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# IP Health Check | AI
## *Australia*

*Protecting IP in a digital world*

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# 10 Questions

## *before* disclosing, deploying or licensing an AI system

Many businesses are building valuable AI products using third-party models, open-source models or externally hosted AI services which means the most important IP question may not be "can we protect the model?"

But rather: **what part of the AI system does the business actually own, and what would a competitor need to copy?**

This checklist is designed to help identify where protectable value may sit in an AI system and whether the patent, confidentiality and contract strategy are aligned.

| The question | The context | ✓ |
|---|---|---|
| **Do you own the AI model?** | Is the system built on an internally developed model, a fine-tuned model, an open-source model, a third-party model, or an externally hosted model accessed through an API?<br>If the business does not own the model, the IP strategy may need to focus on the workflow, integration, data handling, validation process or deployment environment. | |
| **Could the model be replaced?** | If the current model were replaced with another model, would the product still deliver substantially the same commercial value?<br>If yes, the model may not be the main asset. The more valuable IP may sit in the architecture or workflow around the model. | |
| **What would a competitor need to copy?** | If a competitor wanted to reproduce the commercial benefit of the product, what would they need to copy?<br>Consider the model, training data, retrieval process, prompt workflow, validation logic, user interface, integrations, customer data, deployment process and technical constraints. | |
| **Where does the commercial value sit?** | Is the value in the model, the data, the workflow, the validation process, the integration, the user experience, the regulatory pathway, or the technical deployment?<br>Different assets may need different forms of protection. Patents, confidentiality, copyright, database rights, contracts and trade marks may each play different roles. | |
| **Does the system solve a technical problem?** | Does the AI system improve or control a technical process, or does it mainly generate information for human review?<br>Patent protection is generally stronger where the AI system is tied to a practical technical outcome, rather than merely producing advice, recommendations or summaries. | |
| **Are the key workflows documented?** | Has the business documented how the system operates before disclosure, launch, customer demonstrations, investor discussions or commercial rollout?<br>Good documentation can help identify patentable features, preserve confidentiality and support later diligence. | |

| The question | The context | ✓ |
|---|---|---|
| **What should be patented and what should remain confidential?** | Not every valuable feature should be placed in a patent application.<br>Some features may be suitable for patent protection. Others may be better protected as confidential know-how, particularly where they are difficult to reverse engineer or relate to deployment choices, customer-specific configurations or internal processes. | |
| **Do the contracts match the IP strategy?** | Do agreements with model providers, developers, customers, collaborators and data suppliers support the intended IP position?<br>Important issues may include ownership of improvements, rights to use input and output data, confidentiality obligations, permitted uses, audit rights, liability allocation and restrictions imposed by third-party model terms. | |
| **Would an investor or acquirer understand what the company owns?** | If the business describes itself as having proprietary AI technology, can it clearly explain what that means?<br>A strong IP position should identify the assets, who owns them, how they are protected, and how they support the company's commercial advantage. | |
| **Has patent protection been considered before disclosure?** | Public disclosure, product launch, investor presentations, customer trials and conference papers can all affect patent options.<br>Patent protection should be considered early, before key technical details are disclosed externally. | |

Navigating the patent system can be complex, particularly in technology areas that are exponentially developing, such as AI and products built on LLM models.

Our teams across APAC assist innovators worldwide to align their patent and IP applications for strategic, commercial and defensible protection - in markets that matter.

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