

## Environmentally Sustainable Patent Strategies

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A unique spotlight is aimed this month at businesses to drive the innovation needed to reduce climate change and spur sustainable development. With the anticipated release of the U.N.'s sustainable development goals, Pope Francis' visit to the U.S. and President Obama's trip to Alaska, many are looking to business for leadership. Adopting sustainable patent strategies is a new way businesses can lead by example.

Facing common threats of climate change and globalization, businesses across many industries have adopted sustainable practices for some time. These practices extend to their operations, management team and even their charter. General Mills Inc. recently dedicated \$100 million to improve energy efficiency in its operations. Wal-Mart Stores Inc. points to environmental sustainability as a necessary ingredient for success. Amazon.com Inc. hired its first sustainability executive last year. Many companies, such as Patagonia Inc., are now forming or reforming themselves as benefit corporations to place environmental impact alongside profit as their business goal.

However, as Pope Francis rightly calls out in his encyclical *Laudato Si* the accumulation of carbon in the atmosphere, acidification of the oceans, biodiversity loss, income inequality and our interconnectedness as people with our planet, demands more. For innovative companies, one way to step up and respond is with their intellectual property.

Many companies follow patent strategies at opposite poles of a spectrum: proprietary or open. Proprietary patent strategies seek to maximize a return on investment for a company by leveraging a patent's right to exclude others. This often involves litigation or threat of litigation to resolve rights of others to use or license technology. Or worse, the asset is not used and merely deters others. Open patent strategies often involve dedicating patents to the public or making a defensive assertion pledge, neither of which help incentivize investment for university spinoffs and start up or emerging growth companies key to developing new technologies.

Sustainable patent strategies as outlined here aim to foster a middle ground that both promotes innovation for climate change reduction and sustainable development and rewards inventive companies with a return on investment.

While these strategies are groundbreaking to some degree, all of these approaches draw from and



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expand on practices already used and tested in the electronics industry, software practice, university tech transfer and automotive and material science industries. Recent reforms and trends in patent law and practice make sustainable patent strategies a practical option. This is especially true for companies who want to adopt patent strategies that align with their own overall sustainable practice.

Sustainable patent strategies cover three areas: shared information, shared licensing and shared assets.

### **Shared Information**

Under a sustainable patent strategy, companies can pledge to share their patent information independent of any rights to the underlying invention. A spectrum of options exist from which a company can select. First a company can pledge to have their patent applications published. In this way the technical information in patents can be accessed and searched by all even while pending so others can benefit from and improve on the inventions described. Companies can pledge to not pursue claims of willful infringement merely for review and searching patent information. This will encourage and allow engineers and scientists to search patent literature freely. Companies can also pledge to not pursue claims of infringement for experimental use or research use of patent information. Companies can adopt these strategies and can encourage their partners or others in their industry to adopt to help create voluntary best practices that foster sharing of information to boost development of needed technologies in solar, wind, tidal, energy efficiency, food, poverty reduction and other areas.

### **Shared Licensing**

Going further, a sustainable patent strategy can also include mechanisms to help others license patented technology with lower transaction costs while avoiding litigation. License in and out to acquire and spin out new technologies now rather than later is encouraged. Companies can publish a sustainable royalty rate or other license terms for patents they are willing to license to encourage sustainable development. This sustainable royalty rate can be set at a reasonable royalty rate or a lower percentage of a reasonable royalty rate. Such transparency may foster licensing, joint development or open innovation. Companies may also make a Creative Commons type public patent pledge or join a patent commons.

### **Shared Patents**

In some sectors, a sustainable patent strategy can reach patent assets and their exclusive rights. Again, a range of options is available. Fast track patent strategies can be used in the U.S. and worldwide to create patent portfolios for new sustainable technologies. In some of our cases, for inventions that meet patentability standards, we have been able to obtain patents within months of filing and under a year. This can dramatically effect evaluation of technology and research to attract further investment and foster product development relating to sustainable technologies like renewable energy and climate change reduction. Another way is to pledge a license-on-transfer of patents to nonpracticing entities. This can help avoid later litigation brought by nonpracticing entities against existing products once a market is established. Another approach is to make a defensive assertion patent pledge like Tesla Motors Inc. and Toyota Motor Corp. have done recently for certain patents in new markets. Patents can also be offered for a standard with a royalty-free or reasonable and nondiscriminatory terms policy. Carefully created patent pools may be also formed to help provide transparency in pricing and more efficient bundling of licenses.

Rewarding businesses for their innovations on climate change and sustainability naturally starts with

their intellectual property. The intangible nature of intellectual property makes it well-suited to sharing. Patents can play a role not just to incentivize innovation, but also to create an asset that can be transferred and monetized. Sustainability though is a call to a new mindset and new behavior. As Pope Francis calls it an “integral ecology.” By adopting sustainable patent strategies, companies may be able to not only address their own needs but meet the most pressing needs of our times.

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