

Yesterday 7:01 PM

I actually think this is a very interesting thesis, but I would make one important shift.

Rather than arguing "**AI is making patents weaker**," I would argue that "**AI is changing the economics of patent litigation**." That is a more nuanced—and harder to dismiss—argument.

A patent that would have survived a validity challenge 20 years ago may not survive today, not because the invention was less novel, but because the evidence against it is now vastly easier to find.

That is a subtle but important distinction.

I think there are several trends that reinforce each other

1. The explosion of published knowledge

This is the foundation of the article.

A few useful statistics:

- Global scientific publication output increased roughly **21% between 2015 and 2019 alone**, according to UNESCO.  UNESCO +1

- Total worldwide science and engineering publications reached roughly **3.3 million articles in 2022**, several times higher than annual output a few decades ago.



- The volume of published research has been growing for decades, with studies describing long-term exponential growth in scientific literature.  arXiv +1

Your readers don't need exact numbers as much as they need to appreciate the scale:

Twenty years ago there might have been hundreds of thousands of potentially relevant publications. Today there are millions.

That changes everything.

2. AI dramatically lowers the cost of finding prior art

This is the real story.

Historically, finding invalidating prior art required

- expensive search firms
- patent attorneys
- technical experts
- weeks or months of work

Today AI can

- summarize papers
- translate papers
- recognize similar concepts despite different terminology
- connect ideas across disciplines
- search millions of documents in minutes

The prior art may always have existed.

The difference is that it is now discoverable.

That distinction is legally and economically important.

3. Language barriers are disappearing

I especially like this point because very few people discuss it.

Thirty years ago a technical paper written in

- Polish
- Czech
- Romanian
- Hungarian
- Chinese
- Korean
- Japanese

might have been effectively invisible to an American patent litigator.

Today AI translates these almost instantly.

You don't even have to pick Eastern Europe specifically. In fact, I'd broaden it because China, Japan, Korea, Russia, Germany, and many European countries have enormous technical literature.

One sentence I like:

AI has effectively made the world's scientific literature searchable regardless of the language in which it was written.

That's a profound shift.

4. Innovation isn't decreasing

I think this may be the most important paragraph in the article.

Otherwise readers could think you're saying patents have become worthless.

Instead:

The existence of more prior art does not imply that innovation has slowed. Quite the opposite.

Innovation today increasingly consists of

- selecting the right ideas
- recognizing connections others missed
- integrating technologies

- engineering products that actually work
- reducing cost
- making systems manufacturable

Those are enormous creative contributions.

AI doesn't make those easier nearly as much as it makes literature searches easier.

5. Patent litigation becomes more uncertain

This is where I think the article becomes really interesting.

Historically both sides could have reasonably believed:

"We've done a thorough prior-art search."

Now neither side can be completely confident.

Every new generation of AI search tools may uncover

- another obscure dissertation
- an old conference proceeding
- a translated foreign publication
- an industry report
- a master's thesis
- an archived government document

that changes the case.

In other words,

The prior art has become dynamic—not because the art changes, but because our ability to discover it keeps improving.

I don't think I've ever seen someone phrase it that way.

6. Patent value may shift

Instead of saying patents become less valuable, I'd say their value may migrate toward other attributes.

For example:

Companies may increasingly value patents that are

- supported by strong experimental evidence
- narrowly drafted around actual commercial implementations
- difficult to design around
- tied to manufacturing know-how
- supported by trade secrets

rather than relying solely on broad conceptual claims.

A point I would definitely add

One thing AI does exceptionally well is identify **non-obvious combinations** of references.

Many obviousness cases fail because no one thinks to combine Reference A with Reference B.

AI can search across entire technical fields and propose combinations a human searcher would probably never consider.

That could have an even bigger impact on §103 obviousness challenges than on anticipation under §102.

A possible structure

1. The Patent That Wouldn't Survive Today

- Open with a hypothetical: a patent issued in 2005 faces litigation in 2026.

2. The Explosion of Knowledge

- More papers
- More countries publishing
- More open access

3. AI Has Changed Prior-Art Searching

- Search
- Translation
- Summarization
- Cross-disciplinary discovery

4. Innovation Hasn't Declined

- The scarce resource is no longer information.
- It is judgment.

5. The Future of Patent Litigation

- More invalidity challenges
- Greater uncertainty
- Different litigation strategies
- Greater emphasis on execution rather than broad ideas

6. Conclusion

- AI may not weaken innovation.
- It changes how we prove novelty.

One final thought that I think could make the piece memorable:

You could frame it around a historical analogy.

For centuries, maps contained unexplored regions labeled "Here Be Dragons." As explorers charted the globe, those blank spaces disappeared—not because the world changed, but because our knowledge of it improved. AI is doing something similar for prior art. The inventions have not changed. The world's published knowledge has not changed. What has changed is our ability to map it.

I think that's a compelling way to capture the core idea: AI isn't rewriting history—it is making history searchable. That distinction lies at the heart of why patent litigation is likely to evolve so significantly in the coming years.

     ...  Sources

I like your analogy with maps and unexplored regions. I also like 1) the explosion of published knowledge, Lowering the barrier of cost for finding prior art, Language barriers breaking down, that innovation isn't decreasing, and that the patent value may shift, and that AI can combine ideas together making the non-obvious requirement more difficult. Will you write a blog on this?

I love this topic because it isn't simply "AI will change patent law." It's a more subtle observation: **AI changes what we can *find*, not what *was invented*.** That distinction makes the argument both more defensible and, I think, more thought-provoking.

AI Isn't Changing Innovation. It's Changing What We Ca...



AI Isn't Changing Innovation. It's Changing What We Can Find.

For centuries, maps contained vast blank spaces marked with phrases like "*Here Be Dragons*." The continents, rivers, and mountains already existed—we simply hadn't discovered them yet. As explorers charted the globe, those blank spaces disappeared. The world itself hadn't changed; only our knowledge of it had.

Artificial intelligence is doing something remarkably similar for prior art.

The inventions described in scientific papers, conference proceedings, dissertations, and technical reports have existed for years—sometimes decades. What has changed is our ability to find them.

This shift has profound implications for patent litigation.

An Ocean of Prior Art

When the U.S. patent system was developed, and even as recently as twenty years ago, prior-art searches were limited by practical realities. Patent examiners and litigators could search patents, journals, and technical references, but the universe of available literature was relatively manageable.

Today, the situation is dramatically different.

Scientific publications have grown at an extraordinary rate. Worldwide, researchers now publish millions of scientific papers each year, several times the annual output of only a few decades ago. Add to that conference proceedings, university theses, technical standards, government reports, corporate white papers, preprints, and online repositories, and the amount of publicly available technical information has become overwhelming.

The challenge is no longer whether prior art exists. The challenge is finding the relevant needle in an ever-growing haystack.

AI Has Changed the Economics of Prior-Art Searching

Historically, finding invalidating prior art was expensive.

A thorough search required experienced search professionals, patent attorneys, technical experts, and often weeks of effort. Litigation teams had to decide how much they could afford to spend searching, knowing there were diminishing returns.

Artificial intelligence changes that equation.

Modern AI systems can search enormous collections of technical literature, summarize lengthy papers, recognize similar concepts expressed with different terminology, and identify relationships between documents that a human researcher might never connect.

The prior art may have always existed.

The difference is that it has become dramatically easier—and less expensive—to discover.

That changes the economics of patent litigation.

The World's Literature Is Becoming One Library

Perhaps the most overlooked consequence of AI is the disappearance of language barriers.

For decades, valuable technical work published in Chinese, Japanese, Korean, German, Polish, Czech, Romanian, Russian, or dozens of other languages was effectively inaccessible to many litigants. Even if someone knew a relevant paper existed, translating and understanding it required substantial effort and expense.

Today, AI can translate technical literature in seconds.

Suddenly, research that was once practically invisible becomes searchable alongside English-language publications.

The world's scientific literature is becoming one searchable library.

For patent litigators, that dramatically expands the universe of potentially relevant prior art.

More Prior Art Does Not Mean Less Innovation

None of this should be interpreted as evidence that innovation is slowing.

If anything, the opposite is true.

Innovation has never been simply about having an idea. It is about recognizing which ideas matter, combining insights from different fields, solving engineering problems, reducing cost, improving reliability, making products manufacturable, and creating something customers actually need.

The growing body of published knowledge provides more building blocks than ever before.

The innovation lies in knowing which ones to use.

AI May Raise the Bar for Non-Obviousness

Artificial intelligence may have an even greater impact on obviousness than on novelty.

Many obviousness arguments rely on combining multiple references. Historically, identifying those combinations required tremendous technical expertise and a healthy dose of creativity.

AI excels at finding connections across enormous datasets.

It can suggest combinations of publications from different disciplines that a human searcher might never consider, making it easier to argue that an invention represents an obvious combination of existing knowledge.

Whether courts ultimately find those combinations persuasive remains to be seen. But litigants will almost certainly be presenting many more of them.

Patent Value May Shift

None of this means patents are becoming worthless.

Rather, the characteristics that create value may evolve.

Patents supported by strong experimental data, directed toward specific commercial implementations, or protected by complementary manufacturing know-how and trade secrets may become increasingly valuable.

Broad conceptual claims, by contrast, may face greater scrutiny as AI uncovers more prior art from around the world.

Mapping the Unknown

The age of AI is not rewriting the history of innovation.

It is rewriting our ability to discover that history.

Just as improved maps gradually eliminated the blank spaces once labeled "*Here Be Dragons*," AI is steadily removing the blind spots in the world's technical literature.

The inventions have not changed.

The publications have not changed.

What has changed is our ability to find them.

For patent litigators, that may prove to be one of the most significant developments of the next decade.

A few suggestions if you decide to publish this:

- Add a few concrete statistics (with citations) on the growth of scientific publications to strengthen the "ocean of prior art" section.
- Include one or two real examples where an obscure foreign-language publication or non-patent literature (NPL) was used to invalidate a patent. A real case would make the argument much more tangible.
- Consider ending with a question rather than a conclusion, such as: "*As AI continues to improve, will the limiting factor in patent litigation become the quality of the invention—or simply the quality of the search?*" That invites readers to think beyond the article and can encourage discussion.



Today 5:47 AM

This is good, but I changed my mind on the analogy of the blank spaces because it isn't terribly accurate. To me finding new knowledge is like mapping out the blank spaces but AI is allowing one to combine all of the maps together into a detailed and comprehensive map. Instead

of starting and ending with this analogy, I would like to start with a short paragraph about : if you have been reading this blog, you know that litigating patents as an inventor is difficult. It really is a David vs. Goliath scenario. Unfortunately, it just got even harder. Then I want to end with the future of patent litigation section that innovation

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I actually like this direction better. It feels more like *your* voice. You've written before about the practical realities of being an inventor, and opening from that perspective gives you credibility. It also makes the article less academic and more personal.

One thing I would change from your outline is this sentence:

"Unfortunately, it just got even harder."

I would soften it just slightly. The article isn't really saying AI is "bad"; it's saying it changes the playing field. Something like:

"Unfortunately, the playing field is changing in ways that make enforcing patents even more difficult."

That sets up the rest of the article nicely.

Here's how I would rewrite it.

AI Is Changing the Economics of Patent Litigation



AI Is Changing the Economics of Patent Litigation

If you've been reading this blog for a while, you know that I've written often about how difficult patent litigation can be for inventors. Even with a strong patent, enforcing your intellectual property frequently feels like a David versus Goliath battle. Large companies often have the financial resources to challenge patents through lengthy and expensive litigation, while individual inventors and small businesses must carefully decide whether they can afford to defend what they created.

Unfortunately, the playing field is changing in ways that may make enforcing patents even more difficult.

Artificial intelligence is transforming nearly every industry, and patent litigation is no exception. While much of the discussion has focused on AI-generated inventions or whether AI itself can be an inventor, I believe an equally important change is receiving far less attention: AI is fundamentally changing how prior art is discovered.

An Ocean of Prior Art

Scientific and technical publications have grown at an extraordinary rate over the past several decades. Researchers around the world now publish millions of scientific papers every year, in addition to conference proceedings, dissertations, technical standards, government reports, preprints, and countless other publicly available technical documents.

For decades, the limiting factor wasn't whether prior art existed. It almost certainly did.

The limiting factor was whether anyone could realistically find it.

AI Has Changed the Economics of Prior-Art Searching

Historically, searching for invalidating prior art required significant time, expertise, and money.

Patent litigators hired professional search firms, technical experts, and patent attorneys to comb through patents and scientific literature. Even then, there was always the possibility that an important reference remained undiscovered simply because searching every publication was economically impossible.

Artificial intelligence changes that equation.

Modern AI systems can search enormous collections of technical literature, summarize lengthy papers, recognize similar concepts expressed using different terminology, and identify relationships between documents that a human researcher might never discover.

The prior art hasn't changed.

Our ability to find it has.

That simple distinction may have enormous consequences for patent litigation.

The World's Literature Is Becoming Increasingly Accessible

Another consequence of AI is the disappearance of language barriers.

Important technical work has always been published throughout the world. Historically, papers written in Chinese, Japanese, Korean, German, Polish, Russian, Czech, Romanian, and many other languages were often overlooked simply because translating and understanding them required substantial time and expense.

Today, AI can translate technical papers in seconds.

Research that once would have been practically invisible can now become part of a routine prior-art search.

The world's technical literature is becoming increasingly accessible regardless of the language in which it was written.

More Prior Art Does Not Mean Less Innovation

At first glance, this might sound like bad news for innovation.

I don't believe it is.

Innovation has never been simply about having a new idea. The difficult part is recognizing which ideas have value, combining insights from different fields, solving engineering problems, making products reliable and manufacturable, and ultimately creating something customers want.

In many ways, today's innovators have access to more knowledge than any generation before them.

That doesn't reduce innovation—it changes where innovation creates value.

AI May Raise the Bar for Non-Obviousness

Artificial intelligence may have an even greater impact on obviousness than on novelty.

Many obviousness arguments depend on combining multiple references that, taken individually, do not disclose the complete invention. Historically, identifying those combinations required both technical expertise and considerable creativity.

AI excels at finding connections across enormous collections of information.

It can identify references from different technical disciplines that, together, may be argued to render an invention obvious. Whether those combinations ultimately persuade a court is another question, but litigants are almost certain to present many more of them than they have in the past.

Looking Ahead

None of this means patents are becoming obsolete.

Strong patents will continue to be valuable, and truly innovative technologies will continue to shape the future. But I believe AI is changing what makes a patent valuable.

As prior-art searching becomes more comprehensive and less expensive, broad conceptual claims may face increasing challenges. Patents supported by robust experimental evidence, focused on practical implementations, and backed by manufacturing expertise or complementary trade secrets may become increasingly important.

Most importantly, innovation itself is not disappearing. If anything, the pace of innovation continues to accelerate.

What is changing is where value is created.

Success will depend less on being the first person to think of a broad idea and more on being the team that can recognize the right ideas, combine them in meaningful ways, solve the difficult engineering problems, and execute better than anyone else.

AI is not making inventors less creative.

It is simply making the world's collective knowledge easier to discover—and that may fundamentally change the future of patent litigation.

I actually think this version has one more idea worth adding because it gets to the heart of why this matters for independent inventors. Twenty years ago, there was a practical limit to how much prior art a defendant could afford to search. There was a point of diminishing returns where spending another \$100,000 on searching wasn't worth it. AI lowers that cost dramatically. In other words, the legal standard for patentability hasn't changed, but the *practical probability* that someone will find invalidating prior art has. To me, that's the

central insight of the article, and it's a point that many patent attorneys—and certainly many inventors—haven't fully appreciated yet.



