China and U.S. signal openness to AI patents in the AI race, but applicants should proceed carefully

By Kirk Sigmon, Esq., and Hengyi Jiang, Esq., Banner & Witcoff Ltd.

NOVEMBER 4, 2025

Unlike prior years, both China and the United States are actively encouraging inventors to file Artificial Intelligence ("AI")-related patents. This recent shift, partially driven by efforts to support fast-moving domestic AI industries, has been accompanied by a significant and very valuable policy development: Both the China National Intellectual Property Administration ("CNIPA") and the U.S. Patent and Trademark Office ("USPTO") have adopted more flexible examination standards for AI and machine learning ("ML") applications.

For inventors previously on the fence, there has never been a better moment to file AI-related patent applications in either jurisdiction.

China's pro-AI patent policy

Over the past year, China has taken several deliberate steps to promote AI-related patent filings. For instance, the CNIPA has detailed its (very permissive) approach to examining AI-related patent applications, signaling that few AI-related inventions will be rejected for lack of subject-matter eligibility. These actions demonstrate a clear, pro-AI stance, a strong signal to those seeking patent protection in China.

Last December, the CNIPA launched a "Pilot Guidance" clarifying that AI-related inventions would be technical in nature (and thereby patent-eligible) if (1) the AI/ML model processes technical data, (2) the model has a specific technical association with respect to computer parts, and/or (3) the model processes a large volume of data to identify associations, even if those associations reflect laws of nature.

The CNIPA also provided helpful guidance relating to how AI-related applications should sufficiently disclose their inventions, emphasizing the importance of sufficiently detailing training steps, parameters, how input/output data is used, and more.

Virtually every action taken by the CNIPA since that Pilot Guidance has underscored the CNIPA's favorability towards AI-related patent applications. For example, in April, the CNIPA solicited public comment regarding proposed revisions to its Patent Examination Guidelines. The revised guidelines add a new exemplary neural network model claim and explain why it is inventive in view of exemplary prior art. This new guidance, if implemented, would provide additional clarity and guidance for patent examiners when examining AI-related patent applications.

With that said, the CNIPA has not signaled that all AI-related inventions will be automatically granted patent protection. For example, the CNIPA has cautioned that AI-related patent applications might be rejected if they violate other laws or social ethics, such as by being used for unauthorized surveillance.

Both the China National Intellectual Property Administration and the U.S. Patent and Trademark Office have adopted more flexible examination standards for AI and machine learning applications.

For example, the revised guidelines state that a mattress sales assistance system that collects and identifies customers' facial feature information without their knowledge would be unpatentable because other laws would prohibit such a system from being used. As another example, the revised guidelines state that an emergency decision-making model for autonomous vehicles that considers a human's age and gender in unavoidable accident scenarios would be unpatentable because it violates public morality.

In short, all signs point to China becoming friendlier towards AI-related inventions. Noting that China "has become the largest holder of AI-related patents globally, accounting for 60% of the total," the CNIPA has explicitly stated that it seeks to continue to promote "the application and development of AI technologies by refining relevant policies and deepening the implementation of related initiatives." See CNIPA website, April 30, 2025, citing China IP News (https://bit.ly/3X7vRlk).

New director of USPTO signals pro-AI shift

Recent developments at the USPTO, especially under its new Director, show a similarly welcoming attitude toward AI patents.

New USPTO Director John A. Squires appears to be strongly in favor of AI-related inventions. For instance, in one of Director Squires' first actions after being sworn in as the 60th director of the USPTO, he explicitly characterized debate over some aspects of subject matter eligibility as "unproductive," emphasizing that "the U.S. Patent Office is open for business, especially for the technologies of tomorrow." See Patent Signing Ceremony Remarks by John A. Squires, Sept. 24, 2025. He also characterized technologies "[f]rom crypto and AI to quantum computing and diagnostics" as "breathtaking opportunities for invention and investment." *Id.*

Further to this "open for business" approach, Director Squires convened an Appeals Review Panel ("ARP") and issued a pro-AI decision in *Ex parte Desjardins*, Appeal No. 2024-000567 (P.T.A.B. 2025) ("*Desjardins*"). In that decision, and despite conceding that the current state of subject matter eligibility law in the United States had a "confusing nature," Director Squires explicitly endorsed AI-related patent filings, noting that "excluding AI innovations from patent protection in the United States jeopardizes America's leadership in this critical emerging technology." *Desjardins* at 9.

Director Squires also discouraged evaluating AI-related claims "at such a high level of generality" and instead emphasized that technical improvements might be found in AI-related claims involving, for instance, optimization of machine learning models. *Id.*

Even before Squires' appointment, the USPTO was beginning to signal a favorable shift towards the subject matter eligibility of AI-related inventions. For example, in August, Deputy Director Charles Kim issued a memorandum (characterized as "[r]eminders on evaluating subject matter eligibility") that explicitly instructed examiners to adopt a more permissive approach to AI-related innovations. See Memorandum, Reminders on evaluating subject matter eligibility of claims under 35 U.S.C. 101 (Aug. 4, 2025).

That memorandum "reminded" the Examining Corps that the "mental process grouping" of abstract ideas "is not without limits," that they "should be careful to distinguish claims that recite an exception . . . from claims that merely involve an exception," and that, if faced with a "close call," a subject matter eligibility rejection would only be warranted "when it is more likely than not (*i.e.*, more than 50%) that the claim is ineligible."

While the August memorandum was characterized as "[r]eminders" in view of July 2024 "Subject Matter Eligibility Examples" involving AI-related inventions, in practice, the memorandum has already pushed many in the Examining Corps to be more permissive with AI-related applications. Applicants have since cited this memo with notable success in overcoming eligibility rejections.

Move fast and file now

With both the CNIPA and USPTO promoting AI-related patent activity, there has never been a more favorable environment for filing AI-related patent applications. Even if U.S. examiners remain cautious, the potential rewards justify the effort. That said, applicants should not confuse this openness with an invitation to rush to file. AI patents are complex, and weak disclosures can undermine their value, so inventors should proceed deliberately and work closely with experienced AI patent counsel to maximize success.

About the authors

Kirk Sigmon (L), a shareholder at **Banner & Witcoff Ltd.**, helps companies around the world tackle complex intellectual property challenges. He routinely lectures in Asia regarding U.S. patent law and intellectual property enforcement, and is a graduate student at Dartmouth, where his research focuses on artificial intelligence and deep learning. He can be reached at ksigmon@bannerwitcoff.com. **Hengyi Jiang** (R), a shareholder at the firm, focuses his practice on the preparation, prosecution, and strategic management of patents in the electronics and computer technology fields. Prior to his work as a U.S. lawyer, he majored in telecommunications engineering at Xidian University in Xi'an. He can be reached at hjiang@bannerwitcoff.com. The authors are based in Washington, D.C.

This article was first published on Reuters Legal News and Westlaw Today on November 4, 2025.