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From: [redacted]
Sent:
To: AI Call For Views
Cc: [redacted]
Subject:

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Dear UKIPO,
Many thanks for holding a public consultation on AI and IP.
Although not one of the UKIPO's questions, there is a fundamental question to be answered for AI-generated inventions. This is because AI is ultimately a very different technology, in that is can develop agency and potentially create novelty (possibly by the same mechanisms that us humans use).

The CIPA draft notes that whether an AI system can "invent" or "devise an invention" is still a matter of debate, but that the output from an AI system may make a significant contribution to an invention. The draft then suggests that the UK Patents Act could be amended to allow a human who is responsible for making the arrangements for an AI system to provide its contribution to be recognised as the inventor even if that human contribution falls short of being the "actual deviser of the invention" due to a significant contribution from the AI system. This would allow the same patent protection for an invention that was made using an AI system (as long as there is a significant human contribution such as performing the selection and curation of a training dataset in a non-obvious way, which enhances the ability of the AI system to perform the desired task) and the same invention if made by a human without an AI system. There is an interesting aspect here in that while the deviser of a generic AI may not be an inventor, often the use of specific AI to operate in specific domains requires customisation and adaptation of the AI algorithms including a strategy for training the AI – these amendments to a generic AI would in turn fulfil the requirements innovations that make the AI creator an actual deviser.

We believe that UK law and European Patent Office practice needs to change to allow patent protection for core AI technologies including machine learning algorithms that deliver technical advantages, instead of only the EPO-defined "specific technical applications" of those algorithms (with claims functionally limited to the particular technical purpose) and quite narrowly-defined "specific technical implementations" (where algorithms are adapted to take account of the capabilities or constraints of particular hardware). This is not the main focus of the UKIPO's consultation questions, but perhaps UK legislators can be encouraged to improve this situation via replies to the consultation?

Kind regards

[redacted]

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