



Rigorous empirical
research on
intellectual property

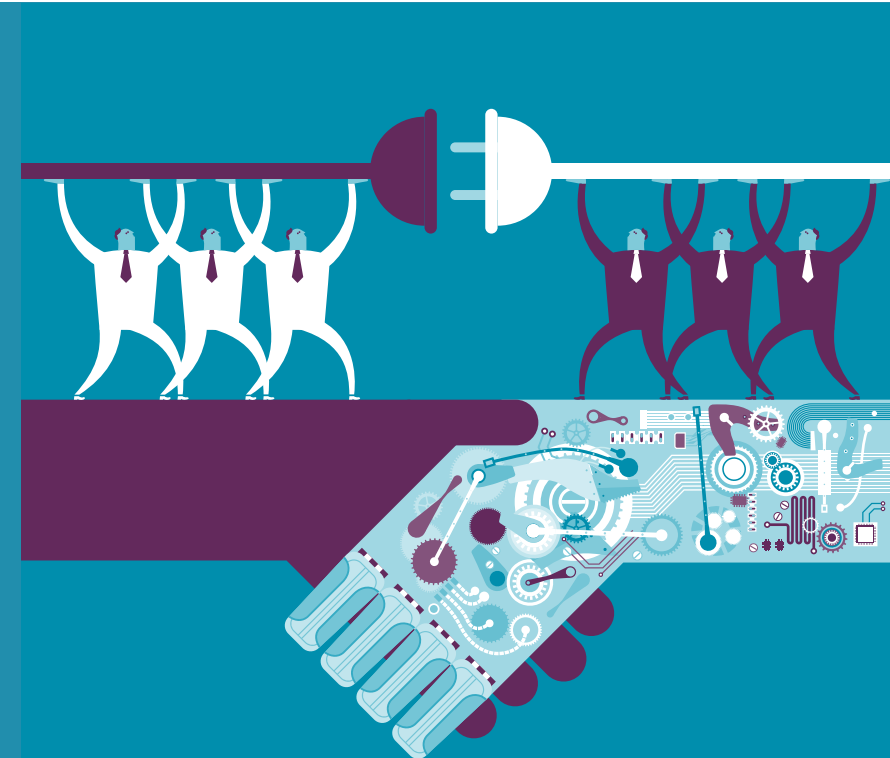
AI and IP Challenges

Host: Axel Ferrazzini, Managing Director, 4iP Council

Presenters:

- Marta Duque Lizarralde
- Dr. Stephen Potter

01/03/2022



What do we do?



Non-Profit Activities



High Quality Academic Research



Education



Promotion Innovative SMEs



For SMEs:

Which types of intellectual property do you need?

Filter table columns

?	B	C	S	R	T
What do they protect?	Patents protect inventions in the field of technology or science, such as a new machine, product, process, or method.	Copyrights protect literary, artistic, scientific, or technical works, such as books, music, films, software, and designs.	Trademarks protect words, symbols, or designs that distinguish the goods or services of one company from those of another.	Design rights protect the appearance of a product, such as its shape, configuration, or ornamentation.	Trade secrets protect confidential information that provides a competitive advantage to a company.
Examples of what is protected	Patented inventions, such as a new machine, product, process, or method.	Copyrighted works, such as books, music, films, software, and designs.	Registered trademarks, such as words, symbols, or designs.	Registered design rights, such as the shape, configuration, or ornamentation of a product.	Confidential information, such as trade secrets.
How are they rights protected?	Patents are granted by a national or regional patent office.	Copyrights are granted automatically by law.	Trademarks are registered with a national or regional trademark office.	Design rights are registered with a national or regional design office.	Trade secrets are protected by law, but they are not registered.
How long is the protection period?	Patents are granted for a limited period, typically 20 years.	Copyrights are granted for a limited period, typically 70 years after the author's death.	Trademarks can be renewed indefinitely.	Design rights are granted for a limited period, typically 5 years.	Trade secrets are protected as long as they remain confidential.
Do I have to register it?	Yes, patents must be registered with a national or regional patent office.	No, copyrights are granted automatically by law.	Yes, trademarks must be registered with a national or regional trademark office.	Yes, design rights must be registered with a national or regional design office.	No, trade secrets are protected by law, but they are not registered.



2 - NEGOTIATING

3 - FUNDING

4 - STRATEGIC VALUE

Explore how patents add value with our [interactive guide](#).

3 - COLLABORATION

4 - FUNDING

Explore the benefits of copyright with our [interactive guide](#).

4 REASONS 4 TRADEMARKS

- 1 - DIFFERENTIATION
- 2 - PROTECTION
- 3 - REPUTATION
- 4 - REVENUE

Explore the benefits of trademarks with our [interactive guide](#).

4 REASONS 4 DESIGN RIGHTS

- 1 - EXCLUSIVITY
- 2 - COMMERCIALISATION
- 3 - REPUTATION
- 4 - VALUE

Explore the benefits of design rights with our [interactive guide](#).

European Court Decisions:



Case Law post CJEU ruling *Huawei v ZTE* [Back to main 4IP Council site](#)

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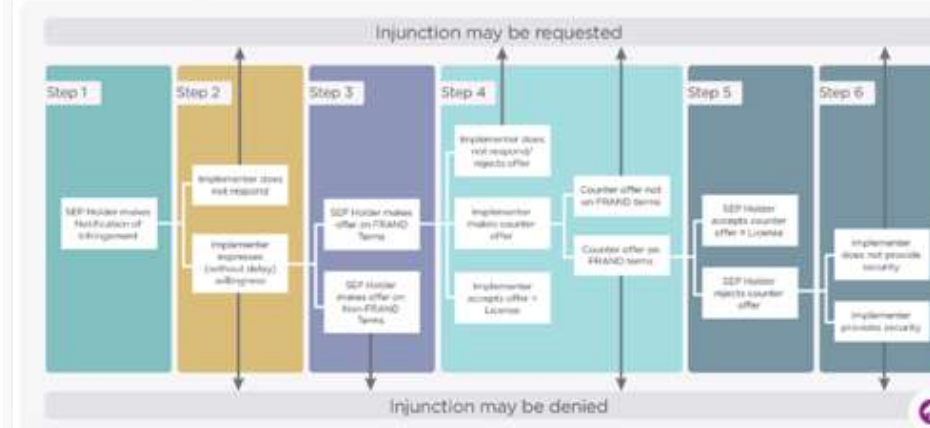
National Courts Guidance

Negotiating Licenses for Essential Patents in Europe

Increased clarity provided on the principles established by the Court of Justice of the European Union in *Huawei v ZTE*.

The Court of Justice of the European Union clarified, in *Huawei v ZTE* (Case No. C-170/13), European law relating to the availability of injunctive relief for infringements of FRAND-based standard essential patents. In doing so, the Court provided a legal framework focused on the good faith conduct to be expected of both parties. Since

Huawei v ZTE process



AI and IP Challenges



Marta Duque Lizarralde

Doctoral Candidate and Research Associate at the Technical University of Munich (TUM). Prior to joining TUM, she worked as IPR policy researcher at Ericsson.



Dr. Stephen Potter

Advisor and Business Development at Iprova, a Swiss / UK start-up that is rapidly delivering highly diverse inventions with the help of its novel AI/ML/NLP software.

Artificial Intelligence

- AI is *“a discipline of computer science that is aimed at developing machines and systems that can carry out tasks considered to require human intelligence”*.
- Current AI systems belong to the category of narrow AI, as they can only perform specific tasks.
- Machine learning (ML) is the most prominent subfield of AI. There are three main types of ML:
 - Supervised
 - Unsupervised
 - Reinforcement

Inventorship Claims

- In 2019 Dr Thaler filed two patent applications designating an AI system called DABUS as inventor.
- AI allows more automated operation of some steps in the inventive process, but the conception of the invention is attributable to humans.
- Determining the human inventor of AI-assisted inventions is challenging.
- The patentability of AI-assisted inventions raises concerns in relation to the novelty and inventive step.

Authorship Debate

- For a work to be eligible for copyright protection it must be original.
- A distinction must be made between AI-assisted works and AI-generated works.
- It is debatable whether authorless creations could be protected by certain related rights.
- The introduction of a new related right has been suggested.

IP protection of AI features

- Copyright:
 - The algorithms themselves are not copyrightable, but the software that embodies them is protectable;
 - There is a debate about whether ML models can be protected.
- Patents: algorithms, models, weights and evaluation mechanisms are protectable when they are applied in an invention with technical character as elements of the invention.
- Trade Secrets: the features that are not protected by copyright and patents, or that do not want to be disclosed.

B2B Data Sharing

- IP rights in the training datasets:
 - Some data publicly accessible and freely available on websites is protected by copyright or related rights. If it is not covered by the TDM exception, a license is needed.
 - Raw data is not protected by IP rights.
 - It is unclear whether the training datasets can be protected by copyright and the sui generis database right.
 - Companies use factual control for restricting access to their raw data and datasets.

B2B Data Sharing

- Competition law
 - Access only in the circumstances set out in the essential facilities doctrine.
 - The EC has stated that compulsory access to data on FRAND terms will be needed where specific circumstances so require.
 - Competition law only operates ex-post.
- Soft law
 - The principles set out in the EC guidelines of 2018 have proven to be insufficient.
 - The EC has stated that it “will continue to assess whether amended principles and possible codes of conduct are sufficient to maintain fair and open markets, will address the situation, and if necessary, will take appropriate actions”.

Conclusions

- Need of definitions that reflect the current state of the debate.
- Need of creation of a flexible B2B data sharing framework, but still many open questions:
 - Recommendation of standard licensing to create a common framework?
 - Role of the OSS community?
 - Method of controlling unfair terms?
 - FRAND model for access?

Thank You!



✈ Send your questions to info@4ipcouncil.eu.



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