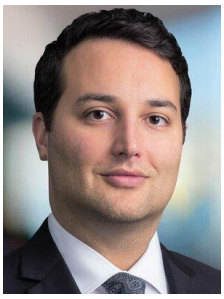
Submitting Ideas To AI Platforms May Affect Patent Rights

By **Jacob Golan, Christopher Cowles and George Chaclas** (May 20, 2026)



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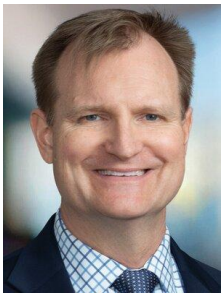

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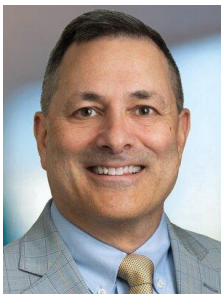

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In November 2025, the U.S. Patent and Trademark Office rescinded its prior AI-assisted inventorship guidance and reframed generative AI as "a tool, analogous to laboratory equipment, computer software, [or] research databases."

In doing so, the office arguably invited inventors to use consumer AI platforms. In considering the implications of this reframing for questions of patentability, it bears asking: Does disclosure of an invention to a consumer AI platform constitute public disclosure?

Some recent judicial developments seem to point in an affirmative direction.

In In re: OpenAI Inc. Copyright Infringement Litigation in January, the U.S. District Court for the Southern District of New York **ordered** OpenAI to preserve every ChatGPT conversation log, suggesting that use of such an AI "tool" may leave behind discoverable records. In the same case, the court again **ordered** OpenAI to produce chat logs in March.

Several AI providers' terms of use indeed already permit data collection, training and disclosure to government authorities, a circumstance based on which the Southern District of New York **held**, in U.S. v. Heppner on Feb. 10, that a criminal defendant's use of consumer AI lacked the confidentiality necessary for attorney-client privilege.[2

Under Title 35 of the U.S. Code, Section 102, an invention "in public use, on sale, or otherwise available to the public" before the effective filing date is unpatentable,[3] subject to a one-year grace period[4] for an inventor's own disclosures.

However, the contours of public disclosure were developed before inventors could type the core of an unfiled invention into an AI chatbot, where it may be incorporated into systems capable of generating outputs for millions.

This article examines how existing Section 102 doctrine fares when applied to AI-mediated dissemination, focusing on three unresolved questions: (1) whether AI-mediated outputs are sufficiently accessible to constitute public disclosure, (2) when such disclosure is deemed to occur, and (3) whether interactions with AI platforms are subject to any obligation of confidentiality.

Accessibility in the Age of AI

Does transmitting an enabling description of an invention to a cloud-based AI service constitute making such information available to the public under Section 102?

The touchstone of public disclosure has always been accessibility, or whether information has moved beyond the inventor's control. In 1881, the U.S. Supreme Court held in Egbert v. Lippmann that use of an invention by even a single person may constitute public use where nothing restricts that person's ability to share or exploit what they have learned.[5]

A century later, the U.S. Court of Appeals for the Federal Circuit confirmed the corollary in Moleculon Research Corp. v. CBS Inc. in 1986: Where access is explicitly limited, disclosure is not public for prior art purposes.[6]

When an inventor submits a prompt to an AI platform, the information enters a system built to process, retain and generate outputs for other users. As an example, OpenAI's terms of use for ChatGPT's consumer tier confirm that consumer inputs may be used to train and improve models, unless the user affirmatively opts out.

Once an inventive concept is incorporated into training data, its substance may therefore become accessible to others. This form of potential AI-mediated public disclosure should be analyzed in view of the printed publication framework established in In re: Klopfenstein in 2004, in which the Federal Circuit asked whether a reference is "sufficiently accessible to the public interested in the art,"[7] including in digital contexts where materials can be located with reasonable diligence.[8]

When an inventor inputs an inventive concept into an AI model that retains, incorporates or can reflect that concept in outputs to third parties, whether verbatim or through semantic reformulation, and whether wholly or in fragments, the information may be deemed accessible with reasonable diligence and prompt submission may therefore constitute a public disclosure under Section 102.

The USPTO itself has stated that AI tools can reliably surface patent-relevant disclosures. Under its automated search pilot program, which ran from October 2025 through April, the office deployed a proprietary AI tool to identify the 10 most relevant prior-art references for participating applications.[9]

If the USPTO's own AI can surface patent-relevant disclosures from an AI-indexed corpus, the argument that information submitted to a comparable consumer platform is "sufficiently accessible to the public interested in the art" under Klopfenstein may become increasingly difficult to rebut.[10]

When Disclosure Occurred

Assuming AI-mediated accessibility constitutes a disclosure event, timing presents a separate and potentially decisive issue.

This has implications for the grace period clock and for identifying prior art at the time of filing, at least in the U.S., as non-U.S. jurisdictions often lack grace periods comparable to Section 102 protections.

On the one hand, courts may focus on when information learned from a user is output by an AI system to another user. Such a scenario would be analogous to an inventor submitting an article to a scientific journal, with the date of publication serving as the operative date for Title 35 of the U.S. Code, Sectoin 102, timing purposes.

Practically speaking, however, identifying such a date with precision may be exceedingly difficult, as it would require tracing whether, when and in what form particular user-submitted information was incorporated into a later output.

On the other hand, courts may focus on the point at which information is introduced into a system designed to generate outputs for others. Under this approach, submission to an open AI platform could itself be treated as the operative disclosure event, even if no specific output disclosing a prompted invention has yet been observed.

Shifting the disclosure date to the moment of prompt submission has consequences for the data retention practices of major AI platforms, which are being tested by courts in adjacent contexts.

In the NYT v. OpenAI copyright litigation, the Southern District of New York ordered OpenAI

to preserve every ChatGPT conversation log — including entries users had purportedly deleted — notwithstanding OpenAI's prior commitments to purge them.[11]

In January, U.S. District Judge Sidney H. Stein affirmed a discovery order compelling OpenAI to produce approximately 20 million deidentified user logs, reasoning in part that "users voluntarily submitted their communications" to the platform.[12]

For patent purposes, cases like NYT may establish that prompt-submission records not only are theoretically retrievable, but can be judicially compelled as discoverable, giving challengers a durable evidentiary hook for the disclosure events identified in the section above. Similar platforms, such as Anthropic and Google, also retain user prompts and interaction logs in forms attributable to individual accounts.[13]

As a result, however courts decide on when disclosure occurs in the context of AI, prior art questions may turn on how particular AI platforms' log-keeping policies may affect discovery.

The Confidentiality Question

Even if submission to an AI platform satisfies the accessibility and timing requirements discussed above, an inventor might contend that their AI-mediated interaction was not public because it was subject to an obligation of confidentiality. The strength of that contention depends on what, if any, duty of secrecy the AI platform-user relationship actually imparts.

Under Federal Circuit precedent, a use or communication is not public for purposes of Section 102 if it occurs among individuals who owe an obligation of confidentiality to the inventor, as established in Invitrogen Corp. v. Biocrest Manufacturing LP in 2005.[14] That obligation may be express, as in a formal nondisclosure agreement, or implied by the nature of the relationship.

The Federal Circuit has recognized that relationships involving an expectation of privacy may negate a public-use finding, even absent an express promise of secrecy.[15] The question, then, is whether the relationship between a user and an AI platform carries any comparable obligation.

Under current terms of service, the answer in most cases is in the negative. As discussed above, consumer AI platforms not only lack any duty of secrecy that would accrue to the

user, but affirmatively reserve the right to retain and reuse inputs for model training.[16] There is no obligation to maintain the confidentiality of user-submitted content; in fact, the terms explicitly contemplate the opposite.

Under the framework established by Moleculon and Invitrogen, the absence of an enforceable obligation of confidentiality makes it difficult to treat submission to a consumer-tier AI platform as a private communication.

Moreover, recent decisions in adjacent IP doctrines are instructive. In Trinidad v. OpenAI in January, the U.S. District Court for the Northern District of California dismissed the plaintiff's Defend Trade Secrets Act claims on the ground that she had developed her proprietary frameworks using ChatGPT, and therefore had "voluntarily share[d] the information she now alleges is part of her trade secrets with OpenAI," absent reasonable measures to preserve confidentiality.[17]

Although Trinidad concerned trade secrets rather than patent doctrine, the voluntary disclosure logic is the same one that animates Section 102: Where information is shared without a cognizable obligation of secrecy, IP protections may be forfeited.

Whether the same logic extends to paid OpenAI tiers (which market, e.g., contractual confidentiality commitments, segregated data handling or opt-out training policies) remains untested, leaving even premium AI use with residual Section 102 risk.

Best Practices

Several practical recommendations follow.

First, prospective inventors should review applicable terms of service to confirm whether a nontraining setting can be used with an AI platform, also taking into account that these settings may vary by product tier, account type and jurisdiction.

Wherever possible, preference should be given to enterprise-tier or API-based services that contractually restrict training on user inputs, as these levels offer the strongest basis for arguing that confidentiality was maintained.

Second, company invention disclosure forms and internal IP policies should be updated to query whether AI tools were used during the inventive process, and if so, which platform, tier and data-handling settings were in place. This information may prove critical to

evaluating disclosure risk and establishing a defensible prior art position.

Third, practitioners should document AI-assisted sessions contemporaneously, including the date and substance of prompts and the platform settings in effect, to preserve evidence of the conditions under which any potential disclosure occurred.

Fourth, and perhaps most importantly, consider reversing typical workflow: File a provisional application before engaging in AI-assisted brainstorming on inventive concepts, rather than use AI to refine any such core inventive concepts before filing. A provisional filing establishing an early effective filing date costs relatively little, and can substantially reduce the disclosure risks identified above.

More broadly, inventors should assume that consumer-tier AI platforms provide little meaningful confidentiality, and should avoid submitting enabling details of unfiled inventions to such systems.

Generative AI does not simply introduce a new tool into the inventive process; it unsettles foundational assumptions about when information becomes accessible, when disclosure is deemed to occur and whether communications remain confidential.

The USPTO's November 2025 revised inventorship guidance addressed one half of the AI question — who can be named as an inventor when AI assists the inventive process — while leaving the other half untouched: whether and when an inventor's use of AI triggers disclosure consequences under Section 102.

Until Congress, the courts or the USPTO provide clearer guidance, inventors should operate on the assumption that interactions with open AI systems are likely to carry consequences traditionally associated with public disclosure, making disciplined use of such tools and early filing strategies essential to preserving patent rights.

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[1] See, In re: OpenAI Inc., Copyright Infringement Litig., No. 1:25-md-03143, slip op. at __ (S.D.N.Y. Jan. 5, 2026).

[2] See, U.S. v. Heppner , No. 25-cr-00503-JSR, 2026 U.S. Dist. LEXIS 32697 (S.D.N.Y. Feb. 17, 2026).

[3] See, 35 U.S.C. § 102(a)(1)

[4] Id. at § 102(b)(1)(A)

[5] Egbert v. Lippmann , 104 U.S. 333, 336 (1881)

[6] Moleculon Research Corp. v. CBS Inc. , 793 F.2d 1261, 1266 (Fed. Cir. 1986)

[7] In re: Klopfenstein , 380 F.3d 1345, 1350 (Fed. Cir. 2004).

[8] SRI International Inc. v. Internet Security Systems Inc. , 511 F.3d 1186 (Fed. Cir. 2008); Voter Verified Inc. v. Premier Election Solutions Inc. , 698 F.3d 1374, 1380 (Fed. Cir. 2012).

[9] Automated Search Pilot Program, 90 Fed. Reg. 48,161 (Oct. 8, 2025) (U.S. Pat. & Trademark Off.).

[10] In re: Klopfenstein , 380 F.3d 1345, 1350 (Fed. Cir. 2004).

[11] In re: OpenAI , No. 1:25-md-03143, at __ (S.D.N.Y. Jan. 5, 2026).

[12] Id.

[13] Anthropic, How long do you store my data?, Anthropic Privacy Center, https://privacy.claude.com/en/articles/10023548-how-long-do-you-store-my-data (last visited Apr. 19, 2026), and Google, "Gemini Apps Privacy Hub," 2025.

[14] Invitrogen Corp. v. Biocrest Manufacturing LP , 424 F.3d 1374, 1382 (Fed. Cir. 2005); see also MPEP § 2152.02(c).

[15] id. at 1382, citing Moleculon Research Corp. v. CBS Inc. , 793 F.2d 1261, 1266 (Fed. Cir. 1986).

[16] OpenAI, Terms of Use (Jan. 2026); see also, Google, "Gemini Apps Privacy Hub" (2025).

[17] Trinidad v. OpenAI Inc. , No. 4:25-cv-06328 (N.D. Cal. 2026), appeal pending, No. 26-721 (9th Cir.).