

MIDS 15th Anniversary &
3rd MAA Annual Conference

Back to the future

Panel

Artificial Intelligence Unleashed:

Navigating the Regulatory Labyrinth & Harnessing Practical Insights

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Digital
Law
Center

www.digitallawcenter.ch



**UNIVERSITÉ
DE GENÈVE**

FACULTÉ DE DROIT



AI in IA

Use of Artificial Intelligence in International Arbitration:

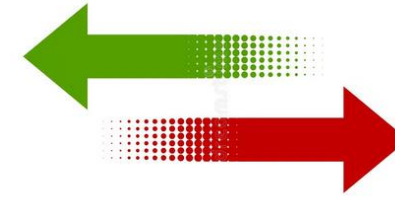


Submerged iceberg, painted drawing, warming concept. Ai generated

By [Joaquin Corbalan](#)



Generated with AI



WHO IS USING AI ? ↓	FOR WHAT ? →	Internal / Informal / Non- Procedural	External / Formal / Procedural
Parties / counsel		Selection of arbitrators/experts	Briefs
Witnesses, experts		Preparation of hearing / cross- examination	Witness statements, expert reports
Arbitrators		Internal review & research	Procedural Rules, Procedural Orders, Awards
Arbitration institutions		Databases of arbitrators & awards	Scrutiny of draft awards

Challenges of AI use

Admissible if...



... Protection of personal data

... Protection of confidential information / trade secrets ...

and...

... Obligation of disclosure (=> algorithmic transparency)

N.B. Obligation to check AI output (=> liability)

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

Dated: June 8, 2023
New York, New York

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



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;



GUIDELINES
ON THE USE OF
ARTIFICIAL INTELLIGENCE
IN ARBITRATION

CONSULTATION DRAFT
31 AUG 2023

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[OPTION A]

1-1. Disclosure concerning the use of AI tools in connection with an arbitration may be appropriate in certain circumstances **depending on the function for which such tool is used and other relevant factors.** In assessing whether disclosure is warranted, participants are encouraged to consider the extent to which (i) the output of an AI tool is to be relied upon in lieu of primary source material, (ii) the use of the AI tool could have a material impact on the proceeding, and (iii) the AI tool is used in a non-obvious and unexpected manner.

1-2. For instance, proactive disclosure **may be warranted** when (i) a party or an expert uses AI tools in the preparation of **evidentiary submissions, including expert testimony, witness testimony or documentary exhibits** and (ii) the use of such AI tools could have a **material impact** on the proceedings and/or their outcome.

[OPTION B]Disclosure and protection of records

1. Without limitation, disclosure may be appropriate **in the following circumstances:**

When a party or an expert (i) uses AI tools in the preparation of **submissions, expert opinions or other documents that are materially relied upon ([including evidence and demonstratives])** and (ii) the use of such AI tools could have **[an impact / a material impact]** on the proceedings and/or their outcome. In that case, they should include the following information in their disclosure:

- 1) The name of the tool used;
- 2) **Methodology** and a short description of how it was used (including, *e.g.*, prompts, instructions, **or search terms**);

2. Should a party have reason to believe that another party **or participant involved in the arbitration may have used AI tools in circumstances that warrant disclosure**, it may submit an application explaining the reasons for such belief to the tribunal.

2-1. Should a party have reason to believe that another party **or an expert (i) used AI tools to prepare submissions, expert opinions or other documents that are materially relied upon ([including evidence and demonstratives]), and (ii) that the use of such AI tools could have [an impact / a material impact] on the proceedings and/or their outcome**, it may submit an application explaining the reasons for such belief to the tribunal **and request the disclosure of the information in Guideline 3.1.**



Draft Witness Statements

TRIALVIEW®

Witness statement preparation is automated with TrialView. Record the interview, generate an automated transcript and convert to a hyperlinked witness statement. Our AI technology allows you generate first draft hyperlinked witness statements with incredible accuracy and speed.



The Accuracy of Fact Witness Memory in International Arbitration

5.24 For witnesses capable of doing so, consider having them draft the first draft of the witness statement.



Court of appeal judge praises 'jolly useful' ChatGPT after asking it for legal summary



Hibaq Farah

Fri 15 Sep 2023 13.58 BST

Lord Justice Birss used AI chatbot to write part of judgment in first known use by British judge

“I think what is of most interest is that you can ask these large language models to summarise information. It is useful and it will be used and I can tell you, I have used it,” he said.

“I’m taking full personal responsibility for what I put in my judgment, I am not trying to give the responsibility to somebody else. All it did was a task which I was about to do and which I knew the answer and could recognise as being acceptable.”

Arbitration for AI disputes : a reality

OpenAI Terms of use

YOU AGREE TO THE FOLLOWING MANDATORY ARBITRATION AND CLASS ACTION WAIVER PROVISIONS:

(a) **MANDATORY ARBITRATION.** You and OpenAI agree to resolve any past or present claims relating to these Terms or our Services through final and binding arbitration, except that you have the right to opt out of these arbitration terms, and future changes to these arbitration terms, by filling out this form within 30 days of agreeing to these arbitration terms or the relevant changes.



Terms of use

(e). **Exceptions.** This arbitration section does not require arbitration of the following claims: (i) individual claims brought in small claims court; and (ii) injunctive or other equitable relief to stop unauthorized use or abuse of the Services or intellectual property infringement.

=> (classical / pre-AI) challenges of « pathological » (?) arbitration clauses
(IP carve-out clauses)

Need for arbitration practitioners to be(come) IA literate

Model Rules of Professional Conduct



AMERICAN **BAR** ASSOCIATION

Maintaining Competence

Rule 1.1 Competence - Comment

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology,



Time for action : shaping the AI framework for use in IA

ARTIFICIAL INTELLIGENCE - THE RISE OF MACHINE LEARNING

BCLP INTERNATIONAL ARBITRATION SURVEY 2023

Jul 24, 2023

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