

Squires Says AI Gets No Special Treatment In Patent Process

By **Dani Kass**

Law360 (November 26, 2025, 6:20 PM EST) -- The U.S. Patent and Trademark Office on Wednesday replaced Biden-administration guidance on the role of artificial intelligence in inventorship with its own, but attorneys say very little changed.

The guidance from USPTO Director John Squires largely states that AI cannot be named as an inventor, but that it can be used as a tool for inventors, just like laboratory equipment or computer software.

"The same legal standard for determining inventorship applies to all inventions, regardless of whether AI systems were used in the inventive process," the guidance states. "There is no separate or modified standard for AI-assisted inventions."

The guidance was filed in response to a January executive order mandating agencies revise policies from the prior administration, "to ensure they promote American leadership in AI." It replaced guidance from former USPTO Director Kathi Vidal, issued in February 2024, that was significantly more detailed and nuanced.

The new guidance aligns with Vidal's while providing more reassurance to patent owners and applicants, said Cadwalader Wickersham & Taft LLP partner Danielle Tully.

"It gives companies permission to use AI in [research and development] without worrying that their inventions will be unpatentable," Tully said. "It creates a little more certainty in the industry."

Morgan Lewis & Bockius LLP partner Manita Rawat likewise said the guidance provides additional support.

"It's just really to hit home that message that, 'Yes, you may be using AI-assisted technology with your developments, but AI is not an inventor. Only humans can be an inventor,'" Rawat said.

The Federal Circuit determined in August 2022 that AI cannot be named as an inventor, and has held that inventorship is based on the conception of the patented idea. Those pursuing AI-based patents or patent applications must be able to show that they conceived the idea, the USPTO said in Wednesday's guidance.

Rawat and Tully each cautioned inventors to keep detailed records to meet that conception requirement.

"If there's an engineer who's using AI, maybe document who directed it and what problem they're solving and what insight guided the result, so that you can have a good record while you're applying for your patents," Tully said.

If a foreign country allows AI to be a sole inventor on a patent, the USPTO said no U.S. application or patent will be able to claim priority to it. That decision is based on a requirement that there needs to be at least one overlapping inventor on the patents to take advantage of the earlier priority date.

The USPTO clarified that AI doesn't change how joint inventorship with humans is handled.

It also confirmed the guidance applies to utility, design and plant patents.

--Editing by Michael Watanabe.