



May 13, 2024

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
United States Patent and Trademark Office
600 Dulany Street
Alexandria, Virginia 22314

RE: Guidance: Inventorship Guidance on AI-Assisted Inventions [[Docket No. PTO-P-2023-0043](#)]

Dear Under Secretary and Director Vidal:

The Alliance for Automotive Innovation (“Auto Innovators”) is pleased to submit comments to the United States Patent and Trademark Office (“USPTO”) in response to its request for comments on its proposed examination guidance for AI-assisted inventions (“proposed guidance”).

Auto Innovators represents the manufacturers that produce most of the cars and light trucks sold in the U.S., original equipment suppliers, battery makers, technology companies, and other value chain partners within the automotive ecosystem. Representing approximately 5 percent of the country’s GDP, responsible for supporting nearly 10 million jobs, and driving \$1 trillion in annual economic activity, the automotive industry is the nation's largest manufacturing sector.

The automotive industry has significant interests in developing artificial intelligence technologies and the patent protection that can be sought for such innovations. Automotive companies use artificial intelligence to integrate driver support features, advanced safety technologies, and automated driving systems into consumer vehicles. These and other technological advances have the potential to reduce serious injuries and deaths, improve roadway safety, protect vulnerable road users, and provide environmental benefits. Current patent law has proven itself equipped to handle inventorship that involves artificial intelligence technologies, and Auto Innovators agrees with the USPTO that inventorship analysis should focus on human contributions.

Auto Innovators appreciates USPTO’s work to craft the proposed guidance, which clarifies that inventors and joint inventors must be natural persons. This is consistent with legal precedent and the intent of patent law to incentivize human ingenuity. Auto Innovators also appreciates that the proposed guidance explains that the use of AI-assistance in the innovation process does not preclude the issuance of a patent so long as a human “significantly contributed” to the claimed invention.

However, the automotive industry is concerned that there is no affirmative obligation for the USPTO to ask, and the patent applicant to answer, whether and to what extent an AI provided contributions to a claimed invention. The USPTO merely warns applicants that they may have to disclose AI contributions under its existing duty of candor and good faith. This is insufficient, especially as examiners will be dealing with novel and fact-intensive issues that would be better informed with all the facts in front of them. Further, AI contributions to a claimed invention are relevant to inventorship, obviousness, and other legal issues before the USPTO, and failure to disclose such contributions violates the applicant's duty of disclosure. We suggest that the USPTO modify the proposed guidance to expressly ask patent applicants whether an AI assisted in the inventive process and, if so, how it contributed. We also suggest that the USPTO advise applicants that knowingly refusing to disclose AI assistance in the inventive process may constitute inequitable conduct.

Thank you for the opportunity to provide input on the proposed guidance. Auto Innovators is grateful for USPTO's continued stakeholder engagement on patent-related matters of interest to the automotive industry.

Sincerely,

A handwritten signature in cursive script that reads "Tara Hairston".

Tara Hairston
Senior Director, Technology Policy

