

Artificial Intelligence (AI) Generated Inventions

- Mitchell S. Feller,
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- Bennett Rockney
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- Barbara Fiacco
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INTRODUCTION

- **What is AI ? (Mitchell Feller)**
- **Current Patent Protections Available for AI Related Inventions (Ben Rockney)**
- **Challenges For Protecting AI Generated Inventions (Barbara Fiacco)**
- **Questions and Answers**



Artificial Intelligence and Inventions

Mitchell Feller

Principal

Gottlieb Rackman & Reisman, P.C.

New York, NY

What is Artificial Intelligence?

A computer that is designed to do something that we typically view as requiring human intelligence

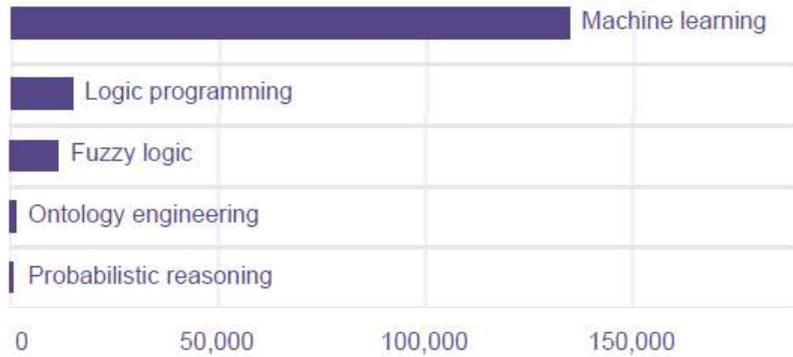
- Many different types of technologies
- Many different uses



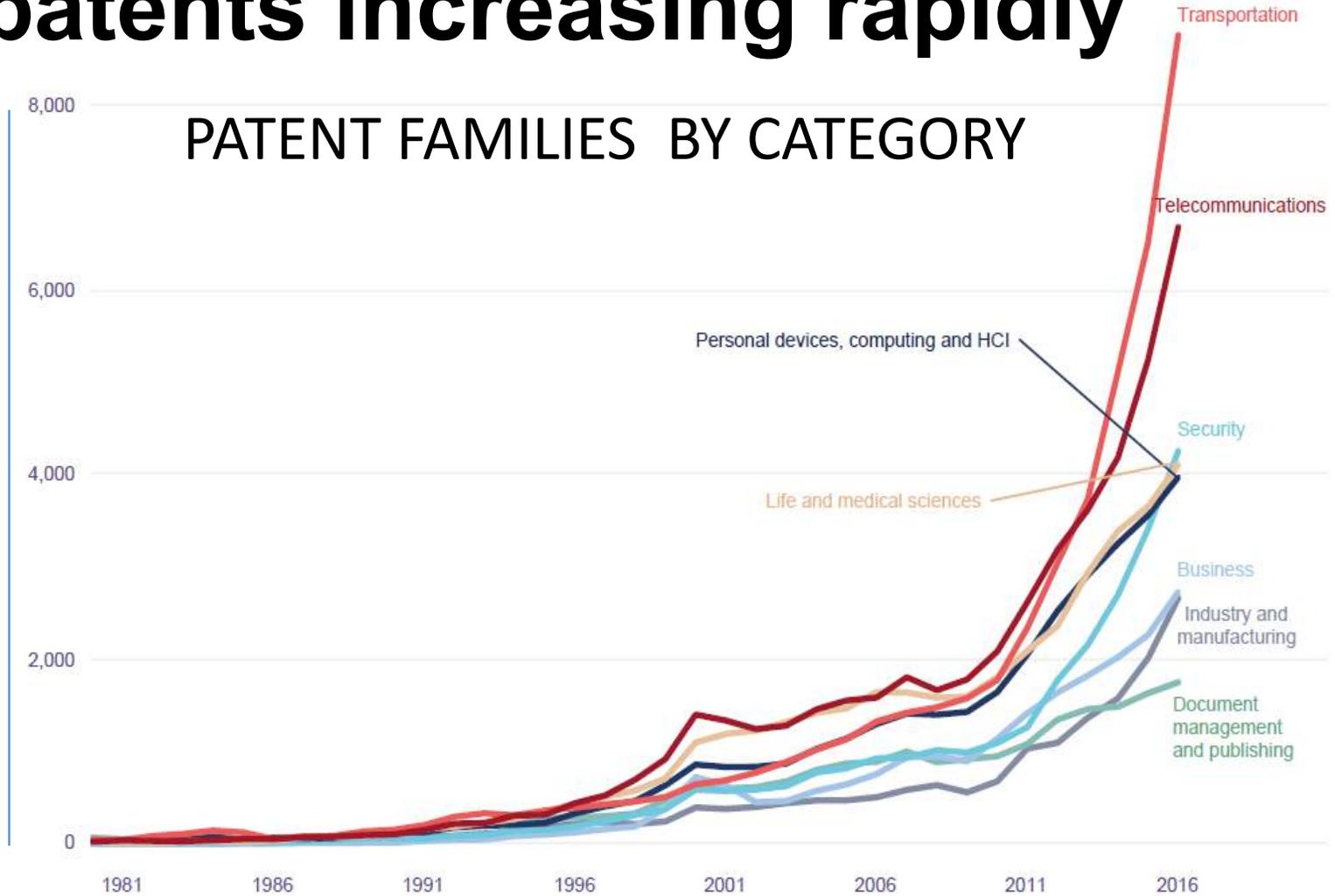
...dark and stormy night...

Number of AI patents increasing rapidly

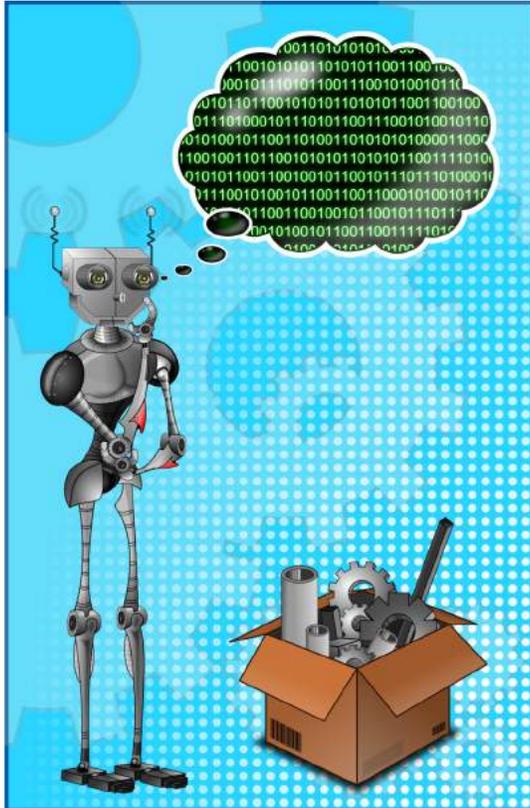
PATENT FAMILIES BY AI TECHNIQUE



PATENT FAMILIES BY CATEGORY



Continuum of inventions involving AI



1. Human-made inventions using AI for the verification of the outcome. ✓
2. A human identifies a problem and uses AI to find a solution. ?
3. AI-made inventions, i.e. AI identifies a problem and proposes a solution without human intervention. !

-> PATENT PROTECTION REQUIRES A HUMAN INVENTOR

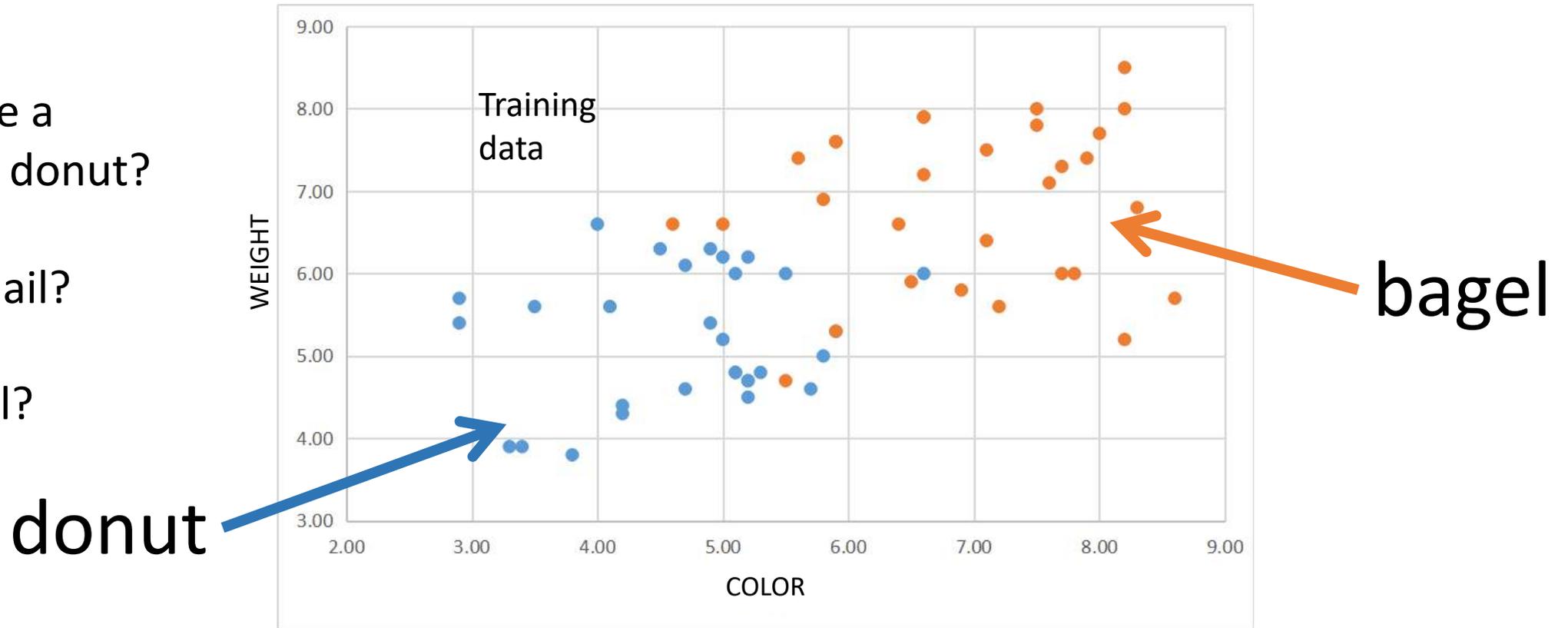
Generic Machine Learning AI system



- Image analysis and computer vision
- Medical diagnosis
- Robotics and gaming systems
- Financial trading
- Spam detection
- ...

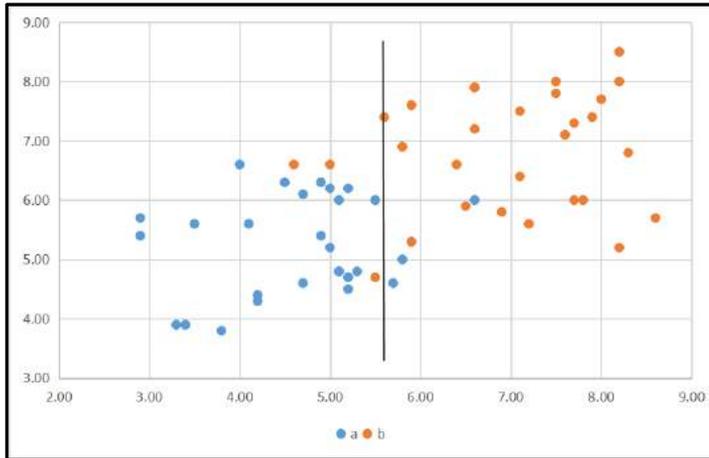
Example - Decide between A and B?

- Is a picture a bagel or a donut?
- Spam e-mail?
- Buy or Sell?

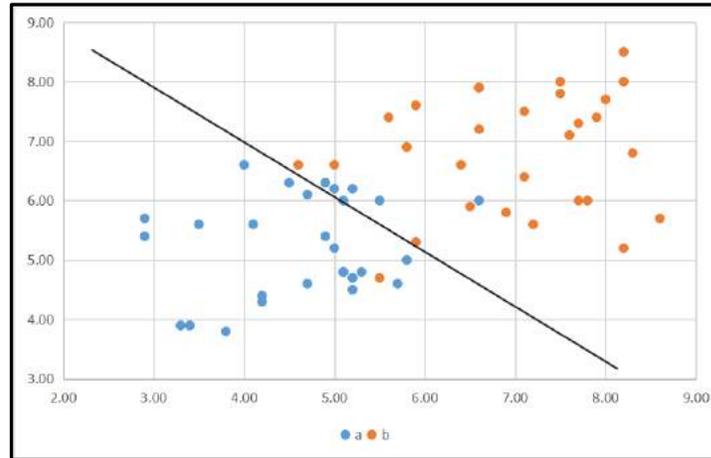


Probability function - bagel or donut?

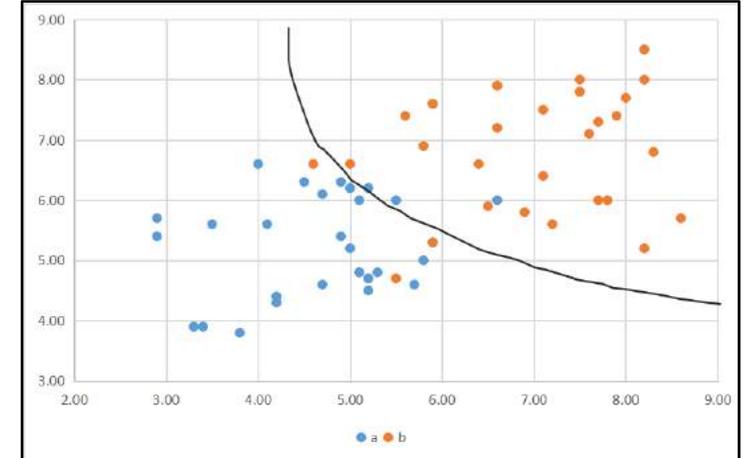
Likely a bagel



Likely a bagel



Likely a bagel

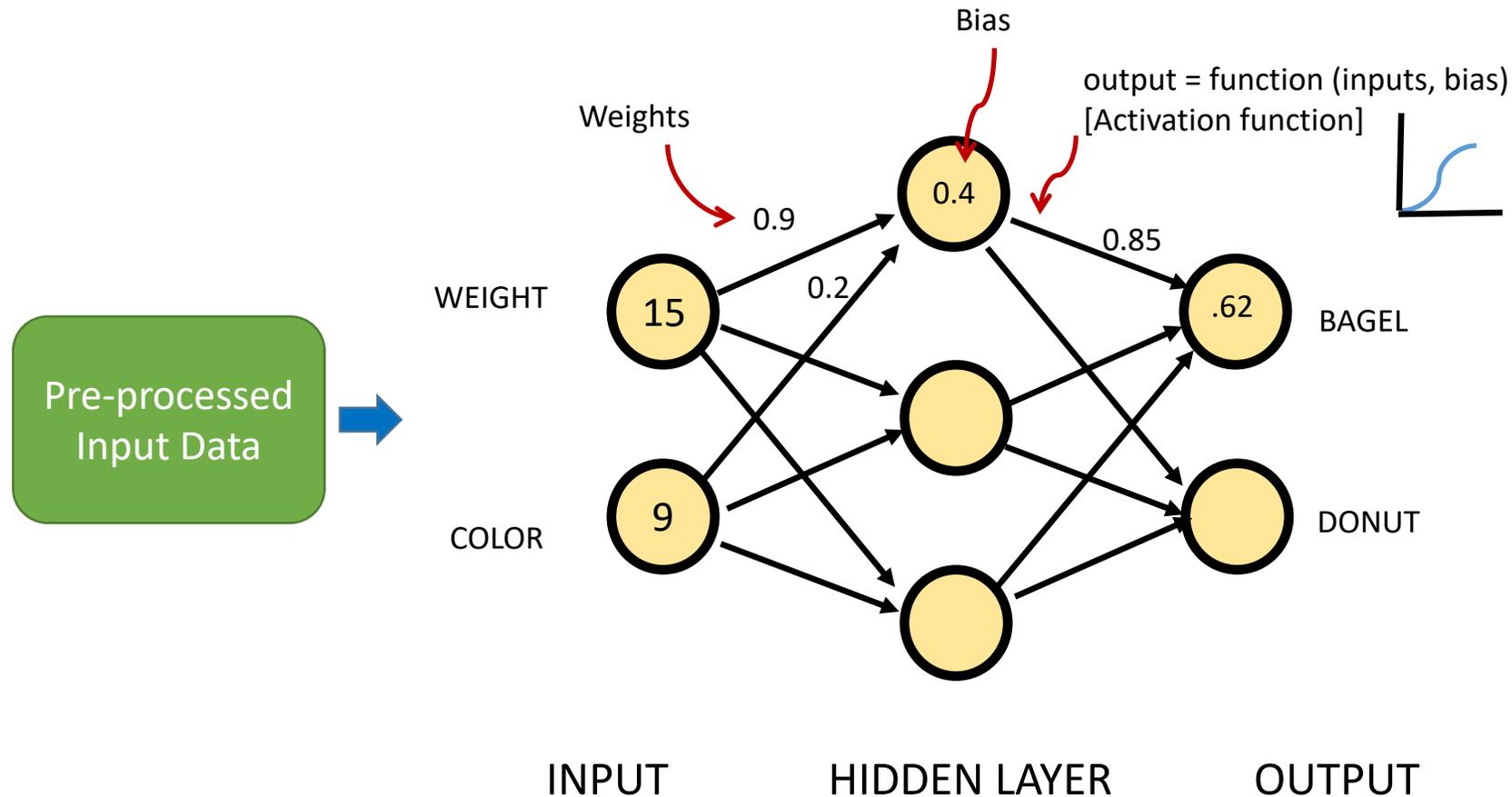


Likely a donut

Likely a donut

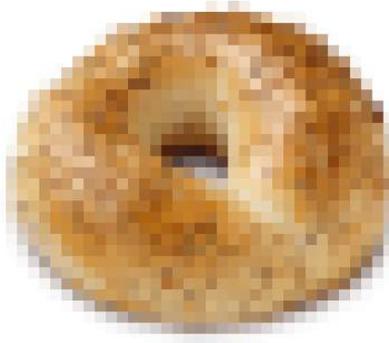
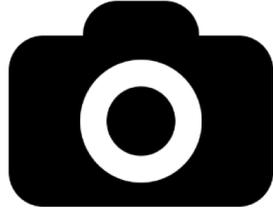
Likely a donut

Neural network

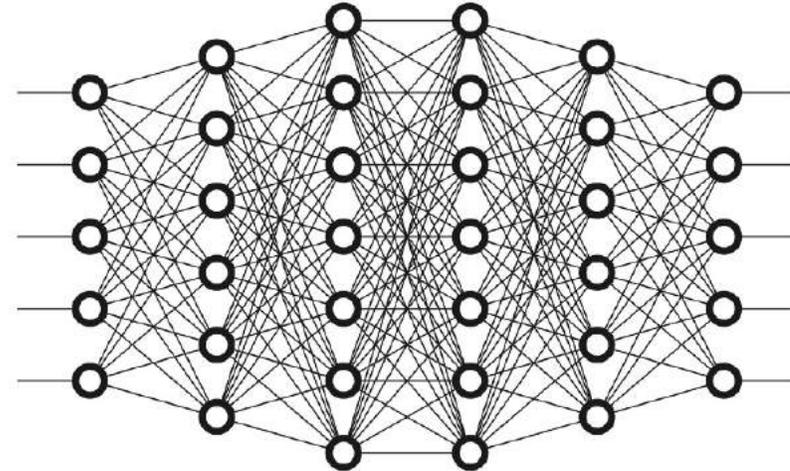


- Apply training data and adjust weights and biases to reduce error
- Apply new data to trained network

Deep Learning Network



Raw Data



Input layers

Hidden layers

Output layers

- Bagel
- Donut
- Bialek
- Pita
- Pan Chuta

AI as the Inventor

“Creative” AI systems today can generate:

- music
- visual artworks
- news articles and blogs (some real but some fake!) as well as stories and ‘poetry’
- names and logos for business and products



AI systems that can generate new ‘innovations’ are being developed.

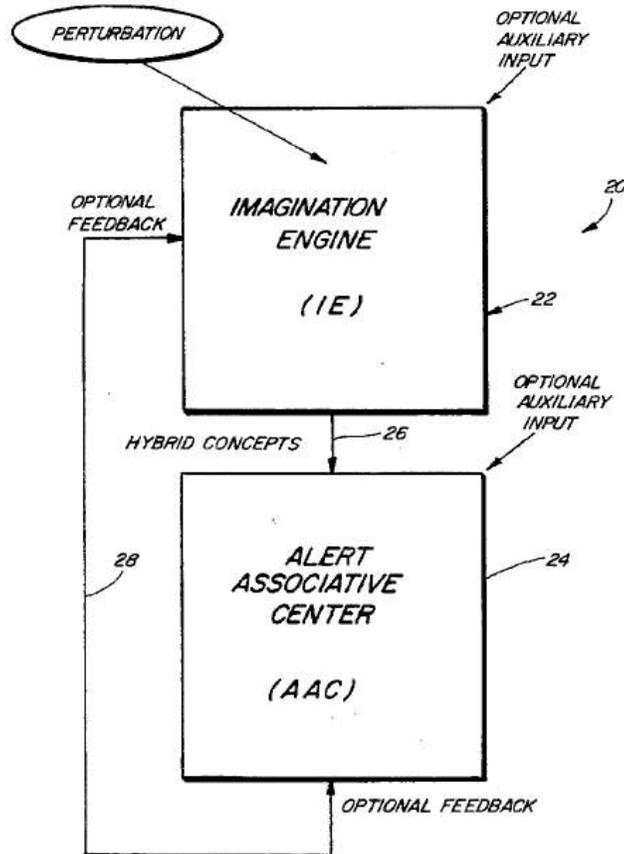
AI as the Inventor

- AI inventions typically concern the tech of the AI system itself and reside within the system. Can be protected by patent or trade secret.
- On the horizon -- Inventions generated by an AI system with limited (or no) human intervention; inventions can exist independently of the AI system.
- How can AI generated inventions be protected? Without a human inventor it (currently) cannot be patented.

AI as the Inventor

U.S. PATENT NO. 5,659,666

By Dr. Stephen Thaler



Neural Net 1: Trained to address a problem and output concepts and “progressively preturbed”.

Neural Net 2: Monitors 1st Net and identifies and isolates useful outputs

“DEVICE FOR THE AUTONOMOUS GENERATION OF USEFUL INFORMATION”

“The present device provides a way to design around the ordinary or the near ordinary and to create new designs in much the same manner as a creative designer would do, unlimited by certain constraints.”
(Col. 2:37-40)

AI as the Inventor - The Dabus AI system

DABUS - “Device for Autonomous Bootstrapping of Unified Sentience”

- From Dr. Thaler -- Multiple neural designed to feed off of and play against each other to improve the output to create something new. (“Generative adversarial network”)
- Patent applications filed in the UK, EU, and the US claiming Dabus as the sole inventor of an improved interlocking food container and a flashing light that mimics neural activity so it is more noticeable.
- Is Dabus an actual inventor (conception)? If so can its inventions be protected? Stay tuned....

IMAGINATION ENGINES, INC. - <http://imagination-engines.com>

US Patent 10,423,875 (Dabus system tech)

AI as the Inventor - The Dabus AI system

FOOD CONTAINER

A container for use, for example, for beverages, has a wall with an external surface and an internal wall of substantially uniform thickness. The wall has a fractal profile which provides a series of fractal elements on the interior and exterior surfaces, forming pits and bulges in the profile of the wall and in which a pit as seen from one of the exterior or interior surfaces forms a bulge on the other of the exterior or interior surfaces. The profile enables multiple containers to be coupled together by inter-engagement of pits and bulges on corresponding ones of the containers. The profile also improves grip, as well as heat transfer into and out of the container.

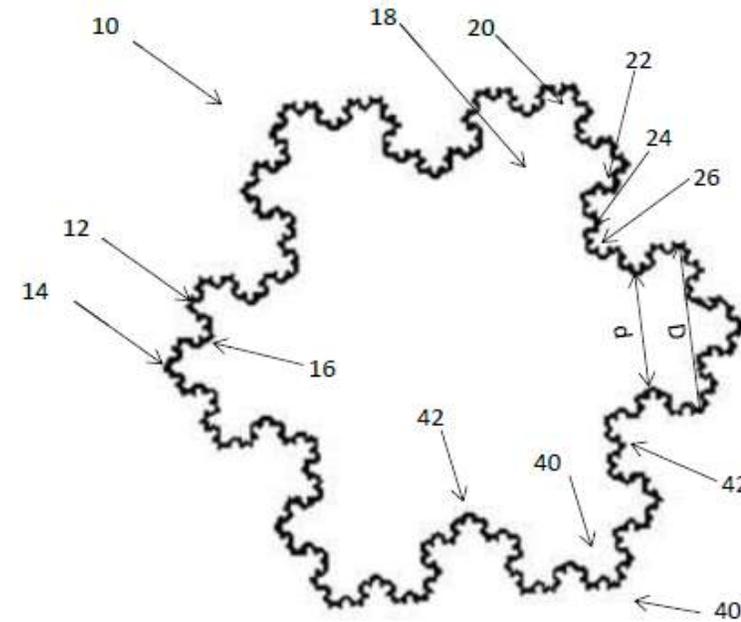


Fig. 1

AI as the Inventor - The Dabus AI system

DEVICES AND METHODS FOR ATTRACTING ENHANCED ATTENTION

The present invention discloses devices and methods for attracting enhanced attention.a neural flame emitted from at least one controllable light source as a result of the lacunar pulse train is adapted to serve as a uniquely-identifiable signal beacon over potentially-competing attention sources by selectively triggering human or artificial anomaly-detection filters, thereby attracting enhanced attention.

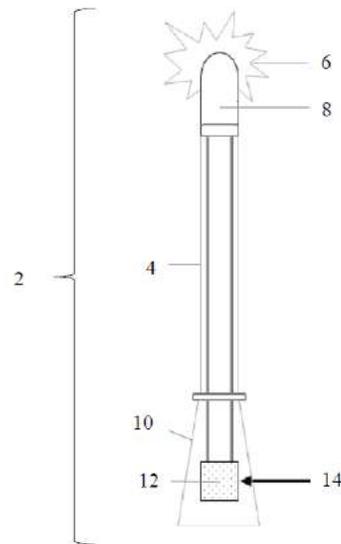
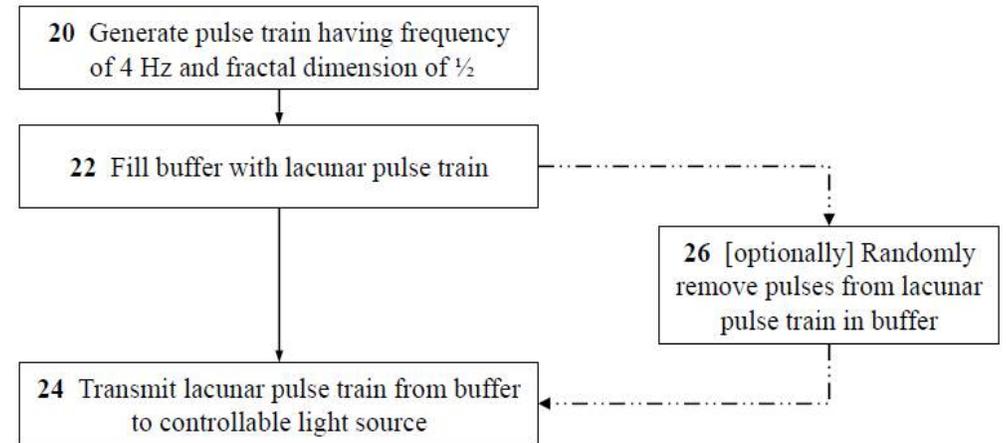


Figure 1



Protection Available for AI - Related Inventions

Ben Rockney

Technology Licensing Officer – Medical Devices

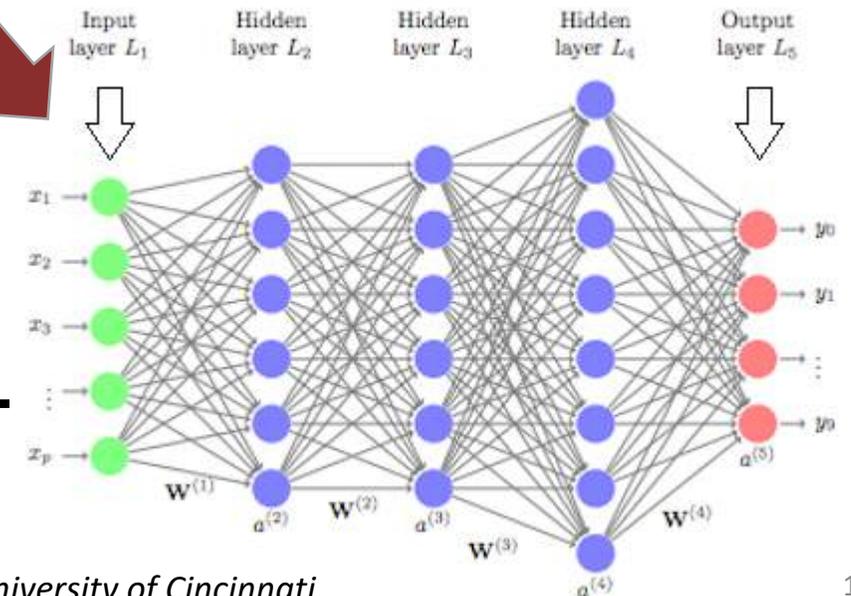
Technology Licensing Office

Massachusetts Institute of Technology

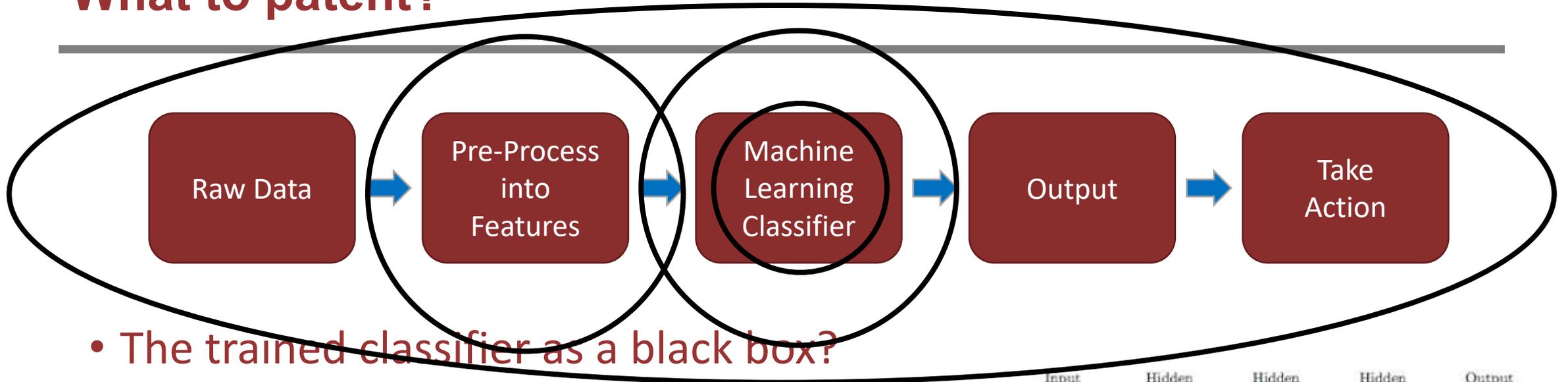
Use of a Typical Machine Learning Invention



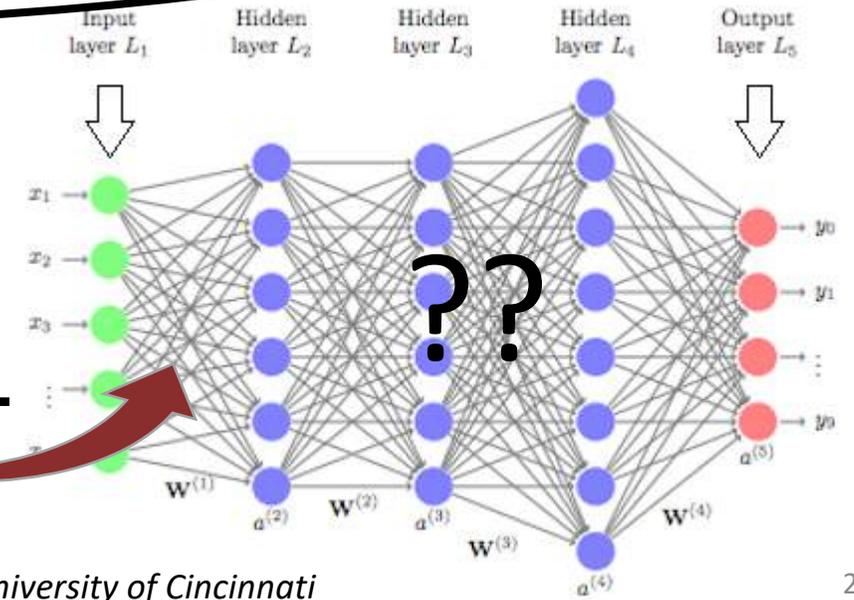
- Train with data
- Verify with new data
- Use with real world data
- Continue to learn from the real world data



What to patent?



- The trained classifier as a black box?
- New inventions in the classifier?
- The features used?
- The entire system?



US Challenges in Patenting Artificial Intelligence Inventions

- Evolving in the broader context of §101 and *Alice v. CLS Bank*
 - Claims may not be directed to a “Judicial Exception” (“JE”)
 - Laws of nature, natural phenomena, *abstract ideas*
 - Often summarized as “An algorithm [or software] isn’t patentable.”
 - Claims strategy since *Alice*: tie the abstract concept to something tangible – mixed and inconsistent success
- *USPTO 2019 Revised Patent Subject Matter Eligibility Guidance*
 - “a claim that recites a JE is not ‘directed to’ the JE if the JE is integrated into a practical application of the JE”
 - This has changed the game for getting claims to allowance but will they withstand a challenge?



<https://www.govinfo.gov/content/pkg/FR-2019-01-07/pdf/2018-28282.pdf>

EP Challenges in Patenting Artificial Intelligence Inventions

- List of exclusions” from patent eligible subject matter includes
 - “Programs for computers”
 - Mathematical methods
- The EPO issued new guidelines in 2018 affecting patenting AI and ML
 - “...it must be taken into account whether the method, in the context of the invention, serves a *technical purpose*” ; e.g.
 - Controlling a specific technical system or process, e.g. an X-ray apparatus or steel cooling process
 - Providing a medical diagnosis by an automated system processing physiological measurements
 - Claim tangible result or technical implementation specific to the anticipated use

Other Challenges in Patenting AI Inventions

- But AI faces additional challenges unique to the field
 - § 101 Patentable subject matter
 - § 102 Novelty
 - § 103 Not obvious *to one skilled in the art*
 - § 112 Enablement
 - Detection of infringement
 - Inventorship and ownership

An Alternative to Patenting

- A very valuable machine learning implementation may not be patentable
 - Use of a commercial machine learning package isn't novel
 - Input may be obvious; e.g. temperature, heart rate, blood pressure, oximetry,...
 - Training method or feature extraction is knowhow rather than invention
- But the input data may be very valuable and expensive to acquire
 - Access to millions of users' internet activity; e.g. Google or Facebook or Amazon
 - Human medical data
 - Geographically dispersed or in wildly different formats

An Alternative to Patenting - Protect Data as a Trade Secret

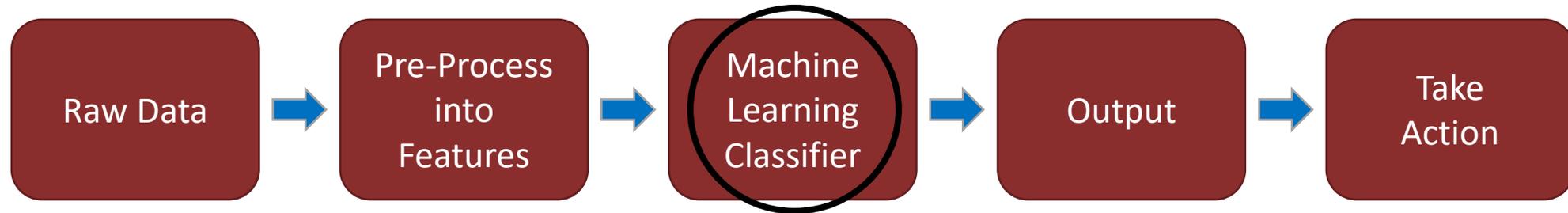
- Pros

- Nothing taught to competitors
- Immediate competitive advantage with known bounds

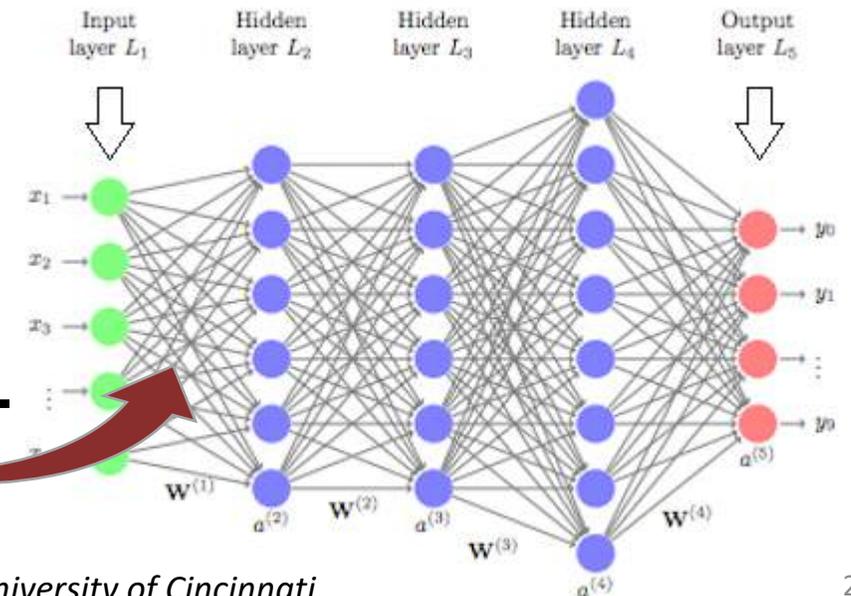
- Cons

- No legal barrier to competition
- Data can be replicated by others if the market justifies the cost
- Investors may be less familiar with copyrights and trade secrets

What to patent?



- The trained classifier as a black box?
- New inventions in the classifier?
- The features used?
- The entire system?



Example of Claims on Deep Learning Structure (pre-Alice)

(12) **United States Patent**
Serre et al.

(10) **Patent No.:** US 7,606,777 B2
(45) **Date of Patent:** Oct. 20, 2009

(54) **HIGH-PERFORMANCE VISION SYSTEM
EXPLOITING KEY FEATURES OF VISUAL
CORTEX**

(75) Inventors: **Thomas Serre**, Cambridge, MA (US);
Tomaso Poggio, Wellesley, MA (US);
Maximilian Riesenhuber, Vienna, VA
(US); **Lior Wolf**, Cambridge, MA (US);
Stanley M. Bileschi, Cambridge, MA
(US)

(73) Assignee: **Massachusetts Institute of Technology**,
Cambridge, MA (US)

(*) Notice: Subject to any disclaimer, the term of this
patent is extended or adjusted under 35
U.S.C. 154(b) by 498 days.

(21) Appl. No.: **11/515,503**

(22) Filed: **Sep. 1, 2006**

(65) **Prior Publication Data**
US 2008/0071710 A1 Mar. 20, 2008

(51) **Int. Cl.**
G06E 1/00 (2006.01)
G06E 3/00 (2006.01)
G06G 7/00 (2006.01)
G06F 15/18 (2006.01)
G06F 15/00 (2006.01)

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19.*

Bileschi, S. and L. Wolf, "A Unified System for Object Detection,
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Conference held at Oxford Brookes University, Sep. 5-8, 2005, pub-
lished in *British Machine Vision Conference (BMVC) 2006*.

Serre, T. et al., "Object Recognition with Features Inspired by Visual
Cortex," *Proceedings of 2005 IEEE Computer Society Conference on
Computer Vision and Pattern Recognition*, Jun. 20-25, 2005 (pp.
994-1000).

Lourens, T. et al., "Large scale natural vision simulations," *Future
Generation Computer Systems 10* (1994) pp. 351-368.

(Continued)

Primary Examiner—David R Vincent

Assistant Examiner—Peter Coughlan

(74) *Attorney, Agent, or Firm*—Hamilton, Brook, Smith &
Reynolds, P.C.

(57) **ABSTRACT**

An artificial visual recognition system and method employ a
digital processor and a model executed by the digital proces-
sor. The model has a loose hierarchy of layers. Each layer,
from a lowest hierarchy level to a top level, provides relatively
increasing selectivity and invariance of the input image. The



Example of Claims on Deep Learning Structure (pre-Alice)

...er computers 60) in
...tion are executed or
...ains system bus 79,
...used for data transfer
...r processing system.
...at connects different
...rocessor, disk storage,
...rts, etc.) that enables
...lements. Attached to
...for connecting vari-
...ard, mouse, displays,
...ter 50, 60. Network
...nect to various other
...√ or global network).
...r computer software
...ment an embodiment
...and model operation
...rovides non-volatile
...ions 92 and data 94
...ae present invention.
...to system bus 79 and
...instructions.
...itines 92 and data 94
...ally referenced 92),
...n (e.g., a removable
...DVD-ROM's, CD-
...des at least a portion
...ention system. Com-

For example, the foregoing tables of parameter values are given by way of illustration and not limitation. Other parameter values are suitable.

What is claimed is:

1. An artificial visual recognition system comprising:
a digital processor; and

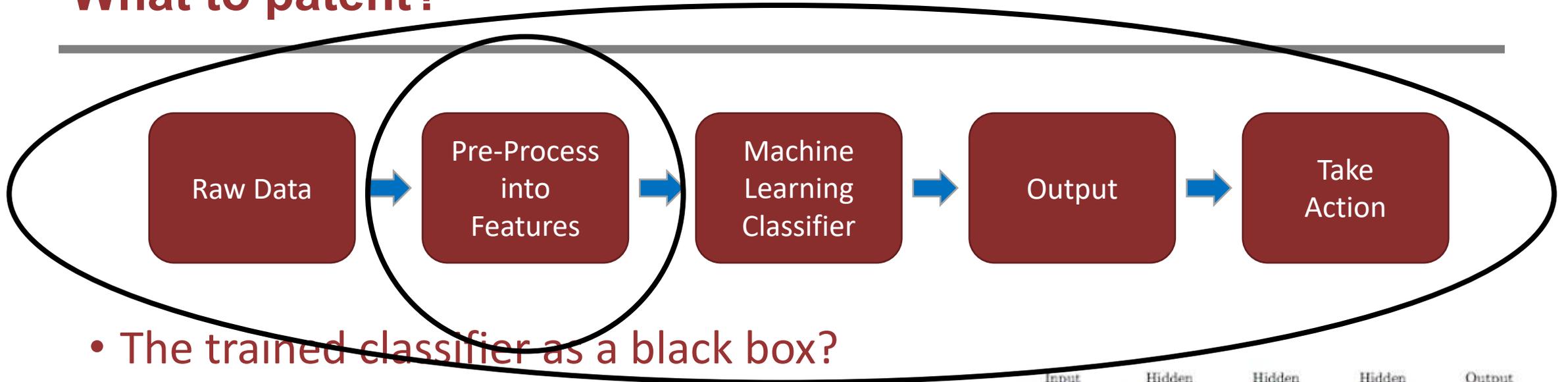
a model that effectively replicates a visual cortex, the model executed by the digital processor and having a loose hierarchy of layers, each layer, from a lowest hierarchy level to a top level, providing increasing selectivity and invariance of an input image such that model output produces feature recognition and classification of an object in the input image, the hierarchy allowing bypass routes between layers, at least one bypass route from a layer at one level to a higher layer enabling increased selectivity and decreased invariance to the input image at the higher layer relative to a layer at a hierarchy level succeeding the one level, the at least one bypass route corresponding to a direct projection in the visual cortex.

2. A system as claimed in claim 1 wherein at one or more layers selectivity is learned in an unsupervised manner.

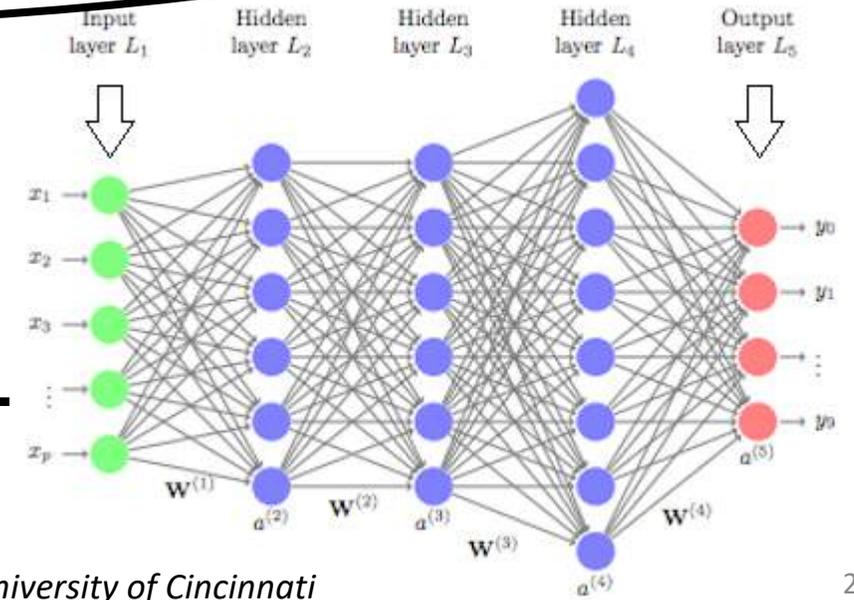
3. A system as claimed in claim 2 wherein selectivity is learned from a data set of natural images.

4. A system as claimed in claim 2 wherein the layer at the top level in the hierarchy is task dependent and undergoes supervised learning.

What to patent?



- The trained classifier as a black box?
- New inventions in the classifier?
- The features used?
- The entire system?



Example of Claims on Entire System (post 2019 Guidance)

<p>(12) United States Patent Giancardo et al.</p>	<p>(10) Patent No.: US 9,867,573 B2 (45) Date of Patent: Jan. 16, 2018</p>																		
<hr/>																			
<p>(54) APPARATUS AND METHOD FOR MOTOR FUNCTION CHARACTERIZATION</p>	<p>5/7278; A61B 5/6897; A61B 5/7246; A61B 5/6898; A61B 5/0022; A61B 5/4088; A61B 5/4806</p>																		
<p>(71) Applicant: Massachusetts Institute of Technology, Cambridge, MA (US)</p>	<p>See application file for complete search history.</p>																		
<p>(72) Inventors: Luca Giancardo, Dorchester, MA (US); Alvaro Sanchez Ferro, Cambridge, MA (US); Ian Butterworth, Cambridge, MA (US); Carlos Sanchez Mendoza, Seville (ES)</p>	<p>(56) References Cited</p>																		
<p>(73) Assignee: Massachusetts Institute of Technology, Cambridge, MA (US)</p>	<p>U.S. PATENT DOCUMENTS</p> <table border="0"> <tr> <td>8,285,658 B1</td> <td>10/2012</td> <td>Kellas-Dicks et al.</td> </tr> <tr> <td>8,346,680 B2</td> <td>1/2013</td> <td>Castleman et al.</td> </tr> <tr> <td>8,671,347 B2</td> <td>3/2014</td> <td>Bromer</td> </tr> <tr> <td>2005/0065452 A1</td> <td>3/2005</td> <td>Thompson</td> </tr> <tr> <td>2006/0195328 A1</td> <td>8/2006</td> <td>Abraham et al.</td> </tr> <tr> <td>2008/0091639 A1</td> <td>4/2008</td> <td>Davis et al.</td> </tr> </table> <p>(Continued)</p>	8,285,658 B1	10/2012	Kellas-Dicks et al.	8,346,680 B2	1/2013	Castleman et al.	8,671,347 B2	3/2014	Bromer	2005/0065452 A1	3/2005	Thompson	2006/0195328 A1	8/2006	Abraham et al.	2008/0091639 A1	4/2008	Davis et al.
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<p>(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 77 days.</p>	<p>FOREIGN PATENT DOCUMENTS</p> <table border="0"> <tr> <td>WO</td> <td>WO 2007/078756 A2</td> <td>7/2007</td> </tr> <tr> <td>WO</td> <td>WO 2012/128952 A2</td> <td>9/2012</td> </tr> </table>	WO	WO 2007/078756 A2	7/2007	WO	WO 2012/128952 A2	9/2012												
WO	WO 2007/078756 A2	7/2007																	
WO	WO 2012/128952 A2	9/2012																	
<p>(21) Appl. No.: 14/668,945</p>	<p>OTHER PUBLICATIONS</p>																		
<p>(22) Filed: Mar. 25, 2015</p>	<p>US 8,621,363, 12/2013, Bromer (withdrawn)</p> <p>(Continued)</p>																		
<p>(65) Prior Publication Data</p> <p>US 2015/0272504 A1 Oct. 1, 2015</p>	<p><i>Primary Examiner</i> — An T Nguyen (74) <i>Attorney, Agent, or Firm</i> — Wolf, Greenfield & Sacks, P.C.</p>																		
<p>Related U.S. Application Data</p>	<p>(57) ABSTRACT</p>																		
<p>(60) Provisional application No. 61/969,940, filed on Mar. 25, 2014.</p>	<p>Analysis of keystroke dynamics performed by an individual can be used for assessment and monitoring of the individual's motor function. Keystroke events related to a user pressing one or more keys on a keyboard or regions on a touch screen may be analyzed to identify a plurality of distributions of keystroke event intervals. The plurality of distributions may be analyzed to identify one or more features indicative of variation among the distributions and</p>																		
<p>(51) Int. Cl. <i>A61B 5/00</i> (2006.01) <i>A61B 5/11</i> (2006.01)</p>																			
<p>(52) U.S. Cl. CPC <i>A61B 5/6897</i> (2013.01); <i>A61B 5/1124</i> (2013.01); <i>A61B 5/4082</i> (2013.01); <i>A61B</i></p>																			

Example of Claims on Entire System (post 2019 Guidance)

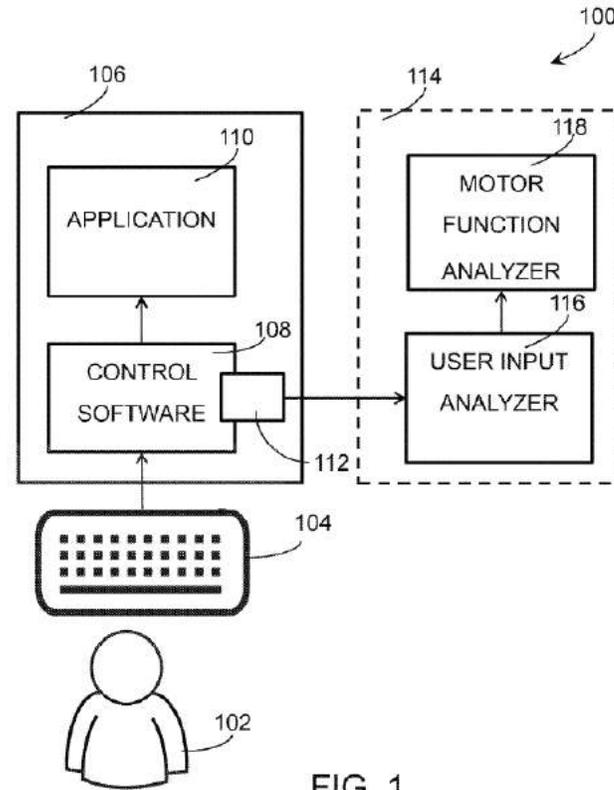


FIG. 1

Example of Claims on Entire System (post 2019 Guidance)

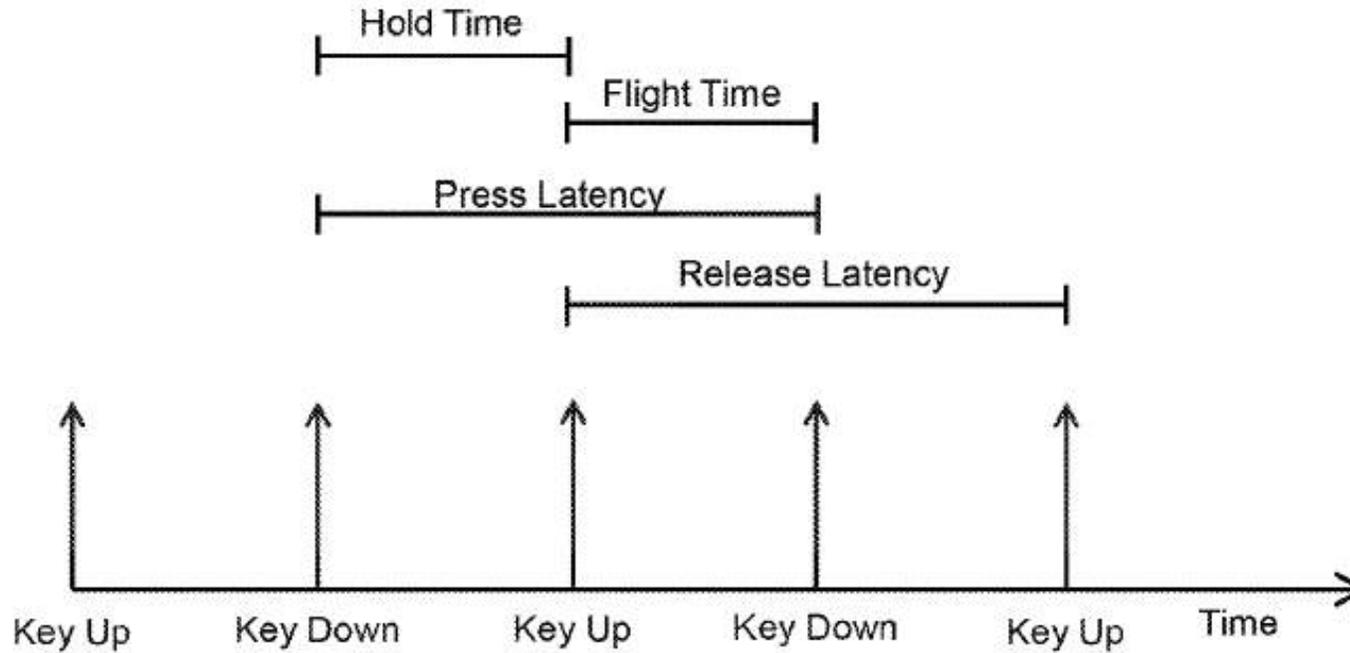


FIG. 2

Example of Claims on Entire System (post 2019 Guidance)

21. A method of characterizing motor function of a user by analyzing an input by the user to a user interface of at least one computing device, the method comprising:

receiving a sequence of keystroke events indicating that the user pressed at least a portion of the user interface over a time duration;

determining a plurality of biosignatures indicative of the user's motor function at different times by determining, for a biosignature of the plurality of biosignatures, a plurality of distributions of keystroke event intervals over at least some of the time duration, wherein each distribution of the plurality of keystroke distributions corresponds to a portion of the time duration; and monitoring motor function in the user by tracking a condition of the user's motor function over time based on comparing a first biosignature of the plurality of biosignatures with a second biosignature.

22. The method of claim 21, further comprising:

identifying impairment in the user's motor function over time based on monitoring the user's motor function; and

comparing a characterization of the user's motor function to characterizations of motor function associated with a plurality of conditions and, when the characterization of the user's motor function matches a characterization associated with a condition, storing an indication that the user may have the condition.

23. An electronic device comprising:
a tactile interface for receiving a plurality of keystrokes,

Thank You





Protecting AI-Generated Inventions: Inventorship and Ownership

Barbara A. Fiacco | Partner
Foley Hoag LLP

In April 2018, a World Economic Forum White Paper entitled “Artificial Intelligence Collides with Patent Law” reported:

- In 2016, tech businesses invested \$26B-\$39B in AI with a 300% increase in investment expected in 2017
- AI penetration in business was estimated at 38% with estimated growth to 62% in 2018
- Number of AI patents granted had tripled from 2012 to 2016

The Monkey Selfie Case

- Photographer traveled to national park in Indonesia
- Placed his camera on a tripod and one curious monkey was drawn to reflection in lens, taking a few pictures
- First pictures were poor quality
- Photographer adjusted settings
- This selfie was taken
- Photographer circulated to news sources and Wikipedia then posted it over photographer's objection



The Monkey Selfie Case

- Who should own the copyright
 - the monkey?
 - the photographer who set up with camera?
 - the national park?
 - no one?



The Monkey Selfie Case

US?

- U.S. Copyright Office (2014): works created by animals belong in the public domain
- 9th Circuit Court of Appeals: animals lack standing to sue for copyright infringement



The Monkey Selfie Case

- **EU?**
 - *Painer v. Standard Verlags GmbH* (C 145/10):
photographer's creative choices (background, pose, lighting, etc.) may confer originality to merit copyright protection
- **UK?**
 - CDPA 9(3): "In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken"



Current U.S. Patent Law

“The term ‘inventor’ means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.”

35 U.S.C. § 100(f)

“Conception is the touchstone of invention.” It is “the formation in the mind of the inventor, of a definite and permanent idea of the complete and operative invention.”

Burroughs Welcome Co. v. Barr Labs., Inc., 40 F.3d 1223, 1227-28 (Fed. Cir. 1994)

Current U.S. Patent Law

“[A] joint invention is the product of *collaboration* of the inventive endeavors of two or more persons *working toward the same end* and producing an invention by their *aggregate* efforts.”

Kimberly-Clark Corp. v. Proctor & Gamble Distrib. Co., 973 F.2d 911, 916 (Fed. Cir. 1992)

“Inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.”

35 U.S.C. § 116 (“Joint Inventions”)

United States Patent Law

Legal entities cannot be named as inventors because “people conceive, not companies.”

New Idea Farm Equip. Corp. v. Sperry Corp., 916 F.2d 1561, 1566 n.4 (Fed. Cir. 1990)

China

- An “inventor” or “designer” is “any person who has made creative contributions to the substantive features of an invention-creation.”
Rule 13 of Chinese Patent Law Implementing Regulations
- An organization of company cannot be an “inventor.”
Examination Guidelines, part 1, Chapter 1, Section 4.12

Korea

- Current law requires inventors to be individuals
- There have been several legislative proposals to address AI-created inventions

Europe

- EPC does not define “inventor”
- EPO assumes the applicant is entitled to the right of the patent as a matter of procedure and has not power to determined questions of inventorship/entitlement
Art. 60(3) EPC
- Courts in contracting states have exclusive jurisdiction to determine entitlement (ownership) claims
Art. 164(1) EPC incorporating Art. I (1) Protocol of Recognition

Japan

- The inventive entity must be a natural person

Possible “inventors” include

- Programmer
- Researcher working with programmer to solve problem
- Data provider
- Researcher reviewing output/possible solutions
- AI entity itself

Is the *human* inventor requirement a relic of the past or a policy-driven judgment?

- Is protection for purely AI-created inventions necessary to incentivize innovation?
- Would patenting purely AI-created inventions confer a “first-mover advantage,” stifling future innovation?
- Or would patenting purely AI-created inventions promote the disclosure and dissemination of useful information upon which others could build?
- Is there a middle ground?
 - Require a heightened obvious standard
 - Provide a shorter patent term

Should an AI entity be recognized as an inventor/owner?

- AI entity could be given legal personhood status like a company
- There has been some recognition of AI entities
 - In 2014, Deep Knowledge, a Japanese venture capital firm, appointed an AI-based robot named Vital to its board of directors
 - In October 2017, an AI-based robot named Sophia was declared a citizen by Saudi Arabia
- What would broader implications be of such legal personhood status?
 - What responsibilities would be required of the AI entity?
 - Would there need to be people associated with/behind the AI entity?
 - What would the respective rights be of an AI entity and person working together in a collaboration?

Is ownership the real issue here?

Can most concerns be addressed by ownership?

- Today, most inventions are assigned to legal persons (i.e., a company or a government)
 - Copyright “work-for-hire” is another contract mechanism for ownership by company
 - Assignment to employers (by employment agreement or other contract) for work performed during employment is standard practice.
 - Collaboration/joint development agreements govern ownership regardless of which company’s employees made the invention

Contract law provides mechanism for dealing with ownership

- Contracts: specify who owns specific IP generated by use of AI
- License agreements for use of AI: specify who owns rights of IP generated by AI entity and license or convey rights
 - Could all IP generated
 - Could be limited in scope of what was intended use of AI
- Implied agreements: akin to “employed to invent” situation with inquiry being whether the use of the AI fell within scope of contemplated use
- “Service” agreements and trouble-shooting by programmer could create complications
- Note that ownership of data sets also needs to be considered

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-C-2019-0029]

**Request for Comments on Patenting
Artificial Intelligence Inventions**

AGENCY: United States Patent and
Trademark Office, Department of
Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and
Trademark Office (USPTO) is interested
in gathering information on patent-
related issues regarding artificial
intelligence inventions for purposes of
evaluating whether further examination
guidance is needed to promote the
reliability and predictability of
patenting artificial intelligence
inventions. To assist in gathering this

2. What are the different ways that a natural person can contribute to conception of an AI invention and be eligible to be a named inventor? For example: Designing the algorithm and/or weighting adaptations; structuring the data on which the algorithm runs; running the AI algorithm on the data and obtaining the results.

3. Do current patent laws and regulations regarding inventorship need to be revised to take into account inventions where an entity or entities other than a natural person contributed to the conception of an invention?

4. Should an entity or entities other than a natural person, or company to which a natural person assigns an invention, be able to own a patent on the AI invention? For example: Should a company who trains the artificial intelligence process that creates the invention be able to be an owner?

Questions & Answers



Thank you!

