

THIRD WORLD NETWORK BRIEFING PAPER

Renewable Energy Agency Parrots Patent Propaganda

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“Inspire”, a program of the International Renewable Energy Agency (IRENA), the Abu Dhabi-based intergovernmental organization that “*supports countries in their transition to a sustainable energy future,*” has disturbingly embraced expanding patents on renewable energy technologies.

It’s an unbalanced position that the agency should reconsider as it implements its wide-ranging work programme and finds its role in the Post-2015 United Nations Development Agenda, now officially known as *Agenda 2030*.

Developed since 2013 and launched in July 2015, “International Standards and Patents in Renewable Energy” (Inspire) is a collaboration between IRENA and the European Patent Office (EPO).¹ Inspire’s web portal claims to be the “*world’s largest collection of global renewable energy standards and patents.*”² Inspire portrays international patenting of renewable energy technology as an unqualified positive, as if an atmosphere thick with wind, solar, and other renewable energy patents is necessary and constructive for reducing carbon emissions and responding to climate change.

As an information source, Inspire is somewhat oversold. The patent search platform is essentially an alternative interface for existing data sources, mainly from the EPO itself. Inspire provides no significant new functionality for intellectual property specialists, who can use patent classification searches and existing interfaces to achieve similar and more detailed results.

Although it is reasonable for IRENA to provide a portal to information on renewable energy patents and basic tools to mechanically analyze them, what’s troubling about Inspire is the ideologically-tinged outlook that accompanies the data.

Inspire uncritically promotes the idea that raw numbers of patent applications are indicative of the quality of scientific innovation in a jurisdiction or a technical field. It generally disregards the reality that patent claims can be made, and are made, on useless and redundant inventions, or without serious intent to complete the process, or that great innovations may never be patented (a famous case being Jonas Salk’s polio vaccine).

A key premise of Inspire is that renewable energy policy makers don’t know enough about intellectual property.³ It thus sets out to educate them with a perspective that appears attributable to the European Patent Office, which can hardly be considered a disinterested party when it comes to promoting expansion of patenting. Intellectual property rights “*act as an engine for technological innovation,*” Inspire categorically declares with little nuance or qualification.

¹ See IRENA Inspire at the URL: <http://inspire.irena.org/>

² IRENA 2015. New IRENA Platform Supports Renewable Energy Innovation, Quality and Collaboration. Press release, 6 July. URL: http://www.irena.org/News/Description.aspx?News_ID=419

³ Isaka M (2013). Intellectual Property Rights: The Role of Patents in Renewable Energy Technology Innovation. IRENA Working Paper. June, p. 5.

Averting that patents “*encourage creative activity for the benefit of society*”,⁴ Inspire barely acknowledges alternative views or even the economic motivations behind patenting. IRENA does not discuss the widely perceived deterioration of patent quality in many scientific sectors, or explain that patents can retard innovation and technology transfer by preventing access, discouraging research, or making technologies unaffordable.⁵

Inspire does not mention how ‘novelty’ or ‘innovative step’ patent eligibility requirements have come to be abused (e.g the practice of “evergreening” in the pharmaceutical field). Nor does it weigh the impact of parasitic non-practicing entities (“patent trolls”), who are facilitated by thickets of complex and overlapping patent claims, and who industry sources say have begun to target wind energy companies.⁶

Nor does Inspire mention the issue of costly defensive acquisitions, for example the complicated chain of custody and billions of dollars spent for the patents originally granted to bankrupt Canadian telecom Nortel, which established major telecoms (Apple, Microsoft, Sony, etc.) collectively bought in consortium in order to prevent the patents from passing to trolls or new competitors.⁷

Reciting mechanically compiled studies of patent applications, Inspire beckons developing countries into the North’s patent fold with a presumption that geographical expansion of patent rights is an inherently positive indicator. Patents are presented as a signifier of scientific advancement and their absence, it is implied, suggests a lack of intellectual capacity. (Of course, many policymakers are less naïve about patents than Inspire purports, and would beg to differ from the IRENA’s implications.)

Inspire claims that a major benefit of analyzing patent data is the identification of “*potential markets where technologies need to be protected.*”⁸ In other words, if patents on renewable technologies appear in a particular country, this may indicate that other companies should follow suit and file more. But do patents, especially those owned by foreign companies, encourage or inhibit renewable energy innovation in the developing world? The answer is certainly not as simple as Inspire suggests.

Another – and arguably patronizing - example is IRENA’s explanation that rising numbers of patent claims on renewable energy technologies made by Northern multinationals in Brazil, China, and South Africa should be viewed as indicating that those countries “*can play an important role in [renewable energy] innovation.*” – as if European and US corporate giants were

⁴ IRENA 2015. How Patents Encourage Innovation in Technological Development and Deployment. Web page. URL: <http://inspire.irena.org/Pages/patents/patentsinnovation.aspx>

⁵ Improving patent quality and skepticism over the patent-innovation causal link are matters under debate at the World Intellectual Property Organization’s Standing Committee on the Substantive Law of Patent. See Alas, M (2015). South stress balanced approach to patents for public health and development. URL: http://twm.my/title2/intellectual_property/info.service/2015/ip150801.htm

⁶ Davidson R (2014). Analysis: Patent trolls target wind power. Windpower Monthly. 7 August. URL: <http://www.windpowermonthly.com/article/1306962>

⁷ See, for example, Chung A (2014). RPX buys Apple-backed Rockstar patents for \$900 mln. Reuters. 23 December. URL: <http://www.reuters.com/article/2014/12/23/rpx-rockstar-ip-idUSL1N0U713M20141223>

⁸ Isaka M (2013), p 5.

paying Chinese scientists and engineers a compliment on their intelligence by using the country's patent system.

A more plausible possibility, of course, is that the multinationals file those patent applications in order to control and limit use of technology, enabling established players to check the advance of developing country potential competitors by refusing licenses or making them very expensive.

For example, US wind company American Semiconductor (AMSC) tells its investors *“we have been particularly successful in targeting key Asian markets, including India and China.”* Although AMSC has *“incorporated China in our patent strategy for all of our various products,”* it is *“careful to limit the technology we provide through our product sales and other expansion plans in China.”*⁹

AMSC's patent activity in China is then part of an explicit strategy to target sales in Asian markets while limiting technology transfer to them. So if, as Inspire suggests, it's a compliment to Asia for AMSC and its peers to use China's patent system, it's certainly a backhanded one.

With the challenge of climate change, hard questions about the desirability and impact of renewable energy intellectual property, especially for developing countries, deserve serious contemplation - rather than regurgitation of oversimplified and ideologically tinged alleged patent “truisms” from the European Patent Office.

Of course, many renewable energy technologies are young, and the field is open in comparison to other areas of technology, meaning that there are – for the time being – fewer patents to work around. But as the revolt against intellectual property business-as-usual expands – the open source movement, drug patents, recognition of the rights of the visually impaired, or agricultural biopiracy are examples – the institutions charged with marshaling technological responses to climate change should avoid past mistakes.

A more balanced consideration than Inspire is needed of what patents will and won't do for meeting renewable energy goals in developing countries. History teaches that business as usual with renewable energy patents could result in concentration of technology ownership with both unjust socio-economic results and less diffusion of innovation in the developing world.

IRENA's work programme has identified many areas of priority and need. The agency's work on intellectual property and standards should recognize that these can be barriers, and its work should be country-driven and designed to bring the benefits to the South. Rather than parroting the views of North intellectual property offices, IRENA's effort on patents and technology transfer should be firmly placed within a framework of technology assessment that emphasizes adaptation to local and regional needs. The development of the Technology Facilitation Mechanism recently agreed for the Post-2015 Development Agenda¹⁰ may offer IRENA to flesh out its technology transfer role.

⁹ AMSC (2015). SEC Form 10-K. 28 May. URL: <http://ir.amsc.com/secfiling.cfm?filingID=1564590-15-4664&CIK=880807>

¹⁰ See URL: <https://sustainabledevelopment.un.org/topics/technology/facilitationmechanism>