

Where's the real value in Tesla's patent pledge?

August 20 2014, by Tyrone Berger



Will anyone jump on the Tesla patent bandwagon? Credit: raneko/Flickr, CC BY

With the much-anticipated arrival next month of electric vehicle manufacturer Tesla's [Model S](#) to Australian shores, it's a good time to revisit Tesla's pledge to freely share patents.

Elon Musk, co-founder and CEO of [Tesla Motors](#), wrote a statement on the company's blog entitled [All Our Patent Are Belong To You](#) back in June.

In a short announcement giving some context to the company's decision, Musk claims that the electric vehicle industry as a whole would benefit from an "open source" approach towards innovation.

His pledge to the market that "Tesla will not initiate patent lawsuits against anyone who, in good faith, wants to use our technology" spawned headlines around the world, and [purportedly armed](#) those who are opponents of the [patent system](#).

Commentators such as [Eric Lane](#) and [Rajiv Rao](#) were quick to suggest that Tesla is abandoning their patents and making them freely available – but the reality is quite the opposite.

There are 'known unknowns'

Musk has since been [reported](#) as saying the new policy is not an abandonment in favour of some notion of the public domain.

In fact, by allowing others to use its patented technologies, Tesla is suggesting that other electric vehicle manufacturing companies would also benefit from adopting this approach in the quest of developing a common technology platform, known as a cross license.

With cross licensing, manufacturers are essentially prevented from filing patent infringement lawsuits against each other and recently corporations have recognised those benefits.

Some of the world's biggest information technology companies, including Google and Canon, last month banded together to form the License on Transfer (LOT) network, which describes itself as "a new kind of royalty-free cross-license".

Tesla's caveat "in good faith" also calls into question whether the patent

pledge is a genuine gesture of goodwill. But this does not amount to Tesla "taking down the patent wall", but rather an attempt to control the direction of the industry.

Tesla's announcement is not entirely without precedent. Swedish carmaker Volvo patented the design for the V-type three-point [safety belt](#) in 1959 and made it freely available. The new safety belt soon afterwards became the industry standard for vehicles worldwide.

There is further evidence of the use of this [strategy](#) in the past by companies such as IBM and Google in the information and communications technology sector, where such pledges have been used to ensure industry-wide adoption of interoperability standards.

Long live the patent system

Patents provide the owner (or patentee) exclusive rights to make, use or sell an invention covered by those rights for a limited period of time. Despite Tesla's decision to make its old patents available, it does not stop the company from seeking patents for its newer technologies.

Keeping in mind that Musk was able to secure venture capital funding on the basis of securing patented technologies in the first place, it now seems that he can shift the strategic focus of those commercial assets towards building goodwill in the marketplace.



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George Mason University law professor Adam Mossoff [points out](#):
"Tesla's new policy is an example of Musk exercising patent rights, not abandoning them."

The real value

We are yet to hear whether other manufacturers have taken up Tesla's offer. But what we do know is Tesla will only continue to prosper if the entire industry succeeds.

In other words, it needs commercial partners to improve battery technologies, build charging stations and band together to change public perception.

The [latest move](#) by Tesla and its partner, Panasonic, will see the construction of the new [Gigafactory](#), which will produce long range battery packs for Tesla's [electric vehicles](#).

In the end, the impact of Tesla's announcement may depend on to what

extent other players in the industry are willing to invest in manufacturing vehicles using Tesla's patented (and [patent](#)-pending) technologies.

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Citation: Where's the real value in Tesla's patent pledge? (2014, August 20) retrieved 25 April 2024 from <https://phys.org/news/2014-08-real-tesla-patent-pledge.html>

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