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Summary

Practical Intellectual Property Considerations for Artificial Intelligence
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Key messages:

- IP is the ideas, information and data that differentiate your business from others.
    - IP *rights*, like trademarks, patents and secrets, are *tools* you can use to leverage the effectiveness of your IP.
- IP matters to AI businesses, because it is important to investors and potential buyers, but also because managing IP can provide tailwinds towards your business objectives.
- IP (ideas, information and data) is an essential resource for AI businesses.
- An IP strategy is the part of your business strategy that aligns how you manage IP to facilitate meeting your business objectives.
- Founders and business leaders need to learn effective IP *business* strategies, but not necessarily the intricacies of IP law.

- For a solid IP foundation, an AI IP strategy should address 5 key elements:
    1. Protect your name and/or product name with a registered trademark;
    2. Ensure you own your important IP, through ownership provisions in contracts;
    3. Know what you should protect as secret, and who you need to protect it from;
    4. Manage your use of open source software, models, etc. to ensure you are not violating the license terms or terms of use; and
    5. Understand what your competitors are patenting, and how they use those patents.
- On top of this foundational IP strategy, AI businesses can then choose to do other things to supplement, such as filing their own patents, releasing their own open source, etc.
- AI can be patented, but the question of whether an AI <u>should</u> be patented must also be considered.
- For startups and SMEs, patents are not as much for starting expensive legal disputes as they are for creating advantages like attracting acquirers, investors and/or customers.
- But before you begin patenting, you need to understand *why* you want to patent, because the "why" affects the "what" and the "when".
- In general, patents for AI ideas (algorithms, etc.) are weak patents; it is better to pursue a patent for *how* an idea is *executed* to provide a business opportunity.
- AI is not usually visible like hardware inventions are, so the question of *detectability* is important – will I be able to see if someone else is using my patented technology?
- The timing of *when* to file is also important. Fiiling too early can mean that key elements of the execution are missing (patents can't be improved after filing). But filing too late (e.g. after significant commercial use starts) can invalidate the patent, so the right time to file is often an optimization decision to discuss with your patent agent.

- All patents aren't the same. Getting the *why-what-when* considerations right is what makes a patent valuable and effective.
- Begin your IP journey by first looking inward – what IP do you have, and what differentiates your business, or is important to your go-to-market strategy? This is the IP that deserves the most attention.
- Then, get to work on your foundational IP strategy – like registering your trademark, ensuring you own key IP and identifying your critical secrets and other steps discussed.