AI may impact UK patent system, judge says

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By Abhishek Kumar

Judge Colin Ian Birss, deputy head of civil justice, said machines are not recognized as inventors under UK patent law. Speaking at a conference in London, Birss highlighted the challenges in patenting AI methods, disclosure requirements for AI patents, and the potential impact of AI on patent obviousness.

Artificial intelligence may have "transformative implications" for intellectual property, including patentability of medicines, if it impacts obviousness determinations, Judge Colin Ian Birss, deputy head of civil justice, told a conference in London on Tuesday.

Speaking at the Life Sciences Patent Network European Conference, Birss addressed claims that AI would make everything obvious, saying "how marvelous!"

"Can we expect a plethora of new drugs within six months? There is no sign of that," he added.

However, he commented that "[i]f this really did happen then one might very well have to re-examine the patent system as an incentive to invest in innovation and thereby disseminate human knowledge."

Birss dismissed fears of AI's ability to generate endless prior art to block future patents, noting that patent law has successfully handled similar challenges with pharmaceutical patents.

Discussing the issue of patenting methods that involve AI, Birss referenced the Emotional Perception case that the UK Supreme Court agreed last week to hear. AI developer Emotional Perception is appealing the UK Court of Appeal ruling that artificial neural networks are not patentable in the UK.

Birss suggested that a system similar to the Budapest Treaty's biological materials deposit system, which eliminates the need to deposit microorganisms in each country where patent protection is sought, might be needed for AI patents as it could potentially cover both training data and algorithms.

Birss also highlighted the Supreme Court's 2023 decision in Thaler v. Comptroller General of Patents, Designs and Trademarks, which held that machines cannot be inventors under UK law.

"One of the potential implications of Thaler, which I think is relevant in the life sciences area, is to work out where the boundary is between work done by a human being who would count as an inventor, such that the patent could be applied for and granted, and work done by a machine, which would not," Birss said.

Birss referenced an automated laboratory that used AI and robotics and stated that it would be difficult to determine how a human being could be called the inventor of materials created in the automated laboratory.
In considering how AI might impact justice in the future, Birss commented that "whether a decision which could be made by AI should be, will be determined by ethics and human rights considerations."

"We need to get it right, but if we do, then there is every prospect it will be good for the society as a whole," Birss concluded.

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Areas of Interest: Artificial Intelligence, Intellectual Property

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