

# Generative Artificial Intelligence (GenAI) in Patent and Trademark Agent Practices – Ethical and Practical Considerations

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## Introduction

Patent agents and trademark agent practices lie at the intersection of innovation and law, and licensees regularly adopt innovative technologies where appropriate to competently and ethically serve clients. With the emergence of generative AI (GenAI), patent agents and trademark agents are once again considering the appropriate uses of new technologies. GenAI is a type of artificial intelligence that creates new content based on user “prompts”<sup>1</sup>. While GenAI can bring significant benefits, patent and trademark agents must consider whether, when and how to deploy such technologies with care considering their specific practice settings. This article introduces examples of GenAI early uses in practice, as well as ethical considerations and risks that should be considered by patent agents and trademark agents as a starting point for considering AI and GenAI use in practice.

## AI Use in Practice

AI tools are being used to assist in a range of practice settings, and for a range of types of tasks, such as the following:

### General practice management and operational supports (patent agent and trademark agent practices)

- Communications: Assistance drafting correspondence to a range of recipients including clients, other licensees, patent and trademark offices and others
- Learning and development: Using AI systems and prompts to quickly learn new knowledge and skills
- Marketing and business development:
  - Creating social media posts
  - Creating images and videos for various uses such as head shots, avatars
  - Developing requests for proposals (RFPs) and presentations
  - Using chat bots and virtual assistants to help potential clients navigate websites
- Human resources: Creating C.V.s, cover letters, job descriptions, draft HR policies, reviewing applications
- Creating summaries of correspondence, meetings and other materials

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<sup>1</sup> For a discussion of what is AI, what is GenAI and further general examples of GenAI tools, see the Government of Canada’s [Guide on the use of generative artificial intelligence](#). See also Canadian Bar Association, [Definition](#), in [Ethics of Artificial Intelligence for the Legal Practitioner](#).

## Legal research and writing (patent agent and trademark agent practices)

- Document review assistance and summarizing of information and evidence
- Development of chronologies
- Legal research assistance and creation of summaries
- Advocacy drafting assistance
- Predictive analysis of likely outcomes

## Patent agent practice

- Patent prior art searches and patent landscape reviews
- Patentability analysis assistance
- Patent drafting assistance
- Identifying patent licensing opportunities

## Trademark agent practice

- Trademark searches to identify similar trademarks and reduce potential conflicts
- Trademark drafting assistance
- Identifying potential trademark infringement

# Safe, Competent and Ethical AI Use Starts with Patent Agents and Trademark Agents

Patent agents and trademark agents have overarching duties as professionals to practice competently and ethically, in accordance with the Rules and general guidance provided in the [\*Code of Professional Conduct for Patent Agents and Trademark Agents\*](#) (the “Code”). This includes, for example, duties with respect to the integrity (Fundamental Canon), competence (Part 1), confidentiality and maintaining privacy (Part 2), quality of service (Part 4) and duties to the College and others (Part 7). Patent and trademark agents also have the duty to effectively supervise staff, which extends to how they may use GenAI tools. Patent agents and trademark agents ultimately assume full professional responsibility for all professional services they provide (Rule 1(3)).

It is therefore the responsibility of patent agents and trademark agents to consider the benefits and risks of adopting new technologies including GenAI tools in their specific practice settings, and should they adopt GenAI tools, they are responsible for their safe, competent and ethical use.

# Applying Best Practices – The “8 practice tips for using generative AI” in action

There are many helpful resources available to help legal professionals use GenAI. The Resources section below provides links to a range of materials developed by government, law societies, courts, associations, and several patent and trademark offices.

As one example, the Law Society of Ontario has developed a suite of GenAI practice resources (noted in the Resources section below), including a tips sheet called “[8 practice tips for using generative AI](#)”. The rest of this article explores and expands on these 8 tips and generally considers how they also apply for patent agents and trademark agents.

## 1 – Know your obligations

*Before using any technology, including generative AI, you must understand your professional and legal obligations. This knowledge will assist you in asking the right questions and obtaining the information you need to ensure compliance. For assistance in understanding your ethical responsibilities relating to AI, consider contacting the [Practice Management Helpline](#).*

For patent and trademark agents, this includes, for example:

- ✓ Gaining a reasonable understanding of the use of GenAI tools.
- ✓ Considering tribunal and Court requirements to disclose the use of GenAI when preparing submissions. For example (as noted in the Resources below), the Federal Court of Canada has developed a [Notice to the parties and the profession, The Use of Artificial Intelligence in Court Proceedings, December 20, 2023](#).
- ✓ Knowing that supports are available. Patent agents and trademark agents can access the various practice resources freely available. Ontario lawyer-agents can contact the Law Society Practice Management Helpline for guidance. All patent agents and trademark agents can also consider contacting CPATA with an Ethics Inquiry using this form: [Ethics Inquiries - CPATA](#).

## 2 – Understand how the technology works

*You should research and test any AI system or tool to understand its capabilities and limitations, and to identify and mitigate potential risks. As a starting point, consider reviewing the free AI resources in the Law Society's Technology Resource Centre.*

- ✓ Stay curious and cautious. See the Resources section below to continue your journey. For example:



- The Government of Canada's [Guide on the use of generative artificial intelligence](#), provides helpful background information on GenAI, GenAI use cases as well as its limitations and risks.
  - The LSO resource "[Generative AI: Your quick-start checklist](#)" provides a useful starting point for adopting new AI technologies into practice.
- ✓ Recognize that outputs may evolve over time based both on inputs and the technology itself. Testing should not be a one and done exercise. Consider regularly testing your GenAI tools to maintain quality assurance.

### 3 – Prioritize confidentiality and privacy

*You owe a duty of confidentiality to every client, even after the retainer has ended. Because any information you put into a generative AI system can enter the public domain, you should be cautious about inputting confidential, privileged, sensitive, personal, proprietary, or identifying client information.*

- ✓ This tip is particularly important for patent agents and trademark agents given the importance of confidentiality when dealing with intellectual property, where public disclosure of information can jeopardize trade secrets and the ability to obtain patent protections should there have been prior disclosure. Agents must exercise reasonable care to maintain confidentiality and privacy (Code, Principle, Part 2 and Rule 2(2)).
- ✓ Consider your knowledge management (KM): It is also important to consider confidentiality and privacy when developing internal knowledge management systems within patent agent and trademark agent practices. When developing GenAI systems based on in-house data, patent agents and trademark agents must take reasonable steps to protect client confidential information. This may mean keeping certain client information separate and only using particular in house GenAI tools for subsets of information that include client-specific information. Developing screens around client information will also reduce the risk of potential conflicts of interest that could arise.

### 4 – Learn to create effective prompts

*Prompts are instructions you provide the AI system to perform a task or provide an output. Crafting successful prompts can significantly impact the quality and relevance of AI-generated responses. Consider using the [CLEAR framework](#) or this [Harvard University Guide](#) to help structure your prompts.*

- ✓ As noted in tip 3 above, prioritize confidentiality and privacy. If using an open GenAI tool, use caution when inputting confidential information or prompts that, if collected, could in the aggregate jeopardize confidentiality.



actually stand for the proposition advanced. Personal professional credibility, and the profession's credibility, may depend on it."<sup>5</sup>

## 6 – Avoid AI dependency and overreliance

*Becoming overly dependent on AI technology for information, problem-solving, and decision-making is a common ethical pitfall. While AI offers speed and accessibility, its reliability is not guaranteed and can lead to biased results. AI should be used as a tool not a replacement for your own expertise, critical analysis, or judgement.*

- ✓ As the Court stated in [Zhang v. Chen, 2024 BCSC 285](#), “generative AI is still no substitute for the professional expertise that the justice system requires of lawyers. Competence in the selection and use of any technology tools, including those powered by AI, is critical. The integrity of the justice system requires no less” (para 46).
- ✓ There are risks of bias in GenAI that can lead to biased results. End users need to be aware of this risk both in terms of inputs and when reviewing outputs. According to the Government of Canada’s *Guide on the Use of Generative Artificial Intelligence by Federal Institutions*, generated content may amplify biases or other harmful ideas that are dominant in the training data:

Generative AI tools can produce content that is discriminatory or not representative, or that includes biases or stereotypes (for example, biases relating to multiple and intersecting identity factors such as gender, race and ethnicity). Many generative models are trained on large amounts of data from the Internet, which is often the source of these biases. For example, training data is likely to reflect predominant historical biases and may not include perspectives that are less prevalent in the data or that have emerged since the model was trained.<sup>6</sup>

## 7 – Establish AI use policies for employees

*If you have licensee or non-licensee employees, consider developing firm policies about the appropriate use of AI systems. For example, you may consider implementing a policy requiring students or junior associates to put an AI watermark on materials they prepare for your review using AI generated content.*

- ✓ As noted above, patent agents and trademark agents are responsible for the work of their employees. In addition to general policies, licensees should consider appropriate training and quality assurance processes.

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<sup>5</sup> Tamara Winegust, [The importance of checking your citations – the non-case of Hennes & Mauritz AB v M & S Meat Shops Inc. 2012 TMOB 7: or am I seeing things?](#) Intellectual Property Institute of Canada UnScripted, published December 13, 2024.

<sup>6</sup> Government of Canada *Guide on the Use of Generative Artificial Intelligence by Federal Institutions* [Guide on the use of generative artificial intelligence - Canada.ca](#)

## 8 – Stay informed on AI developments

*AI is not the future. It is here and now. It is also evolving rapidly. Staying curious and current on AI developments is crucial for anyone seeking to use or integrate AI. To stay informed, consider joining online communities, following tech experts, attending conferences, or subscribing to newsletters.*

- ✓ For patent agents and trademark agents, it is important to stay informed on substantive developments with respect to how AI is treated in intellectual property.
- ✓ It is also best practice to stay informed on obligations for filing requirements in other jurisdictions. Depending on your client’s IP strategy and where they may be considering filing, consider guidance available from other jurisdictions, as such standards may impact on drafting and filing strategy. For example:
  - The USPTO has issued general [Guidance on Use of Artificial Intelligence-Based Tools in Practice Before the United States Patent and Trademark Office](#). See the Resources below for further USPTO materials.
  - The Guidelines for Examination in the European Patent Office were updated in March 2024 to include a section on [“Artificial intelligence and machine learning”](#). Watch for updates as well, which typically occur annually. For 2025, the updated guidelines will be [published on February 3, 2025](#) and come into force on April 1, 2025.

## Conclusion

GenAI can be effectively applied by patent agents and trademark agents to provide competent, ethical and good quality service to clients. Making safe and effective use of GenAI systems requires a careful balancing of opportunities and risks, having good systems in place to make it work for you and your firm, and not creating unnecessary risks. The Resource list below will hopefully support you in your education and continued exploration of GenAI.



## Resources

### CPATA Code and Ethical Analysis

[CPATA Code of Professional Conduct](#)

[CPATA Ethical Analysis and Guidelines](#)

### Government of Canada

Government of Canada *Guide on the Use of Generative Artificial Intelligence by Federal Institutions* [Guide on the use of generative artificial intelligence - Canada](#).

### Canadian Bar Association and Law Society Generative AI Guidelines and Resources

[Canadian Bar Association, Ethics of Artificial Intelligence for the Legal Practitioner](#)

- Alberta:  
[Law Society of Alberta, Generative AI Playbook](#)
- British Columbia  
[Law Society of British Columbia, Practice Resource, Guidance on Professional Responsibility and Generative AI, October 2023.](#)
- Ontario: Law Society of Ontario  
[Licensee's use of generative artificial intelligence](#)  
[Generative AI: Your professional obligations](#)  
[Generative AI: Your quick-start checklist](#)  
[8 best practice tips for using generative AI](#)  
[Using technology - Lawyer | Law Society of Ontario](#)
- Quebec  
[Barreau du Québec, L'intelligence artificielle générative, Guide pratique pour une utilisation responsable \(available in French only\).](#)
- Saskatchewan  
[Law Society of Saskatchewan, Guidelines for the Use of Generative Artificial Intelligence in the Practice of Law \(February 2024\)](#)
- Nova Scotia  
[Artificial Intelligence in the Practice of Law. What is AI and can I or should I use it in my practice? Nova Scotia Barristers' Society, September 2023](#)

## Judicial notices and guidelines

Federal Court of Canada, [Notice to the parties and the profession, The Use of Artificial Intelligence in Court Proceedings, December 20, 2023](#)

Federal Court of Canada video on *The Use of Artificial Intelligence*,  
<https://www.youtube.com/watch?v=0ze0gkpUZQ4>

Canadian Judicial Council, [Guidelines for the Use of Artificial Intelligence in Canadian Courts, First Edition, September 2024](#)

## Intellectual Property Offices and WIPO

*Processing AI: Analysis from a Canadian Perspective*, Government of Canada [Processing Artificial Intelligence: Analysis from a Canadian Perspective](#)

United States Patent and Trademark Office (USPTO):

- [AI-related resources](#)
- [Guidance on Use of Artificial Intelligence-Based Tools in Practice Before the United States Patent and Trademark Office](#)
- [Director Guidance on party and practitioner misconduct related to US of AI, February 6, 2024](#)
- [USPTO Artificial Intelligence Strategy, January 2025](#)

Guidelines for Examination in the European Patent Office, G-11—3.3.1, "[Artificial intelligence and machine learning](#)", March 2024 edition

[WIPO Patent Landscape Report – Generative Artificial Intelligence \(GenAI\), 2024](#)

## American Bar Association Formal Ethics Opinion 512

July 29, 2024, American Bar Association, [ABA issues first ethics guidance on a lawyer's use of AI tools](#)

July 29, 2024, American Bar Association Standing Committee on Ethics and Professional Responsibility, [Formal Opinion 512 Generative Artificial Intelligence Tools](#)

## AI Safety Human Rights Impacts

[Canadian AI Safety Institute](#)

Law Commission of Ontario and Ontario Human Rights Commission [Human Rights AI Impact Assessment](#),  
November 2024

[Who is GenAI leaving out, and does it matter?](#) Alexander Fleischman, Artificial Intelligence, November 12,  
2024