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Developing a Global Green Patent Policy

The discussion around climate change and patents is heating up. In order to increase access to climate-friendly technologies, developing and middle-income countries like Brazil, China, and India have called for compulsory licensing, reduced patent terms, and the outright exemption of green technologies from patentability. Industry groups have opposed these ideas, saying they won't address "real" barriers to existing technologies, like tariffs, but will chill investment in new technologies. Such fears led the US House of Representatives to vote on June 10 to oppose any climate change treaty that would weaken IP protections over green technology. Both positions have merit. Unless the distance between them is reconciled, however, a global climate treaty that includes developed and developing countries will remain elusive. This paper suggests options for bridging the gap, drawing upon the relevant parts of the global experience with compulsory licenses over HIV drugs, which both sides have cited to support their views that compulsory licensing is a good or a terrible idea. Specifically, it suggests the promotion of voluntary licensing, the tailoring of domestic patent policies, and an administrative body to provide case-by-case guidance on proposed compulsory licenses could be used to promote the incentives for the development of as well as access to green technologies.