Risks (and safeguards) in the use of AI by IP professionals

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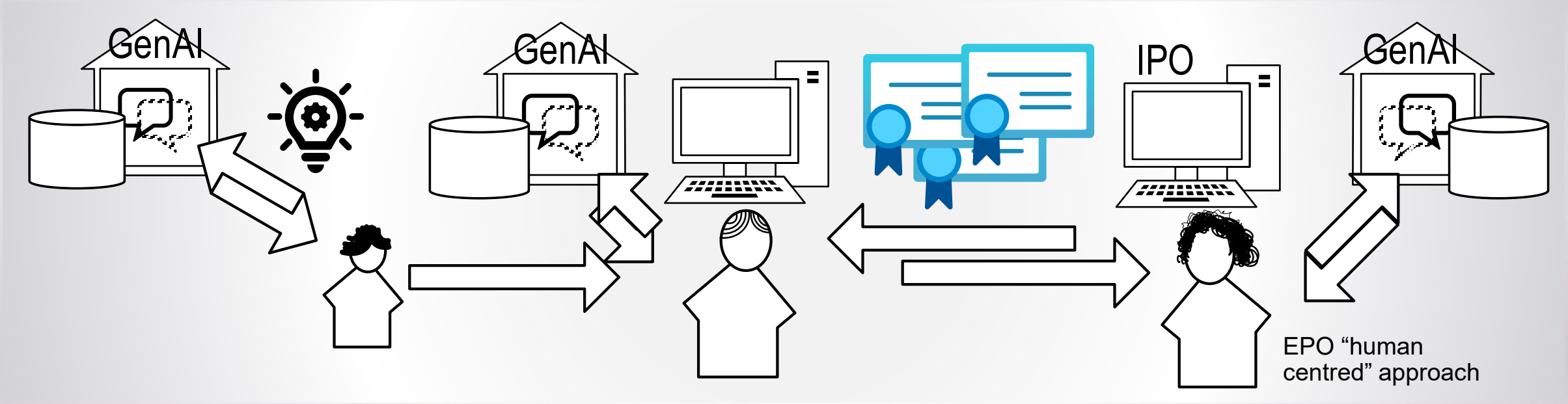
Disclaimers and apology

The views and opinions expressed in this presentation are those of the author alone and do not necessarily reflect the official position of the **epi** or any other organisation.

The author has not bothered to develop and include glossy AI-generated illustrations for this presentation. More often than not, they look good but fail to illustrate the point accurately.

Generative AI + the “human in the loop”



Quality ↑ Speed ↑ Cost ↓

GenAI has many uses

- Technical Research
  - Prior art searches
  - Landscaping, data analysis
  - Novelty assessment?
- Legal Research
  - Statutes, Rules & guidelines
  - Case Law
- Office automation
  - Practice manuals
  - Costing
  - Portfolio management
  - Minute-taking & summaries

- Drafting help
  - Automate routine tasks
  - Check quality
  - Create text and drawings; claims?
- Prosecution help
  - Analyse prior art
  - Formulate arguments?
- Infringement detection

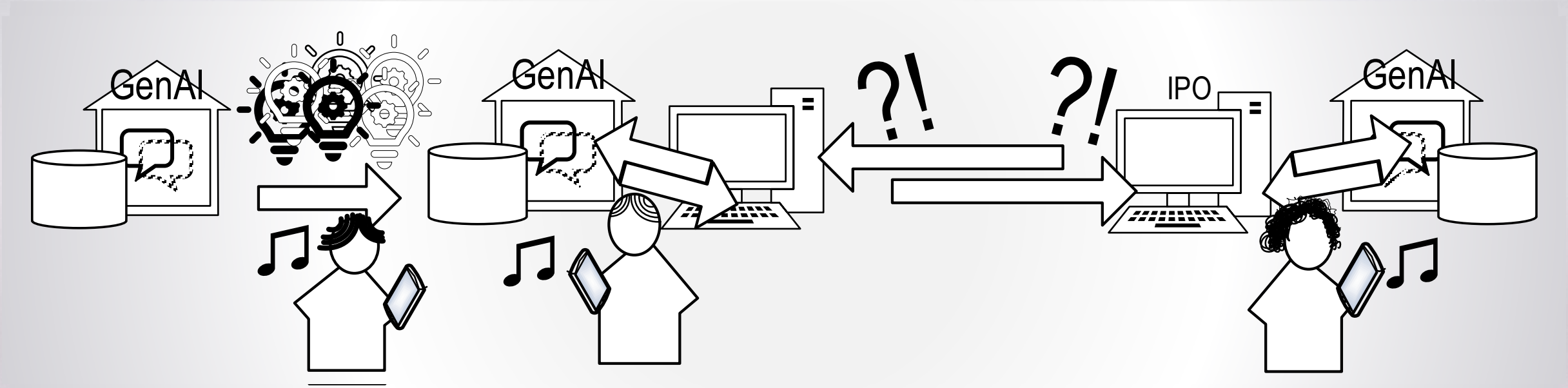
Example chat from EPO legal research tool

Example chat from one AI drafting tool

Limitations of LLMs and Generative AI

- Large language models are trained on vast databases of diverse knowledge, but
  - Does it include **my specialty**?
  - Is it verified as true?
  - Is it kept up to date?
  - Is it biased towards some branches of knowledge?
  - Some types of humans?
  - Does it know about my local laws/culture?
  - Is it trained on illegal/unethical/private materials?
  - …
- The trained model can be used to **predict** the **most likely** output (text/image) from your input text (the "prompt") but
  - The process is **stochastic** (a bit random), not deterministic.
  - Did I include the necessary information/**context**?
  - Is output **contaminated** with copyright/secret information?
  - How can it describe something that is truly new?
  - It can't infer function by looking at a new mechanism.
  - **It will not say "I don't know".** It will do the best it can.
  - **It will make stuff up ('hallucinate'), in the most convincing style.**

Generative AI, “the ~~human~~ in the loop”



How did that happen?
(And who’s to blame?)

Guidelines issued

ABA – First ethics guidance on a lawyer's use of AI tools (Formal Opinion 512)

- Competence
- Confidentiality of Information
- Communications
- Fees

epi – European Patent Attorneys

- epi Guidelines: Use of Generative AI in the Work of Patent Attorneys

The rules of professional conduct are not new *– only the temptations and risks are new*

IPREG – UK patent and trade mark attorneys

- Interim guidance

CIPA – Chartered Institute of Patent Attorneys (UK)

- AI guidance for SMEs and creators – Advice for inventors and clients.

CITMA - Chartered Institute of Trade Mark Attorneys (UK)

- Choosing your AI tools & vendors: Top 5 tips for trust and partnership assessment:
- The "trust equation": Credibility, Reliability, Sector familiarity, User-focused

CNIPA – Chinese State IP Office

- Warnings to both professionals and applicants

Competence – the attorney is <u>always</u> responsible

epi: "*Members remain **at all times responsible** for their professional work, and cannot cite the use of generative AI as any excuse for errors or omissions. …Members **must check any work product** produced using generative AI for errors and omissions. ..*"

- Ask for sources, but **check don't trust**.
  - Verify every reference exists AND says what the AI says it says.
    - Use further prompts to test the first answer. Either with the same AI or a competing/supervising one.
      - e.g. "*<u>Where</u> in D1 does it describe an example with features A and B combined?*"
    - Find better tools, either GenAI or more conventional automation.

What's the point of the AI if I have to check everything? ("Truth Tax")

Confidentiality – do not trust, verify

epi: "***If there is doubt*** *that confidentiality will be maintained to a level that is appropriate to the prevailing context* ***the AI model in question should not be used****…. **Members must inform themselves** about the likelihoods and modes of non-confidential disclosures deriving from use of specific AI models.*"

IPREG: "*You have a* ***fundamental duty to safeguard your client's sensitive information****. If you intend to use AI,* ***you must understand*** *whether and how any information provided when using the product will be stored and secured. ..*"

Some things are more sensitive than others.

Beware - ‘FREE’ AI will train on your data

“*If you are not paying for the product, you <u>are</u> the product*”

Or are you paying for it with your <u>client’s</u> trade secrets?

Patents:

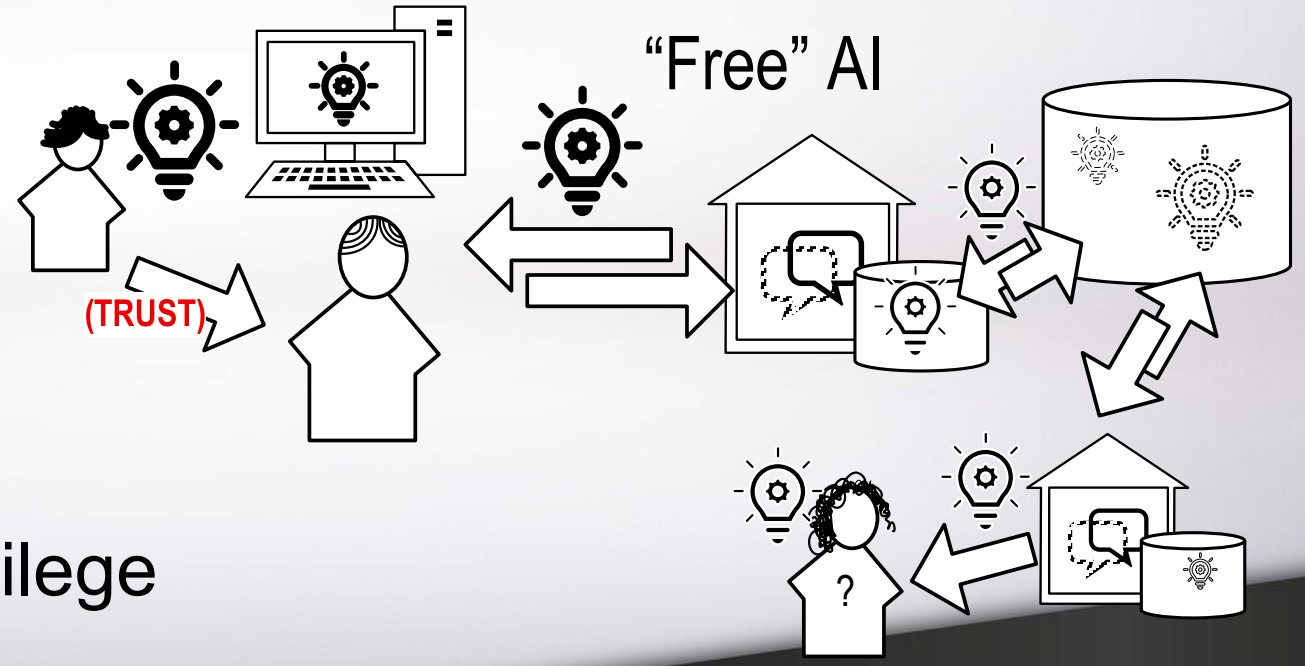
- Novelty destroyed by non-confidential disclosure.

Commercial secrets:

- Could leak

Advice:

- Loss of attorney-client privilege



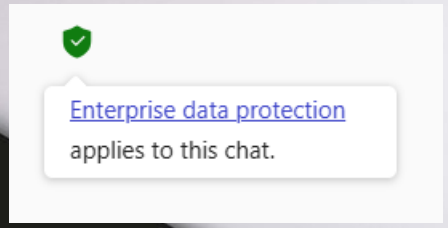
Confidentiality: Cloud solution OK?

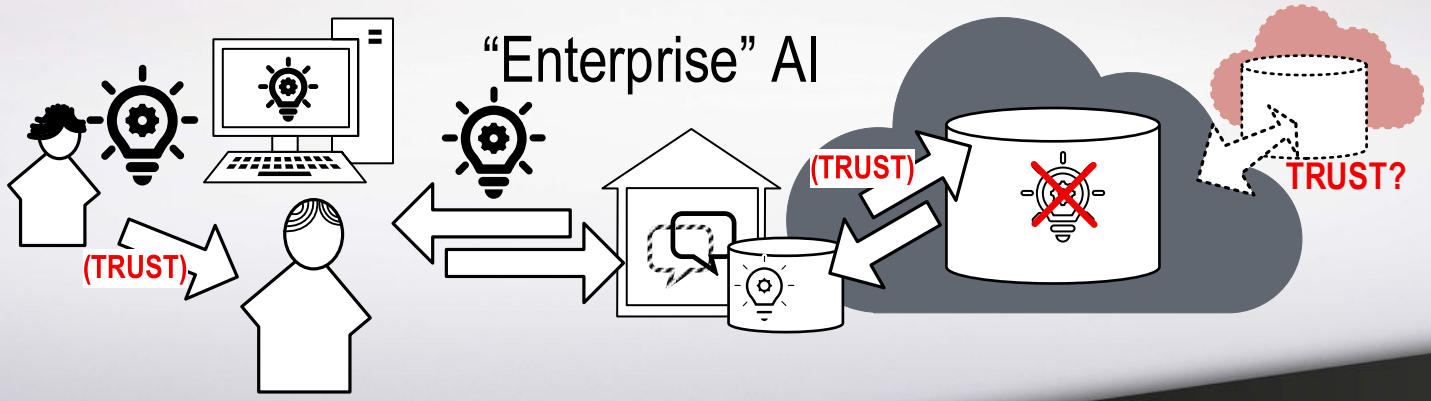
Secrets are safe, by everyday standards…

- Confidential by contract/law
- No training the AI on your data
  - → Patent novelty assured
  - → Privilege OK
- Familiarity "everyone uses the Cloud"
- Modest expense and infrastructure

…but they are on *someone else's computer*…

- Where is my data? EU? US? (residency)
- Who do you send it to behind the scenes?
- How long do you keep it? (retention)
- How secure is it against spying?
- What if your company goes bust?

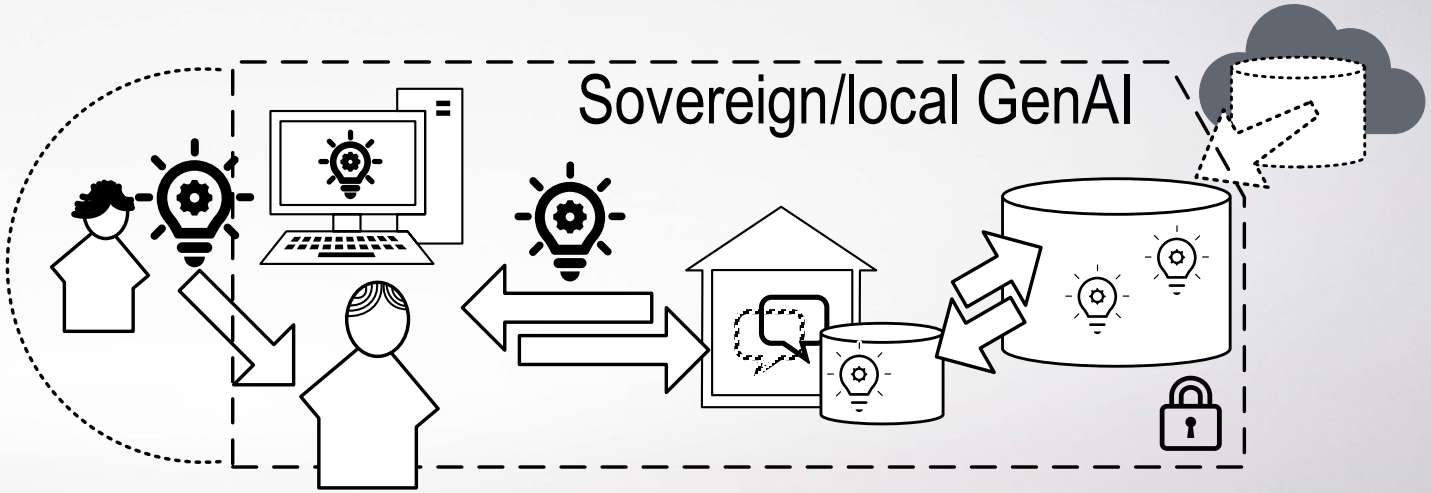




Confidentiality: ‘sovereign’/local AI

Secrets are safe, by your chosen standards

- Confidential by contract/law
- No training *other people’s models* on your data
  - → Patent novelty OK
  - → Privilege OK
- Custom train *your own models*
- Secure: secrets never leave your premises



But… you’re gonna need a bigger computer!

Communication/transparency

epi: "*Members **must** in **all** instances establish, **in advance** of using generative AI in their cases, **the wishes of their clients** with regard to the use of generative AI*. …"

- Do these wishes match the capability of your preferred AI tool?
- Do you need different tools/settings/accounts for different clients?

*"Members are **not** required to state, **in communications with the European Patent Office** and Unified Patent Court, that generative AI has been used in the production of work, unless …"*

Some clients are more sensitive than others. But **the attorney still bears the ultimate responsibility** for professional standards.

Fees/charging

- **IPREG**: "*There is **no requirement to pass on costs savings achieved by the use of AI to the client** as how you choose to bill for your work is a matter for you. **However**, you should bear in mind your **overarching duties to act in your client's best interests** and to provide **transparency** about billing.*"

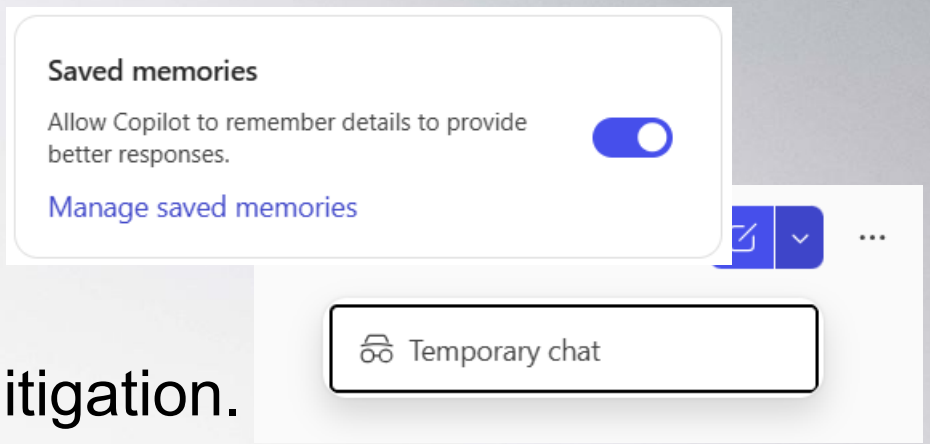
- **ABA**: "…*if a lawyer uses a GAI tool to draft a pleading and expends 15 minutes to input the relevant information into the program, **the lawyer may charge for that time as well as for the time necessary to review** the resulting draft for accuracy and completeness. But, **in most circumstances, the lawyer cannot charge a client for learning how to work a GAI tool.***

Hidden/long-term risks 1

- How much time do you spend checking the AI output – is it cost-effective? When will it be cost-effective? (Can I improve my prompting?)
- Will clients take the same care over confidentiality?
- Will clients no longer see the value of our expertise? Will they just choose vendors using AI to draft a patent at low cost?
- CIPA AI guidance for SMEs and creators:

"The patent system fundamentally relies on human invention and absolute confidentiality before filing. AI tools, whilst offering efficiency gains, threaten both foundations. A single confidentiality breach or over-reliance on AI-generated content could render years of R&D worthless. The true cost of AI errors may only emerge during litigation or licensing negotiations years later."

Hidden/long-term risks 2



- AI's "opinions" on file may have to disclosed in litigation.
- **Skills/recruitment/demographics** – How to pass on/acquire the familiar professional skills in a new working environment? Who gets left behind?
- **"Feature creep"** – AI creeps into our conventional tools & could be used unconsciously: MS Copilot, Gemini, Meta AI colonising and submerging regular apps; plugins like Grammarly; Zoom AI Companion
  - Do these AI functions have to be disabled/re-approved with clients?
  - Will my AI respect confidentiality between clients?
- Are new recruits addicted to using GenAI for everything?

How to begin? – Play safe, but play & learn!

Experiment & learn different tools

- Use opportunities to get familiar with GenAI in routine work (non-confidential)
- Who learns first? How/when does whole firm learn? (Do they want to?)

Choose the right tool for the job.

- General purpose vs Special purpose:
  - Which general-purpose tool is best for task X?
  - Which special purpose tools have added value?
- **GenAI can't do everything**. It can be safer to use old-fashioned automation – deterministic vs stochastic.
  - But you can use GenAI to help design your automation!
- Don't expect a patent at the press of a button. **Supervise and challenge the AI.** Ask it **to challenge your own work.** Ask it to **defend its own work.**

CITMA guidance – Choosing your AI tools & vendors:

Top 5 tips for trust and partnership assessment:

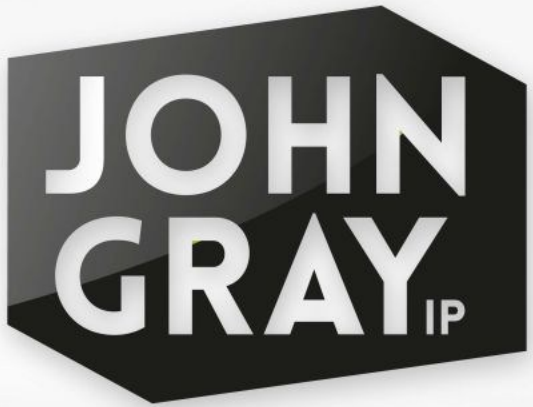
- The “trust equation”:
  - Credibility,
  - Reliability,
  - Sector familiarity,
  - User-focused
- Verify data privacy, confidentiality, and isolation standards
- Require evidence of transparent governance and oversight

Further reading/training

Blogs and podcasts, training

- Bastian Best Software Patent Attorney
- IP Lawyer Tools by Martin Schweiger: section “Robot Patent Drafting”
- Russell IP - IP Tool Demo Day: Exploring Nine IP Tools
- EPO podcast Exploring AI in the patent profession
- *Insight **epi*** podcast
  - epi guidelines: Use of generative AI
  - AI in patent practice: A reality check
  - AI at the EPO: Learning from the best -
- IPKat articles on AI
- Responsible AI UK Rai UK – Research on ethics and regulation

Discuss …



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