

Enabling Artificial Intelligence

Abstract

In order to obtain a patent, an inventor's patent application must enable others to make or use their invention. This rule is referred to as the enablement requirement. The enablement requirement ensures that the inventor is in possession of the invention. In addition, the enablement requirement ensures that, in exchange for a patent, the public has received a sufficient invention disclosure.

Historically, the impact of the enablement requirement has differed based on the technology in question. Inventions in the "predictable" arts such as engineering have required less description to meet the enablement requirement. In contrast, unpredictable inventions in areas such as biotechnology have required more detailed disclosures to satisfy the enablement requirement.

Inventions that incorporate artificial intelligence ("AI") present an interesting challenge for enablement doctrine. AI has its origins in the disciplines of math and computer science. Both disciplines are traditional examples of predictable technology. Yet, AI inventions are also perceived to produce unpredictable results. In a recent request for comments from the public, the USPTO asked "How can patent applications for AI inventions best comply with the enablement requirement, particularly given the degree of unpredictability of certain AI systems?"

The USPTO's question begs a larger inquiry. Specifically, is the enablement requirement a significant impediment to the patenting of AI inventions? This article concludes the answer is no, but not for the reasons one might suspect. First, the enablement requirement does more to limit the scope of a patent than it does to encourage robust and informative disclosures. Second, the USPTO's focus on the lack of predictability of AI inventions is misplaced. It is difficult to obtain guidance from court opinions as how best to satisfy the enablement requirement for "unpredictable inventions." Courts have not treated predictable and unpredictable inventions as differently as they have in the past. Instead, all an inventor of an AI invention need do is enable one of ordinary skill to make the disclosed invention without undue experimentation.