

THE HAND OF ARTIFICIAL INTELLIGENCE IN INTELLECTUAL PROPERTY

PRESENTED TO



JUNE 3, 2021 WEBINAR

BY

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YOUR SPEAKER



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- Registered U.S. Patent Attorney
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OVERVIEW



- WHAT IS AI?
- AI RELATIVE TO PATENTS
 - INVENTOR?
 - PATENTABLE SUBJECT MATTER?
 - TOOL?
- AI RELATIVE TO COPYRIGHTS
 - AUTHOR?
- RESPONSIBILITIES



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What is Artificial Intelligence (AI)?



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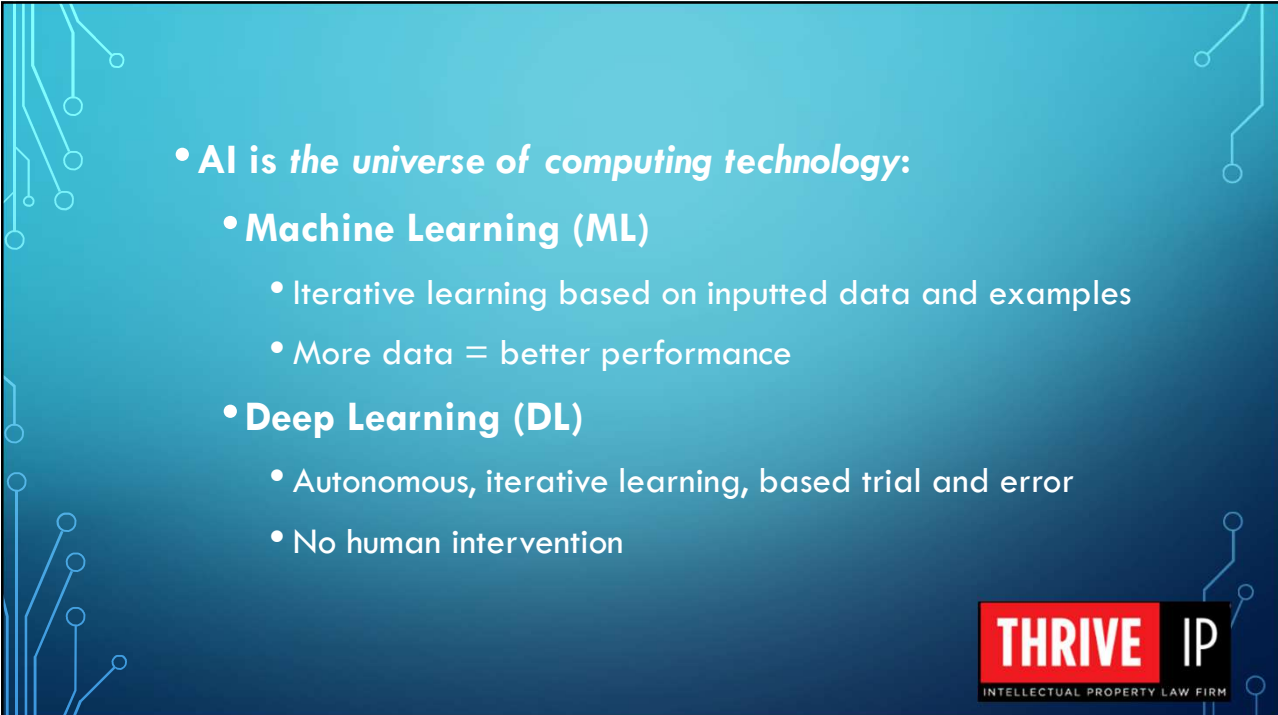


AI IS A *SYNTHETIC ENTITY* – a human-created computer, robot, or machine demonstrating human-like intelligence and performing human-like actions.

A synthetic entity can make decisions, solve problems, and function like a human by learning from examples and experience, recognizing objects, and understanding human language.

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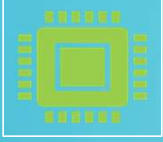
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- **AI is the universe of computing technology:**
 - **Machine Learning (ML)**
 - Iterative learning based on inputted data and examples
 - More data = better performance
 - **Deep Learning (DL)**
 - Autonomous, iterative learning, based trial and error
 - No human intervention

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Machine Learning (ML)

Based on a *neural network*, essentially consisting of 3 layers:

1. Data entry or input layer.
2. Hidden layer where algorithms process data by assigning significances, biases, etc. to data.
3. Output layer in which the AI produces conclusions or results with varying degrees of confidence.

ML AI **requires human supervision**; e.g., periodic adjustments of algorithms




Deep Learning (DL)

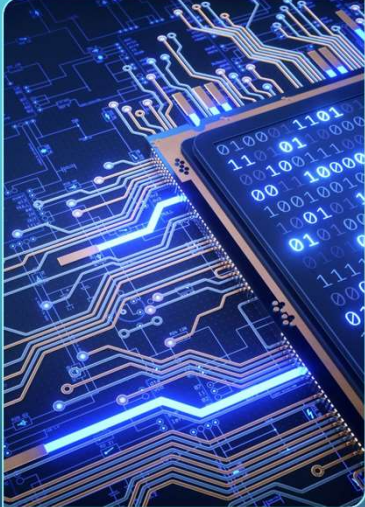
Based on *deep neural networks*; like ML but with multiple hidden layers.

1. Data entry or input layer.
2. Multiple hidden layers that refine conclusions of previous layer.
3. Output layer with conclusions that have been refined, **forward** and **backward**.

DL AI is capable of **unsupervised learning**.




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EXAMPLES OF AI

- **Natural Language Processing**
 - Interpreting human language; e.g., Siri® and Alexa®
- **Speech recognition**
 - E.g., voice-enabled text messaging
- **Spam filters**
- **Recommendation Engines**
 - E.g., Netflix, Amazon
- **Household robots:**
 - Robotic vacuums use AI and GPS to determine room sizes, avoid obstacles, and to learn most efficient routes to vacuum rooms.



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DEEP FAKE INFLUENCERS
<https://youtu.be/6sDJNlyW2AA>

GENERATIVE ADVERSARIAL NETWORK (GAN): THIS PERSON DOES NOT EXIST
 USING GENERATORS AND DISCRIMINATORS FOR RESOLUTION CONVERGENCE
 SEE, E.G., GAN OBJECTIVE FUNCTIONS: GANS AND THEIR VARIATIONS
 BY HUNTER HEIDENREICH, AUG. 23, 2018

USING IBM WATSON COGNITIVE CAPABILITIES WITH DEVICES COUPLED TO THE INTERNET OF THINGS
 "MOVING DATA AND THE POINT-OF-SALE TO WHEREVER THE CONSUMER WANTS IT TO BE"
[IBM AND VISA: API AND WATSON IOT](#)

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Can AI be an Inventor?

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Q: Do current patent laws ...regarding inventorship need to be revised to take into account inventions where an entity...other than a natural person contributed to the conception of an invention?

A: USPTO response (internal citations omitted):

[A]n “inventor” is defined in 35 U.S.C. § 100(a) as the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention. **Title 35 of the United States Code is replete with language indicating that the inventor of a patent application must be a natural person.** For example, 35 U.S.C. § 101 states, “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter ... may obtain a patent therefore, subject to the conditions and requirements of this title” (emphasis added). “Whoever” denotes whatever person, a person being a human being—a natural person. **By the use of “whoever,” § 101 limits patent protection to inventions and discoveries by natural persons.**

“The USPTO’s understanding of the patent statutes and the Federal Circuit case law [is] that inventorship requires that an inventor must be a natural person”

Responses to the RFC on Patenting Artificial Intelligence Inventions, issued 8/27/19.
USPTO AI&Report_2020-10-07.pdf (https://www.uspto.gov/sites/default/files/documents/USPTO_AI-Report_2020-10-07.pdf)

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AI CAN NOT BE INVENTOR

In re Application Ser. No. 16/524,350, filed July 29, 2019, for DEVICES AND METHODS FOR ATTRACTING ENHANCED ATTENTION


Inventor listed on ADS with “given name” DABUS and family name “Invention generated by artificial intelligence.” (DABUS = Device for the Autonomous Bootstrapping of Unified Sentence)

“The granting of a patent under 35 U.S.C. § 151 for an invention that covers a machine does not mean that the patent statutes provide for that machine to be listed as an inventor in another patent application-any more than a patent for a camera allows the camera hold a copyright.” [16524350_22ap](#)

PETITION DENIED (Refusing To Vacate Notice To File Missing Parts), APRIL 22, 2020.

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Can AI be patented?

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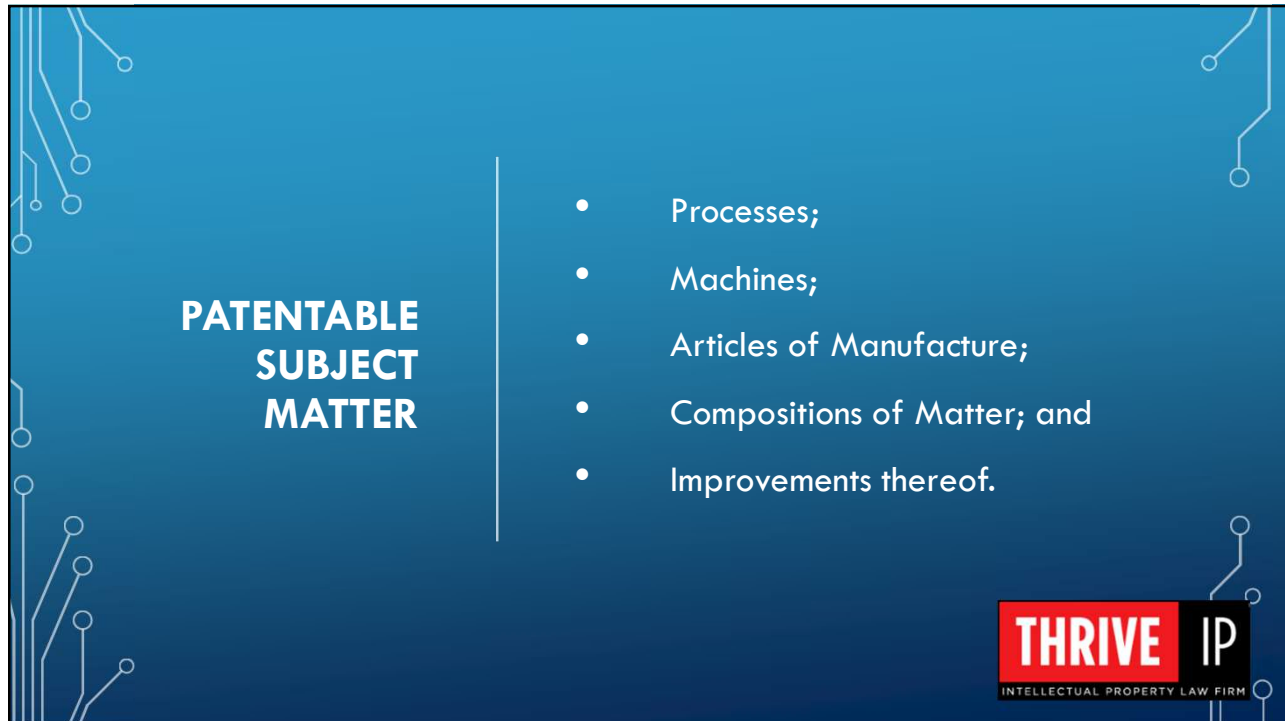
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35 USC § 101

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title."

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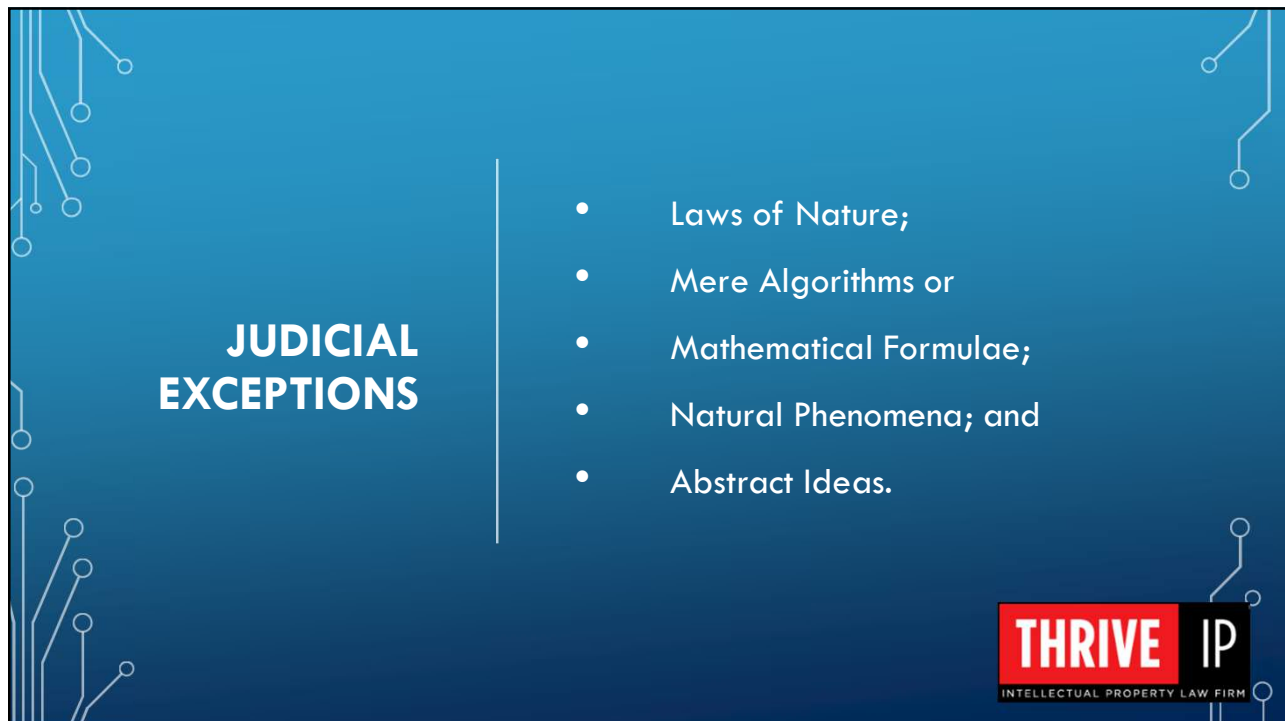


**PATENTABLE
SUBJECT
MATTER**

- Processes;
- Machines;
- Articles of Manufacture;
- Compositions of Matter; and
- Improvements thereof.

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**JUDICIAL
EXCEPTIONS**


- Laws of Nature;
- Mere Algorithms or
- Mathematical Formulae;
- Natural Phenomena; and
- Abstract Ideas.

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TESTING A PATENT CLAIM AGAINST AN ABSTRACT IDEA

- Is there a concrete statement of a specific technological problem that the claims solve or address?
- Is there something “significantly more” in the claims that elevates the technological problem/solution to inventive status?



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(12) **United States Patent**
Sharma et al.

(10) **Patent No.:** US 10,980,028 B2
(45) **Date of Patent:** Apr. 13, 2021

(54) **ADAPTIVE BEAM SWEEPING FOR 5G OR OTHER NEXT GENERATION NETWORK**

(71) Applicant: **AI&T Intellectual Property I, L.P.**, Atlanta, GA (US)

(72) Inventors: **Deva-Datta Sharma**, San Ramon, CA (US); **Shrabati Jana**, Danville, CA (US); **Mostafa Tolghakhah**, Cupertino, CA (US); **Bogdan Ungureanu**, Holmdel, NJ (US); **Ritvik Jana**, Monville, NJ (US)

(73) Assignee: **AI&T INTELLECTUAL PROPERTY I, L.P.**, Atlanta, GA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: 16369,778

(22) Filed: **Mar. 29, 2019**

(65) **Prior Publication Data**
US 20200314826 A1 Oct. 1, 2020

(51) **Int. Cl.**
H04W 72/04 (2009.01)
H04B 7/06 (2006.01)
H04B 7/0426 (2017.01)
H04W 16/28 (2009.01)

(52) **U.S. Cl.**
CPC: *H04W 72/046* (2013.01); *H04B 7/044* (2013.01); *H04B 7/0617* (2013.01); *H04W 16/28* (2013.01); *H04W 16/28* (2013.01)

(58) **Field of Classification Search**
CPC: *H04W 16/28*; *H04W 64/006*; *H04B 7/0617*; *H04B 7/0401*; *H04B 7/043*


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(Continued)

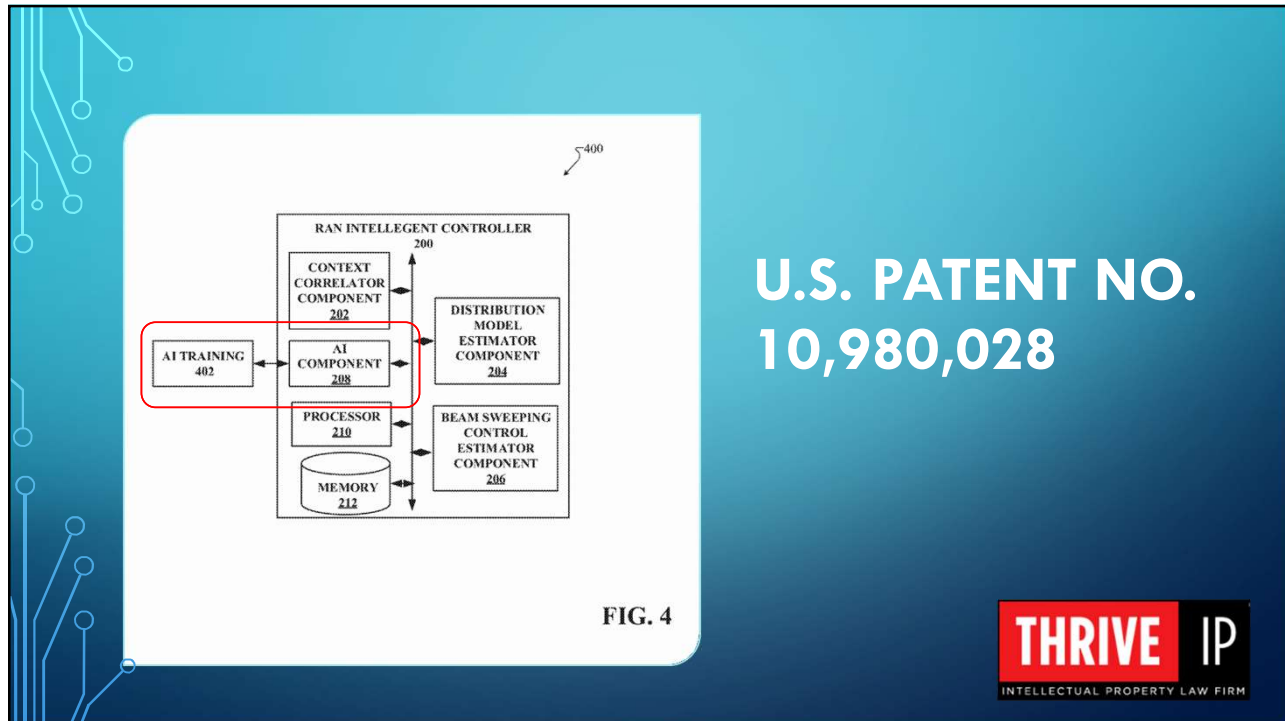
Primary Examiner — Omer S Mian
(74) *Attorney, Agent, or Firm* — Amin, Turcay & Watson, LLP

(57) **ABSTRACT**
Given real-time user equipment (UE) measurements from an open radio access network (O-RAN) infrastructure, a radio access network intelligent controller (RIC) can compute a UE distribution context space. The O-RAN can comprise gNodeBs, centralized units, and distributed units. The UE distribution context space computations can be performed by a UE context correlator module of the RIC. The UE context correlator module can also utilize a pre-defined UE context model, which contains definitions and values for various UE context attributes to generate adaptive beamforming patterns.

U.S. PATENT NO. 10,980,028



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U.S. PATENT NO.
10,980,028

FIG. 4



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It should also be noted that an artificial intelligence (AI) component can facilitate automating one or more features in accordance with the disclosed aspects. For purposes of this disclosure, ML and AI are used interchangeably. A memory and a processor as well as other components can include functionality with regard to the figures. The disclosed aspects in connection with adaptive beam sweeping can employ various AI-based schemes for carrying out various aspects thereof. For example, a process for detecting one or more trigger events, modifying a beam sweeping pattern as a result of the one or more trigger events, and transmitting the beams, and so forth, can be facilitated with an example automatic classifier system and process. In another example, a process for penalizing one beam while preferring another beam can be facilitated with the example automatic classifier system and process.

U.S. PATENT NO.
10,980,028




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In the embodiment shown in FIG. 2, the RIC 200 can comprise sub-components (e.g., context correlator component 202, distribution model estimator component 204, AI component 208, and beam sweeping control estimator component 206), processor 210 and memory 212 can bi-directionally communicate with each other. It should also be noted that in alternative embodiments that other components including, but not limited to the sub-components, processor 210, and/or memory 212, can be external to the RIC 200. Aspects of the processor 210 can constitute machine-executable component(s) embodied within machine(s), e.g., embodied in one or more computer readable mediums (or media) associated with one or more machines. Such component(s), when executed by the one or more machines, e.g., computer(s), computing device(s), virtual machine(s), etc. can cause the machine(s) to perform the operations described by the RIC 200. In an aspect, the RIC 200 can also include memory 212 that stores computer executable components and instructions.

RIC = Radio Access Network Intelligent Controller

U.S. PATENT NO. 10,980,028



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REPRESENTATIVE CLAIM:


8. A system, comprising: a processor; and a memory that stores executable instructions that, when executed by the processor, facilitate performance of operations, comprising:

- based on attribute data representative of attributes of a first number of user equipment, modeling a real-time distribution of the first number of user equipment at a first time, resulting in a real-time distribution model, wherein the attribute data comprises a time associated with utilization of the first number of user equipment, a location of the first number of user equipment, and a social event associated with the first number of user equipment;
- correlating the attribute data to defined parameters, wherein correlating the attribute data to the defined parameters comprises partitioning the attribute data based on defined context attributes comprising a time context attribute, a location context attribute, and a social event context attribute;
- in response to correlating the attribute data to the defined parameters and based on historical distribution data, generating a machine-learned distribution model;
- based on the real-time distribution model and the machine-learned distribution model, estimating a distribution model for a second time that is later than the first time, resulting in an estimated distribution model, applicable to a second number of user equipment, wherein the second number of user equipment is less than the first number of user equipment; and
- based on the estimated distribution model, determining a beam sweeping control parameter, wherein the beam sweeping control parameter comprises a scanning periodicity value to be applied, by the processor, to a beam sweep; and
- in response to the determining, applying the beam sweeping control parameter to the second number of user equipment at the second time.


U.S. PATENT NO. 10,980,028

- Claimed: "Machine Learned Distribution Model"
- ...and allowed.

Is this permissible?




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AI as a Patent Tool?




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The use of an AI system as a tool by a natural person(s) does not generally preclude a natural person(s) from qualifying as an inventor (or joint inventors) if the natural person(s) contributed to the conception of the claimed invention. That is, the activities by a natural person(s) that would ordinarily qualify as a contribution to the conception of an invention are unaffected by the fact that an AI system is used as a tool in the development of the invention. For example, depending on the specific facts of each case, activities such as designing the architecture of the AI system, choosing the specific data to provide to the AI system, developing the algorithm to permit the AI system to process that data, and other activities not expressly listed here may be adequate to qualify as a contribution to the conception of the invention.

- Responses to the RFC on Patenting Artificial Intelligence Inventions, issued 8/27/19, [USPTO AI-Report 2020-10-07.pdf](https://www.uspto.gov/sites/default/files/documents/USPTO_AI-Report_2020-10-07.pdf)

https://www.uspto.gov/sites/default/files/documents/USPTO_AI-Report_2020-10-07.pdf



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AI as a Search Tool

AI can
find
relevant
prior art
using:

- Cooperative Patent Classification (CPC) methodology
 - 260K+ symbols in the CPC scheme
- Word relation methodologies to rank results by relevance
 - Ever evolving terms, technology specific keywords, applicant-as-lexicographer synonyms
- Image searches
- Intelligent assumptions to reorder/cull results based on context (based on deep learning neural network algorithms)



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AI as a Patent Application Drafting Tool

Will “AI-assisted drafting” become commonplace?

OpenAI’s language generator GPT-3 has 175 billion parameters or values that the neural network attempts to optimize during training.

In this linked example of a SIX (6) PAGE DOCUMENT, only a title, an author’s name, and the opening “It” were provided – the rest was generated by #gpt3:

<https://drive.google.com/file/d/1qtPa1cGgzTCaGHULvZIQMC03bk2G-YVB/view?usp=sharing>



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AI as an Opinion Drafting Tool

Will “AI-assisted drafting” become commonplace?

See GPT-3 example:

<https://drive.google.com/file/d/1qrPa1cGgzTCaGHULvZIQMC03bk2G-YVB/view?usp=sharing>



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AI as an eDiscovery Tool

Use of AI for Technology-Assisted Review (TAR)

TAR at least for initial intake and comprehension of large quantities of data - emails, text messages, documents, et cetera.


See, e.g., www.logikcull.com

The screenshot displays the Logikcull search interface. At the top, there is a search bar with the text 'Cullinda' and a 'Search' button. Below the search bar, there are two tabs: 'Unculled' (selected) and 'Culled'. The main area shows a list of search results with columns for 'Email from' and 'Custodian'. The 'Email from' column lists addresses like '@logikcull.com', '@schmasons.com', '@ediscovoryhell.com', and '@logikbot.com'. The 'Custodian' column lists names like 'Shang Kong', 'Marfan Klug', and 'Eric Vender'. To the right of the search results, there is a section titled 'Search & review seamlessly' with a sub-heading 'Logikcull's straightforward design makes it easy to find what you need.' Below this, there is a list of features:

- **Intuitive filters** resemble online shopping
- Search with **basic terms or bulk keywords**
- Build **complex searches with metadata**
- **Identify privileged documents automatically**
- Apply custom or template tags
- Redact documents in seconds



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Can AI be protected by Copyright?

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17 USC § 102

Copyright protection subsists...in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or *with the aid of a machine or device*. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

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Can AI create
“copyrightable”
material?

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17 USC § 101

An “anonymous work” is a work on the copies or phonorecords of which no **natural person** is identified as author.

17 USC § 302

Copyright in a work created on or after January 1, 1978, subsists from its creation and...endures for a term consisting of the **life of the author and 70 years after the author's death**.

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MONKEY SELFIE CAN NOT BE PROTECTED BY COPYRIGHT

In 2011 a macaque snatched a camera from photographer David Slater and snapped some selfies. Wikimedia, the nonprofit foundation behind Wikipedia, later posted some of the photos and Slater tried get the photos taken down but Wikimedia refused saying they weren't taken by a human. The U.S. Copyright Office lists "a photograph taken by a monkey" and "a mural painted by an elephant" as works **ineligible for copyright registration**.



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WHAT IF AUTHOR USES AI TO CREATE A WORK?

In the US, if AI "acts" autonomously, likely no US copyright eligibility. Creativity currently requires "human intention." See *Feist v. Rural Telephone*, 499 U.S. 340 (1991) (discussing "modicum of creativity").

Hypothetical: Artist trains AI uses classical paintings and then uses the AI to help paint a "new Mona Lisa" - protectable under copyright?
The creativity of a human artist is involved...if the artist is merely using the **AI as a tool**.

Contrast: **UK** 1988 Copyright, Designs and Patents Act recognized a "computer-generated" work as one **without a "human author"** and granted copyright protection.

And in 2017 **European Parliament advocated legal status for "electronic persons"** for purposes of copyright protection.



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17 USC § 412

In...an action for infringement of the copyright of a work...no award of statutory damages or of attorney's fees, as provided by sections 504 and 505, shall be made for—

- (1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or
- (2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.

IN SHORT: GET THE WORK REGISTERED BEFORE PUBLICATION.



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Attorney Responsibilities and AI (and Tech Transfer Managers'?)

If we desire respect for
the law, we must first
make the law respectable.

Louis D. Brandeis

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Duty of Confidentiality

ABA Rule 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the **client gives informed consent...**

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client....

South Carolina Rule 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the **client gives informed consent**, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).



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Duty of Supervision

ABA Rule 5.3(b): Responsibilities Regarding Nonlawyer **Assistance**

With respect to a nonlawyer employed or retained by or associated with a lawyer: ... (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the **professional obligations of the lawyer**.

South Carolina Rule 5.3(b): Responsibilities Regarding Nonlawyer **Assistants**

...(b) a lawyer having direct supervisory authority over the nonlawyer, including a suspended lawyer employed pursuant to Rule 34, RLDE, Rule 413, SCACR, shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer...



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Duty of Competency

South Carolina Rule 1.1: Competence

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. **Expertise in a particular field of law may be required in some circumstances.**

Maintaining Competence

[6] To maintain the requisite knowledge and skill, **a lawyer should keep abreast of changes in the law and its practice, including a reasonable understanding of the benefits and risks associated with technology the lawyer uses** to provide services to clients or to store or transmit information related to the representation of a client, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.



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Duty of Independent Judgment


South Carolina Rule 2.1: Advisor

In representing a client, a lawyer shall **exercise independent professional judgment and render candid advice**. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.




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What if algorithms are wrong?




AI SYSTEMS USE MODELS BASED ON ADJUSTED ALGORITHMS FOR PERFORMING DATA COMPUTATION AND ANALYSES CLASSIFY OR PREDICT




ALGORITHMS ARE ADJUSTED TO REFLECT LEARNED INFORMATION




MODELS MAY RELY ON DATA FEATURES OR CHARACTERISTICS



FEATURES MAY BE WEIGHTED IN THE MODEL ACCORDING TO SIGNIFICANCE FOR MAKING CLASSIFICATIONS OR PREDICTIONS; I.E., DECISIONS



MODELS MAY REQUIRE TRAINING USING TRAINING DATA



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ELLENOFF GROSSMAN HIT WITH \$11M SUIT OVER SOURCED MERGER


“An e-commerce blockchain technology company has filed **suit against Mid-Law firm Ellenoff Grossman & Schole LLP** in New York federal court for allegedly **failing to realize the patents that formed the basis of an \$11 million acquisition the firm facilitated were worthless.**”

“RocketFuel Blockchain Company, which develops **blockchain-based technology designed to protect consumers' privacy,** said in a complaint filed Tuesday that it relied on Ellenoff Grossman to do the due diligence in its acquisition of a company whose sole value rested on **five patent applications that RocketFuel later realized had “substantial deficiencies.”** ...

“[T]he firm failed to properly notify the company [or] the firm did not properly do its due diligence and verify the value of Page's patent applications [so] the firm was negligent.

“The complaint includes **claims for negligence and legal malpractice,** breach of contract, and breach of fiduciary duty.”

• Emma Cuelo, Law360 (March 3, 2021), <https://www.law360.com/articles/1360467/ellenoff-grossman-hit-with-11m-suit-over-sourced-merger?copied=1>



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Observe Duties by asking:

- Can I (or my professor/inventor) explain how the AI works to a 12-year-old?¹
- Was the AI trained using sufficient, realistic data?^{1,2}
- How accurate is the AI output and can it be validated?^{1,2}
- Do I understand the meaning of the AI results?^{1,3}
- Do the advantages of using the AI outweigh its limitations?¹⁻⁴
(e.g., limited database)
- Do I need to consult with my client/board about using AI and its pros/cons?^{1,3,4}
- Am I using the AI to support reasoning and conclusions, or using the AI to generate my work product?^{1,3}
- **And watch those public disclosure dates!**

1. Duty of Competency
2. Duty of Supervision
3. Duty of Independent Judgment and Candid Advice
4. Duty of Confidentiality



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THANK YOU!



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