

Patents in the Age of Generated Knowledge

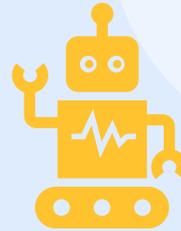
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AGENDA



The rise of synthetic
prior art (SPA)



Why is novelty getting
fragile in AI-heavy fields?



A pragmatic playbook
for in-house counsel



THE RISE OF SYNTHETIC PRIOR ART (SPA)

- Definitions, sources, and mechanics

What do we mean by ‘Synthetic Prior Art’ (SPA)?

- AI-generated technical disclosures published (intentionally or incidentally) before your filing date that become searchable/discoverable
- Includes: model-authored posts, TD Commons/defensive publications, auto-generated docs, blog posts, preprints, etc.
- Often low-signal individually, but high-impact in aggregate once indexed and cited
- May be non-enabling on its own but still relevant to novelty/obviousness objections

Channels where SPA enters prior art

- Preprints & tech blogs: rapid, iterative posts; cross-posting spreads timestamps
- Code platforms: auto-generated READMEs
- Documentation sites & Q&A forums
- Academic drafts augmented by AI summarization
- Press/marketing collateral that states technicalities / mechanics

Mechanics that matter (legal tests, practical realities)

- Public accessibility & date certainty drive prior art status
- Specificity & enablement: how much detail is 'enough' varies by use (novelty vs obviousness)
- Attribution ambiguity: human-in-the-loop vs autonomous drafting
- Propagation: 10s–100s of near-duplicate disclosures across sites



WHY IS PATENTABILITY GETTING FRAGILE IN AI-HEAVY FIELDS?

- Scale, speed, and granularity of disclosure

Scale & Speed Effects

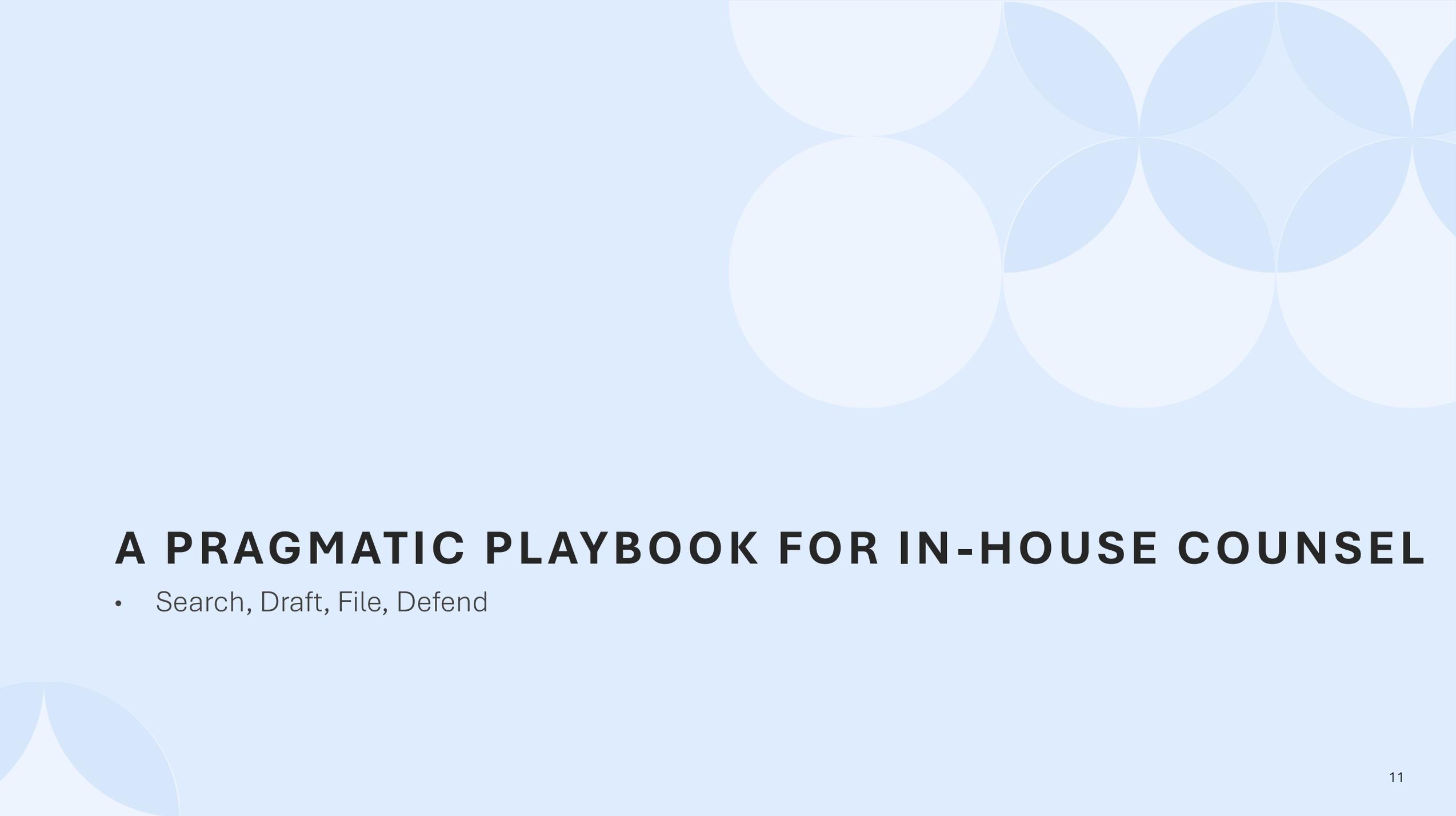
- Publication at scale: millions of auto-generated disclosures raise likelihood of accidental anticipation
- Faster dissemination: preprints, standards portals, conference sites beat your filing date
- Automation: AI tooling generates variations that cover claim space
- Globally accessible – may meet prior publication / public availability tests
- PHOSITA & search: AI-augmented search expands what is findable with ‘reasonable diligence’

Data Sparsity & combinatorics

- Atomic disclosures: small, precise elements scattered across sources
- Combinatorial coverage: AI creates near-complete mosaics
- Claim drafting risk: broad, functional claims are easier to piece apart

Other issues: accessibility, archiving, and provenance

- Date certainty vs. backdating concerns in dynamic web content
- Web archives, permalinks, and Digital Object Identifiers (DOIs) strengthen public accessibility
- Enablement debates for concise, AI-written disclosures



A PRAGMATIC PLAYBOOK FOR IN-HOUSE COUNSEL

- Search, Draft, File, Defend

1) Monitoring & Search Upgrades

- Expand NPL coverage: preprints, code repositories, forums, TD Commons
- Run AI-augmented novelty searches + human validation; log search trails
- Date-stamped evidence pack: URLs, web-archives, and screenshots
- Watch competitor's communication calendars, release notes, trade shows

2) Drafting to withstand SPA

- Anchor claims in mechanisms, not just functions
- Include concrete embodiments: data flows, architectures, training regimes, parameter ranges, and disclosures emphasizing unexpected results/enablement
- Add defensive disclosures for alternatives you won't claim
- Build fallback positions: multi-tier dependent claims

3) Filing & portfolio tactics

- File early (provisionals) to lock dates; convert provisional quickly; follow with continuations/divisionals
- Use parallel filings for data/process vs. system claims
- Calibrate jurisdictions based on eligibility and SPA risk
- Maintain an invention disclosure cadence aligned to release cycles
- Avoid leakage via marketing

4) During Examination and Beyond

Public accessibility

- Was the disclosure disseminated to the relevant community (e.g., trade shows, standards bodies)?
- Could a skilled person find it with reasonable diligence on a known website/archive?
- Remember - Not everything online counts: poorly indexed or hidden pages may fail

4) During Examination and Beyond...continued

Enablement & operability

- Does the disclosure teach how to make/use?
- Are key parameters/data present (esp. biotech/chemistry)?
- Is the content demonstrably wrong or speculative?
- Tactics: examiner interviews, affidavits (IPA Section 79 / USPTO Rule 132), expert declarations
- Document human contribution for inventorship (lab notebooks; AI-use logs)

Takeaways

- Synthetic prior art is real—but not unbeatable
- Focus on public accessibility + enablement to defuse weak AI disclosures
- Harmonization is incomplete; watch WIPO/USPTO/EPO updates
- Implement an SPA-aware patenting playbook now

Questions? Thoughts?

Let's keep the conversation going –
IP is never boring!



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