "everyone is doing it." There is a widespread view that every patent practitioner must rapidly incorporate AI into their workflow to stay competitive, and clients are putting pressure on patent practitioners to just "jump on the bandwagon." The current AI fever is reminiscent of the intense focus that began during the dot-com era of filing business method patents directed to "everything under the sun."[25] Years later, the U.S. Supreme Court issued its decision in *Alice Corp. Pty. Ltd. v. CLS Bank International*, which in "one fell swoop" rendered thousands of those business method patents completely worthless.[26] The Supreme Court in that case was not deterred by the fact that the USPTO had already issued thousands of business method patents to patent owners who were justifiably relying on those patents to protect their business interests. If history is a guide, the fact that the USPTO will have issued thousands of patents with claimed subject matter that includes generative AI content will hold little sway in how the validity of such patents will ultimately be adjudicated.

Managing the Risks

Patent attorneys are adept at making decisions as to how to manage risk, whether they realize it or not. Many decisions about patent practice in general, and the drafting of a given patent application in particular, have pros and cons that need to be analyzed and balanced along the way. In that respect, the use of generative AI tools is no different from the myriad other issues at play when practicing in the patent field. The use of common sense and attention to detail goes a long way toward managing those risks.

A patent attorney might supply a wide range of prompts to the AI drafting tool to prepare an application, each with a different risk profile. On one end of the risk spectrum would be a prompt that supplies the invention disclosure from the inventor and instructs the AI tool to "be creative" when formulating additional embodiments. A more conservative prompt would instruct the AI tool not to deviate from, or supplement, the content of the invention disclosure and, in that context, prompt the tool to simply reformulate the material in the invention disclosure form into the format of a patent application. A client who is requesting its patent attorney to use AI for application

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drafting should consider giving guidance on the types of prompts that should and should not be used in order to manage the risk associated with the use of generative AI.

Every patent practitioner must critically review and analyze the output of AI drafting tools, just as they would do if the material was prepared by a more junior attorney. In so doing, the practitioner should identify new subject matter that was originated by the AI tool (and not found in the invention disclosure provided by the inventor) and evaluate whether the inclusion of such material in the patent application could jeopardize the validity of a resulting patent. When new subject matter is included in a draft patent application, the practitioner should also review the new material with the client and advise the client of the potential risk.

While careful scrutiny of both the prompts provided to and output of AI drafting tools will help minimize the risks, it will not eliminate them. That will only happen when the issue is resolved by Congress or the federal courts. Until then, it will be up to the patent practitioner in consultation with the client to balance the inherent and real risks presented by the use of AI drafting tools against the improvements in efficiency and quality offered by those tools.

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Endnotes

1. 43 F.4th 1207 (Fed. Cir. 2022).
2. *Id.* at 1211 (quoting 35 U.S.C. § 100(f)).
3. *Id.* (citing Mohamad v. Palestinian Auth., 566 U.S. 449, 454 (2012)).
4. *Id.* (quoting 1 U.S.C. § 1).
5. *Id.* (citing *Mohamad*, 566 U.S. at 454).
6. *Id.* (emphasis added) (quoting 35 U.S.C. § 115(b)(2)).
7. *Id.* at 1213.
8. *Id.*
9. Townsend v. Smith, 36 F.2d 292, 295 (C.C.P.A. 1929) (emphasis added); *see also* Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1376 (Fed. Cir. 1986).
10. Diamond v. Chakrabarty, 447 U.S. 303, 309, 313 (1980).
11. Gunter v. Stream, 573 F.2d 77, 79 (C.C.P.A. 1978).
12. Ethicon, Inc. v. U.S. Surgical Corp., 135 F.3d 1456, 1460 (Fed. Cir. 1998).
13. Inventorship Guidance for AI-Assisted Inventions, 89 Fed. Reg. 10043, 10048 (Feb. 13, 2024) (emphasis added).
14. *Id.*
15. The issue might come down to a pure question of statutory interpretation. Under 35 U.S.C. § 100(f), an "inventor" is defined as "the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention." If a court interprets "*the* subject matter of the invention" to mean *all* of the subject matter of the invention, then *all* of the subject matter must have been conceived by individuals, which, under *Thaler*, must be human individuals. If all of the subject matter must be conceived by humans, the statute leaves no room for AI to originate any part of the invention. Alternatively, if a court interprets "*the* subject matter of the invention" to mean *some or all* of the subject matter of the invention, then the statute would permit an invention to be partially conceived by a human while the remainder is originated by AI.
16. 157 Cong. Rec. S1034–51 (daily ed. Mar. 1, 2011) ("[L]et me address the matter of what gets included in a typical invention notebook or invention record. . . . Every patent attorney and patent agent knows the level of detail that is provided by inventors, even those who work for large corporations. The invention disclosures are as a rule laughably inadequate. One paragraph passes for a 'complete' explanation of the invention. The truth is that patent attorneys are typically given very little from an inventor at the beginning of the process. In fact, inventors give such little information that at times the true inventor on the patent application that is actually filed should really be the patent attorney, not the inventor. That is obviously not always the case, but this is the big joke in the patent attorney community. Getting information from inventors is a little like herding cats." (quoting Gene Quinn, *Much Ado About Nothing Over First to File*, IPWatchdog (Nov. 7, 2009), https://ipwatchdog.com/2009/11/07/much-ado-about-nothing-over-first-to-file/)).

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17. 35 U.S.C. § 256(b) ("The error of omitting inventors or naming persons who are not inventors shall not invalidate the patent in which such error occurred *if it can be corrected* as provided in this section." (emphasis added)).

18. 964 F.3d 1365, 1371 (Fed. Cir. 2020) (quoting Pannu v. Iolab Corp., 155 F.3d 1344, 1351 (Fed. Cir. 1998), and *In re* VerHoef, 888 F.3d 1362, 1366 (Fed. Cir. 2018)).

19. *Id.* at 1371–73.

20. *Id.* at 1372.

21. *Id.*

22. *Id.* at 1373.

23. GPTZero, https://gptzero.me/ (last visited Sep. 28, 2026).

24. Originality.ai, https://originality.ai/ (last visited Sep. 28, 2026).

25. State St. Bank & Tr. Co. v. Signature Fin. Grp., Inc., 149 F.3d 1368 (Fed. Cir. 1998) ("[T]he Supreme Court has acknowledged that Congress intended § 101 to extend to 'anything under the sun that is made by man.'").

26. 573 U.S. 208 (2014).

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