

Tesla Motors and the Rise of Non-ICT Patent Pledges

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Quick View

This week, electric car developer Tesla Motors made news by publicly announcing that it will no longer “initiate patent lawsuits against anyone who, in good faith, wants to use our technology.”² Tesla’s pledge has met with both praise and cynicism, with some applauding the company’s ostensible desire to spur the development of eco-friendly technology, while others have dismissed the announcement as a mere publicity stunt lacking in real effect.

Whatever the merits of Tesla’s patent pledge, it is only the most recent in a growing series of voluntary public commitments made by patent holders to refrain from exercising their patent rights to the fullest extent of the law. To date, most of these pledges have been made by companies in the information and communications technology (“ICT”) sector. For example, in 2004-05, a handful of firms publicly announced that they would not assert patents against use of the open source Linux operating system.³ Some large patent holders have issued blanket assurances covering substantial portfolios of patents and products, including IBM’s public commitment not to assert approximately 500 patents against open source software products,⁴ and Google’s more recent “Open Patent Non-Assertion Pledge.”⁵ As I have written elsewhere,⁶ these pledges are intended to assure the market that the pledged patents will not be used to disrupt or hinder the adoption of

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² Elon Musk, *All Our Patent Are Belong To You*, <http://www.teslamotors.com/blog/all-our-patent-are-belong-you>.

³ Legally Binding Commitment Not to Assert Nokia Patents against the Linux Kernel, <http://web.archive.org/web/20051229190243/http://www.nokia.com/iprstatements>.

⁴ IBM, IBM STATEMENT OF NON-ASSERTION OF NAMED PATENTS AGAINST OSS, available at <http://www.ibm.com/ibm/licensing/patents/pledgedpatents.pdf>.

⁵ Google, *Open Patent Non-Assertion Pledge*, <http://www.google.com/patents/opnpledge/pledge/>.

⁶ See, e.g., Jorge L. Contreras, *A Market Reliance Theory for FRAND Commitments and Other Patent Pledges*, UTAH L. REV. (forthcoming Spring 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2309023; *Patent Pledges*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2525947.

market-wide interoperability standards or open technology platforms.

But, as the Tesla pledge demonstrates, patent pledges are also becoming popular outside the ICT sector. Below are examples of a few recent patent pledges made by companies in non-ICT industries ranging from GM seeds to household electrical meters.

Company	Patents	Pledge
Monsanto	Patents claiming genetically-modified seeds	“It has never been, nor will it be Monsanto policy to exercise its patent rights where trace amounts of our patented seed or traits are present in farmer’s fields as a result of inadvertent means.”
Myriad Genetics	Genetic diagnostic patents	Myriad will not “impede non-commercial, academic research that uses patented technology licensed or owned by us... Myriad will continue its practice of not interfering with laboratories conducting genetic testing on patients for the purpose of confirming a test result provided by Myriad.. Myriad will continue to offer financial assistance programs and free testing to help patients with the greatest need.”
Southern California Edison	US 11/626,810 (Method of communicating between a utility and	SoCal Ed will grant anyone a non-exclusive royalty-free license under any patent

	its customer locations)	issuing from this application covering basic “smart metering” technology.
Tesla Motors	All patents	Tesla will not “initiate patent lawsuits against anyone who, in good faith, wants to use our technology.”

The full text of (and hyperlinks to) these commitments, as well as patent pledges from many companies in the ICT sector, can be found in the Non-SDO patent pledge database⁷ maintained by the Program on Information Justice and Intellectual Property (“PIJIP”⁸) at American University’s Washington College of Law. As always, we welcome additional contributions to the database.

Cited as:

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⁷ <http://www.pijip.org/non-sdo-patent-commitments/>.

⁸ <http://www.pijip.org/>.