

CASE & EFFECT

TODAY'S LEGAL INTELLIGENCE. TOMORROW'S BUSINESS.

A SCIO LAW PUBLICATION

THE FEDERAL GOVERNMENT BRINGS AI TO TRADEMARK EXAMINATION

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BY GEORGE SCIARRINO

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From the Editor



Intellectual property rarely changes through a single dramatic event. More often, it evolves as institutions change—agencies adopt new technologies, courts refine the boundaries of protection, and businesses discover valuable assets that were never properly identified or protected.

Artificial intelligence is accelerating that change, including within the government institutions that administer and shape intellectual property rights. This issue of **Case & Effect** examines that shift alongside trademark distinctiveness, trade-secret timing, copyright damages, and intangible assets—developments reshaping how brands, innovations, and creative works are protected and commercialized.

Our goal is not simply to report what happened, but to understand how these developments fit together and what they may mean next. That idea informs this issue's **Sciolosophy**: Information alone is not intelligence; intelligence lies in how it is assembled, understood, and applied.

George Sciarrino, Esq.
Founder, SCIO Law

USPTO Brings Scout LLM to Trademark Examination, Expanding Its AI Toolkit

Scout LLM, Class ACT, and public image-search technology illustrate how artificial intelligence is entering different stages of the federal trademark process.



Photo: KKMECA, via Wikimedia Commons. Cropped from the original. Licensed under CC BY 3.0.

Artificial intelligence no longer operates only outside the legal system. Businesses already use AI to generate names, develop logos, create content, and accelerate innovation. Now, the United States Patent and Trademark Office (USPTO) has expanded AI across multiple stages of trademark examination.

That expansion marks an important shift, but not because the USPTO has turned examination over to a single AI system.

Instead, the agency has deployed multiple technologies, each serving a distinct purpose: assisting personnel, preparing applications for examination, and improving public access to trademark searching.

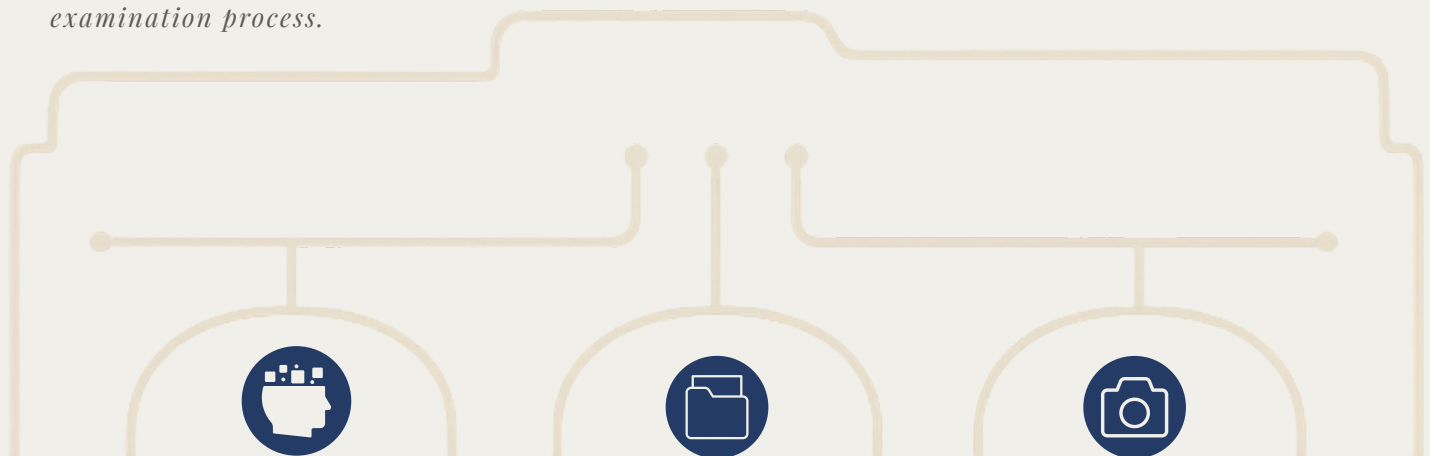
Collectively, these tools may accelerate application processing, improve access to information, and enhance trademark searching. A legal judgment, however, remains a human decision made by examining attorneys.

Three Tools. Three Distinct Roles.

The USPTO's expanding AI toolkit illustrates that different technologies now support different stages of the trademark examination process.



Historic USPTO search record · Public domain



Scout LLM

Supports research, analysis, summarization, and drafting for USPTO personnel—including examining attorneys. The agency's guiding principle remains unchanged: Examining attorneys lead. AI supports.

Class ACT

Prepares applications for examination by assigning international classes, generating design-search codes and pseudo marks, and organizing application data. According to the USPTO, the system has processed approximately **250,000 trademark applications**, reducing preprocessing from **months to minutes.**

AI Image Search

Allows users to upload an image and retrieve visually similar marks from the federal register. The tool improves visual searching but does not determine registrability or likelihood of confusion.



TAKEAWAY

The USPTO's expanding AI toolkit signals continued change in trademark examination. Businesses should monitor these developments and consult with experienced IP counsel when evaluating trademark clearance and filing strategies.

“AI accelerates the search. Legal judgment determines the outcome.”

Beyond the Search

How AI Is Changing Trademark Examination

Although these technologies support different stages of trademark examination, none independently determines registrability or likelihood of confusion. Legal judgment remains a human decision made by examining attorneys.

Faster Information. Earlier Visibility.

Perhaps the most immediate impact comes from speed. By automating classification and coding, the Classification Agentic Codification Tool (Class ACT) allows newly filed applications to become searchable much earlier in the examination process. Earlier visibility gives examining attorneys and trademark practitioners a more current view of the federal filing landscape while reducing delays that historically separated filing from substantive examination.

Improved coding and AI-assisted image searching may also strengthen the retrieval of visually similar marks, allowing potentially relevant records to surface more efficiently. These advances improve how trademark information becomes organized and accessed before legal analysis begins. Finding similar marks, however, represents only the first step.

Whether consumers are likely to be confused depends upon the marks as a whole, their appearances, sounds, meanings, commercial impressions, the identified goods and services, marketplace context, and other relevant factors. AI may identify similarities. Trademark law determines whether those similarities matter.

“Greater search capacity does not necessarily produce greater legal certainty.”



Government Examination and Trademark Clearance Serve Different Purposes.

The USPTO determines whether a particular application qualifies for federal registration. Government examination, however, does not answer every question a business should ask before adopting a new brand.

The examination process generally does not determine whether another party possesses unregistered trademark rights, whether state or foreign rights create concerns, whether domain names or social media identities present conflicts, whether a proposed mark offers meaningful commercial strength, or whether adoption could invite an opposition or infringement action.

Accordingly, the absence of a USPTO refusal does not guarantee that use of a mark remains free from challenge.

Comprehensive trademark clearance serves a different objective. While the USPTO evaluates registrability, businesses and their counsel evaluate broader legal exposure, commercial strategy, and the practical risks associated with adopting and investing in a new brand.

The Convergence of Artificial Intelligence and Human Judgment

Artificial intelligence excels at identifying patterns. It can compare names, retrieve similar records, analyze vast collections of information, and surface relationships that might otherwise go unnoticed. Those capabilities are already transforming legal research, trademark searching, and government examination. Yet pattern recognition is not judgment.

Two trademarks may appear similar while creating entirely different commercial impressions. Conversely, two marks with no identical wording may communicate sufficiently similar meanings to create a likelihood of confusion. Artificial intelligence can identify the pieces. Human judgment determines how they fit together.

That principle extends well beyond trademark law. Every legal opinion, business decision, and creative endeavor requires more than information. It requires context, experience, and the ability to distinguish what is merely relevant from what is truly meaningful.

“Information alone is not intelligence.”

Repeating information is not intelligence. Intelligence lies in the assembly, comprehension, and application of information. The individual facts may all be accurate, yet the conclusion may still be wrong. Context may be omitted. Similarities may be emphasized while meaningful distinctions disappear.

Intelligence lies in the assembly of information—but it can also *lie* in the assembly of information. Human judgment makes the difference.

The most important questions are rarely whether artificial intelligence found an answer. They are whether the right question was asked, whether the relevant context was considered, and whether the conclusion advances the underlying objective.

Artificial intelligence can accelerate research, organize information, and reveal possibilities with extraordinary speed. Human judgment supplies the legal reasoning, strategic perspective, ethical considerations, and commercial insight that transform those possibilities into informed decisions.

The future of intellectual property will not be defined by choosing between artificial intelligence and human judgment. It will be defined by their convergence.

Artificial intelligence can expand what we see. Human judgment determines what we understand—and ultimately, what we decide.



Courts Draw New Lines Around Distinctiveness, Delay, and Damages

Recent U.S. and European decisions are drawing important lines around distinctiveness, delay, and damages, offering practical guidance for protecting and enforcing valuable intellectual property rights.

OpenAI v. EUIPO

Recognition Does Not Equal Distinctiveness

OpenAI sought to register OPENAI as a European Union trademark for certain technology-related goods and services. The European Union Intellectual Property Office partially refused the application, finding the mark descriptive and devoid of inherent distinctive character for the goods and services at issue. On July 15, 2026, the EU General Court upheld that determination.

The court concluded that the relevant English-speaking public would understand “open” as meaning available or freely accessible and “AI” as an abbreviation for artificial intelligence. Taken together, OPENAI could therefore describe AI-based goods and services that are openly available or accessible, rather than identify a single commercial source.

The court also found that registrations obtained in other jurisdictions did not bind EUIPO. The registrability of an EU trademark must be assessed independently under European Union law.

OpenAI’s widespread recognition may support its separate, still-unresolved claim of acquired distinctiveness. But marketplace recognition does not eliminate the mark’s inherent descriptiveness; it may instead establish that the mark has acquired distinctiveness through use.



THE EFFECT

Commercial success and trademark strength do not always develop together.

The broader lesson extends well beyond OpenAI. Technology companies often select names that immediately communicate what their products or services do. That marketing advantage can create a corresponding trademark disadvantage. Choosing a distinctive brand at the outset is often easier than establishing acquired distinctiveness after substantial investment.



Insulet Corp. v. EOfFlow Co.

Waiting Too Long Can Cost the Entire Case

Following a jury verdict of approximately **\$452 million**—later reduced by the district court to **\$59.4 million**—a divided Federal Circuit panel reversed the judgment in a trade-secret dispute involving competing wearable insulin-delivery devices, ruling that Insulet waited too long to sue.

On May 28, 2026, the court held that, under the **Defend Trade Secrets Act**, a company must sue **within three years** after it discovers—or reasonably should have discovered—the alleged misappropriation. Complete proof is unnecessary. Former employees with access to Insulet’s trade secrets had joined a direct competitor, its product appeared strikingly similar, and internal communications raised concerns about misuse. Together, those facts provided enough information to bring a claim years earlier.



THE EFFECT

Trade-secret protection requires more than confidentiality agreements and cybersecurity.

It also requires a process. Companies should identify warning signs, preserve evidence, investigate concerns promptly, and document their findings. Waiting until every fact becomes clear may allow the limitations period to expire before litigation even begins.

4DD Holdings, LLC v. United States

Copyright Damages Cannot Depend on Perfect Hindsight

On July 16, 2026, the Federal Circuit reviewed a **\$12.7 million** copyright award involving the government’s unauthorized use of healthcare software. It upheld the use of a hypothetical negotiation rather than the parties’ existing license rates, including consideration of alternative software and volume discounts.

The court nevertheless vacated portions of the award because the lower court relied on the government’s later abandonment of the project. Under the “book of wisdom” doctrine, later evidence may clarify a license’s value when infringement began but cannot impute knowledge of unforeseeable events. Other evidence, however, might support the same result on remand. The court also held that the government may owe compensatory damages under **28 U.S.C. § 1498(b)**, but not enhanced statutory damages for willful infringement.



THE EFFECT

Proving infringement and proving damages are separate tasks.

Licenses, pricing records, negotiations, implementation costs, and contemporaneous valuations can establish what reasonable parties would have agreed to when infringement began. Later evidence may clarify that value, but hindsight cannot replace their expectations at the time.

From Intangible Asset to Intellectual Property

FROM UNSEEN POTENTIAL TO DURABLE VALUE

Every achievement begins where others cannot yet see—in the mind. Before the business, the book, the invention, or the breakthrough, there is a question, an observation, a moment of creativity, or the realization that something could be done differently. That is where every intangible asset begins.

An idea becomes a company name. Knowledge becomes a proprietary process. Creativity becomes original content. A solution becomes software. Experience becomes expertise. Through thought, effort, and execution, something intangible takes shape and becomes capable of creating real business value.

Every business and creative professional develops intangible assets. A founder recognizes an opportunity in the market. A designer creates a distinctive brand identity. A developer writes software. An author drafts a manuscript. An inventor devises a new solution. Each begins as an idea. With the right strategy, each has the potential to become one of its owner's most valuable assets.

Not every intangible asset, however, ultimately becomes intellectual property. Some remain unrecognized. Others are never documented. Ownership may be uncertain, or the creator never takes the steps necessary to protect or strategically develop what has been created. Valuable intangible assets are often lost not because they lacked potential, but because no one recognized or managed them as strategic business assets.

That observation led us to develop the **INTANGIBLE-TO-IP™** Framework—a practical methodology for understanding how an intangible asset evolves from an idea into intellectual property and, ultimately, long-term commercial value.

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Ideas create
potential.
Ownership
creates
value.

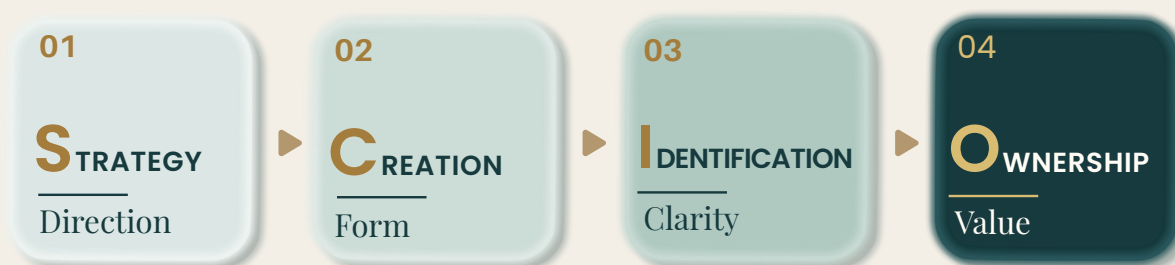




Introducing the Intangible-to-IP™ Framework

FOUR CONNECTED STAGES

*The **INTANGIBLE-TO-IP™** Framework traces the development of an intangible asset through four connected stages: Strategy establishes direction; Creation gives the asset form; Identification clarifies what has been created; and Ownership establishes the legal foundation for protection and commercial use. Each stage builds on the one before it, moving an intangible asset closer to becoming a durable source of enterprise value.*



01 STRATEGY

Strategy begins the development of an intangible asset. Businesses and creative professionals identify opportunities, solve problems, and determine how they will distinguish themselves. Those strategic decisions shape what will be created and where it may generate value.

02 CREATION

Creation gives an idea tangible expression through brands, inventions, software, designs, proprietary processes, creative works, and marketing campaigns. Through thought, effort, and execution, intangible potential takes form and becomes capable of creating business value.

03 IDENTIFICATION

Identification clarifies what has been created, who may own it, and how it can contribute to the business. Recognizing and documenting an intangible asset is essential because businesses cannot strategically protect assets they have not identified.

04 OWNERSHIP

Ownership establishes the legal foundation for protection and commercialization. It enables informed decisions about legal rights, licensing, enforcement, investment, and other commercial strategies that can transform creativity into a durable and valuable business advantage.



Many valuable business assets begin as ideas, knowledge, creativity, and experience. The strategic advantage lies in recognizing those assets, establishing ownership, and aligning legal protection with commercial objectives so they can become durable sources of value.

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GEORGE SCIARRINO, ESQ. | FOUNDER, SCIO LAW

GEORGE@SCIOLAW.COM • 646.833.8111

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