KILPATRICK TOWNSEND

TEXAS Law

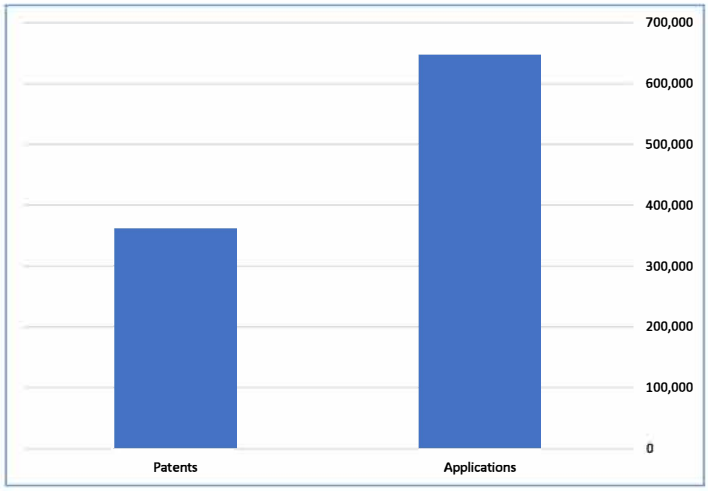
# IP Considerations For Generative AI

*Patrick Njeim, November 2, 2023*



## Let's start with numbers

- How many patent applications were filed in 2021?
  - 646,855
- How many patents were issued in 2021?
  - 360,625
- How many AI patent applications were filed in 2021?
  - 13,898
- Average annual growth rate?
  - 38%- highest across technology areas
- 2023 and on should see higher growth rate in view of generative AI



# Example AI: "self-learning"

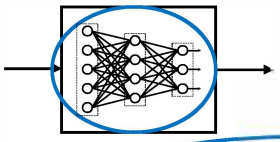
- DeepMind (acquired in 2015 by Alphabet/Google)
- Video shows AI-powered robots playing football
  - No human programming
  - Motion capture data to teach robots how to move like humans
  - Then robots given goal: score goals
  - Robots self-learned moves to play the game by testing different moves over 2 weeks



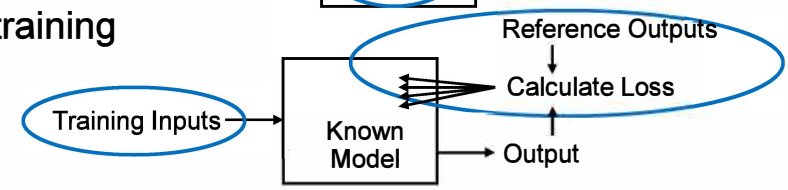


# Areas of protection

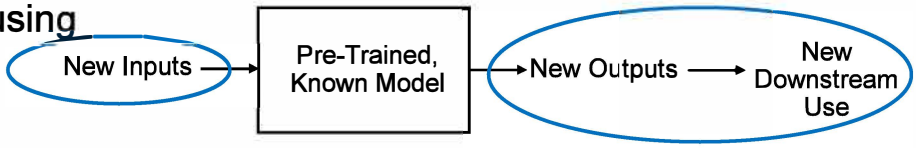
- Type 1 – New model (can be combination of known models)



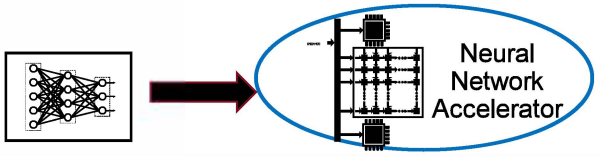
- Type 2 – New method of training model



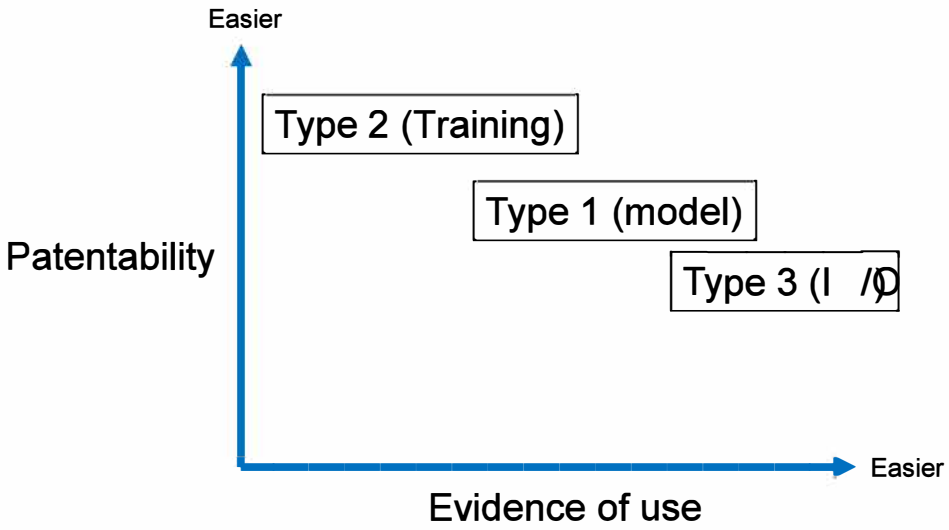

- Type 3 – New method of using model




- Type 4 – New hardware for runtime/training



# The balance in the software space



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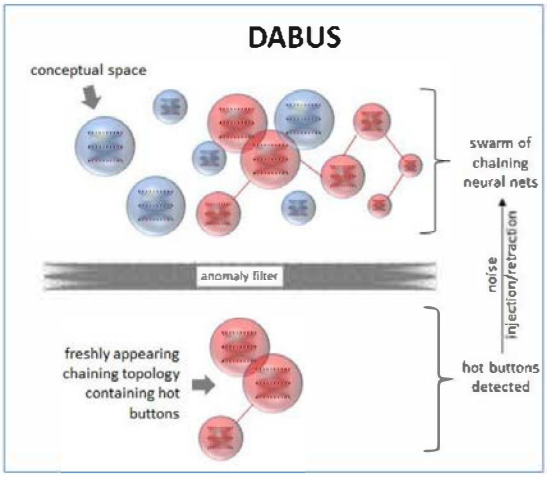
# Can an AI model be an inventor? Short answer: no.

- DABUS: Device for the Autonomous Bootstrapping of Unified Sentience
  - AI model developed by Thaler
- DABUS named as sole inventor:
  - US 16/524,350 (light beacon that flashes in a new and inventive manner to attract attention)
  - US 16/524,532 (beverage container based on fractal geometry)
- USPTO found application incomplete for not naming an inventor per patent act (35 U.S.C. § 100(f))
- On appeal, Federal circuit found AI cannot be inventor
  - 35 U.S.C. § 100(f): inventor is "individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention"
  - although "individual" not defined, it is clear from the language of the statute that an "individual" is a natural person




See US 2015/0379394



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# Title search: IP Considerations for Generative AI

Also available as part of the eCourse
2023 Advanced Patent Law (Austin) eConference

First appeared as part of the conference materials for the
28th Annual Advanced Patent Law Institute session
"IP Considerations for Generative AI"