Deep learning technology has been gaining widespread momentum in the artificial intelligence (AI) community. With more sophisticated AI engine architectures, model training algorithms, and self-executing applications, questions concerning patentability are at the forefront of AI and patent law policy. Now, as AI has important implications for business and national innovation strategy, the time is ripe for examining justifications for exclusive rights in deep learning in order to develop ample incentives to foster the long-term goal of general-purpose AI. To that end, this Article introduces “dynamicism” to identify tensions with overbreadth of method patent claims and related challenges with disclosure and possession of the deep learning invention. The Article draws upon economic theories underlying the patent system to propose a modified prospect theory justification for a more holistic AI innovation law and policy framework.

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