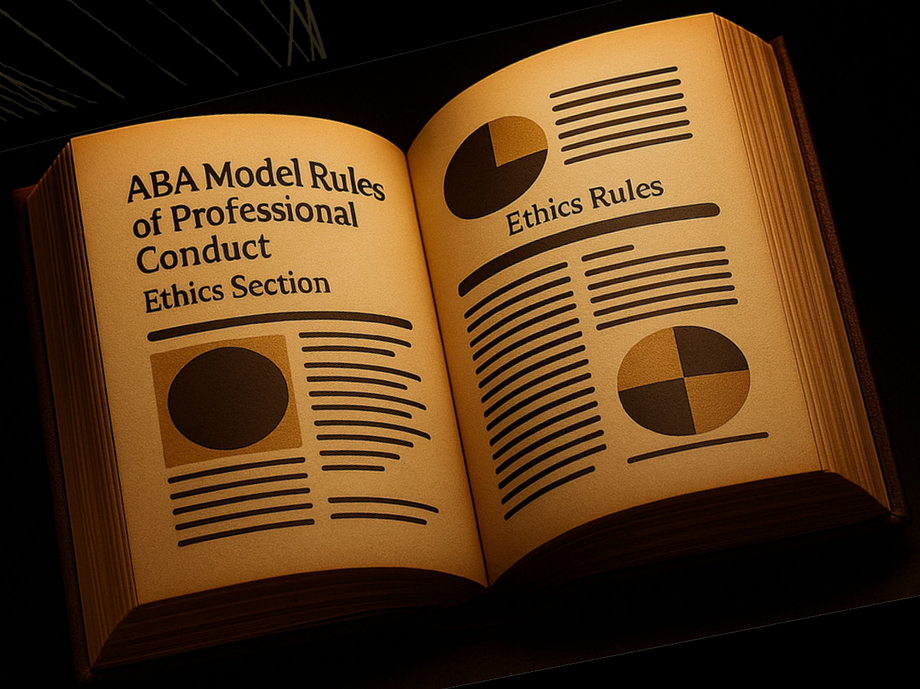
The Legal Framework for Adopting AI



The practice of law is highly regulated, with several rules governing the ethical adoption of AI:

- ABA Model Rule 1.1 – Competence
- ABA Model Rule 1.4 – Client Communication
- ABA Model Rule 1.5 – Fees
- ABA Model Rule 1.6 – Confidentiality
- ABA Model Rule 1.7 – Conflicts of Interest
- ABA Model Rule 3.3 – Candor to the Tribunal
- ABA Model Rule 5.1 – Responsibilities of Supervisory Lawyers
- ABA Model Rule 5.3 – Responsibilities Regarding Nonlawyer Assistance
- **ABA Model Rule 5.5 – Unauthorized Practice of Law**

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Rule 1.1 — Duty of Competence

"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Client-Centered Understanding

Lawyers must thoroughly understand the scenarios and circumstances surrounding their clients' specific needs.

Technological Competence

Comment 8 now explicitly includes technological competence as part of legal competence requirements.

Obligation to Innovate

Seeking out the latest tools is part of the competence requirement—lawyers must use available technical means for effective representation.

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Rule 1.4 — Client Communication

A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

Disclosure Obligation

Clients should be informed if AI is used substantively in their legal matter.

Materiality Standard

Disclosure is required if AI usage affects cost, confidentiality, or potential outcomes.

Relationship Benefits

Transparent AI disclosure builds client trust and meets ethical disclosure standards.

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Rule 1.6—Confidentiality

"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent..."

Implications for AI Implementation:

- Client must provide informed consent
- All client data must be rigorously protected
- AI systems must be siloed and secure by design
- Cross-client training without explicit informed consent constitutes an ethical violation

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Rule 1.7—Conflicts of Interest

A concurrent conflict of interest exists if "the representation of one client will be directly adverse to another client" or if there is a significant risk of material limitation due to other client obligations.

Critical AI Conflicts Considerations

- Cannot train AI on one client's data and use it to benefit another
- Even internal misuse can constitute a significant conflict
- Requires strict technical data segmentation between matters and clients
- This presents a major challenge in enabling proper infrastructure and architecture

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Rule 5.3 / 5.5 — Nonlawyer Assistance + Unauthorized PL

> Lawyers must make reasonable efforts to ensure that nonlawyer assistants' conduct is compatible with the professional obligations of the lawyer.

AI as "Nonlawyer Assistance"

- AI systems are categorized as "nonlawyer assistance" under ethics rules
- Outputs must be reviewed with the same scrutiny as junior associate work
- Unlike delegating to junior attorneys who hold individual licenses, the full ethical burden remains on the supervising attorney

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Rule 1.5 — Reasonable Fees

A partner in a law firm, and a lawyer with supervisory authority, must make reasonable efforts to ensure the firm has in effect measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.

Leadership Accountability

Firm leadership must ensure AI outputs comply with all applicable ethics rules.

Non-Delegable Duty

Ethical oversight cannot be delegated to software or systems.

Continuous Verification

Firms must implement processes to monitor, test, and validate AI systems and outputs.

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PANEL SESSION

Structured AI Patent Drafting

Moving from "Magic Button" to **Architectural Workflow**

Eric Maschoff

maschoff brennan

The "Magic Button" Fallacy

The "Average" Trap

LLMs predict the statistical average. In patent law, "average" = **Obvious** (§103).

Narrative Drift

Without guardrails, AI hallucinates features or conflates prior art to fill space.

§112 Failures

One-shot drafts create "fluff" instead of the technical "how-to" details needed for enablement.

The "Golden Thread" Gap

One-Shot Chaos

Prompting for a full patent at once breaks the narrative line. Terms used in claims appear undefined in the description. The logic fractures.

Structured Continuity via Discrete Prompts:

Problem → Inventive Concept → Claims → Description

The "Architectural" Approach

Decomposition over Generation. Treat the AI as a specific role.

The Partner

You (The Human)

Sets strategy, reviews quality, locks scope.

The Junior Associate

The AI

Executes specific tasks (Brainstorm, Draft Section) under supervision.

The Tool

The Prompts

Structured instructions that act as blueprints.

Phase 1: Problem Excavation

Defining the "Why"

Identify the Deficit

Before asking what the invention *is*, ask AI what the prior art *failed to do*.

The Narrative Anchor

Establishes motivation for the invention, critical for overcoming §103 rejections.

Global Alignment

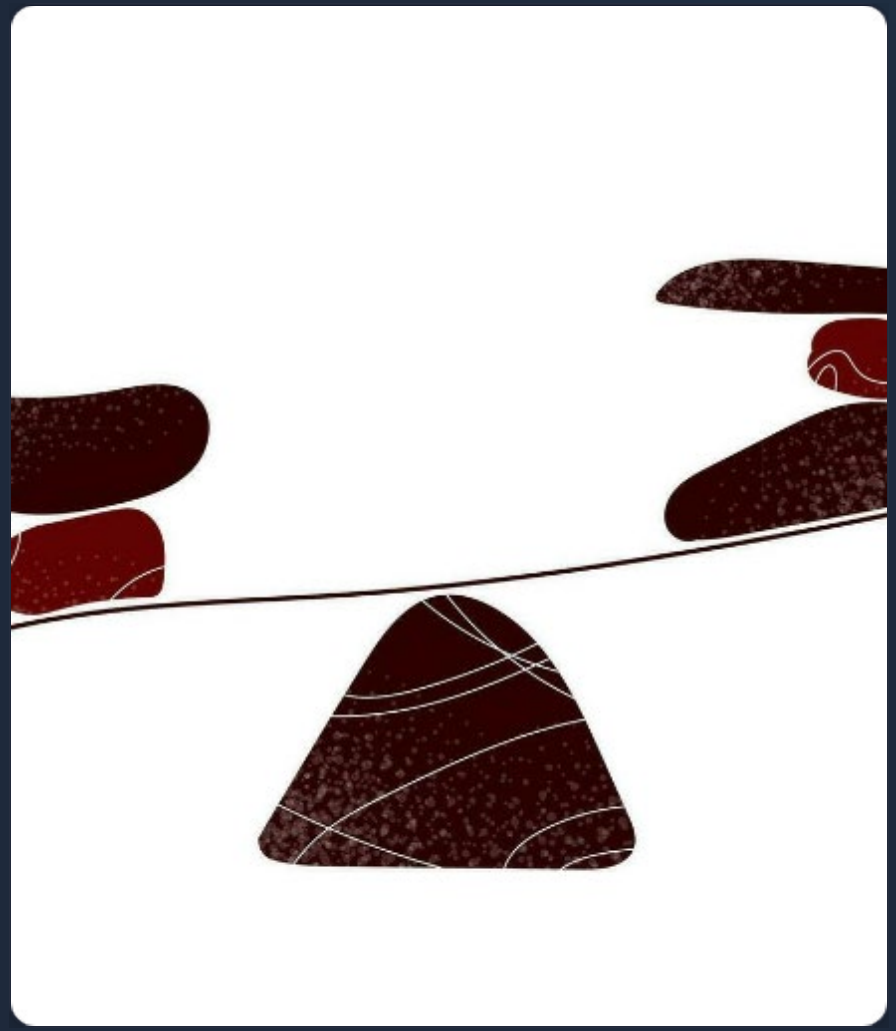
Aligns with the European "Problem-Solution" approach.

Phase 2: The "Concept Anchor"

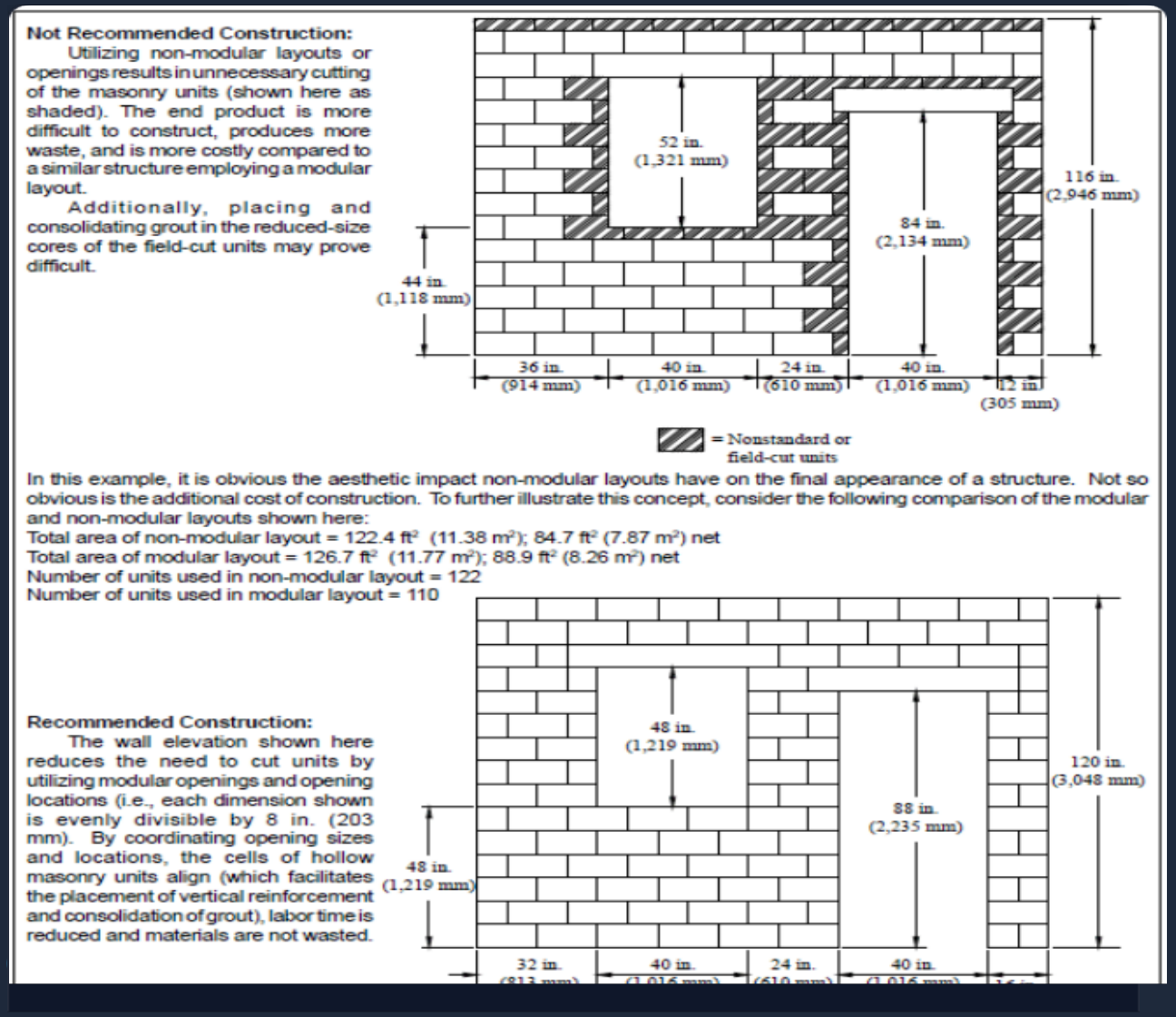
The "Goldilocks" Iteration

Use AI to find the right level of abstraction for the Inventive Concept (IC):

- **Too Cold:** Broad but reads on prior art.
- **Too Hot:** Too specific, easy to design around.
- **Just Right:** Broad enough to be valuable, specific enough to be novel.



Phase 3: Claims-First to Modular Embodiment



Not Recommended Construction:

Utilizing non-modular layouts or openings results in unnecessary cutting of the masonry units (shown here as shaded). The end product is more difficult to construct, produces more waste, and is more costly compared to a similar structure employing a modular layout.

Additionally, placing and consolidating grout in the reduced-size cores of the field-cut units may prove difficult.

In this example, it is obvious the aesthetic impact non-modular layouts have on the final appearance of a structure. Not so obvious is the additional cost of construction. To further illustrate this concept, consider the following comparison of the modular and non-modular layouts shown here:

Total area of non-modular layout = 122.4 ft² (11.38 m²); 84.7 ft² (7.87 m²) net
Total area of modular layout = 126.7 ft² (11.77 m²); 88.9 ft² (8.26 m²) net
Number of units used in non-modular layout = 122
Number of units used in modular layout = 110

Recommended Construction:

The wall elevation shown here reduces the need to cut units by utilizing modular openings and opening locations (i.e., each dimension shown is evenly divisible by 8 in. (203 mm). By coordinating opening sizes and locations, the cells of hollow masonry units align (which facilitates the placement of vertical reinforcement and consolidation of grout), labor time is reduced and materials are not wasted.

The Pivot

Lock claims *before* drafting the description. This ensures strict antecedent basis.

Modular Construction

Draft one embodiment at a time based on your claims.

Prevent Blending

Asking for the full spec at once causes AI to blend features. Isolate them: "Draft Embodiment A only."

Execution: The Quality Loop

1. **Prompt**
   Specific Task
2. **Draft**
   AI Generation
3. **Verify**
   Human Edit & Lock
4. **Next**
   Prompt Next Section

Hallucination Check: Catch "invented facts" early in the concept phase before they propagate.

Example: The Smart Mug

The Prompt Chain (Iterate when needed)

Step 1: Problem Excavation

"Acting as a patent attorney, analyze the disclosure. Identify the **primary technical problem**. Specifically, articulate why existing solutions (like active battery heating) are insufficient."

Step 2: Concept Anchor

"Based on the problem from Step 1, articulate the core Inventive Concept that solves this problem. State it broadly in terms of function. **Do not limit it** to the specific lattice shape mentioned in the disclosure."

Step 3: Claims Generation

"Using the **finalized Inventive Concept** from Step 2 as your guide, draft a broad Independent Claim. Ensure the claim focuses on the structural relationship between the wall and geometry."

Step 4: Modular Description

"Now, draft the Detailed Description for the **Primary Embodiment** shown in Figures 1-3. Describe the lattice **exactly as defined in the broad independent claim from Step 3**. Do not discuss the alternative embodiment yet."

Addressing Skepticism

"Is it Faster?"

It reduces **Cognitive Load**. Editing a structured draft is faster than staring at a blank page.

"Why no Mega-Prompt?"

LLMs suffer from **Attention Drift**. Breaking it down ensures adherence to constraints.

"Junior Associates?"

They become **AI Architects**. Less scribing, more strategy and review.

> **"You don't tell a contractor 'build me a house' and walk away."**

You start with blueprints.

The Attorney is the **Architect**.

The AI is just the power tool.

Background:

- 10+ Years in Computer Industry
- 20+ Years in IP
- AI Task Force Lead

FIRST RULE – Duty for Responsible and Ethical Adoption of Technology

- Potential For AI Is Extraordinary
- Potential Risks As Well

Limit The Risk: Have Framework To Use AI As A Tool & Validate Output

wolf greenfield
INTELLECTUAL PROPERTY LAW

DRAFTING REVIEW: Review *Your* Work

- You own it
- You are responsible for it
- You can be sanctioned for it
- **VALIDATION, VALIDATION, VALIDATION**
- Test Each Step Of Your Framework With A Prompt
  - Let Your Claim Be Your Guide: Focus On Independent Claims
- Each Feature Described? Generally, Specifically, and In-between: Prompt
- §101 Technical Story? Prompt
- Favorite & “Bad” Language Review – Prompt Up-font & On Review
- Foreign Jurisdiction? Disclosure and Best Practice Language – Prompt
- ***Assume Nothing*** – Validate Everything: Purpose Built Tools Help

Patent Prosecution

- AI Provides A Roadmap For Focusing Efforts
- Review Roadmap – Is It Reasonable
  - Overall, beneficial, time-saving outline. On occasion, the review misses the point
- 101 Rejections
  - US Cite Cases, Cites to MPEP, and Argue. Provide Evidence Of What Is Conventional
- 102/103 – Validate Reasonable Arguments & Challenge the Roadmap
  - Generate An Argument For Why You Can Not Combine the Reference
  - Generate An Argument For Why Each Element is Not Taught
- 112 Rejections
  - Argue written description, enablement, etc.: AI can find citations in the application
- Foreign & Continuing Prosecution
- Future Development

Education & Training

- Having A Framework To Use AI Is Key
- Consistent Guidelines Provide Flexibility For Individual Prompts
- Constantly Evolving Capability, Functionality, and Purpose-Built Tools
- You Will Have To Adapt Your Prompts To Compensate
- Seek Feedback From Users As Often As Practical
- Share Experience:
  - What works, what does not
- Training: Prompts For Review of Work
  - You can tailor your prompts – As a Junior – what will my supervisor review?
  - Supervisor: Assess arguments, ask what prompts were used for preparation, and what prompt were used to validate work product