

# Mitigating risks related to patent infringement in AI marketing materials

By Karon N. Fowler, Esq., and Jason C. White, Esq., Morgan, Lewis & Bockius LLP

JULY 23, 2025

As artificial intelligence continues to revolutionize software capabilities and reshape industries, technology companies are increasingly promoting their AI-powered solutions through marketing efforts. These campaigns — ranging from whitepapers and webinars to blog posts and product datasheets — aim to establish technological leadership and attract potential customers.

However, marketing content that overstates product capabilities, misrepresents technical features, or unnecessarily uses certain, key buzzwords may trigger or support a patent infringement claim.

---

*Overstated marketing claims can serve as valuable evidence for plaintiffs in patent litigation.*

---

This article offers a practical framework for in-house legal teams to mitigate patent-related risks arising from AI marketing communications. Drawing on common scenarios and industry practices, we explore five key strategies that can help reduce the likelihood of costly litigation while enabling marketing teams to tell compelling stories about technological innovation.

## 1. Close coordination between legal and marketing teams

The foundation of effective risk mitigation lies in early and frequent coordination between legal and marketing teams. Engaging in-house or outside counsel at the start of a product marketing campaign enables companies to identify and address potential pitfalls before they occur.

### Legal review of key content

Although routine promotional materials such as social media posts and event invites may not require (or allow for) detailed legal oversight, higher-impact content (e.g., whitepapers, technical blog posts, product datasheets, pitch decks, demo scripts, and launch announcements) should undergo a targeted legal review.

These materials may contain technical descriptions, flow diagrams, and comparative language that can inadvertently resemble or reference elements of a patented invention.

Rather than positioning legal review as a final gatekeeping step, it is more effective to establish recurring cooperation and communications between legal, product, and marketing stakeholders.

This could be structured through formalized content review protocols for AI-related materials, giving priority to higher-risk content, including:

- Launch materials for new AI-enabled features or platforms.
- Public statements describing technical underpinnings of proprietary systems.
- Use cases involving automation, prediction, personalization, or data analytics.

### Potentially problematic language

Counsel can also help educate marketing teams on risks associated with potential technical overstatements or misrepresentations in AI marketing.

One example may be a statement that “our model continuously retrain[s] itself using customer data to adapt instantly to changing behavior.” The statement’s reference to automated, real-time, online learning implicates domains with increasingly present machine learning-related patents.

In addition, reference to a model that “continuously retrain[s] itself using customer data” may motivate an opponent in litigation to seek machine learning training data, including all historical sets used for incremental training, batch retraining, and trigger-based retraining.<sup>1</sup>

To proactively reduce risk, legal teams should consider providing a practical checklist of terms and claim styles to approach with caution.

For example:

- Overstatements about automation, accuracy, or uniqueness.

- Unqualified references to machine learning, neural networks, or “AI.”
- Language suggesting a specific process or method where none exists.

In addition, companies may consider providing in-person demonstrations or conducting other in-person marketing efforts to demonstrate AI-related capabilities in lieu of relying predominantly on written, online marketing statements related to AI capabilities.

## 2. Avoiding technical overstatements or misrepresentations

Overstated marketing claims can serve as valuable evidence for plaintiffs in patent litigation.<sup>2</sup> Courts and juries may interpret such claims as admissions about how the product works, even if those claims were drafted without technical accuracy in mind. This becomes especially problematic if a claim in a patent closely resembles the described feature.

For example, in *Ohio State Innovation Foundation v. Akamai Technologies, Inc.*,<sup>3</sup> Defendant Akamai Technologies argued that Ohio State Innovation Foundation (“OSIF”) failed to state a claim for patent infringement because the asserted patent “pertains to machine learning technology, whereas Akamai’s MAP SDK allows users, rather than machines, to create user profile groups based on mobile browsing history.”<sup>4</sup>

But, in support of its infringement claim, OSIF relied “primarily on quotes from Akamai’s own publication describing the MAP SDK and its required subscription service,” including that the MAP SDK uses a network, “coupled to a mobile network” to “predict[ ] content of interest” and “automatically deliver[ ] the content of interest to the end user mobile device in a background process.”<sup>5</sup>

Moreover, “when describing its own prediction engine in its patent application, Akamai explained that ‘data mining-based or machine-learning-based algorithms’ could be utilized.”<sup>6</sup>

The district court concluded that “Akamai’s argument that its product requires human interaction is inadequate to rebut its own statements pertaining to the actual or potential utilization of automation and machine-learning in its MAP SDK and associated Ion Platform subscription service.”<sup>7</sup> Accordingly, the district court denied Akamai’s motion to dismiss the direct infringement claims.<sup>8</sup>

Stated differently, even if Akamai’s own publications and descriptions of its product were not factually accurate, they provided sufficient basis for OSIF’s allegations of direct infringement at the pleading stage.

## 3. Understanding competitor or NPE patent portfolios

A robust risk mitigation strategy may also involve understanding the patent landscape, especially when

competitors or non-practicing entities (NPEs) are active in the same AI domain.

One option is to regularly review and analyze patents held by close competitors and litigious NPEs in the industry. This process, often managed by in-house or outside counsel, can identify trends in claim language, common technical themes, and areas of heightened risk.

For example, if multiple competitors are patenting methods related to “predictive personalization using reinforcement learning,” legal and marketing teams may decide to avoid marketing language that closely tracks those claims unless the company has a clear non-infringement position or a strong defensive portfolio.

---

*Regular training for marketing, sales, and product teams on the legal implications of AI language can foster a culture of caution without sacrificing creativity.*

---

A practical program might include:

- Monitoring of patent litigation and licensing activity in relevant sectors.
- Mapping of marketing content against areas of dense patent activity.
- Flagging of high-risk technologies (e.g., NLP pipelines, computer vision models, model fine-tuning methods) for extra scrutiny.

Some companies incorporate these insights into training materials for product and marketing teams, thereby helping teams to understand which terms or technologies may carry additional legal risk.

## 4. Using care when referencing open-source or licensed tools

Although many companies integrate open-source libraries or licensed APIs into their AI workflows, reference to those libraries or APIs in marketing materials is not without risk.

For example, where a plaintiff accuses one party of infringement based on its use of a specific open-source library or licensed API,<sup>9</sup> finding additional parties to sue for the same use may be as simple as an online search.

Legal teams should guide marketing on when and how to reference third-party tools.

Some best practices may include:

- Avoiding detailed descriptions of technical integration unless vetted.

- Referring generally to “third-party AI services” rather than naming specific APIs.
- Ensuring that all referenced tools are properly licensed and compliant with their terms.
- Coordinating with engineering and procurement to track open-source usage.

## 5. Developing internal guidelines for AI-related marketing

To streamline review and foster consistency across departments, in-house counsel may consider developing internal guidelines and playbooks on permissible marketing terminology in connection with AI technology.

These guidelines might include:

- A list of high-risk terms or phrases to avoid or use with caution.
- A content review process that outlines when legal input is required.
- Templates or style guides for describing AI functionality in non-technical language.
- A matrix for evaluating risk based on product type, patent exposure, or publication channel.

Additionally, companies should establish a regular audit cadence to review and, where necessary, revise published content.

This is particularly important for materials that remain publicly accessible over time, such as webpages, videos, and downloadable whitepapers. Such legacy materials may contain outdated claims that no longer reflect the product or its capabilities. These materials may come up in litigation and can complicate legal positions.

Finally, developing awareness across teams is critical. Regular training for marketing, sales, and product teams on the legal implications of AI language can foster a culture of caution without sacrificing creativity.

These trainings can include:

- Real-world examples of how marketing claims have been used in litigation.
- Simulated reviews of draft content.
- “Dos and don’ts” of describing AI features in public materials.

## Conclusion

The way that companies describe their AI capabilities has become both a business imperative and a legal risk. Marketing teams must walk a fine line between highlighting innovation and avoiding language that invites unwanted scrutiny.

By fostering close collaboration between legal and marketing, grounding claims in technical accuracy, understanding the patent landscape, being cautious with references to third-party tools, and implementing internal guidelines, in-house counsel can help reduce exposure without stifling communication.

## Notes:

<sup>1</sup> In addition, there are an increasing number of AI tools that purport to scan web sources to identify potential patent licensing or litigation targets.

<sup>2</sup> Overstated marketing claims can also expose a company to additional legal issues or claims that exceed the scope of this article.

<sup>3</sup> No. 19-cv-11528-ADB, 2019 WL 4573496, at \*2 (D. Mass. Sept. 20, 2019).

<sup>4</sup> *Id.* at \*2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at \*3.

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., *WAG Acquisition LLC v. Bernoata Servs., Ltd.*, No. 2:25-cv-00162, Dkt. 1 ¶ 24 (E.D. Tex. Feb. 10, 2025) (identifying Defendants’ alleged use of “an open source system known as ‘obs’ (Open Broadcaster Software)” in connection with limitation of asserted patent); *Carma Tech. Corp. v. Uber Techs., Inc.*, No. 2:25-cv-00029, Dkt. 1 ¶ 87 (E.D. Tex. Jan. 14, 2025) (identifying Uber’s alleged use of S2, “an open source, hierarchical, discrete and global grid system using square cells” as part of allegations regarding infringement); *Winview IP Holdings, LLC v. DraftKings, Inc.*, No. 25-cv-1143, Dkt. 1 ¶¶ 155, 200, 333, 377 (D.N.J. Feb. 10, 2025) (referencing DraftKings’ alleged use of third party sports data provider API as part of its allegations regarding infringement).

## About the authors



**Karon N. Fowler (L)** is a trial lawyer with **Morgan, Lewis & Bockius LLP** who represents clients in complex intellectual property disputes involving utility patents, design patents, unfair competition, licensing issues and trade secrets. She is part of collaborative litigation teams handling jury and bench trials in U.S. district courts, the U.S. International Trade Commission and the U.S. Court of International Trade. She can be reached at [karon.fowler@morganlewis.com](mailto:karon.fowler@morganlewis.com). **Jason C. White (R)** leads litigation teams tackling IP disputes involving utility patents, design patents, trademarks, trade dress, unfair competition and trade secrets. He has also served as lead counsel in bench and jury

trials in district courts, the International Trade Commission and the U.S. Court of International Trade. He can be reached at [jason.white@morganlewis.com](mailto:jason.white@morganlewis.com). The authors are based in Chicago.

This article was first published on Westlaw Today on July 23, 2025.

© 2025 Thomson Reuters. This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit [legalsolutions.thomsonreuters.com](https://legalsolutions.thomsonreuters.com).