The Pre-announced Death of Software Patents

Dudu Mimran

What Is a Patent

Time and space limited exclusive rights given to an inventor over a new, useful and non-obvious invention where the inventor discloses at least one way to implement the invention verifiable as feasible by others.

Genres of Patents

- Utility Patents - i.e. something useful
  - Hardware - every physical entity
  - Software ?
  - Business Models ?
- Design Patents i.e. IKEA Chair
- Plant Patents i.e. a reproducible plant concept

Why Startups Bother Registering a Patent?

- Creates a sense of intellectual property, mostly appreciated by investors
- In Israel it balances the lack of strong market execution capability with assets buildup
- Potentially defend against lawsuits
- Potentially prevent others from imitation
- Potentially a new revenue stream in forms of royalties
- Something to brag about!

Rough History of Software Patents

1960-1970S

No protection if invention used a calculation made by a computer

Software is Math and Math is an Abstract Idea

1980S

Software begins to look like something interesting

1990S

If the software interacts with the physical world then it is patentable

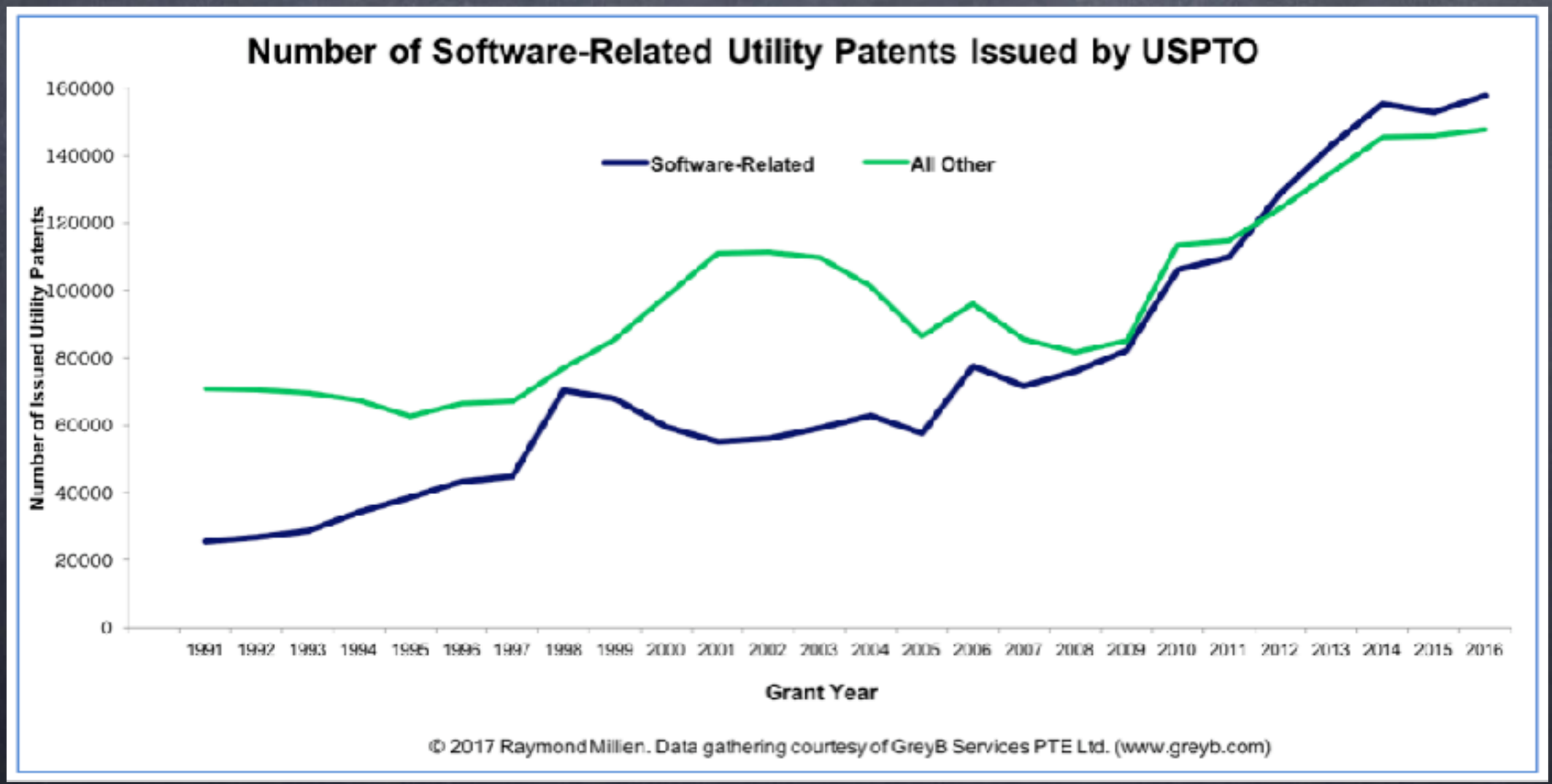
2000S

If the software transforms something to different states then it is patentable

2010S

It became more open to interpretation but still controversial!

Historic View

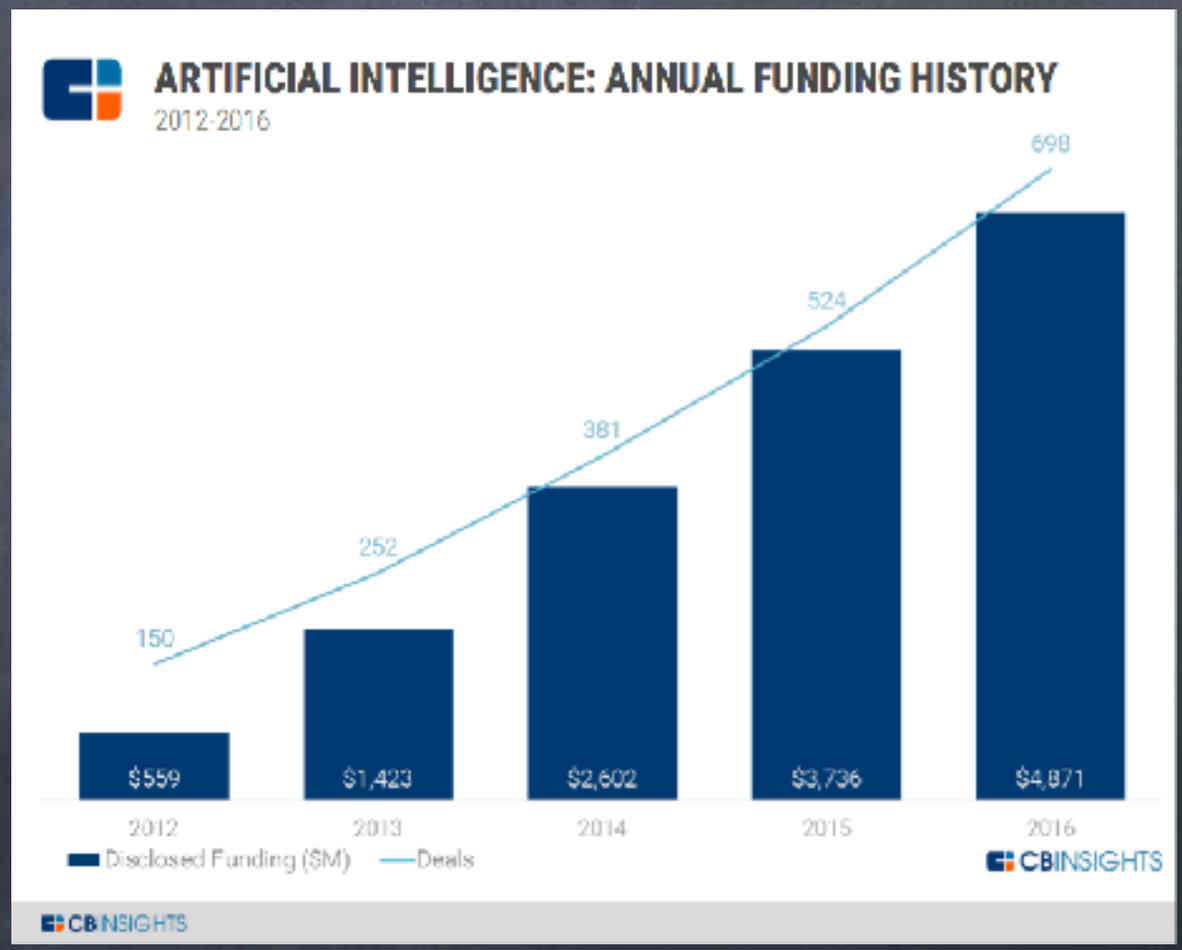


Why So Difficult?

- Software creates non-physical structures and flows - idea
- Impact of software can be achieved in many variations of implementation
- Creativity in software is explosive
- Software is many times part of a much more complicated structure which makes it difficult for humans to identify and later on defend
- Inhibiting innovation

AI

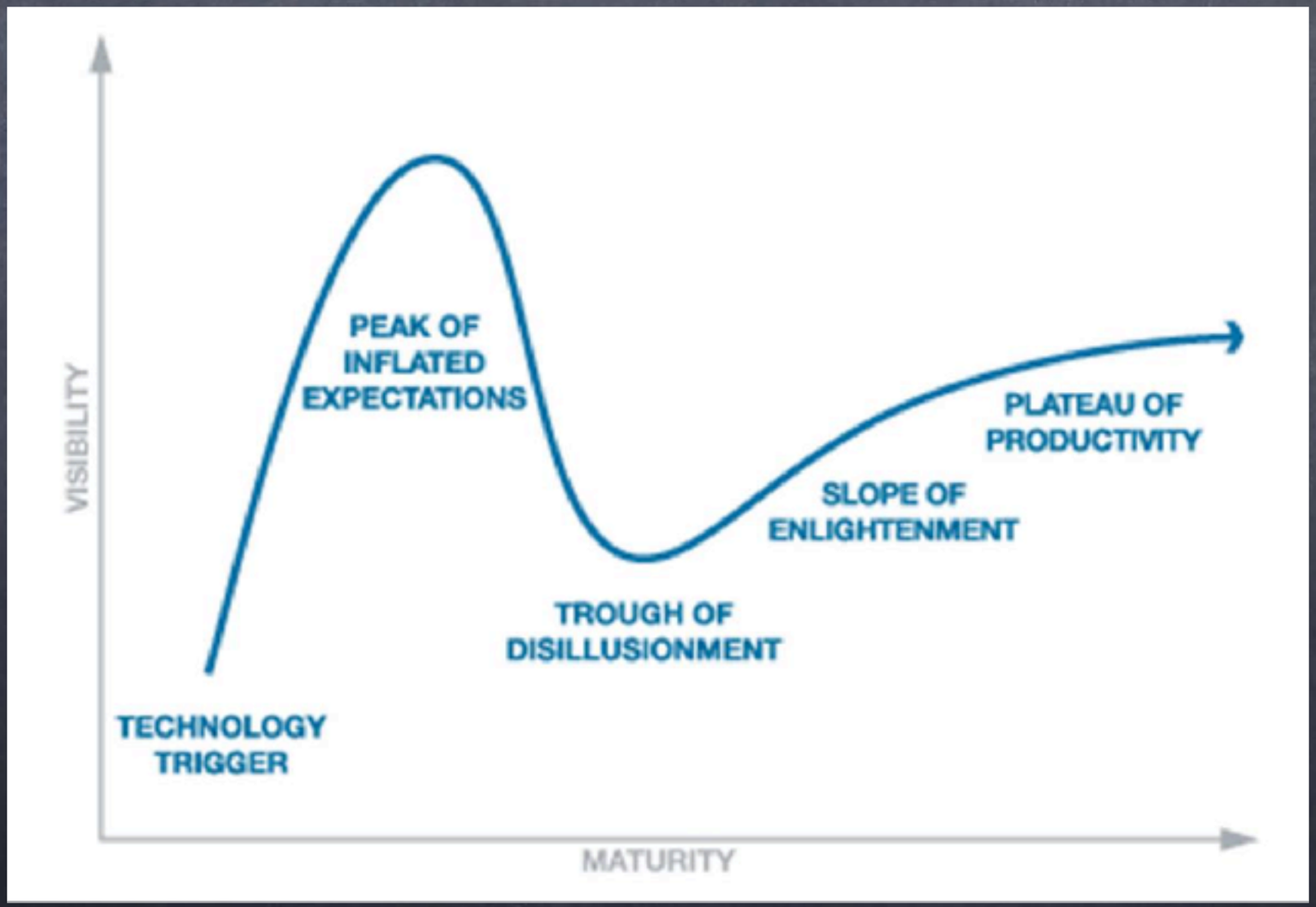
The New Gold Rush



Curves of Growth in AI

- Hardware - Accelerated growth
- Software - Accelerated growth
- Algorithms - We aint seen nothing yet

The Never Ending Innovation Cycle of AI



Intellectual Property is Going to Shift to Algorithms

- If software is abstract then algorithms are super abstract
- Most algorithms not necessarily communicate with the external world
- Impossible to identify prior art as algorithms are buried deep inside
- Exposure of the algorithm may defeat the purpose of intellectual property

The Return of The Days of The Secret Sauce

- I see many who prefer not to patent algorithms
- Algorithms become the "secret sauce" of products and technologies
- Defending "secret sauces" is very challenging - employees, contractors, security...

It Is In The Cards

- Years of confusion and struggle with the patents systems while de-facto practice would be to "hide" innovations
- Discussion on alternative systems for the patent system will intensify
- Stories about stolen unprotected IP
- A shift to execution and formation vs. technologies and ideas

Advise for the New Up-start

- Don't waste too much time and money on patents unless you have something innovative with strong presence in the physical world
- Worry when you hear investors that care only about patents
- Stop dreaming that your existing or future patents will save you - it is all about execution!!!

#FreeIdeas

Build an alternative IP system which registers inventions based on trusted and consensual ledger

#blockchain

Thanks

Dudu Mimran