

Loopholes in Intellectual Property Rights: AI Usage

N.Sreenivasa Rao

*Prl.Senior Civil Judge, Kakinada, Research Scholar, P.G .Department of Legal Studies and Research,
Acharya Nagarjuna University, Nagarjuna Nagar, Guntur*

INTRODUCTION

The right of property in personal liberty is a legal notion. The incorporeal for the property that cannot be physically touched, sensed, or perceived is also known as intangible property, including intellectual property, securities, and the right to individual reputation. As a result of the industrial revolution and the rapid development of science and technology, new rights and properties like patents, copyright, and industrial designs became known as 'Intellectual property rights.' These rights include literary property and industrial property. There are many court claims regarding the protection of their IP rights. It is due to the improper functioning of IP offices and loopholes in the adjudication system. However, with the advancement in technology there are several other loopholes that arise in the area on intellectual property right, one of them being the advent of Artificial intelligence and its usage for creating intellectual property. This is a fairly new arena in the field of law and has no law or legislation which determines the position of AI under the law.

PATENTS

These are grants to the individuals to protect their new invention and simultaneously improve research and development across the globe. There are numerous Artificial Intelligence tools to aid and assist in the Patent office, mainly at World Intellectual Property Organization (WIPO): 1. 'PATENTSCOPE'- Aims at identifying similar images from the 'Grand Brand Database' while examining the originality of the work. 2. 'Automatic Patent classification' AI tool organizes the applications received at the IP offices into appropriate groups and sub-groups. 3. EPO uses the translation AI tool, concerning patent publications, from 32 languages into English, French, and German. Regardless of this, Patent rights are still not being protected as many companies are modifying or

replicating the functions of the patented product and claiming it as a new version. For instance, in "Limelight Networks v. Akamai Technologies," 2014 case, Limelight followed the similar procedure of the Akamai companies' delivering content to the client's websites, exempting the last step, which is made by one of the customers. The US Supreme court held that Limelight is not liable by considering it as 'split infringement.' Thus, by examining these types of cases, we can consider it as there is no technology to recognize the modified content. Here, AI tools should be developed to discover the replicas of the patented products before giving the license.

The main criticism of Indian patent rights lay in medicine. The intermixing of two or more formulae of different drugs into 'one' can be seen, for example, Saridon, Aspirin, and so on, which the government bans. However, Indian SC in 2019 held, considering said on as 'cultural heritage,' no ban on Saridon. Further, recently, some of the Indian Pharmaceutical companies have been selling the copied versions of drugs imported from the no pharma patent countries such as Bangladesh, which violates TRIPs norms and the patents rights and makes people fall into risks in the country. Thus, AI systems should be used regarding finding the modified drugs during the clinical trials.

TRADEMARKS

This recognizes the product's brand or symbol of a company that others cannot use—for example, McDonald's golden arches, NBC'S peacock logo. These licenses were given by the UK Intellectual Property Office (UK IPO), WIPO, etc. The AI is starting to make its mark in this field, automatically examining trademark applications, accurate image searching from the database, trademark clearance, and registering process. This could be helpful to identify the marks at an early stage than raising the claims in front of the Trade Mark Office.

In some instances, the counterfeit of logo or brand can be done, but it can only be recognized later. Relating to this, in the case of Delhi HC, where the defendant adopted the mark of BMW as 'DMW' for his E-Rickshaws, it was held that as the plaintiff's marks and visuals similarly resemble and can create confusion, thus, made the defendant as liable [1]. Even though this is considered as precedent in other judgments, still there are similar cases that cannot be identified, such as 'Swiggy' has the similar mark of 'google location' to some extent. There is a need for AI tools to identify the detailed modifications of logos or marks from patent applications in these occurrences.

COPYRIGHTS

The right that a person requires in work resulting from his intellectual labor is called his copyright. This is to protect the moral rights and integrity of the owner exclusively. This has jurisdiction over literary, musical, paintings, architectural works, sound recordings, and cinematograph films. Suppose any infringement happens to the owner of copyrights of a particular work, then the civil, criminal, and border enforcement remedies are provided. Further, some conventions and agreements protect these rights, such as the Berne Convention, TRIPs, etc.

Despite these restrictions concerning the protection of an individual's work, still, there are many loopholes in the system. For instance, in the case of the Library of Congress, the ownership rights were given without a formal verification procedure and ultimately led to numerous copyright infringement court cases. Thus, instead of providing ample remedies, if there is an operation of Artificial intelligence tools in the copyright offices and private agencies while detecting the originality of works, it would be way better to detect the plagiarized work or ideas expressed. Further, the inclusion of AI tools in verifying the works can circumvent various loopholes.

If the plagiarism or originality of work is detected, then there will be no instances to file cases on copyrights infringement. In these circumstances, courts may use exceptions present in the copyright laws provided in various jurisdictions. In which using these may lead to 'justice' and some 'may not.

a. Fair use: One of the exceptions mentioned in 'Section 107 of the US Copyright Act for copyright

infringement. This test is based on the purpose for which it can be used, the nature of copyrighted work, the amount and substantiality part is copyrighted and the effect on the value of copyrighted work in the market, held in the case; of 'Folsom vs. Marsh.' Further, in the recent 2021 case of "Google LLC v. Oracle America, Inc.", US. The Supreme Court held that "Google's use of the Java APIs fell within the four factors of fair use" against copyright infringement, and the case must be further reviewed.

b. Fair dealing: It is another exception that is mainly used in the common law. In this case, the Supreme Court of Canada held that "limited copying for educational purposes could also be justified under the fair dealing exemption." [2] Even in Indian Jurisdiction, the 'Fair dealing' doctrine is used as an exception (Section 52(1)(a) and (b) of Copyright Act, 1957). In the case of Honourable Kerala High Court, established the three tests to determine work to be an infringement of copyright: a. "the quantum and value of the matter taken concerning the comments or criticism"; b. "the purpose for which it is taken"; and

c. "the likelihood of competition between the two works." [3] Thus, even though the cases may appear in the court of justice, there are chances to get the judgment to favor the copyright infringers.

The plagiarism checkers used in the copyright office can only detect the websites, blogs, published books, and so on, but not the non-published books, etc., which plagiarism checkers cannot recognize. Further, this originality checking is not done at the international level. Thus, some copyright infringement can be done unknowingly. Here, AI software should be used which can maintain records of all works internationally.

In the copyright justice system, if AI judges like Estonia can automate court proceedings and enhance speedy delivery systems, it could save the precious time of courts. In this instance, if there are lawyer robots like Wevorce, Fedor Neuronov, etc., which have command on legal terms and phrases, give legal advice, draft memorandums, and so on. In this way, delivering justice will be more accessible, and the courts can concentrate on complex cases. Moreover, this can be applied in the patents and trademark cases jurisdictions as well.

CONCLUSION

The usage of AI in this IPR field may aid with the quick and accurate processing of data automatically and make law firms and the Intellectual Property Office focus on more complicated issues. Further, this AI can be used as a 'unique identifier' by maintaining uniform data sets in all IP offices. Moreover, in later stages, where the claims arise at courts, it can reduce the unnecessary time taken if AI systems notify the 'minute' details while comparing large data sets. But the major issues: a. The AI capacity, which can be earned during training, will be based on human knowledge, which is limited. b. The data and algorithms are limited in smaller firms at present, but there can be improved with consistency and corporation. We can conclude that AI can open up a new generation of IP safeguards, lead to further development stages in research and development without any replicas, and simultaneously reduce court claims in these areas.

REFERENCE

- [1] Bayerische Motoren Werke AG v. Om Balajee Automobile (India) Private Limited, IA No.4800/[2017].
- [2] Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), [2012] SCC 37.
- [3] Civic Chandran vs. Ammini Amma, Civil Miscellaneous Appeal No. 329 Of 1995 [1996].