

IP for Future ... where do we want to go?

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**AI / Big Data
in EU IP law**
(Copyright, Trade Secrets)

**AI / Big Data /IoT
in Patent law and EU law**
(... and what the EU can
do...)



- Protection discussion

- Investment oriented discussion on incentivization
- Ethical discussion on data property
- Both arguments seem to have little merit

- Access & portability discussion

- Access to collected use/behaviour data etc. vs. **access to refined and structured (generated) training data**
- Inner relationship to **incentives** oriented discussion above →
,smart', ,inclusive' IP rights, reduce transaction costs etc.
 - Petty patents?
 - **Revising the database sui generis right** → registered IP right?, protection term, exceptions and/or compulsory licenses
 - **Role of trade secrets?**
 - **Very difficult policy prognosis**
- **New exceptions, compulsory licenses etc.**



- **Contracts & contract law (B2B & B2C)**
 - Best practices, non-mandatory (or even mandatory) contract law
 - Portability (Art. 20 GDPR – model character for the future?)
 - → Art. 16 (4) Digital Content Directive 2019/770 as a first step
 - **How to make this work in practice?** See also *Furman* report et al.
 - Interoperability, APIs etc.
 - Transaction costs (information costs)
- **Competition law and regulation**
 - **New instruments & approaches (pro-active, upstream, horizontal)**
 - **E.g. 10th planned revision of German Competition Act (to be enacted in 2020) → New § 19a GWB!**
 - Data as an essential facility & ‚intermediary‘ market dominance
 - This is not just for the social networks, this is also for IoT!
 - **Area specific access rights →**
Further research on case examples needed and partly underway
 - Partly, already existent
 - No present need for pro-active intervention



- **Relationship of existing IP protection and contracts**
 - Almost no IP contract law on the European level!
(e.g. Trade Secrets Directive)
 - Competition law issue of ‚empty‘ licenses (IP & trade secrets)
 - → Contract law instruments and refined competition law analysis needed
- **Intellectual Property**
 - Extending registration requirements, incentivizing/enforcing disclosure, improving access?
 - In copyright: new exceptions (fair use/revision of TDM)
 - Database sui generis protection for collected data → Need for reform!
 - In patents → ...
 - **Trade Secrets Directive (additional flexibility in particular in enforcement) – trade secrets as the new paradigm?**
 - Additional guidance for licenses in the field
 - Will trade secret protection inhibit necessary access to training data?



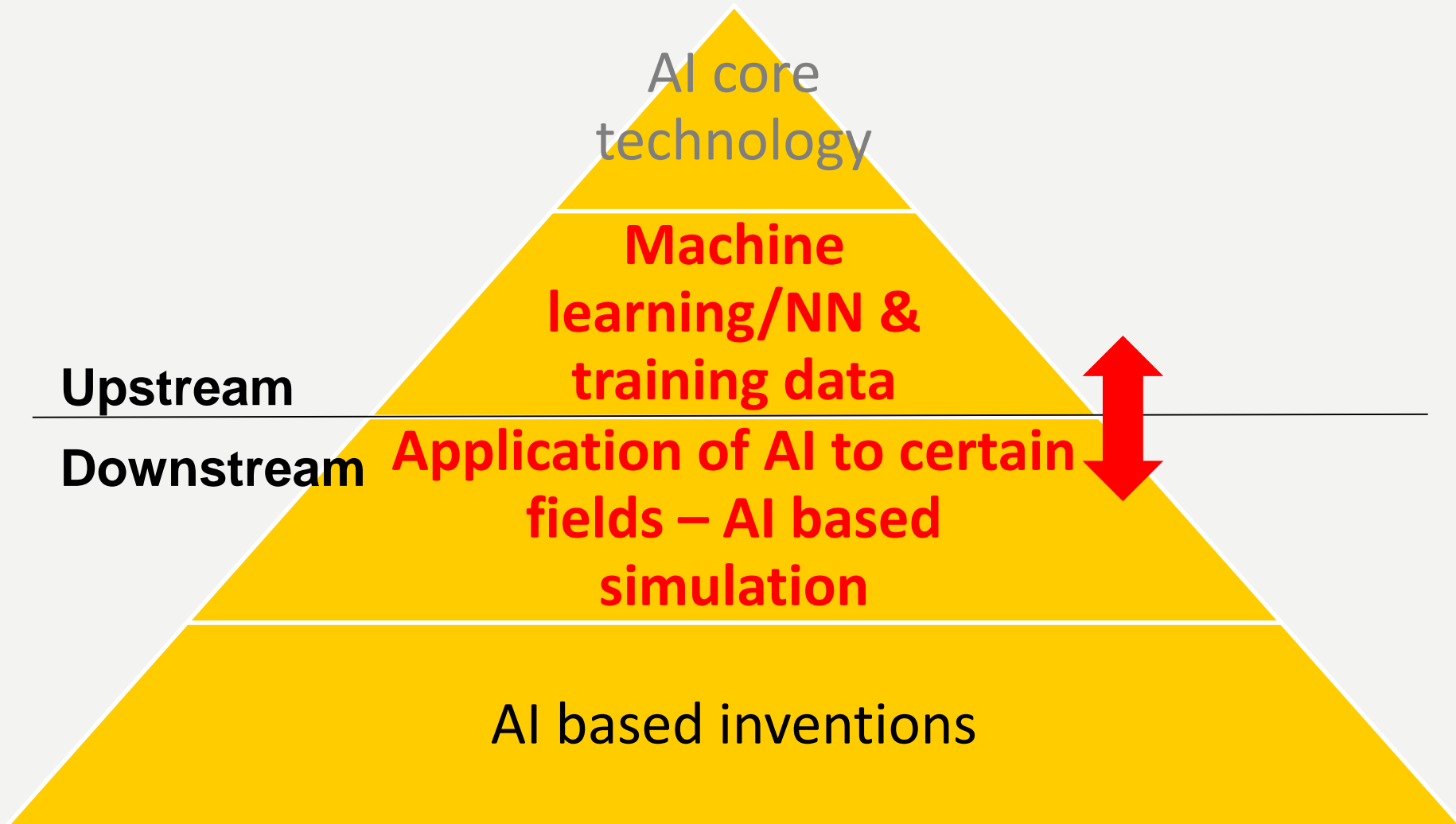
Challenges for the patent system

Protection

- Upstream
- Downstream

Access & disclosure

- Training data
- AI results (eg. for improvement etc.)
- IoT Communication Standards





Disclosure, access & use: Two main problems

Disclosure & access

- To training data & AI results
- E.g. for improvements etc.

Accessibility & portability of AI standards & data

- IoT Communication Standards →
- IoT in the age of SEPs



• Scope of protection

- Process patents and their scope concerning resulting products – reach through problems?
- **Data set as direct product of a patented process (algorithm)**
 - German Federal Court of Justice
 - MPEG2 –Videosignalkodierung (2012) > Rezeptortyrosinkinase II (2016)
 - Different situation in U.S. law
- New multi-polar & international infringements
- **No ‚automatic‘ injunctions? Proportionality?**
 - General proportionality qualification in injunctions?
 - Cf. the recent German policy discussion



Access and portability in IoT & AI in the age of SEPs – even larger problems

(AI Standards needed, more players across more industry sectors)

Patent law instruments

- Licensing of rights registrations (LORs)?
 - New ‚collecting societies‘?
 - Compulsory arbitration?
- Extended role for the Patent Offices?
- **Proportionality in enforcement?**

Competition law

- **Targeting the SSO's** (e.g. essentiality check, transparency, ...) – more specific competition law framework under Art. 101?
 - **But: what about trade secrets?**
- **New instruments under Art. 102 for hold up?**



- **Contracts & contract law**
- **Resurrection of registration requirements for certain new style neighbouring rights? Revision of Db. Dir?**
- **Trade Secrets**
- **Enforcement: Enforcement Directive (2004) → Trade Secrets Directive (2016)**
- **Competition Law (pro-active, upstream, horizontal) & Regulation**
- **New institutional alternatives**

Thank you very much for your
attention!

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