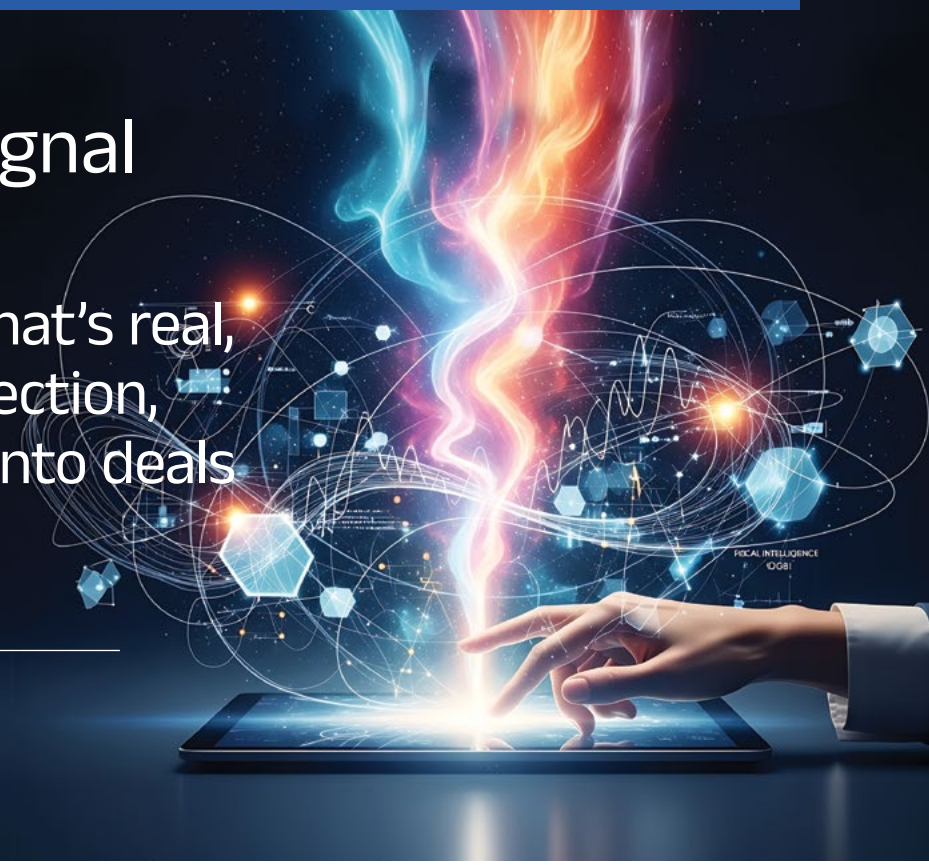
Separating AI Signal from Noise

How TTOs can tell what's real, pick the proper protection, and turn substance into deals



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ABSTRACT

Over the past decade, the volume of artificial intelligence (AI) related publications has skyrocketed, and university technology transfer offices are witnessing a similar surge in AI-labeled disclosures. These disclosures range from genuine advancements to superficial rebranding. This article proposes a practical framework to distinguish between genuine value and noise, enabling the translation of credible value into protection and deals. The article outlines a fast taxonomy to classify AI as core invention, AI as an enabling capability, or AI as a bolt-on. A five-signal test evaluates various aspects, including benchmarked performance against credible baselines, a defensible data advantage, technical differentiation that survives patent eligibility thresholds, safety and regulatory alignment, and licensability under upstream model/data terms. Based on the signals, the article suggests matching protection strategies to the locus of value. Patents are recommended for genuine technical improvements, trade secrets for datasets, weights, and pipelines, and copyrights for code and human-authored contributions. Finally, a concise decision flow is proposed to operationalize these choices during initial review. An interactive version of the decision flow is available at https://sauriiiin.github.io/ai_triage/, providing a clickable path through intake and signals and supporting evidence capture. The result is a disciplined, evidence-first posture that reduces noise, aligns rights and obligations, and accelerates the right AI inventions to market on stronger terms.

Introduction

The definitions of machine learning (ML) and artificial intelligence (AI) are subject to much debate. Generally speaking, AI is the study and engineering of machine-based systems that perceive, reason, and act to achieve specified objectives in their environment. Modern governance definitions used by researchers and policymakers align with this agent-and-goals view. For example, the Organisation for Economic Co-operation and Development (OECD) and National Institute of Standards and Technology (NIST) both define an AI system as a machine-based system that, for given objectives, generates outputs (e.g., predictions, recommendations, decisions) that influence real or virtual environments.[1, 2]

In 2024, there were over 30,000 PubMed-indexed publications containing the term "artificial intelligence," a significant increase from slightly over 4,000 in 2019 and approximately 1,000 in 2015. This exponential rise in AI-related publications has also been reflected in the disclosures received by a typical university technology transfer office (TTO). As "AI" became the preferred adjective for almost everything, it also became a common tool for concealing disclosures and startup decks. Sometimes, the claims made are based on genuine, quantifiable technical advancements. However, other times, "AI" is merely a superficial term used to describe rule-based analytics, a pre-designed prompt template, or an off-the-shelf model devoid of any unique features.

1 "Explanatory Memorandum on the Updated OECD Definition of an AI System." *OECD.* March. Accessed August 15, 2025.

2 "AI Risk Management Framework (AI RMF 1.0)." *NIST.* January 26. Accessed August 15, 2025. https://doi.org/10.6028/NIST.AI.100-1.

The ability to distinguish between these two extremes is crucial for several reasons: (i) it determines whether there is protectable subject matter and who the inventors are; (ii) it decides whether secrets—rather than patents—should be the primary focus; and (iii) it guides the approach to pitching to licensees who may raise challenging questions regarding evidence, safety, rights, and regulatory implications.

Even the legal and policy landscape around AI is rapidly evolving. In the United States, the United States Patent and Trademark Office (USPTO) issued guidance in February 2024, affirming that only human beings can be inventors. This guidance provides a framework for evaluating "significant human contribution" in AI-assisted inventions and applies to all applications as of February 13, 2024.[3] In March 2025, the D.C. Circuit reaffirmed human authorship as a fundamental requirement for copyright registration in *Thaler V. Perlmutter*.[4, 5] The FDA finalized guidance in December 2024 on Predetermined Change Control Plans (PCCPs) for AI/ML medical devices, making them a practical necessity for regulated adopters.[6] Internationally, the European Union's AI Act came into force on August 1, 2024, with phased obligations, including general-purpose AI (GPAI) provisions, beginning to take effect in 2025.[7] Across various industries, the NIST AI Risk Management Framework (AI RMF 1.0) has emerged as a shared vocabulary for establishing trust in AI systems.[8] These developments significantly influence how we assess disclosures, draft claims, structure licenses, and respond to diligence inquiries from sophisticated counterparties.

A Fast Taxonomy: What Kind of "AI" Is This?

The licensing choices that are to be made at intake—what to file, what to hold as a secret, and how to frame the value to the market—will depend on a deceptively simple first question: what kind of AI is this? A quick classification often cuts hype in half and points to the right diligence path.

A. AI as the Core Invention

Sometimes the AI is the invention itself: a new training regimen, an architecture that lowers memory bandwidth, a clever loss function, or a co-design with hardware that changes latency or energy use. Knowing that AI is the core invention turns on mechanism-level evidence rather than labels. If replacing the claimed mechanism with an off-the-shelf alternative causes a statistically significant drop in the stated metrics (accuracy, latency, energy, memory footprint) on representative workloads, the contribution is likely core. If ablation studies show the claimed component is necessary for the observed lift; if the improvement generalizes across datasets or hardware under defined resource budgets; if profiler traces or counters document concrete changes in compute/memory behavior; and if the specification teaches how and why the mechanism delivers the effect (not merely that it does), the work falls squarely in "core invention" territory. When that happens, the patent story can be strong, provided the claims are anchored in a concrete technological improvement and not just "apply a model to do a business task."[9, 10]

B. AI as an Enabling Capability

Often, the AI is not the invention but the enabler. A team may deploy a known architecture inside a performance-critical or regulated workflow and claim impact in the field. In this role, the differentiator lies less in the novelty of the model and more in integration choices—domain adaptation and calibration to local data, operating-point selection (precision–recall trade-offs), guardrails and fallbacks, edge-versus-cloud placement under latency and cost budgets, and the way outputs alter downstream human or machine actions. Properly engineered, enabling AI unlocks higher throughput and capacity (e.g., triage and prioritization), improved decision quality and safety margins (decision support with calibrated confidence), lower cost-to-serve (automation of rote steps and efficient inference), and access to previously underused assets (retrieval-augmented use of institutional content, structuring of unstructured data). It also enables new product modalities like personalization at scale, proactive alerts, and just-in-time recommendations. In health care, proof still hinges on prospective, context-matched outcomes and credible lifecycle plans; FDA guidance on PCCPs formalizes a path for iterative updates while preserving safety and effectiveness.[11]

3 *Inventorship Guidance for AI-Assisted Inventions*. February 13. Accessed August 15, 2025. https://www.federalregister.gov/d/2024-02623.

4 *Thaler V. Perlmutter*. 2024. 1:2022-cv-01564 (United States Court of Appeals, For The District of Columbia Circuit, September 19).

5 Levi, Stuart D., Jordan Feirman, Mana Ghaemmaghami, and MacKinzie M. Neal. 2025. *Skadden*. March 21. Accessed August 15, 2025. https://www.skadden.com/insights/publications/2025/03/appellate-court-affirms-human-authorship.

6 "Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence-Enabled Device Software Functions." *FDA*. December 4. Accessed August 15, 2025. https://www.fda.gov/regulatory-information/search-fda-guidance-documents/marketing-submission-recommendations-predetermined-change-control-plan-artificial-intelligence.

7 "Artificial Intelligence Act." *European Union*. June 13. Accessed August 15, 2025. https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai.

8 "AI Risk Management Framework (AI RMF 1.0)." *NIST*. January 26. Accessed August 15, 2025. https://doi.org/10.6028/NIST.AI.100-1.

9 "Copyright and Artificial Intelligence." *USCO*. January. Accessed August 18, 2025. https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf.

10 *Inventorship Guidance for AI-Assisted Inventions*. February 13. Accessed August 15, 2025. https://www.federalregister.gov/d/2024-02623.

11 "Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence-Enabled Device Software Functions." *FDA*. December 4. Accessed August 15, 2025. https://www.fda.gov/regulatory-information/search-fda-guidance-documents/marketing-submission-recommendations-predetermined-change-control-plan-artificial-intelligence.

Outside regulated domains, analogous lifecycle commitments—monitoring, auditability, rollback procedures, and clearly defined human-in-the-loop roles—separate genuine enablers from bolt-ons.

C. AI as a Bolt-on

Sometimes, though, AI is simply bolted on. This occurs when "AI" is added as a label rather than a source of measurable capability. There is no unique data or algorithmic contribution, no external benchmarked lift over a simple baseline, and the output does not materially alter downstream human or machine actions. Tell-tale signs include trivial substitutability (an off-the-shelf library or a rules engine can be dropped in with no meaningful change in accuracy, latency, cost, or safety), absence of calibration to local data, and marketing copy or disclosure that mentions "AI" without specifying the task, metric, or environment. The value of such systems is typically limited to cosmetic differentiation or short-lived signaling; moats are weak, patent prospects are poor, and added complexity can increase cost, latency, privacy exposure, and compliance risk. Where any value exists, it tends to be minor user-experience polish rather than defensible performance or trust advantages. A documented example is the U.S. Securities and Exchange Commission's (SEC) first "AI-washing" enforcement actions from March 2024. Two investment advisers—Delphia (USA) Inc. and Global Predictions Inc.—were charged for making false or misleading statements about their purported use of AI (e.g., branding themselves as "AI-driven" or a "first regulated AI financial advisor") and paid civil penalties to settle.[12] Regulators found that the firms' marketing outpaced what the systems actually did, which is precisely the "bolt-on AI" pattern: the AI label provided signaling value without demonstrable material capability or outcome lift.

The Five-Signal Test: Does This Thing Really Deliver?

While taxonomy helps decide which path to walk, a short list of evidentiary "signals" can tell whether to walk it at all – evidence remains the most reliable ally for licensing decisions.

SIGNAL 1: Benchmark Lift Against a Credible Baseline

Early requests should be made for clear benchmarks. A statistically sound improvement (accuracy/AUROC, latency, energy, cost) on an external test set or a prospective study are more valuable than cherry-picked demos. In high-stakes domains, like healthcare, there needs to be an attempt to tie metrics to real outcomes (time-to-treatment, throughput, cost-savings). In a large prospective study published in the *American Journal of Roentgenology*, an intracranial hemorrhage CT triage tool failed to improve radiologists' diagnostic performance or report turnaround times, despite the existence of FDA-cleared triage products. The lesson is not that medical AI "doesn't work," but that context and study design matter more than press releases.[13]

SIGNAL 2: A Defensible Data Advantage

Equally important is a defensible data advantage. That means documented provenance and lawful rights to use, share, and sublicense data; reproducible pipelines; evidence of bias assessment; and governance that survives diligence. Market signals increasingly reward such posture: major news publishers have struck multi-year licensing deals with AI developers (e.g., the *Financial Times* and News Corp agreements with OpenAI), explicitly monetizing curated corpora and clarifying permitted uses.[14] Conversely, there has been a steady uprise of data-centric litigations around AI.[15] Litigation such as *The New York Times v. OpenAI/Microsoft* places training data authorization at the center of the dispute, underscoring how uncertain provenance can become a commercial and legal drag.[16] In practice, durable value often comes less from a generic model and more from access to high-quality, well-governed datasets whose rights are clear, auditable, and defensible across jurisdictions. Through these lenses, data isn't just fuel; it's the negotiable asset, compliance boundary, and litigation flashpoint that often makes or breaks AI commercialization.

SIGNAL 3: Technical Differentiation That Survives §101

On the technology side, claims should be tested against eligibility doctrine. If the alleged novelty is merely "using a model to make a decision in domain X," there may be little to claim. By contrast, a specification that explains how the method changes computation—e.g., a memory layout that reduces bandwidth, a training schedule that improves convergence, or a pipeline that enables on-device inference—lands in stronger territory under the USPTO's subject-matter eligibility guidance and

12 *SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence.* March 18. Accessed August 18, 2025. https://www.sec.gov/newsroom/press-releases/2024-36.

13 Savage, C. H. Tanwar, M. Elkassem, A. A. Sturdivant, A. Hamki, O. Sotoudeh, H. Sirineni, G. Singhal, A. Milner, D. Jones, J. Rehder, D. Li, M. Li, Y. Junck, K. Tridandapani, S. Rothenberg, S. A. Smith, A. D. 2024. "Prospective Evaluation of Artificial Intelligence Triage of Intracranial Hemorrhage on Noncontrast Head CT Examinations." *AJR Am J Roentgenol* 223 (5).

14 *Financial Times announces strategic partnership with OpenAI.* April 29. Accessed August 19, 2025. https://aboutus.ft.com/press_release/openai.

15 *AI Infringement Case Updates:* June 23, 2025. June 23. Accessed August 19, 2025. https://www.mckoolsmith.com/newsroom-ailitigation-28.

16 *The New York Times v. Microsoft/OpenAI.* 2023. 1:23-cv-11195 (United States District Court, Southern District of New York).

examples.[17, 18] This line was underscored by the Federal Circuit in *Recentive Analytics, Inc. v. Fox Corp.*,[19] which affirmed ineligibility where the claims simply applied generic machine-learning techniques to a particular environment without any improvement to the model or computer functionality.[20]

SIGNAL 4: Safety/Regulatory Alignment

Substantive AI offerings demonstrate a safety case and lifecycle plan matched to the domain. In regulated settings (e.g., medical, mobility, finance), this includes a clearly stated intended use; defined performance bounds and operating points; human-in-the-loop roles and fail-safes; hazard and risk analyses (e.g., ISO-style frameworks); software lifecycle controls (validation/verification, traceability, versioning); cybersecurity posture (SBOM, vulnerability handling, access controls); privacy/data-protection compliance; and an update strategy—such as a PCCP for AI systems subject to device regulation—covering monitoring, drift detection, rollback, and post-market surveillance.[21] Outside formally regulated domains, credible alignment looks like mapping to a recognized governance framework (e.g., NIST AI RMF), articulating risk categories under applicable regional laws (such as the EU AI Act), publishing model cards and data documentation, maintaining auditable logs and incident response, and committing to periodic re-evaluation.[22, 23] Evidence for this signal is artifact-based: risk registers, validation protocols, monitoring dashboards, documented change procedures, and third-party audit readiness.

SIGNAL 5: Licensability Under Upstream Model/Data Terms

Upstream licenses should not be neglected. Readily available pre-trained models like Meta's Llama are often labeled "open source" because weights are available, yet the Open Source Initiative (OSI) has been clear that the Llama licenses are not OSI-approved open source. In addition, licenses like Meta's community license include conditions and use-based restrictions that can affect sublicensing and fields of use. Either way, outbound terms and sublicensing promises must reconcile with the inbound license realities.[24, 25, 26]

The signals stated above function as actionable gates that are needed to translate messy "AI" claims into the concrete facts that tie technical and legal reality to protection strategy and go-to-market terms (Table 1).

TABLE 1 - The Evidence Pack

Model card + evaluation report	External test set, baseline comparison, failure modes, hardware footprint
Data provenance memo	Sources, consents/licenses, territorial issues, retention/rights to share
IP map	What's patentable vs secret; human inventive contributions documented per USPTO guidance
Change-management plan	Monitoring and retraining triggers; PCCP if medical
License stack	Every third-party model/dataset/library and terms

17 "Copyright and Artificial Intelligence." *USCO.* Janurary. Accessed August 18, 2025. https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf.

18 *Inventorship Guidance for AI-Assisted Inventions.* February 13. Accessed August 15, 2025. https://www.federalregister.gov/d/2024-02623.

19 *Recentive Analytics, Inc. v. Fox Corp.* 2025. 23-2437 (United States Court of Appeals for the Federal Circuit).

20 Arnall Golden Gregory LLP. 2025. *Federal Circuit Delivers Blow to AI-Based Patents in Precedential Decision.* April 24. Accessed August 19, 2025. https://www.jdsupra.com/legalnews/federal-circuit-delivers-blow-to-ai-9294527/.

21 "Marketing Submission Recommendations for a Predetermined Change Control Plan for Artificial Intelligence-Enabled Device Software Functions." *FDA.* December 4. Accessed August 15, 2025. https://www.fda.gov/regulatory-information/search-fda-guidance-documents/marketing-submission-recommendations-predetermined-change-control-plan-artificial-intelligence.

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24 *Meta's LLaMa license is not Open Source.* July 20. Accessed August 18, 2025. https://opensource.org/blog/metas-llama-2-license-is-not-open-source.

25 *meta-llama.* April 05. Accessed August 18, 2025. https://huggingface.co/meta-llama/Llama-4-Scout-17B-16E-Instruct/blob/main/LICENSE.

26 *CompVis.* August 22. Accessed August 18, 2025. https://huggingface.co/spaces/CompVis/stable-diffusion-license.

Choosing the Protection Path (and the AI-Specific Wrinkles)

With a firm grasp of the signals, the next step is to match the protection to the locus of value. Where a genuine technical improvement makes the computing machinery work better, patent claims directed to that improvement are appropriate. Where value resides in datasets, model weights, feature pipelines, evaluation harnesses, and deployment configurations, trade secrets plus contracts often carry the load. Under the U.S. Defend Trade Secrets Act, information qualifies as a trade secret only if reasonable measures are taken to keep it secret and it derives independent economic value from not being generally known (18 U.S.C. § 1839).

Copyright, in turn, covers code and human-authored creative contributions around AI systems, but it does not and cannot attach to purely machine-authored output. The D.C. Circuit's 2025 *Thaler v. Perlmutter* decision affirmed that basic point, and the U.S. Copyright Office's 2025 "Part 2" report explains when AI-assisted works may nonetheless be registrable—the key is meaningful human authorship, often in the selection, arrangement, and editing that shape an output into a work of authorship. For university projects that produce creative tools, that means capturing the human contribution in lab notebooks and design records instead of assuming "the AI did it."[27, 28]

Cross-border collaborations introduce additional layers. In Europe, the sui generis database right can protect substantial investment in obtaining, verifying, or presenting database contents—distinct from copyright in the contents themselves. This matters in joint projects where a European partner curates or structures valuable data. Sorting out who qualifies and how rights travel before access is sold will spare painful renegotiations later.[29]

27 *Thaler V. Perlmutter.* 2024. 1:2022-cv-01564 (United States Court of Appeals, For The District of Columbia Circuit, September 19).

28 "Copyright and Artificial Intelligence." *USCO.* January. Accessed August 18, 2025. https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf.

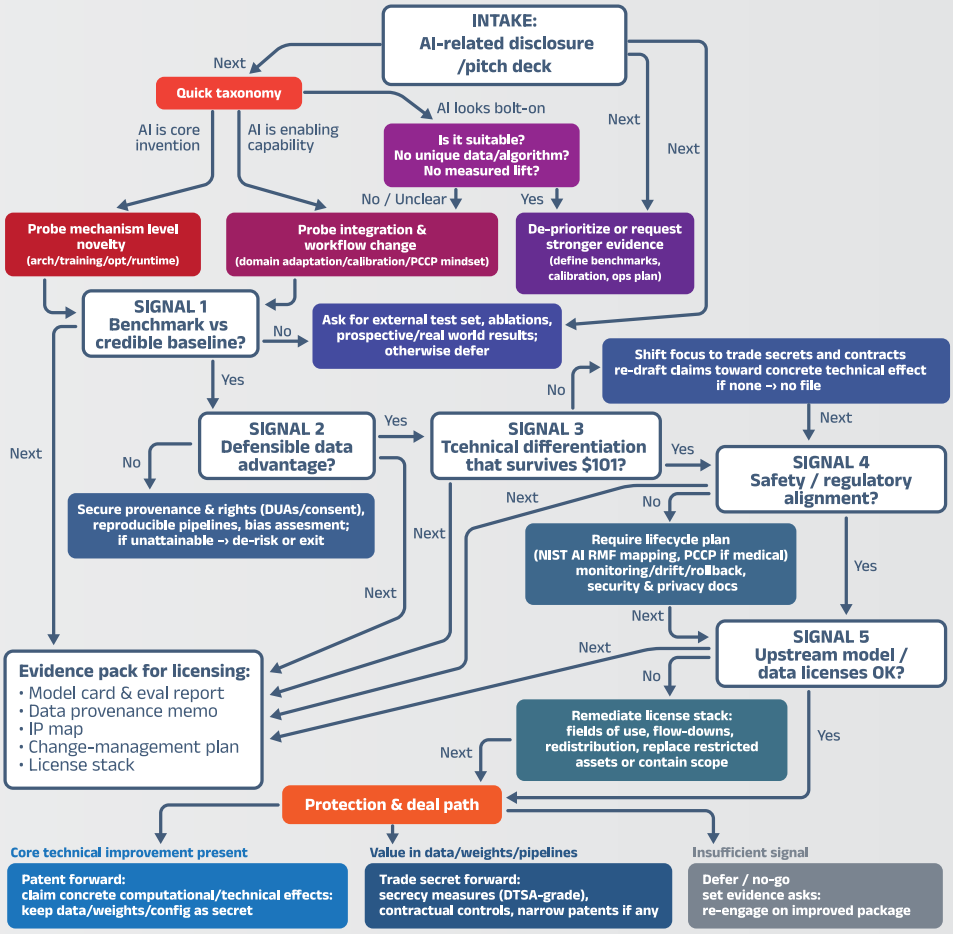
29 "Database protection." Your Europe. February 3. Accessed August 18, 2025. https://europa.eu/youreurope/business/running-business/intellectual-property/database-protection/index_en.htm.

FIGURE 1 - A practical decision flow for IP & data strategy:

This flow turns AI intake into a fast, evidence-first review: start with a quick taxonomy (core invention, enabling capability, or bolt-on), then run the five signals in order—benchmarked lift vs a credible baseline; defensible data and rights; technical differentiation that survives §101; safety/regulatory alignment (HITL, V&V, NIST AI RMF mapping, PCCP if regulated); and clean upstream licenses.

Each "Yes" advances; a "No" triggers specific remediation or a return to intake. Outcomes align protection to the locus of value: patent-forward for concrete computational improvements, trade-secret-forward when value is in data/weights/pipelines, or defer/no-go with clear evidence asks. In parallel, you build a living evidence pack that captures the proof behind each signal—model card and evaluation report, data-provenance memo, IP map, change-management plan, and license stack—kept versioned and auditable so diligence and licensing move faster with fewer surprises.

An interactive version of this decision flow is available at https://sauriiiin.github.io/ai_triage/.



Discussion

All of these choices unfold against a fast-moving policy backdrop that increasingly demands fluency from licensing professionals. On inventorship, the USPTO's 2024 guidance confirms that only humans can be inventors and sets out a "significant contribution" test for AI-assisted inventions; it applies to applications as of February 13, 2024. In medical AI, FDA guidance on PCCPs provides a clearer pathway for iterative models to evolve after clearance. Regarding copyrightability, the D.C. Circuit and the U.S. Copyright Office have reaffirmed the human-authorship requirement for protectable works. On the regulatory front, the EU AI Act entered into force in August 2024 with phased applicability—including obligations for general-purpose AI—and sophisticated European licensees increasingly expect a clear mapping of where a product or service falls within that regime.

These policy anchors inform practical habits that separate signal from noise. Inventors can be asked to tell the story without the word "AI"; what remains often reveals the real value. An evidence packet that withstands scrutiny should include an external test set, a baseline comparison, and a brief narrative about failure modes and hardware footprint. A data-provenance memo and a one-page license stack reduce diligence friction. Where a regulator is relevant, the lifecycle narrative—updates, monitoring, and change control—belongs at the center. An IP map that places patents where the technological improvement lives, trade secrets where the data and weights live, and copyright where human authorship lives reduces later confusion.

The real promise of university AI is not that it sprinkles intelligence over everything, but that it occasionally moves the frontier of what is technically or clinically possible. In technology transfer, the task is to locate those frontier moves, protect them in ways that match their true locus of value, and articulate the case to buyers who will live with the consequences. By insisting on evidence, aligning licenses with upstream and downstream realities, treating data and weights as secrets when appropriate, and privileging trust over slogans, noise can be reduced and the right inventions moved to market—faster, and on better terms (Figure 1). ■

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