

Preparations for AI patenting in Europe



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The current era of rapid technological development requires industry to be quick to respond to challenges and opportunities, with many choosing to exploit new AI technologies rather than wait to be disrupted by competitors.

Intellectual property law firms need to be just as prompt, flexible and proactive as their industry clients. But are they able to do this despite European constraints on patenting computer programs and mathematical methods? Are these laws and procedures suitable for the accelerating pace of technological change?

TIMELINESS

Historically, the European Patent Office was criticised for long delays examining patent applications, but this is changing. Starting in 2014, the EPO has made real progress against aggressive timeliness targets - now issuing European substantive search opinions within 5 months, and completing a major reorganisation that will achieve faster grant, reduce costs for some applicants and improve opposition handling. The EPO granted more patents and reduced average pendency times in 2017. Their target is to grant patents within 3 years of filing by 2020 – faster than what some pharmaceutical companies want.

PATENTING AI

The EPO is well prepared for the current generation of AI-related patent applications in which AI tools support human ingenuity and a vast number of patents are granted in Europe for new computer-implemented solutions to technical problems. In fact, EPO practice on computer-implemented inventions including software (CIIs) has been stable for a decade (unlike the USPTO and IP Australia), so we can accurately predict outcomes, before costs are incurred, based on a large body of case law and consistent practice.

Looking ahead, many AI-related patent applications, including some applications of AI technologies in healthcare and biosciences, will be handled under the established CII practice. The EPO has consulted with representatives from industry, the judiciary, academia and private practice as it prepares for further growth in AI patenting. Examiners and our attorneys in life sciences have been trained on CII practice and new guidelines with AI examples in healthcare will be published soon.

Legislation will be needed for future generations of AI however, including inventions made autonomously by AI systems without human inventors. Meanwhile, we will obtain European patents more quickly for many AI inventions, and we can predict outcomes for challenging cases.

Should you have any queries on this topic please get in touch with Mike at mjj@aathornton.com

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