Joshua Davenport: Impact of the proliferation of AI on prior art and PHOSITA listening session

On July 25, Joshua Davenport participated in the USPTO's listening session on a Person Having Ordinary Skill in the Art (PHOSITA) and Artificial Intelligence (AI).

On April 30, 2024, the USPTO published a Federal Register Notice requesting comments regarding the Impact of the Proliferation of AI on Prior Art, the PHOSITA standard, and Determinations of Patentability Made in View of the Foregoing. The purpose of the listening session was to obtain public input from stakeholders on the impact of the proliferation of AI on prior art and the PHOSITA standard, as outlined in the questions presented in the Federal Register Notice of April 30, 2024.

Josh argued that the PHOSITA standard should not undergo any significant changes in view of AI. In his opinion, existing case law and regulations (such as MPEP § 2121) are equipped to handle the challenges of AI, and AI cannot be a substitute for the real-world skill of a PHOSITA in obviousness determinations.

You can find the full recording of the listening session by clicking here.