Abstract

The world is increasingly facing the adverse impact of climate change. In this context, what is the role of intellectual property (IP) for stimulating the innovation and technology transfer that are considered essential to resolving this global issue?

Taking the existence of the IP system as a foundation, this paper aims to provide a comprehensive review of pragmatic IP-based options in the multilateral climate change regime. The paper does so principally by addressing the possibilities afforded by three components of the patent system: patent law, patent policy and patent information. Complementing these public options are technology transfer initiatives by IP communities, some of which the paper describes, together with associated IP issues. The paper also briefly surveys complementary means of balancing IP and competition potentially relevant to climate change solutions.

In providing the above description and analysis, this paper identifies a number of potential controversies at the crossroads of IP and climate change, for example, compulsory licensing for climate change, patent offices' preferential treatment policy for 'green' technology and TRIPS compliance, consideration of 'greenness' in substantive patent law, and emerging patent litigations and antitrust disputes affecting green technology sectors.

The paper illustrates the need for a multifaceted approach to make effective use of IP for combating climate change. Technical progress can be rooted in a range of areas of scientific experimentation; likewise, policy solutions for climate change can come from complementary sources ranging from laws and regulations to tailored means of organizing patent information. Indeed, no matter how such options are combined and whether they are government regulated or privately initiated, the core promise of IP in this context may well be the optimal provision of information to technology users.

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