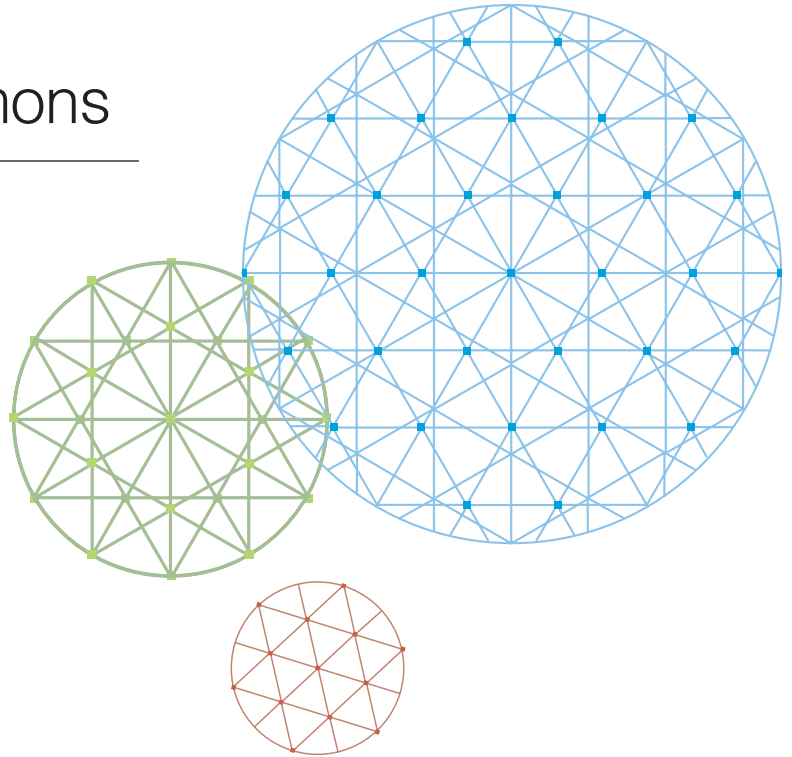


The Eco-Patent Commons

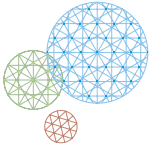
A leadership opportunity for global business to protect the planet



A New Initiative:

The Eco-Patent Commons is an initiative to create a collection of patents that directly or indirectly protect the environment. The patents will be pledged by companies and other intellectual property rights holders and made available to anyone free of charge.

The Commons is a resource for connecting those who have had success with a particular challenge in a way that benefits the environment and those who are facing similar challenges. >



The Eco-Patent Commons

A leadership opportunity for global business to protect the planet

The premise:

Sharing knowledge and technology that protect the environment is one way to address a wide range of challenges and threats to our planet. One vital way to share such knowledge and technology is through making patented technology available. Yet, to date, there has been no organized effort to make patents available, without royalty, to help enable the world community to reduce waste, pollution, global warming, and energy demands.

The Commons concept recognizes that some patents that provide environmental benefit may represent the jewels of a company's kingdom. Asking an enterprise to relinquish such key assets is not the objective the Commons. However, leading businesses may hold some patents that provide environmental benefit and do not represent an essential source of business advantage for them. Though these patents may provide nominal license or exclusivity potential for companies, they may provide greater value in a public commons. As has been demonstrated by the open source software community, the free sharing of knowledge can provide a fertile ground for new collaboration and innovation. Sharing environmental patents can help others become more eco-efficient and operate in a more environmentally sustainable manner—enabling technology innovation to meet social innovation.

The objectives of the Eco-Patent Commons:

- To provide an avenue by which innovations and solutions may be easily shared to accelerate and facilitate implementation to protect the environment and perhaps lead to further innovation.

- To promote and encourage cooperation and collaboration between businesses that pledge patents and potential users to foster further joint innovations and the advancement and development of solutions that benefit the environment.

The Eco-Patent Commons provides a unique leadership opportunity for global business to make a difference—sharing their innovations in support of sustainable development.

How the Eco-Patent Commons will work:

The patents will be identified in a searchable Web site hosted by the World Business Council for Sustainable Development (WBCSD). The Commons will be open to all—with global participation by businesses in diverse industry sectors. It will be fed with initial and subsequent patent pledges by companies that become members of the Commons. Through the Commons, the patents will be made available for free use by all, subject to defensive termination.

Which patents are pledged:

- Which patents a business wishes to offer the Commons is left to the discretion of each business.
- The patents must be for innovations that provide “environmental benefits.” These “environmental benefits” may be a direct purpose of the patents, such as a technology to accelerate groundwater remediation, but can also be less direct as in manufacturing or business processes that lead to a reduction in hazardous waste generation or energy consumption.

- Businesses can pledge any number of patents in order to participate in the Commons. To join the Commons, only one patent of a business need be pledged. While it is intended for the Commons to grow and include a robust number of patents over time, businesses which may only hold one or a small number of relevant patents are welcome to participate and support this global initiative.

Examples of environmental benefits patented inventions may provide:

- Energy conservation or efficiency
- Pollution prevention (source reduction, waste reduction)
- Use of environmentally preferable materials or substances
- Materials reduction
- Increased recycling ability

A Web-based resource:

The primary mechanism supporting the Eco-Patent Commons will be a dedicated, public Web site. While informative, it will also be the major promotional tool for the Commons. It will promote both the pledging and use of patents.

The Web site will provide the following:

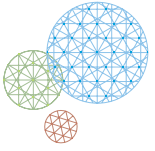
- Introductory material about the Eco-Patent Commons
- Introductory material about patents and their relation to ecological and environmental issues
- Information on the legal “framework” that outlines membership matters, organizational structure, and the granting of rights.
- A list of companies or other patent holders that are members of the Commons.
- A form allowing new members and existing members to pledge patents
- A way to browse through the list of patents in the Commons
- A way to identify patent home classes that are recognized as having environmental effects
- A search function allowing quick access to specific patents in the Commons
- A list of related press articles
- An area for recorded video messages from people who support the Commons—both businesses pledging patents and also external thought leaders
- Information on how to pledge patents and join the Commons—including the rights and obligations of members, along with a patent non-assert applicable to all pledged patents
- Contact information for press inquiries and help

Benefits for member companies or other patent holders (that have pledged patents):

- The Eco-Patent Commons will provide global recognition for the businesses whose leadership is contributing to the acceleration of sustainable development.
- It will be an efficient channel through which businesses can share their innovations.
- It will provide a catalyst for further innovation and can facilitate potential new opportunities for business collaboration.
- It can help introduce the pledger's technology and vision of the future to the industry and businesses in the industry—who may select the pledger's technology and adopt the pledger's vision.
- In contrast to dedicating patents to the public, the Commons allows the pledger to terminate as to those who assert patents against the pledger.
- With respect to defensive termination, one pledger may assert patents, outside the field of the Commons, against another pledger without losing rights inside the Commons field.

Benefits for patent users and our planet:

- The Eco-Patent Commons will provide free access to patents that can be leveraged by others to improve the environmental aspects of their operations.
- The information will be readily available in one easily accessible place.



- The Commons will provide an avenue by which those who are facing a challenge that may have environmental impact can connect with those who already have had success in meeting that challenge.

Next steps:

If you are interested in helping benefit the world through the Eco-Patent Commons:

- 1) Contact any of the representatives listed below to express your interest and discuss joining the Eco-Patent Commons.
- 2) Contact your Intellectual Property (IP) function and examine your business's patent portfolio. Identify patents your business may want to contribute to the Eco-Patent Commons. Many businesses do not routinely patent innovations that benefit the environment, so some participants will have only a small number of patents to pledge. Contributing even one patent is sufficient for participation and can make a significant difference in helping to further sustainable development.

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Q&A

Q1) Is the Eco-Patent Commons philanthropy or a business opportunity?

A1) It is both. While the Eco-Patent Commons clearly has an important philanthropic aspect, its benefits to the businesses pledging patents goes beyond philanthropy. By forming a Commons, members and non-members obtain free access to patents pledged by others, and the opportunity to leverage the Commons to further innovate and establish business relationships with businesses that have similar interests.

Q2) How does the Eco-Patent Commons foster and promote innovation?

A2) Experience has shown that free exchange of intellectual property fosters innovation by allowing new players in and freeing resources to work on other problems and improvements—working on the gear rather than reinventing the wheel. The Commons will also provide an opportunity for businesses to identify common areas of interest and establish new collaborative development efforts.

Q3) How will the Eco-Patent Commons enhance business collaboration for the businesses pledging and using the pledged patents?

A3) The Commons will effectively provide a place for businesses to identify areas of common interest and may promote cross-fertilization among businesses in various areas of the Commons.

Q4) Who will host the Eco-Patent Commons?

A4) The patents pledged to the Commons will be listed in a dedicated Web site hosted by the World Business Council for Sustainable Development (WBCSD).

Q5) What is the WBCSD?

A5) The World Business Council for Sustainable Development (WBCSD) is a CEO-led, global association of some 200 companies. Its mission is to provide business leadership as a catalyst for change toward sustainable development and to support the business license to operate, innovate and grow in a world increasingly shaped by sustainable development issues. The Council provides a platform for companies to explore sustainable development, share knowledge, experience and best

practices, and to advocate business positions on these issues in a variety of forums, working with governments, nongovernmental and intergovernmental organizations.

Q6) How will the Eco-Patent Commons be structured?

A6) The structure of the Eco-Patent Commons is a simple one, because we believe that will make the initiative more effective. It has a minimal structure sufficient to handle some administrative work, manage the Web site, and provide a point of contact for prospective members.

Q7) How will the Eco-Patent Commons be funded?

A7) There will eventually be a membership fee to cover costs associated with the management of the Eco-Patent Commons. Anticipated costs include hosting membership meetings or meetings of the Executive Board as needed (which Board member companies may host) as well as the cost of maintaining the dedicated Web site. These costs are expected to be modest and contained. The membership dues amount is initially set to zero; it will be revised by the Executive Board when it becomes necessary.

Q8) How will the Eco-Patent Commons be promoted and publicized?

A8) Some of the possibilities include the WBCSD's regional network, symposia or innovation events around the Commons. Another potential avenue is working with NGOs (e.g., the IUCN) and various government agencies (e.g., UNEP). Other venues include press releases at the time of the initial launch and when new members join.

Q9) Who determines whether a patent is worthy of being included in the Commons?

A9) Which patents are contributed to the Commons is left to the discretion of each business. The scope of patents to be considered for inclusion in the Commons is based on the patent classification. An Eco-Patent Commons Classification List of selected International Patent Classifications (IPCs) has been published. Patents may be pledged that provide environmental benefit and have a primary IPC class that is on the Classification list. Patents may be identified that do not have a homeclass on the Classification List—the homeclass will be considered for inclusion by the Commons. Patents submitted must identify an environmental benefit.

Q10) Are only 'environmental' patents to be included in the Commons?

A10) Yes. Although it is left to individual businesses to decide which patents they want to pledge, businesses will only pledge patents that directly or indirectly improve or protect the environment and ecology of our planet.

Q11) Do businesses have to provide all of their environment-related patents to the Eco-Patent Commons?

A11) No. It is up to each business to determine which of its patents it believes is appropriate to pledge to the Commons. It is recognized that businesses will want to retain their exclusive rights to certain patents, including patents that may represent a significant business advantage. Because this advantage may disappear as time passes, businesses will be encouraged to reconsider their decisions periodically but they are free to do so as they deem appropriate.

Q12) Will there be an effort to 'translate' the legal language of the patents into a text that would be more readily understood by potentially interested parties?

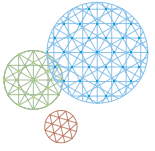
A12) We expect the businesses pledging patents to provide simple, easily understood summaries of the patents they contribute to the Commons along with an identification of their environmental benefit.

Q13) Would the pledgers need to provide ongoing help to people who are trying to understand the patents the participants have pledged?

A13) There is no requirement for pledgers to provide ongoing support to the businesses interested in using the patents they have pledged. There is certainly an opportunity for collaboration and development of a larger business relationship, however.

Q14) How will the Eco-Patent Commons grow?

A14) The Commons will be fed with the initial and subsequent patent pledges by the businesses that join the Commons and will expand as the number of member businesses that pledge patents increases. As more businesses access patents from the Commons to implement solutions that benefit the environment and as the virtue in participating becomes more widely known, the Commons will grow.



Q15) How will the effectiveness of the Eco-Patent Commons be measured?

A15) It would be useful to have a metric to determine the success of this initiative. However, at this time, the usage of the patents will not be monitored. Assessing usage of patents where there is a unilateral pledge is a challenging task. However, ways to measure the success of the Commons are being explored.

Q16) Would patent holders still need to pay the expense of maintaining the patents they have pledged? Why wouldn't they just let the patents lapse and not incur the expense to maintain them?

A16) Payments of maintenance fees on pledged patents are at the sole discretion of the patent holder. While a business can certainly decide to simply place its patents in the public domain, there are reasons a business may want to keep them in force. One reason is the possibility of using pledged patents to maintain freedom of action by enforcing a defensive termination clause. The defensive termination clause outlines instances in which a pledger may terminate its nonassert if another company brings an infringement action against the pledger. It is further noted that the nonassert applies to uses of the patent that provide an environmental benefit. If a business elects to let a pledged patent lapse or it otherwise becomes unenforceable, the patent holder shall provide written notice to the Commons and the Patent List will be updated.

Q17) What is defensive termination?

A17) Defensive termination is a generally applicable contract provision in license agreements or covenants not to sue (like nonasserts). It sets forth conditions under which the patent holder may terminate to a specific party's rights on the occurrence of a specified condition which is typically an offensive use of patents or other intellectual property (IP) by that party. In the Commons, one defensive termination applies to pledgers and a second defensive termination applies to others. If a non-pledger asserts any patent against a pledger, the pledger may terminate its nonassert. If one pledger asserts against another pledger, the attacked pledger may terminate only if the asserted patent has a homeclass on The Classification List. If the asserted patent(s) are outside the Commons (do not have a homeclass on the Classification List), there is no defensive termination against the attacking pledger—both parties can continue to operate within the Commons. This

provides a reasonable benefit to those who contribute to the Commons.

Q18) Is it possible that the cost of maintaining the pledged patents could be reduced under "license of right" rules?

A18) That may be possible in some countries. For example, there is a provision (Section 46) in the UK Patents Act 1977 which allows a patentee to have its patent endorsed "licenses of right" and this reduces the annual renewal fees by 50%. Many governments have expressed an interest in the Eco-Patent Commons and asked what they might do to help. The Commons Board or membership will investigate provisions like this that would reduce the cost of maintaining patents contributed to the Commons.

Q19) Is it possible that pledged patents could be considered 'charitable donations' and be subject to tax deductions for the annual patent renewal fees?

A19) It is possible that there could be tax benefits for making donations or pledges of patents, but it may be difficult to structure the Commons to enable that benefit, and it may require a greater degree of governance and operational cost than is currently being envisioned for the initiative. Nonetheless, the Commons Board or membership will investigate this possibility. In any event, this benefit would greatly depend on the pledger and facts surrounding its tax situation.

Q20) What should businesses interested in joining the Eco-Patent Commons do at this point?

A20) If your business is interested in exploring the possibility of becoming a member of the Eco-Patent Commons, you should:

- Contact the WBCSD or the IBM representatives listed on page 5 to express your interest.
- Discuss the Commons with your Intellectual Property organization.
- Examine your patent portfolio and identify patents that your business may want to contribute to the Commons.

Q21) Does a business have to be a member of the WBCSD to be a member of the Eco-Patent Commons?

A21) No. Any business pledging one or more patents is welcome to become a member of the Eco-Patent Commons.

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JANUARY 2008