

# Ford Motor Company Response to USPTO Request for Comments on Patenting Artificial Intelligence Inventions

## Fundamental Questions

We appreciate the opportunity to comment on the questions raised by the USPTO. Upon our thorough review of the questions presented, we have resolved our input into two central themes. The first is whether the U.S. Patent System is capable of properly addressing patentability arising in AI-related inventions. The second is whether AI (a non-human) can or should be an inventor.

## Invention, Eligibility, and Enablement

We do not believe there is a meaningful distinction between how you invent or discover AI-related inventions. An invention, regardless of it being AI-related, is an invention. The same is true for discoveries. If you come up with a better neural network architecture, your invention should be eligible for patent protection. The same is true if you have a model that yields a discovery. It should not matter if you are trying to innovate in AI computing or not.

We think the U.S. Patent System is well defined and flexible enough to handle AI-related inventions. Claims to AI-related inventions are capable of being written towards at least one statutory category, and the claims can certainly meet the utility requirements under the statute. Additionally, the claims can rise or fall through traditional novelty and obviousness tests. We do not believe these requirements need to be altered for AI-related inventions.

It is frequently brought up that AI-related inventions may have enablement issues. For instance, if you have a deep neural network, can you really sufficiently describe what is happening in the hidden layers to enable one skilled in the art to carry out the claimed invention without undue experimentation? We feel we can sufficiently explain the inputs, the goals or objectives of each layer, and the output well enough that someone skilled in the art could reproduce the claimed invention without undue experimentation.

## Can AI be an Inventor

We believe our Constitution provides guidance here. Article 1, Section 8, Clause 8, of the U.S. Constitution states, [The Congress shall have power] “To promote the progress of science and useful arts, by securing for limited times to **authors and inventors** the exclusive right to their respective writings and discoveries.” From this, 35 U.S.C. Section 101 provides “**whoever** invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.” Finally, Section 100(f) of the Patent Act defines “inventor” to mean “the **individual**... who invented or discovered the subject matter of the invention.” Caselaw provides “People conceive, not companies,” as held in *New Idea Farm Equipment Corporation v. Sperry Corporation and New Holland Inc.*, 916 F.2d 1561 (Fed. Cir. 1990).

Taking the above into consideration, we simply believe AI-created inventions are the product of a tool that facilitates discovery by the true inventor. That is, the discoverer is the inventor, not the tool.

We would like to thank the USPTO and Director Andrei Iancu for giving the public an opportunity to shape future policy. This echoes a Ford Truth of Be Curious, which means to approach the world and each other with a sense of interest and wonder. We need to be humble enough to know we can learn from every situation, and actively question to understand and think critically. AI is changing the world we live in, and we are optimistic that Ford can have a voice in the transformation. If we cannot protect our valuable IP, it will have a ripple effect across the promotion of innovation.