

AI-Enhanced Patent Claiming

Sarah R. Wasserman Rajec^{*}

William & Mary Law School

Courts have ruled that artificial intelligence cannot serve as a named inventor on a patent. However, the much more likely use for AI in patent drafting is its use as an aid to inventors in expanding patent claims and applications for inventions. New generative AI tools allow patent applicants to describe and claim far more than they otherwise might have. The use of generative AI as a tool in patent drafting need not be seen in a negative light. To the contrary, it may lead to greater innovation, sooner, driving down the overall costs of innovation. However, AI-enhanced claims come with costs for the patent system and innovation ecosystem. This includes examination costs, information costs, and litigation costs.

Some have suggested that the statutory requirements for patentability, particularly utility and obviousness, are useful levers to address AI-enhanced claiming. While these tools may address some of the problems associated with AI-created inventions, they may prove too blunt for AI-enhanced claims. However, there are other tools that address some of the issues that accompany AI-enhanced claiming. In particular, including a requirement of central claiming—in addition to the peripheral claiming now used in patent applications—would address the problems with overbroad and unclear scope that are likely to accompany AI-enhanced claiming. In addition, a return to a modified type of working requirement might serve as a bulwark against using AI-enhanced claims to preempt competitor inventions and preserve the public domain.

^{*} Professor of Law, William & Mary Law School.