

UNITED STATES COURT OF INTERNATIONAL TRADE
THE HONORABLE STEPHEN ALEXANDER VADEN, JUDGE

ORDER ON ARTIFICIAL INTELLIGENCE

Parties must conform to many rules when they file briefs in a case before the Court of International Trade. For instance, briefs must state with particularity the grounds for seeking a desired order and make “the legal argument necessary to support it.” USCIT Rule 7(b)(1)(B). They must follow certain requirements of form, including those that govern the use of captions, exhibits, and paragraphing. USCIT Rule 7(b)(2); USCIT Rule 10. However, perhaps the most important of these rules are those that concern confidential or business proprietary information. The Court has taken special care to ensure that bringing a claim will not result in the disclosure of sensitive non-public information owned by any party before it. Accordingly, the Court requires that briefs containing confidential or business proprietary information “must identify that information by enclosing it in brackets,” that parties must file a non-confidential version of such a brief and redact the bracketed information, and that recipients of the confidential brief may not disclose its contents to any party not authorized to receive such information. USCIT Rule 5(g). In particular, an attorney may only receive confidential or business proprietary information if he or she has filed a Business Proprietary Information Certification and received an order from the Court granting access to such information. USCIT Rule 73.2(c)(2).

Generative artificial intelligence programs that supply natural language answers to user prompts, such as ChatGPT or Google Bard, create novel risks to the security of confidential information. Users having “conversations” with these programs may include

confidential information in their prompts, which in turn may result in the corporate owner of the program retaining access to the confidential information. Although the owners of generative artificial intelligence programs may make representations that they do not retain information supplied by users, their programs “learn” from every user conversation and cannot distinguish which conversations may contain confidential information. In recognition of this risk, corporations have prohibited their employees from using generative artificial intelligence programs. *See, e.g., Samsung Bans Staff’s AI Use After Spotting ChatGPT Data Leak*, Bloomberg, <https://www.bloomberg.com/news/articles/2023-05-02/samsung-bans-chatgpt-and-other-generative-ai-use-by-staff-after-leak> (last visited June 8, 2023).

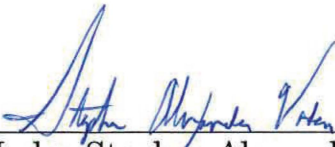
Because generative artificial intelligence programs challenge the Court’s ability to protect confidential and business proprietary information from access by unauthorized parties, it is hereby:

ORDERED that *any* submission in a case assigned to Judge Vaden that contains text drafted with the assistance of a generative artificial intelligence program on the basis of natural language prompts, including but not limited to ChatGPT and Google Bard, must be accompanied by:

- (1) A disclosure notice that identifies the program used and the specific portions of text that have been so drafted;
- (2) A certification that the use of such program has not resulted in the disclosure of any confidential or business proprietary information to any unauthorized party; and it is further

ORDERED that, following the filing of such notice, any party may file with the Court any motion provided for by statute or the Rules of the Court of International Trade seeking any relief the party believes the facts disclosed warrant.

SO ORDERED.



Judge Stephen Alexander Vaden

Dated: June 8, 2023
New York, New York