Dina Blikshteyn in Bloomberg Law: Patent Office Expanding AI Effort to Trademarks, Copyrights

By Dina Blikshteyn | October 18, 2019

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Haynes Boone Counsel Dina Blikshteyn talked with *Bloomberg Law* about the U.S. Patent and Trademark Office's efforts to address intellectual property questions related to artificial intelligence (AI) technology.

Here is an excerpt:

The agency is already seeking comment about how it should adapt its policies to handle patent applications for inventions created with AI, and whether Congress should make any changes to patent law. It plans to extend its inquiry in the coming weeks to AI-related questions involving trademarks and copyrights, Laura Peter, the PTO's deputy director, told *Bloomberg Law*.

The agency doesn't have an AI unit now "because AI is so ubiquitous across so many different technologies, it goes to the technology group," Peter said.

That approach works in some cases, such as when the refrigeration technologies unit reviews an application for AI in a refrigerator. But it may not work for applications for inventions on how to create AI, Dina Blikshteyn, a New York-based counsel in the IP practice group at Haynes Boone, said.

"For the complex technologies, if the patent office has a separate unit, it would be helpful," she said.

Guidance 'Needed'

The patent office has already taken steps to clarify what AI inventions can be patented. It announced new patent guidance earlier this year, including an example of an invention covering neural networks, a branch of AI, that would meet patent eligibility requirements under Section 101 of U.S. patent law.

"The 101 guidance that the PTO put out is very helpful for AI right now," Blikshteyn said. "Whether it's going to be the case several years from now when the current applications enter prosecutions, that's still to be determined."

Blikshteyn said she hopes the PTO issues more guidance to deal with situations that the framers of the U.S. Constitution could not envision when they included intellectual property protections in the document.

"The inventorship itself comes from the U.S. Constitution, but I don't know if the Constitution foresaw, per se, that machines could be inventors, so there's some guidance that is definitely needed," Blikshteyn said.

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