LEASON ELLIS
INTELLECTUAL PROPERTY ATTORNEYS

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The AI Issue: Artificial Intelligence is Reshaping IP Law

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THE AI ISSUE

Artificial Intelligence Is Reshaping Innovation, and Intellectual Property Law is Evolving Right Alongside It

In this special AI issue, we examine how AI is influencing the development, protection, and enforcement of intellectual property. Our attorneys share practical insights on the legal, strategic, and ethical questions businesses face as AI continues to advance.

In the Practice Group Insights section, our attorneys explore topics including minimizing risk in AI partnerships for life sciences companies, the use of AI in IP litigation, legal ethical considerations surrounding AI, and notable decisions on AI training and the fair use defense to copyright infringement.

In addition, we're pleased to share firm updates reflecting Leason Ellis' continued growth, including the expansion of our Executive Committee and the addition of a nine-member lateral patent team that enhances our life sciences capabilities.

FIRM NEWS

Leason Ellis Expands Patent Practice with Nine Ph.D. Life Sciences Professionals from Haley Guiliano LLP

We're proud to welcome a highly regarded group of life sciences professionals from Haley Guiliano LLP, a patent practice that originated as a spin-off from Ropes & Gray LLP. Joining the firm's Patent Practice Group are co-founder **James Haley, Jr.**, and partners **Karen Mangasarian** and **Brian Gummow**, associate **M. Diana Danca**, law clerks **Stacey Chung** and **Marcus Jellen**, patent agent **Maha Saber**, and technical advisors **Kendra Johnson** and **Taylor Vacala**.

All nine members of the team hold a Ph.D. in the life sciences, bringing exceptional scientific and technical depth to Leason Ellis. Their backgrounds in molecular biology, organic chemistry, immunology, biochemistry, neurobiology, and related fields enhance the firm's ability to collaborate with innovative life sciences clients, including academic institutions, startups, established companies, and industry leaders at the forefront of scientific advancements.

The team also brings extensive experience in global patent portfolio development, strategic counseling, and the patenting of complex biotechnology, pharmaceutical, and chemical innovations. The team is ranked among the industry leaders in life sciences and individually recognized for their work in numerous publications, including IP Stars, IAM's Patent 1000, and WIPR Leaders.

"We are thrilled to welcome this distinguished group of professionals to Leason Ellis," said Managing Partner Yuval Marcus. "Their arrival enhances our strong patent and life sciences team and reinforces our firm's position as a leader in intellectual property law."

Brian Gummow, Karen Mangasarian, James Haley Jr.

"Leason Ellis offers a full-service IP platform that is scientifically rigorous, strategically focused, and reinforced by exceptional litigation capabilities," said James Haley. "It's an ideal environment for advancing and protecting the innovations our clients are developing."

Patent Practice Group Co-Chairs Edward Ellis and Jordan Garner said in a joint statement: "We're excited to welcome this truly exceptional team. The breadth and depth of their experience will significantly strengthen our ability to develop, support, and protect breakthrough technologies across all stages of the patent lifecycle – from patent drafting and prosecution to sophisticated global IP strategy and enforcement."

The addition of this nine-member team underscores Leason Ellis' continued commitment to attracting top IP talent and building one of the nation's premier patent practices.

Leason Ellis Expands Executive Committee to Include Partners Lauren Emerson and Jordan Garner

We are very pleased to announce that partners **Lauren Emerson** and **Jordan Garner** have been appointed to the Executive Committee of the Firm. Lauren is currently a Co-Chair of the Firm's Trademark & Copyright Practice Group. Jordan is currently a Co-Chair of the Firm's Patent Practice Group and a Co-Chair of the Transactions Practice Group.

Lauren and Jordan's appointments reflect the Firm's commitment to broadening leadership opportunities and engaging partner ranks in governance and strategic decision-making. Over the past several years, the Executive Committee has worked closely with outside consultants and internal stakeholders to ensure that Leason Ellis remains well-positioned for continued success.

Their appointment to the Executive Committee reflects the confidence of their colleagues and their demonstrated leadership within the Firm. Managing Partner Yuval Marcus comments, "Lauren and Jordan exemplify the qualities that define our Firm's leadership. Their talent, judgement, and commitment to our clients and culture make them outstanding additions to the Executive Committee. We look forward to the insight and vision they will bring as we continue to shape the future of Leason Ellis."

Lauren Emerson and Jordan Garner

Ethical Considerations When Using AI for Legal Services


By Audrey E. Trace, Melvin Garner

Generative Artificial Intelligence (GAI), particularly Large Language Models (LLMs), are reshaping the way legal work is performed. These tools can streamline drafting, research, discovery review, and more. With the emergence of this new technology, it is essential to recall the professional rules which govern attorneys and apply to GAI tools. LLMs, such as ChatGPT, introduce new contexts in which long-standing ethical rules already apply. Recent court decisions across the country highlight the importance of using AI responsibly and in accordance with the ethical rules, and underscore the need for careful human oversight.

Competence and Diligence in an AI Environment

The American Bar Association Model Rules 1.1 (Competence) and 1.3 (Diligence) require that lawyers provide competent representation, including thorough preparation, and that they act with reasonable diligence. Since LLMs can "hallucinate" cases and text that appear authoritative, but may be fabricated, lawyers cannot take on cases in areas of law where they lack competence by relying on GAI. Even if competent in an area of law, lawyers must diligently review any AI output to make sure it is accurate. Further, they must make sure that they meet deadlines and review their submissions in sufficient time so they will not need to rely on AI to complete an assignment.

Several widely discussed cases demonstrate the consequences of neglecting these competence and diligence responsibilities. For example, in 2023, lawyers dodged sanctions when they submitted a brief that contained made-up cases. Since that case, the penalties for misuse of AI and neglect of professional responsibilities have increased. In January 2024, an attorney was referred to the Second Circuit Court of Appeals Grievance Panel for punishment after submitting a brief that contained a fake case citation[1]. In another case, this time in the Southern District of New York, a law firm was fined $5,000 for submitting non-existent judicial opinions with fake quotes and citations created by ChatGPT.[2] Around the country, attorneys have been removed from cases[3], ordered to pay litigation sanctions in the tens of thousands of dollars[4], and have been publicly reprimanded and referred to state bars for mis-using generative AI tools.[5]

These cases illustrate a consistent lesson, namely, that AI tools cannot replace human judgment, legal training, or careful research and review. Courts increasingly expect attorneys to certify that any AI use has been reviewed for accuracy, and several judges and courts have implemented standing orders requiring such verification. A few have even banned the use of AI-generated content. As a result, increased punishments and fines for attorneys who continue to misuse GAI in their work can be expected in the future.

Communication and Transparency

Model Rule 1.4 requires attorneys to keep clients promptly and reasonably informed so that they can make decisions about representation. This means that an attorney may be under an obligation to inform the client about the use of AI to prepare legal documents, such as drafting patent applications, briefs, etc. According to the American Bar Association Standing Committee on Ethics and Professional Responsibility Formal Opinion 512, issued on July 29, 2024, lawyers need not disclose every use of AI, but transparency may be necessary if AI plays a significant role in document generation or analysis. Clear communication and transparency ensure that clients understand both the benefits and the limitations of the technology.

Fees

According to Model Rule 1.5(b) an attorney taking on the representation of a client is responsible for communicating to the client the basis or rate of the fee and expenses that the client will be charged. This indication of the fees and expenses is preferably indicated in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

With the advent of AI in legal representation, its effect on the proper fee a client should be charged has arisen and is still being worked out. Such questions as: "Should the attorney be able to charge the client for purchase of AI as an expense? Should any savings from use of AI be passed onto the client? Can a client

1. *Park v. Kim,* ---F.4th----, No. 22-2057, 2024 WL 332478, at *2-4 (2d Cir. Jan. 30, 2024).

2. *Mata v. Avianca Inc.,* ---F. Supp. 3d ----, No. 22-CV-1461,2023 WL 4114965, at *l (SDNY June 22, 2023).

3. *Magpul Industries Corp. v. Mission First Tactical, LLC,* ---U.S. District Court, Eastern District of PA----2025- No. 24-5551-KSM (April 28, 2025).

4. *Lacey v. State Farm General Insurance Co.,* ---U.S. District Court, Central District of CA ----2025- No. CV 24-5205 FMO (MAAx) (May 6, 2025) (attorneys submitted bogus AI-generated research that affirmatively misled the judge; judge ordered $31K litigation sanction).

5. *Johnson v. Dunn,* ---U.S. District Court, Northern District of Alabama Southern Division ---2025- No. 2:21-cv-1701-AMM (July 2025).

demand a lower price because of the attorney's use of use of AI?" come up. One thing is fairly clear. If the client is billed by the hour and the attorney spends less time on the matter as a result of the use of AI tools, billing the hourly charge without adjustment is not acceptable.

Confidentiality of Information

According to Model Rule 1.6 "(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation ..." Further, "(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Use of LLM GenAI tools raises data protection and privacy issues. Some AI tools use the inputs or prompts of users to further train the tool. If the AI tool is "open" or publicly accessible, such use may disclose the client's information. Thus, using a client's confidential information in a prompt, e.g., to generate a patent application, may result in its disclosure. The same may be true of the use of client confidential information to train the AI. Thus, in evaluating AI tools, the attorney should determine whether input data is used to train the AI, and if so, use caution in the types of information that is used in prompts. Alternatively, the attorney can restrict the use of AI tools to those that do not train on input data, and even better, to those that are closed and only available for internal use.

Supervision and Law Firm Obligations

Model Rules 5.1 and 5.3 require partners and supervisory attorneys to ensure that lawyers and non-lawyer staff comply with ethical obligations. This includes firm-wide policies governing how and when AI may be used, and how confidential information is protected. Thoughtful supervision helps ensure that use of GAI tools contribute to efficiency, while maintaining professional responsibilities.

USPTO Considerations

USPTO Rules 11.101 and 11.103 require a practitioner registered to practice before the office, (which includes attorneys and non-attorney agents) to "provide competent representation to a client," which "requires the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation." These rules further require that practitioners "act with reasonable diligence and promptness in representing a client." Thus, these rules are similar to Model Rules 1.1 and 1.3.

In the patent context, the USPTO has issued guidance emphasizing practitioners' duty to determine proper inventorship in situations involving AI-assisted inventions. Examiners may require information about whether AI contributed to the conception of the claimed subject matter or other elements. As with other areas of practice, the duty of reasonable inquiry applies regardless of whether AI tools were used to draft or review submissions.

Conclusion

It is not sufficient to try to avoid the risks stemming from GAI by refusing to use it or learn about it. In fact, Comment 8 to Model Rule 1.1 requires that lawyers keep abreast of changes in the law and its practices "including the benefits and risks associated with relevant technology..." Thus, at a minimum, lawyers have a duty to understand how AI functions and how it can be used or mis-used.

AI has the potential to enhance legal services, including decreasing the cost and time, and potentially improving work product and workflow. Despite the benefits, there are risks to using AI, and the ethical rules obligate attorneys to understand such risk and benefits, and to use these tools responsibly. The cases emerging from around the country make clear that courts will hold attorneys accountable for inaccuracies and violations resulting from the misuse of AI tools. Ultimately, the ethical use of AI rests on the same core principles that have always guided the legal profession: competent and diligent representation, timely and thorough review and verification, transparent communication, and commitment to protecting client interests.

TRADEMARK INSIGHTS

- **Attorneys must not neglect human oversight when using AI in practice.** The ethical rule of competence requires that lawyers independently verify all AI output to meet their duty of competence. Attorneys should not use AI without independently verifying the information, or risk shirking their ethical responsibilities. Also, attorneys should diligently work on tasks, so they may timely prepare effective submissions, rather than relying on AI to make up for that lack of diligence.

- **Attorneys should communicate transparently with clients about the use of AI in practice and in relation to fees and expenses.** The ethical rules may require that attorneys inform clients about the use of AI in practice. Communications with clients and fee agreements should properly reflect any relevant use of AI.

- **Attorneys should take care to protect confidential information when using AI.** The ethical rules require that lawyers make reasonable efforts to protect information relating to representation of a client. Thus, before using an AI tool, lawyers should determine whether the input data is used to train the AI, and whether the AI tool might expose the client's confidential information to risk of disclosure.

- **It may be beneficial to establish firm wide policies to ensure appropriate supervision of the use of AI.** The ethical rules require that supervisory attorneys ensure that other lawyers and non-lawyer staff comply with ethical obligations. Outlining firm-wide policies that govern the use of AI may be beneficial to avoid the potential pitfalls of using AI tools.

PRACTICE GROUP INSIGHTS

TRADEMARK

TTAB Extends Initial Time to File Answers

By Sara E. Gruber

The Trademark Trial and Appeal Board recently revised the amount of time allowed for filing answers in Board proceedings. The Board is required to designate an amount of time "not less than thirty days" in which answers must be filed. Typically, the Board sets this deadline at forty days, but effective as of September 4, 2025, this deadline has been extended to sixty days.

The US is a member of the Madrid Protocol, an international treaty to facilitate international trademark registration, and this change stems from a parallel amendment to the Madrid Regulation Rules. This change should lead to consistency of expectations in Board proceedings and streamlined docket management.

- Change in Time Initially Set To File an Answer in a Trial Proceeding Before the Trademark Trial and Appeal Board, 90 Fed. Reg. 42751 (Sept. 4, 2025), https://www.federalregister.gov/d/2025-16930.

- U.S. Patent & Trademark Office, *Change in Initial Time Set to File an Answer in a Trial Case Before the Trademark Trial and Appeal Board (TTAB),* USPTO (Sept. 5, 2025), https://www.uspto.gov/subscription-center/2025/change-initial-time-set-file-answer-trial-case-trademark-trial-and-appeal.

AI in IP Litigation: Balancing Promise and Peril


By Vera Glonina, Audrey E. Trace

As artificial intelligence (AI) transforms the legal landscape, it looks to be a promising tool to improve the speed, and thereby lessen the cost of otherwise time-consuming and expensive intellectual property litigation tasks. However, to effectively harness the power of AI, litigants must balance the advantages of AI with its limitations. Anticipating potential pitfalls is a first step; utilizing human-in-loop protocols to ensure responsible use of AI is not only an important but necessary second one.

Responsible Use of AI in Formulating Case Theory and Drafting

It may be tempting to use AI to assist with case theory or preparation of litigation papers, but litigants must recognize the substantive and procedural limitations of AI tools. Substantively, AI "hallucinations," namely, fabricated or misstated information presented by AI systems as fact or law, create real problems with significant consequences. For example, in a patent litigation, an attorney personally faced covering a $10,000 repayment fee to opposing counsel and possible Rule 11 Sanctions after submitting an error-filled claim construction chart almost entirely generated by AI. While the attorney used a second AI system to cross-check the work, the second tool failed to identify the erroneous citations. *Magpul Industries Corp. v. Mission First Tactical, LLC,* No. 24-5551-KSM (E.D. Pa. 2025). In other cases across the United States, attorneys have faced even larger fines, sanctions, and other penalties for using AI tools and submitting fabricated case citations and inaccurate information without proper verification.

Critically, AI systems lack the contextual judgment necessary to prepare sound pleadings without human oversight, and they may not be trained properly in the various rules applicable to a case. For example, they may omit foundational facts relevant to standing or jurisdiction of the presiding tribunal, or key elements of a cause of action, especially as they relate to IP disputes. Such deficiencies may render pleadings drafted with AI technology vulnerable to summary dismissal and the filing party subject to sanctions.

Anticipating Potential Pitfalls in Discovery Where AI Tools are Concerned

With respect to discovery, litigants must be aware that materials generated by AI may be discoverable unless a privilege applies. For example, in the recent copyright litigation, *Concord Music Grp., Inc. v. Anthropic PBC,* Anthropic attempted to obtain broad discovery of all AI prompts and outputs used by Concord, arguing that such information was not shielded from discovery. The court disagreed and held that the attorney work-product doctrine applied and had not been waived. No. 24-CV-03811-EKL (SVK), 2025 WL 1482734 (N.D. Cal. May 23, 2025).

However, in another copyright case, the court initially ordered OpenAI to preserve all ChatGPT output logs—an extremely extensive data retention requirement. In *re OpenAI, Inc. Copyright Infringement Litigation,* No. 23-CV-11195, 2025 WL 2691297 (S.D.N.Y. Sept. 19, 2025). After months of negotiation, the parties ultimately agreed to a narrower preservation scope.

Also relevant in discovery is ensuring protocols are used to avoid inadvertent disclosure of confidential client information. For example, in a patent litigation, the parties agreed that any AI tools used to review or analyze discovery materials must be "fully containerized," meaning they could not share, train on, or otherwise reuse litigation data. *Eireog Innovations Ltd. v. Amazon Web Services, Inc.,* No. 1:25-cv-00552-ADA (W.D. Tex. Oct. 7, 2025), Dkt. 41, ¶30.

LITIGATION INSIGHTS

With appropriate use, AI-based tools can be a powerful ally for many tasks in litigation, from drafting to assisting with discovery. However, recent decisions still teach a human-in-loop approach to balance the advantages and limitations of AI:

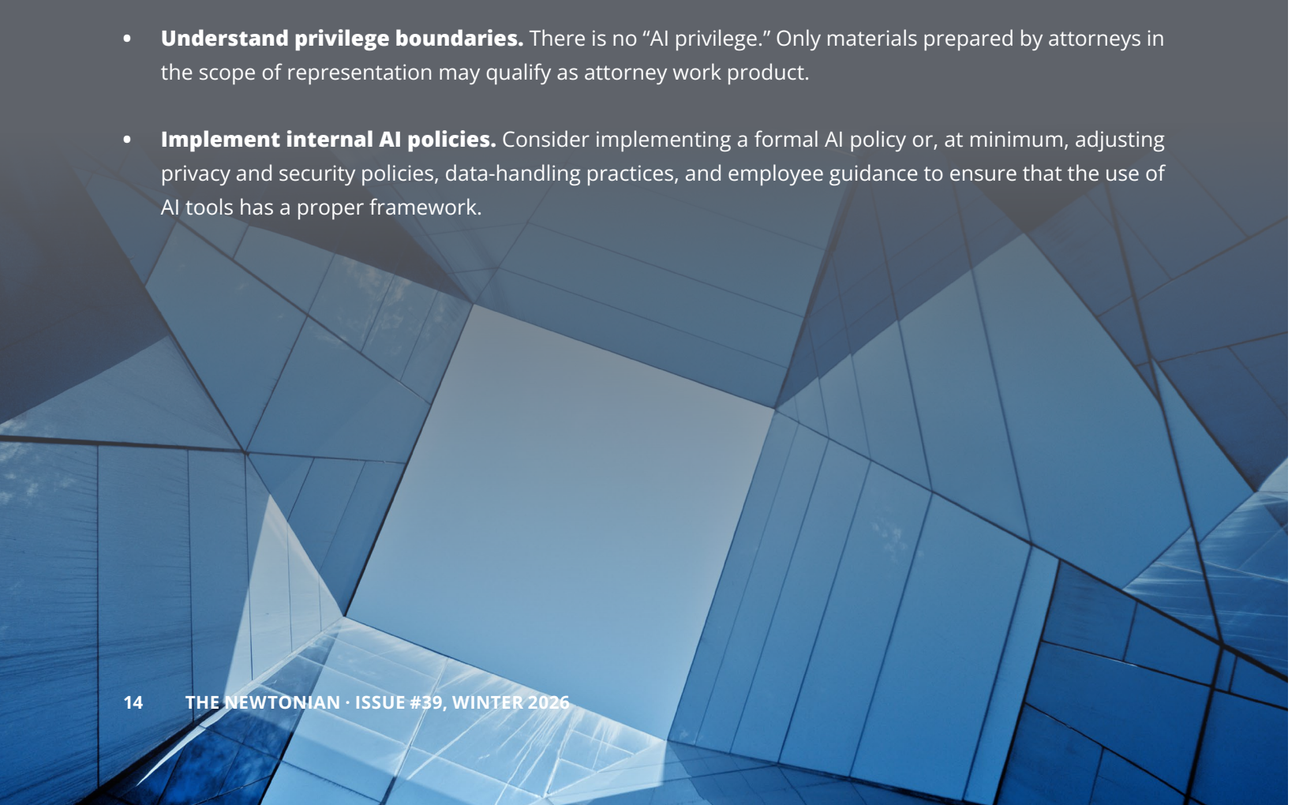
- **Use AI selectively and securely.** Choose vetted, containerized AI tools designed for legal work. If AI tools are licensed, review vendor policies on retaining input data carefully. Avoid sharing confidential or privileged information with open or publicly accessible systems.

- **Maintain attorney oversight.** AI may assist with research, drafting, and review, but it cannot replace legal reasoning, strategy, or professional judgment especially by a seasoned attorney in the complex field of IP.

- **Anticipate discovery and protective orders.** In litigation, protective orders restricting AI use to secure, containerized platforms can mitigate confidentiality risks. Assume that AI-related data (e.g., prompts, outputs, and model logs) may be subject to discovery.

- **Understand privilege boundaries.** There is no "AI privilege." Only materials prepared by attorneys in the scope of representation may qualify as attorney work product.

- **Implement internal AI policies.** Consider implementing a formal AI policy or, at minimum, adjusting privacy and security policies, data-handling practices, and employee guidance to ensure that the use of AI tools has a proper framework.



PRACTICE GROUP INSIGHTS

COPYRIGHT

Fair Use and AI Training: A Comparative Analysis of *Bartz v. Anthropic* and *Kadrey v. Meta*



By Henry Gabathuler, Lauren Emerson, Cameron Reuber

In the past few years, a wave of authors has taken AI companies to court, accusing them of quietly feeding copyrighted books into the training pipelines of large language models (LLMs). The core allegation is simple: *you used our books without permission*. The legal response from LLM developers has been equally straightforward—they've leaned heavily on the doctrine of fair use, the long standing safety valve in U.S. copyright law that allows certain unlicensed uses of copyrighted works.

Fair use, codified in 17 U.S.C. § 107, permits "the fair use of a copyrighted work … for purposes such as criticism, comment, news reporting, teaching …, scholarship, or research." Courts evaluate fair use through four familiar but flexible non-exclusive factors:

1. The purpose and character of the use, including whether it is commercial or nonprofit;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used; and
4. The effect of the use on the potential market for the work.

In 2025, the Northern District of California issued the first two substantive opinions applying these factors to LLM training: ***Bartz v. Anthropic***[1] and ***Kadrey v. Meta Platforms***. Both judges ultimately held that using copyrighted books to train LLMs qualifies as fair use. But beneath that shared outcome lies a striking divergence in reasoning—an early judicial split that will shape how courts, policymakers, and the AI industry think about training data for years to come.

The tension between the decisions begins with a deceptively simple question: *What exactly is the "use" the court should be evaluating?* From there, the judges parted ways on how much weight to give each statutory

1. Bartz v. Anthropic PBC, 787 F. Supp. 3d 1007 (N.D. Cal. 2025) and *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026 (N.D. Cal. 2025).

factor and how to conceptualize the relationship between copying, machine learning, and market harm. The factual backdrop in both cases was similar. Each company had amassed large collections of books through a mix of authorized and unauthorized channels. Anthropic downloaded unlicensed copies from online libraries and later bought physical books to digitize. Meta purchased digital copies but also supplemented its dataset with unauthorized downloads[2]. These shared facts only sharpened the contrast in how the two courts approached the same legal problem.

Factor 1 — Purpose and Character of the Use

The sharpest divide deriving from in-depth analyses of *Bartz* and *Kadrey* begins with a deceptively simple question: ***What exactly is the "use" the court should be evaluating?***

***Bartz:* A Disaggregated, Step by Step Approach**

In *Bartz*, Judge Alsup broke Anthropic's conduct into three distinct uses, each analyzed independently:

1. **Creating "training copies"** from subsets of its internal library
2. **Digitizing lawfully purchased print books**
3. **Acquiring and storing unauthorized copies** from online libraries

Judge Alsup, by isolating each step, prevented the transformative purpose of training from "laundering" or justifying improper copying upstream. In his view, the fact that training itself is transformative does not retroactively sanitize the acquisition or retention of unauthorized copies.

***Kadrey:* A Holistic, Purpose Driven Lens**

Judge Chhabria took the opposite tack. In *Kadrey*, he treated Meta's downloading of unauthorized books as part of the **overall training process**, which he deemed highly transformative. Although he acknowledged that downloading is "a different use" from the copying that occurs during training, he insisted that it must be evaluated **"in light of its ultimate, highly transformative purpose: training Llama."**

From that vantage point, he concluded that because the end use was transformative, **the intermediate downloading was transformative as well**. He rejected the idea that each step required its own independent justification.

Common Ground—and a Critical Divergence

Both judges agreed that using copyrighted works to train LLMs is **highly transformative**. Judge Alsup even called Anthropic's training "spectacularly transformative," likening it to a student learning to write by reading widely—absorbing patterns, not reproducing text.

2. The plaintiff Authors' books alleged to be infringed by Meta were all downloaded by Meta from online libraries of unauthorized copies of copyrighted books.

But the agreement ended there.

Judge Alsup drew a bright line at Anthropic's downloading of "pirated library copies," calling it **"inherently, irredeemably infringing"** regardless of whether the copies were later used for training. Judge Chhabria, by contrast, treated the use of shadow libraries as relevant but not dispositive. He noted that plaintiffs had shown no evidence that Meta's downloads benefitted the unlawful sites (e.g., through ad revenue), and he declined to treat "bad faith" as outcome determinative.

Factor 2 — Nature of the Copyrighted Work

Here, the judges aligned. Both recognized that the works at issue—novels, memoirs, and other expressive texts—sit at the heart of copyright protection. As a result, **Factor 2 favored the plaintiffs** in both cases, though neither court treated this factor as especially weighty.

Factor 3 — Amount and Substantiality of the Portion Used

Both courts reached the same bottom line for training: **copying entire works was permissible**.

Training Requires Full Text Copying

Both judges accepted that full text ingestion is reasonably necessary for LLM training and that the amount of copyrighted material that could be output to the public was insubstantial. On this point, the decisions are strikingly aligned.

Where They Split: Unauthorized Acquisition

Judge Alsup again drew a line that Judge Chhabria declined to draw.

- For Anthropic's **permanent retention of pirated copies**, Judge Alsup found Factor 3 weighed **against** fair use, emphasizing that Anthropic "lacked any entitlement to hold copies of the books at all."
- Judge Chhabria, by contrast, did **not** analyze Meta's acquisition separately. He treated full text copying as necessary for training and did not carve out a separate inquiry for how Meta obtained the books.

Factor 4 — Effect on the Market

Factor 4 proved to be the most conceptually challenging—and the most consequential—of the four factors. Both judges considered three theories of potential market harm:

1. **Direct substitution** (LLM outputs replacing the books themselves)
2. **Harm to a licensing market** for training data
3. **Indirect substitution / market dilution** (AI generated works flooding the market and devaluing human authorship)

The judges agreed on the first two theories but diverged sharply on the third.

Direct Substitution: No Harm

Both judges rejected the idea that LLM outputs displace demand for the books, noting that the models do not reproduce or distribute plaintiffs' works.

Licensing Market: Circular and Unsupported

Both judges also rejected the argument that training harms an emerging licensing market for training data, calling the theory circular. As Judge Alsup put it, this is not a market the Copyright Act "entitles Authors to exploit."

Indirect Substitution: The Major Split

This is where the decisions part ways.

Bartz: **No Cognizable Harm**

Judge Alsup dismissed concerns about market dilution, comparing them to the idea that teaching students to write well unlawfully competes with authors. He concluded that such competition is not the kind of harm the Copyright Act recognizes.

Kadrey: **A Serious and Novel Risk**

Judge Chhabria took the opposite view. He criticized *Bartz* for "brushing aside" the risk of market flooding and called the analogy to schoolchildren "inapt." He emphasized that LLMs can generate **millions of works instantly**, creating a risk of unprecedented market saturation. He warned that such flooding could reduce incentives for authors to create—precisely the harm copyright law seeks to prevent.

Yet despite this concern, he ultimately found that the plaintiffs had **not produced evidence** of actual or likely market harm. As a result, Meta prevailed on Factor 4.

Still, his analysis leaves a clear roadmap for future plaintiffs: **Factor 4 could become the battleground for challenging AI training as fair use.**

Combining the Factors

Bartz v. Anthropic

Judge Alsup held that **all factors except Factor 2** favored fair use for training. He granted summary judgment to Anthropic on that issue.

But he denied summary judgment on the separate issue of downloading unauthorized copies, finding that **all four factors weighed against fair use**. That denial—and the resulting exposure to liability—ultimately drove the parties to settle.

Kadrey v. Meta Platforms

Judge Chhabria granted summary judgment to Meta on its fair use defense **for both the downloading and the training**, concluding that the copying was transformative and that plaintiffs had not shown market harm sufficient to reach a jury. The case continues, but the fair use ruling stands as the most expansive judicial endorsement to date of LLM training as fair use.

Summary of Analysis

Issue	***Bartz v. Anthropic*** **(Alsup, J.)**	***Kadrey v. Meta*** **(Chhabria, J.)**
How the "use" is defined	Disaggregated into separate acts: (1) training copies, (2) digitizing purchased books, (3) downloading unauthorized copies. Each step must independently satisfy fair use.	Holistic view: downloading unauthorized copies is evaluated in light of the ultimate transformative purpose of training Llama. Intermediate steps need not be justified separately.
Transformative purpose	Training is "spectacularly transformative." But transformative purpose does not justify acquiring or retaining pirated copies.	Training is "highly transformative," and this transformative purpose extends to the acquisition of books, including unauthorized downloads.
Treatment of unauthorized copies	Sharp line: downloading "pirated library copies" is "inherently, irredeemably infringing," regardless of later use.	Relevant but not dispositive. No evidence that Meta's downloads benefitted shadow libraries; "bad faith" alone does not defeat fair use.
Factor 2 — Nature of the work	Favors plaintiffs (creative works), but given little weight.	Same: favors plaintiffs but not significant in the overall analysis.
Factor 3 — Amount used	Full text copying is necessary for training and favors fair use. But retaining pirated copies weighs against fair use.	Full text copying is necessary for training; does not separately analyze acquisition. Factor favors Meta.
Factor 4 — Market effect	Rejects all three theories of harm except for pirated copies. No cognizable harm from training; licensing market theory is circular; indirect substitution is speculative.	Treats Factor 4 as most important. Rejects direct substitution and licensing market theories, but takes indirect substitution seriously. Ultimately finds insufficient evidence of harm.
Outcome on training	Fair use; summary judgment for Anthropic.	Fair use; summary judgment granted.
Outcome on unauthorized copies	Not fair use; summary judgment denied; case settles.	Fair use; summary judgment for Meta.
Analytical philosophy	Formalist, step specific, skeptical of using transformative purpose to justify upstream copying.	Purpose driven, flexible, emphasizes fair use's adaptability to technological change.

Conclusion: Implications for Future Litigation

Taken together, *Bartz* and *Kadrey* mark the first major judicial attempt to map 20th century fair use doctrine onto 21st century AI training practices — and they reveal a fault line that future courts will have to confront.

Three themes stand out for consideration by Leason Ellis clients, existing and prospective:

1. The definition of "use" will shape the entire fair use analysis.

Whether courts adopt *Bartz's* step by step approach or *Kadrey's* holistic framing will determine how much scrutiny is applied to the acquisition and handling of training data. Plaintiffs will likely push for the *Bartz* model, which isolates and challenges each act of copying. Defendants will favor *Kadrey's* broader lens, which treats training as a single transformative enterprise.

2. Factor 4 is emerging as the battleground.

Both judges rejected direct substitution and licensing market theories, but Kadrey opened the door to a more sophisticated argument: **indirect substitution through market flooding**. That theory is now the most promising path for plaintiffs — but only if they can produce empirical evidence of actual or likely market harm. Expect future cases to feature expert testimony, economic modeling, and data on AI generated content's impact on book markets.

3. The treatment of unauthorized sources remains unsettled.

Judge Alsup's categorical rejection of pirated copy retention stands in stark contrast to Judge Chhabria's more forgiving approach. This split creates uncertainty for developers who rely on mixed source datasets. Appellate courts will likely need to clarify whether the legality of acquisition is a threshold issue or merely one factor among many.

4. The Ninth Circuit, and likely the U.S. Supreme Court, will have to intercede.

The doctrinal tension between these decisions is too significant to remain unresolved. As more cases are filed (and they will be), courts will be forced to decide:

- Is LLM training more like reading, copying, or data analysis?
- Can transformative purpose justify intermediate copying?
- Does the Copyright Act recognize a market for training data licenses?
- How should courts measure indirect market harm in an AI saturated ecosystem?

The answers to these questions will determine not only the legality of current AI training practices but also the shape of the creative economy for decades to come.

Leason Ellis professionals are closely monitoring these and other AI-related issues impacting the legal landscape.

COPYRIGHT INSIGHTS

- ***Bartz* and *Kadrey* illustrate the fact-intensive nature of fair use analysis applied to AI training.**
- **Both courts found that training LLM using copyrighted works is highly transformative,** and allowing the copying of entire works and reproduction for that purpose can be reasonably necessary and permissible.
- **There is a judicial split on framing the "use" to be analyzed for fair use that has yet to be resolved:**
    - ***Bartz:*** Judge Alsup parsed each act (training, digitizing, downloading) separately, limiting transformative justification for unauthorized acquisition.
    - ***Kadrey:*** Judge Chhabria adopted a holistic view, treating all steps as part of the transformative training purpose.
- **Factor 4, particularly market dilution, may become a focus of future disputes between authors and LLM developers.** Judge Chhabria's decision suggests this could potentially outweigh the transformativeness of LLM training, and goes at length to discuss a number of factual questions that, if supported by sound evidence, could tip the scales for or against fair use.

PATENT

Minimizing Risk in AI Partnership for Life Sciences Companies

By Dr. Susie S. Cheng

Artificial intelligence is rapidly transforming the life sciences fueling everything from molecule prediction to biomarker discovery. The opportunities are enormous, but so are the legal and strategic risks. For biotech and pharmaceutical companies, the question is not whether to embrace AI, but how to do so safely without compromising intellectual property, data integrity, or long-term value.

Here's what forward-thinking companies are doing to scale safely and protect what matters most.

1. Data Confidentiality Starts at the Source

As companies share proprietary data such as compound libraries, assay results, clinical datasets with AI partners to train powerful models, it is essential to put guardrails in place. To mitigate risk, start by thoroughly vetting your AI partners. Review their model training policies, insist on robust data-sharing agreements, and make sure the contract is enforceable-not just in theory, but in practice. Limit how your data can be used. Most importantly, include clear clauses that prevent the reuse or redistribution of your data or the AI outputs derived from it once training is complete. These are critical to keeping your proprietary data safe.

2. Clarifying ownership of AI outputs and derivatives

One of the trickiest issues in AI partnerships is IP ownership. When your data trains a model, it is important to spell out who owns the model, outputs, insights, molecule predictions, compound suggestions or other improvements. This should never be left vague. Your contracts should clearly delineate ownership and use rights for the trained AI model, any derivatives, and any improvements that arise from its use. This clarity prevents disputes down the line, protects your ability to patent key innovations, and gives investors confidence. It is important to make sure to file patents early, identify trade secrets from the start, and ensure all contributors assign their rights.

3. Balance Regulatory Disclosure with IP Protection

In life sciences, explainability is not optional. Regulators want to know how AI-derived conclusions are made. But disclosing too much about your model can erode your competitive advantage. The solution lies in selective disclosure. It is important to work with legal and regulatory teams to provide just enough transparency to meet requirements—while protecting the "secret sauce" of your innovation. For example, one can use redacted documentation, strategic patent filings, and clear trade secret protection to walk that fine line between compliance and confidentiality.

4. Investors Expect a Clean IP Story

Investors are savvy about AI and wary of uncertainty. They are aware of the legal pitfalls of AI partnership in life science innovations. Before they fund a company, they dig deep into patent filings, data rights, and who really owns the models and insights behind the product. If anything's unclear, it can raise red flags. To avoid that, companies should proactively secure assignments of all IP from employees, collaborators, and vendors. They should also build and maintain a strong IP portfolio. This protects the company's innovation, enhances valuation and positions your company for growth.

5. Train Your Team to Be a First Line of Defense

AI development often involves interdisciplinary teams such as data scientists, clinicians and biologists. That diversity brings innovation but also increases the risk of unintentional leaks. Whether it is publishing code to GitHub, submitting a manuscript to bioRxiv, or presenting in a conference, sensitive information may be revealed.

These unintentional leaks can be prevented through strong internal protocols. Thus, it is important for companies to offer regular employee training in confidentiality. Set clear rules around who can access sensitive models and datasets. And finally, make sure everyone involved in AI work understands the legal stakes as well as the science.

A Call to Action: Innovate safely with AI

AI is redefining drug discovery and diagnostics. But to truly harness its potential, companies need more than algorithms. They need a legal and operational framework that supports safe and scalable innovation. With the right legal strategies in place, biotech and pharmaceutical companies can unlock the full potential of AI without compromising their valuable assets.

PATENT INSIGHTS

- **Thoroughly Assess AI Partners:** Review AI partners' model training policies and enforce robust, practical data-sharing agreements.
- **Protect Proprietary Data:** Restrict usage and prohibit redistribution of data and outputs.
- **Clarify IP Ownership Early:** Define who own the rights for trained models, outputs, derivatives, and improvements at an early stage of the AI partnership.
- **Balance Regulatory Transparency with Confidentiality:** Use selective disclosure strategies to meet regulations without exposing competitive advantages.
- **Strengthen Investor Confidence:** Secure IP assignments from all contributors and build a strong IP portfolio to enhance valuation.
- **Implement Internal Confidentiality Protocols:** Train your teams regularly on data security and legal obligations to prevent unintentional disclosure of sensitive information.

IN CASE YOU MISSED IT

Leason Ellis Assists Client in Overcoming Section 101 Patentable Subject Matter Rejections on Solar Energy Patent, Assists Another to Reinstate Removed Product on Amazon

Leason Ellis patent teams led by **Partner Melvin Garner** aided successes in two recent matters.

First, the firm assisted a client in obtaining allowances on two patent applications. The client initially filed a provisional patent application in February 2021 on a system to aggregate and sell solar energy generated in multiple low-income areas. A non-provisional application was filed a year later. After prosecution stalled due to Section 101 patentable subject matter eligibility rejections, a continuation application was filed with different claims. This application also ran into patent eligibility rejections. Leason Ellis took over both cases and was able to secure a successful result for the client.

Second, the firm assisted a Shenzhen, China-based battery jump-starter manufacturer in reinstating a product that had been taken down from Amazon, along with products of other third party companies, all based on alleged infringement of the same patent. While Amazon initially rejected the non-infringement arguments advanced by the other manufacturers, Mel's team assisted in proving non-infringement through alternative, practical means, and Amazon reinstated the listings in July.

Leason Ellis Lawyers Recognized in the 2026 Editions of Best Lawyers

Leason Ellis is proud to announce that several of our lawyers have been recognized in the 32nd edition of The Best Lawyers in America and the 6th edition of Best Lawyers: Ones to Watch in America. In The Best Lawyers in America® (2026 Edition), the following Leason Ellis Lawyers were recognized by their peers for their work across intellectual property and patent litigation, copyright law, and trademark law: **Partners Susie Cheng** (copyright law, IP litigation), **David Leason** (patent litigation), **Yuval Marcus** (patent and IP litigation), **Cameron Reuber**, **Karin Segall** (IP litigation), and **Peter Sloane** (copyright law, IP litigation).

Elizabeth Barnhard Named to 2026 IAM Strategy 300 and Elected to Directorship of Westchester Women's Bar Association

Leason Ellis congratulates **Counsel Elizabeth Barnhard** on her inclusion in the 2026 IAM Strategy 300: The World's Leading IP Strategists, where she is ranked in IP management consultancy. The IAM Strategy 300 highlights professionals worldwide who help organizations protect innovation and realize the business value of their intellectual property. Elizabeth was also recently elected to be a Director of the Westchester Women's Bar Association, a chapter of the Women's Bar Association of the State of New York, for the 2025-2026 term.

NYIPLA Leadership in Action

Associate Tatsuya Adachi has been appointed to a three-year term as co-chair of the New York Intellectual Property Association (NYIPLA) Copyright Law & Practice Committee, which regularly contributes to public discourse concerning copyright law. In May, Tatsuya and fellow **Associate Vera Glonina** helped draft the NYIPLA's public comments to the U.S. Copyright Office's Notice of Inquiry concerning the Copyright Claims Board, a voluntary forum established in 2022 for certain copyright disputes with a total value of $30,000 or less. With **Partner Lauren Emerson** serving on the NYIPLA's Board of Directors, these roles reflect Leason Ellis' ongoing commitment to leadership in the IP legal arena.

Trademark Partner Karin Segall Makes First Appearance at European Community Trademark Association Autumn Conference

Partner Karin Segall represented Leason Ellis at the ECTA Autumn Conference in beautiful Lyon, France on October 28 to November 1. The conference is attended only by ECTA members who are on committees, and Karin recently began her first term on the Design Committee, where she also serves as the AI and Design Project manager.

ECTA Design Committee Meeting Photo (Karin Segall Fourth from Right in Front Row)

IP and Apéritifs at the INTA 2025 Leadership Meeting

Leason Ellis partners talked trademarks at the International Trademark Association (INTA) 2025 Annual Meeting in Hollywood, Florida. We had the pleasure of hosting a cocktail reception that brought together trademark practitioners from around the world for thoughtful conversations and invaluable connections.

We're also pleased to announce that several Leason Ellis attorneys have been appointed to 2026–2027 INTA Committees:

- **Partner Lauren Emerson** has been appointed to the Commercialization of IP Committee, which examines how brands and brand-related intellectual property are developed, valued, and brought to market.
- **Partner Peter Sloane** will serve on the Law Firm Committee, which focuses on initiatives and resources supporting law firm professionals, with particular attention to associate development and firm leadership.
- **Partner Matthew Frisbee** has been appointed to the Legislation and Regulation Committee, which monitors and evaluates legislative and regulatory activity impacting trademarks and related intellectual property rights.
- **Associate Vera Glonia** will serve on the Trademark Reporter Committee, which supports The Trademark Reporter, INTA's peer-reviewed law journal.
- **Associate Audrey Trace** has been appointed to the Trademark Office Practices Committee, which evaluates and recommends improvements to trademark office practices.

Congratulations to Lauren, Peter, Matthew, Vera, and Audrey on these well-deserved appointments!

From Left: Cameron Reuber, Lauren Emerson, Yuval Marcus, Matthew Frisbee, Peter Sloane, Melissa Alcantara

Leason Ellis Sponsors and Attends Pro Bono Legal Services of the Hudson Valley Gala

Leason Ellis was proud to sponsor the Legal Services of the Hudson Valley Equal Access to Justice Gala, at Greentree Country Club in New Rochelle, New York, as part of the firm's ongoing efforts to support our local community. **Associate Josh Montgomery** attended. LSHV serves over 543,000 qualified residents in New York's Hudson Valley region with assistance during crises threatening their housing, health, safety, and livelihood.

Leason Ellis Sponsors and Attends AIPLA's 2025 Japan Practice Pre-Meeting in Washington, D.C.

Once again, Leason Ellis sponsored American Intellectual Property Law Association's 2025 Japan Practice Pre-Meeting in Washington, D.C. in late October, hosted by the JPAA (Japan Patent Attorney Association). The event provides a valuable opportunity to reconnect with some of the firm's cherished international colleagues. **Partners Lauren Emerson** and **Jordan Garner**, and **Patent Agent Mitsu Haraguchi** attended the pre-meeting, while Lauren spoke at the pre-meeting and was a panelist at the AIPLA Annual Meeting for a presentation titled "Fair Use or Foul Play? AI & Copyright."

Mitsu Haraguchi and Jordan Garner at AIPLA Pre-Meeting

Leason Ellis Japan Practice Group Members Jordan Garner (Left), Cameron Reuber (Third from Left), Lauren Emerson (Center), and Mitsu Haraguchi (Second from Right) at Dinner With Wisdom IP Firm

Leason Ellis Presents on IP and Emerging Technologies at Mastercard

On September 30, 2025, **Managing Partner Yuval Marcus**, **Partners Lauren Emerson** and **Jordan Garner**, and **Associate Erica Livingstone** joined in-house counsel from Mastercard and IBM to discuss non-traditional marks, design patents, AI copyright, and global trademark enforcement on Mastercard's campus. The CLE presentation event, coordinated in conjunction with the Association of Corporate Counsel, was titled "IP FRONTIERS: Enforcement, Expression, and Emerging Tech."

Susie Cheng Speaks on Westchester Community Life Science Series Panel

Partner Susie Cheng participated in the 6th Monthly Westchester Community Life Science Event as a panelist with other speakers on the topic of AI Case Studies in June at Serendipity Labs in White Plains. She appeared on the panel to discuss the importance of safeguarding innovation and legal strategies for using AI in Life Sciences. Attendees of the event included a broad spectrum of the Westchester community including university academics, entrepreneurs, investors, lawyers, and philanthropists. The event was organized by Westchester County Biosciences Accelerator. A summary of her presentation can be accessed through the following link: https://www.linkedin.com/pulse/safeguarding-innovation-minimizing-risk-ai-life-cheng-ph-d-j-d--yapje/.

Lauren Emerson Advances Thought Leadership on Trademark, Copyright, and AI

Partner Lauren Emerson recently presented at the 50th Annual Intellectual Property Law Institute in Traverse City, Michigan, where she taught the Advanced Litigation Session on Due Diligence and presented the Update on Trademark Law. In June, Lauren moderated a panel entitled, "How Not to Be Copy-Wrong with Copyright: A Primer for In-House Counsel," at the annual NYIPLA Hot Topics in Copyright and Trademark event. Lauren also recently presented on AI & Copyright at the JPPCLE 41st Annual Joint Patent Practice Seminar hosted by Joint Patent Practice Continuing Legal Education Inc.

Melvin Garner and Audrey Trace Present on "Ethical Considerations When Using AI for Legal Services"

Partner Melvin Garner and **Associate Audrey E. Trace** presented on an ethics panel for the New York Intellectual Property Law Association One-Day Patent CLE Program. The panel explored the ethical considerations of using AI in the practice of intellectual property law, covering attorneys' professional responsibilities and potential pitfalls due to AI mis-use by attorneys.

Associate Sara Gruber Speaks on Alma Mater's Intellectual Property Law Panel

On September 16th, **Associate Sara Gruber** spoke on a panel for the Intellectual Property Law Society at her alma mater, the Benjamin N. Cardozo School of Law. The panel was called "Intro to IP Law" and the goal was to provide students with an overview of the essentials of trademark, copyright, patent and trade secret law.

Sara Gruber (Center)

One Run Shy: Leason Ellis Monsters Cap 12-4 Season

The Leason Ellis Monsters co-ed softball team—including **Partner Henry Gabathuler**, **Associates Jarryd Werts** and **Josh Montgomery**, and **Patent Agent Mitsu Haraguchi**—along with Pace Environmental Law professor Achinthi Vithanage, former Sacred Heart University softball player Jill Carlisto, former Pace University softball player (and incoming Pace Law first year student) Alexa Borino, and a host of other firm family and friends, finished the season with a 12-4 record and lost in the playoff semifinals by a score of 9-8 to the eventual champion White Plains DA's Office. We were **THIS** close and definitely had the talent to go the distance! We'll get 'em next year, friends.

LEASON ELLIS
INTELLECTUAL PROPERTY ATTORNEYS

Drop Us A Line

We're always thinking and know you are too, so we welcome your comments, questions, and suggestions. As a firm dedicated to the application of keen insight in intellectual property law and business, our goal is to make The Newtonian a useful periodical that you read and share. Reach us at **inquiries@leasonellis.com**.

About Leason Ellis

Clients engage Leason Ellis to obtain outstanding legal counsel to protect and enforce their intellectual property rights. Our specialized practice area excellence comes from a keen appreciation for inventiveness, creativity, branding, a profound understanding of the law, and a powerful commitment to using IP to help our clients achieve their business objectives. Learn more about Leason Ellis at **leasonellis.com**.

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