# AI Can't Be an Inventor, But How About a POSA?

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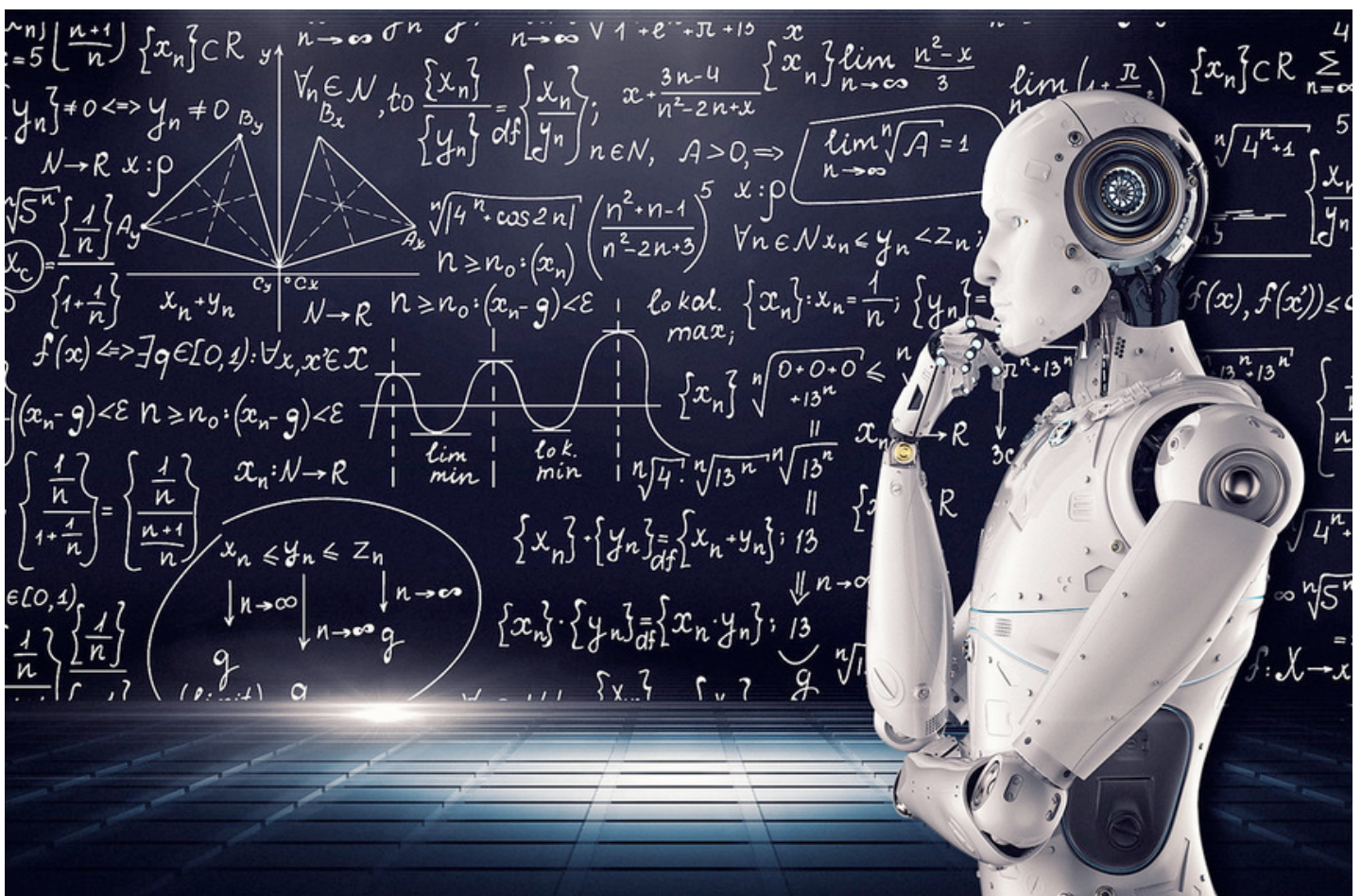
May 2, 2024, 6:00 PM
By: Don Z. Wang 王哲楠, Jeannine Yoo Sano

On April 30, 2024, the U.S. Patent and Trademark Office (PTO) issued a Request for Comment on how AI technology could affect the PTO's evaluation of patentability, particularly with respect to qualifying prior art and the level of ordinary skill in the art. The Request includes 15 questions for public comment in the following three general categories:

- Group A (Questions 1-5): To what extent AI-generated content may be relied upon as prior art and what related safeguard measures (e.g., watermark, notice to examiner) should be put into place.

- Group B (Questions 6-11): How AI technology could impact the analysis relating to the level of ordinary skills in the art, obviousness (e.g., rationale to modify, reasonable likelihood of success), objective indicia of non-obviousness, and enablement.

- Group C (Questions 12-15): What legislative or regulatory changes would be necessary in light of the potential impact of AI on patentability determinations.
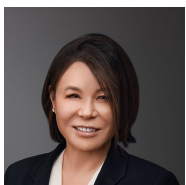
The deadline for comments through the Federal eRulemaking Portal, Docket number PTO-P-2023-0044, is July 29, 2024.

"As AI assumes a larger role in innovation, we must encourage the responsible and safe use of AI to solve local and world problems and to develop the jobs and industries of the future, while ensuring AI does not derail the critical role IP plays in incentivizing human ingenuity and investment," said Kathi Vidal, Under Secretary of Commerce for Intellectual Property and Director of the USPTO. "This work builds on our inventorship guidance, which carefully set forth when the USPTO will issue a patent for AI-assisted innovations, and our continuing policy work at the intersection of AI and all forms of IP."
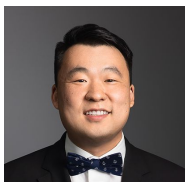
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