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General Comment

Legal precedent specifies that virtually any so-called non-obvious, man-made object or (certain) processes are patentable; one of the most unique cases fitting this precedent in recent years being gene sequences and man-made organisms. Taken to a logical extreme, applications of artificial intelligence (AI) and various manifestations of the intelligent agents themselves are no different in light of this precedent. Thus, with respect to AI, we have seen a rise in patents bordering on the mathematically obvious and enforceable only as a legal cudgel.

Any referendum on the patentability of AI then seems to depend on how broadly the definition of intellectual property (IP) can be applied under this precedent. The intended goal of IP is to incentivize those who generate it to share it (as opposed to a trade secret), and by consequence benefit domestic markets and consumers. Due to the broad applicability of current precedent, we have seen a trend toward frivolous and predatory patent behaviors that 1) do not positively serve domestic markets and 2) have created perverse incentives in bioengineering, and are currently in the process of doing so in AI engineering. What qualifies today as patentable is merely an activation barrier for legal action.

What is required then, is an evolution in legal precedent. By contrast, anti-trust law has historically undergone such an evolution in legal precedent. Sherman-act era anti-trust law was applied in an ad hoc fashion based on arbitrary guidelines as to what qualified as a monopoly. Over the course of a century, a transition to Bork-era anti-trust law was applied based on careful analysis of how and why breaking up a company would potentially benefit consumers. If current precedent regarding patentability remains status quo, and not transitioned to consumer and market welfare requirements (i.e. how does the use of this patent benefit the market and

consumers and what are the consequences if this patent is sequestered by the holder?), we are likely to see an increase in litigious, rent-seeking behaviors.