



Impact of the Proliferation of AI on Prior Art and PHOSITA

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Thank you for the opportunity to comment. My name is Liza Vertinsky, and I am a Professor of Law at the University of Maryland Francis King Carey School of Law. I have graduate degrees in law and in economics, and I worked for a decade as a practicing attorney supporting high tech and biotech companies and universities in intellectual property transactions and technology transfer prior to joining academia. In my current research I explore ways in which law can support innovation in the public interest. The comments I provide are my own and do not reflect the views of my institution, and I do not represent any clients or receive any industry funding.

While recognizing that artificial intelligence technologies (AI) and their use impact many different aspects of the patent system, I restrict my comments today to the impact of the proliferation of AI on the knowledge of the person of ordinary skill in the art (the "PHOSITA") as it is used in determining whether an invention is obvious. I make two basic points:

1. That the concept of the PHOSITA should be empirically informed by how members of the relevant innovation community are using AI in their knowledge creation, acquisition, and application.
2. That decisions about how the proliferation of AI impacts different elements of patentability are interdependent and collectively should be considered not just in light of immediate and follow on incentives to innovate, or practical concerns with implementation, but also in light of potential effects of unequal and highly concentrated access to the most sophisticated AI technologies on access to patents, innovation and competition.