Patentability of AI Generated Drugs

Pharmaceutical companies are increasingly involving Artificial Intelligence (AI) in those processes that may be defined as 'inventive' as they lead to inventions. As a result, these inventive processes are changing and, thus, also altering the contributions of human inventors working with AI. The author, therefore, questions whether those inventions generated by AI might face obstacles in attracting patent protection from a legal perspective. This article explores two particular aspects of the patent system. Namely, the patentability requirement of inventive step and the requirement to name an inventor in patent applications. Indeed, these are considered to present theoretical and practical incompatibilities in relation to inventions generated by AI. Furthermore, the author discusses the potential consequences of the patentability of AI generated inventions from a competition law perspective. This brings into focus the crucial role of data ownership in relation to AI driven innovation, and consequently the possibility of applying the essential facilities doctrine to data. The article concludes that both the assessment of inventive step and the requirement to name an inventor might require adaptation in relation to AI generated inventions. Moreover, it might be desirable to engage in further sectorial research on data management in the pharmaceutical industry.

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