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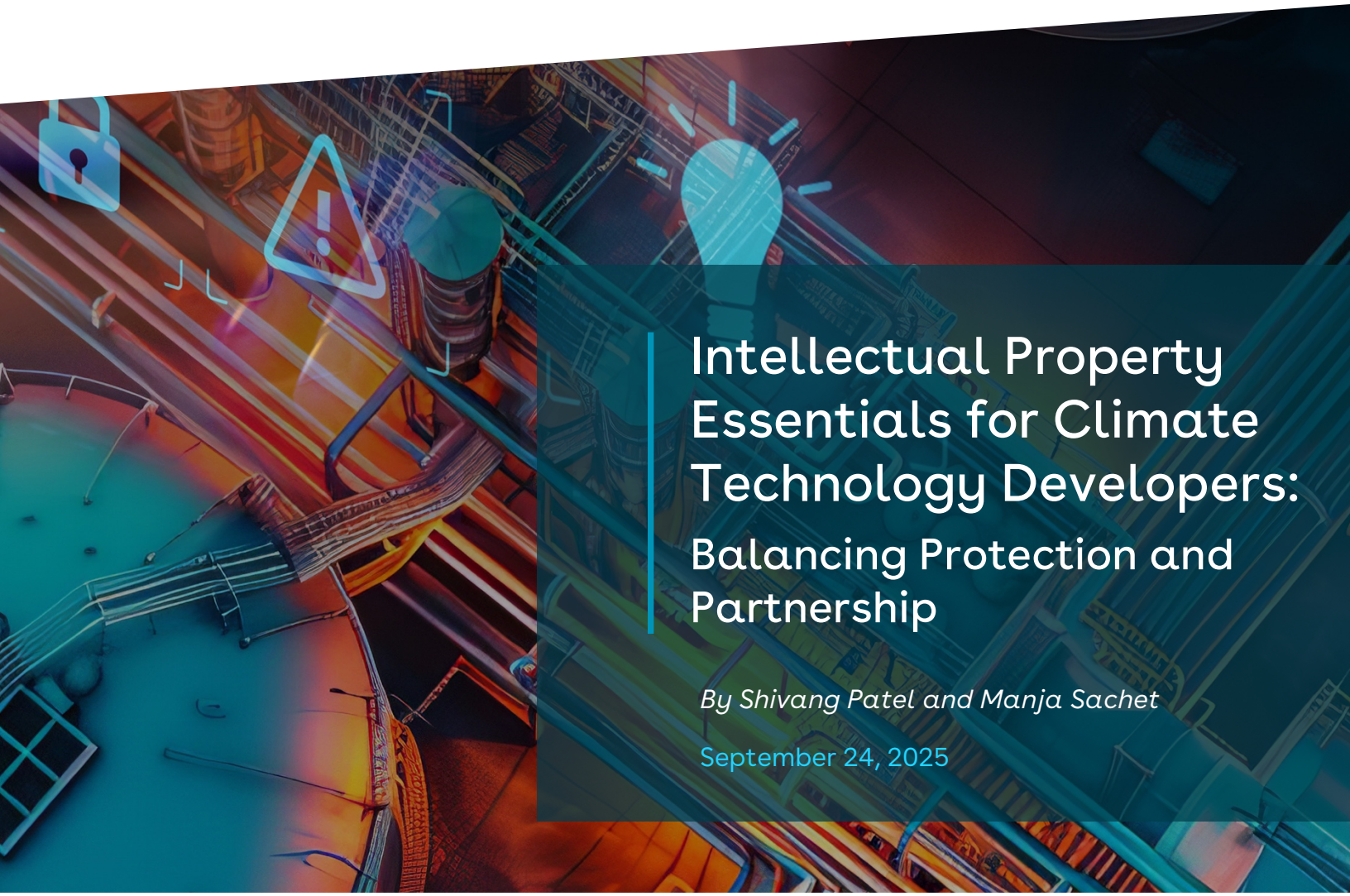

Intellectual Property Essentials for Climate Technology Developers:

Balancing Protection and Partnership

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A Developer U Collaboration

Developer U

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About Developer U

Developer U is a recurring two-day workshop, run by CREO in partnership with Wilson Sonsini, Spring Lane Capital, and Builders Vision, designed for senior executives of climate hardware companies navigating the shift from innovation to commercial deployment. The seminar focuses on core concepts in project development and project finance, essential tools for bridging the "missing middle" financing gap that often hinders climate infrastructure projects. Taught by active industry practitioners, Developer U equips entrepreneurs with both strategic insight and practical skills to implement and scale their projects effectively.

This whitepaper is the second in a series developed by Wilson Sonsini, in collaboration with Builders Vision, CREO, and Spring Lane Capital, to complement the Developer U workshops. Read the previous whitepaper here.

The series is intended to introduce key concepts critical to the successful development and financing of climate hardware projects, with the goal of equipping stakeholders with the knowledge needed to navigate the complex financing and development challenges in climate technology.

This whitepaper outlines key intellectual property (IP) principles and offers practical guidance for climate tech developers navigating the shift from R&D to commercialization, helping them protect their IP while building strategic partnerships.

To learn more about Developer U, please visit www.developer-u.com.

I. Introduction

As climate technology developers (developers) transition from technology R&D to scale-up, pilots, and commercial deployment, it is crucial to understand how to effectively manage and protect IP rights to ensure the developer's ongoing ability to further develop, finance, commercialize, and scale its technology. This primer is written to help readers attain a working knowledge of the basics of IP rights and raise important considerations for protecting a developer's technology. This whitepaper is written with U.S. law in mind, excluding IP considerations related to government funding. International development or commercialization and cross-border transactions are also outside the scope of this whitepaper, although these topics eventually become important for many developers.

Commercial deployments of climate technology (referred to in this paper as projects) often require a large amount of capital or other resources or rely on collaborating with large incumbents with existing technology, IP rights, expertise, infrastructure, or relationships. This can place developers in a vulnerable position, as potential strategic collaborators or lenders (strategic partners) may seek to maximize their returns and want to ensure that the entities operating the projects (operating entities) have what they need to continue scaling, developing, and operating, with or without further involvement or assistance from the developer. It is therefore important for developers to structure projects in a way that is responsive to the concerns of their strategic collaborators and project lenders, while still: (1) maintaining control over their data and IP rights, (2) preserving their ability to continue developing and improving their technology, and to stand up additional projects over time, in each case without the need to secure licenses, approvals, or other rights from third parties and, (3) ensuring that strategic partners do not obtain rights in the developer's own technology that could enable them to compete with the developer.

II. IP Basics

Failure to timely and properly seek IP protection, or failure to take proper steps to protect IP rights, could lead to losing IP protection altogether. It's therefore critical to establish a clear IP protection strategy as soon as possible in the development lifecycle, and well in advance of partnering or commercial deployment. Engaging with an IP attorney early can help developers form a robust and comprehensive strategy for how to best protect their IP assets.

Developers should take inventory of their technology and consider which aspects are their key drivers of value, and which aspects could benefit most from a strategic partner; these considerations should inform with whom to partner, and how to structure a project.

The following main categories of IP rights may each be relevant to climate tech infrastructure projects to varying degrees, depending on the nature of the developer's technology and desired business model. In addition, the categories of available IP protections for a developer's technology also inform the developer's commercialization strategy.

a. Patents

Patents protect inventions that are useful, novel, and non-obvious, and give the owner the exclusive right to use, make, have made, sell, offer for sale, and import the claimed invention, or practice the claimed invention for a period of time. Compositions, devices, systems, and processes can all be patented. Registration is necessary to secure protection. Prosecuting a patent from start to finish can be a lengthy and complex process, often taking months or even years from initial application to issuance, with no guarantee a patent will ever be issued[1]. Developers should keep in mind that it is very common for a patent application to receive at least one rejection from the United States Patent and Trademark Office (USPTO) during the examination process, and most applications go through a few rounds of back and forth with the USPTO prior to issuance.

With limited exceptions, information or technology that's public knowledge (prior art) when a patent application is filed (filing date) can be used to show that the invention is not novel or that it is obvious. A common mistake developers make is to publicly disclose or use aspects of the invention prior to filing a patent application. Such actions can cause aspects of the invention to become prior art that is usable against them when prosecuting a patent for that invention. Although the USPTO offers a one-year grace period for a patent application to be filed before such aspects become prior art, it's not always intuitive what actions might cause an invention to become prior art or start the one-year clock. Other jurisdictions may not offer a grace period. As a result, it's important to seek guidance from an IP attorney before publicly disclosing, publicly using, selling, licensing, or offering to sell or license the invention.

Developers should also ensure they have an appropriate non-disclosure agreement in place with any third party with whom they share non-public information about their technology. This may be difficult to comply with in practice, however, as many potential investors refuse to sign non-disclosure agreements as a matter of policy. If sufficient information about a patentable invention is disclosed to the investor without an appropriate non-disclosure agreement in place, such disclosure would start the one-year clock. Further, note that making an offer to sell or license the invention or process (to an investor or any other third party), even with an appropriate non-disclosure agreement in place, would start the one-year clock.

Developers can consider filing a provisional patent application prior to making a public disclosure or use of, or selling, licensing, or offering to sell or license, a patentable invention. A provisional patent application is a low-cost way to secure a filing date for the claimed invention with fewer formalities required than a non-provisional patent application. The USPTO does not review provisional patent applications. A non-provisional patent application must be filed in order for the USPTO to begin review and potentially issue a patent. A provisional patent application lasts for 12 months, and a non-provisional patent application must be filed within that 12-month period in order to receive the benefit of the corresponding provisional patent application's filing date. If a provisional patent application

[1] As a point of reference, the USPTO reported that as of July 2025, the average pendency time for a patent application to reach a final disposition is 26.2 months (https://www.uspto.gov/dashboard/patents/#traditional-total), and the rate of patent applications allowed to the total patent applications disposed of (including abandoned patent applications) is 59.8 percent (https://www.uspto.gov/dashboard/patents/production-unexamined-filing.html#allowed), though note that this figure excludes applications for design patents from the calculation.

expires, it may be re-filed. However, the filing date of the re-filed provisional patent application will be the day it is re-filed, not the filing date of the original provisional patent application.

When filing a non-provisional patent application, only information adequately supported by the provisional patent application—if one has been filed—will receive the benefit of the earlier filing date. Further, the information in both the provisional and the non-provisional patent applications may eventually become public knowledge. Accordingly, developers should think carefully about what to include in their provisional and non-provisional patent applications and what to keep confidential.

Note, however, that patents are generally effective only in the jurisdiction in which they are issued. For example, a patent issued by the USPTO is generally not enforceable in another country, so developers may decide to file patents in multiple jurisdictions, depending on where their technology is likely to be used, sold, imported, manufactured, or licensed. Developers may file in multiple jurisdictions either via a single application under the Patent Cooperation Treaty, or in jurisdiction-specific applications. Ultimately, each national or regional patent office decides whether to grant the patent.

Developers work closely with their patent counsel throughout the patent application process, starting with determining which aspects of their technology, if any, is patentable (e.g., by conducting a search of public records) and which aspects to describe in the patent application and what to exclude, through filing and prosecution of the patent application itself. Patent counsel can also manage patent portfolios, including by managing deadlines for filing patent applications, responding to the USPTO, and making payments of filing or maintenance fees.

b. Trade Secrets

The term “trade secrets” refers to proprietary knowledge, confidential information, know-how, or other information that derives independent economic value from not being generally known to, or readily ascertainable by proper means, by others, and that the holder uses reasonable efforts to maintain the secrecy of. It’s important to ensure that an appropriate non-disclosure agreement or confidentiality commitment is in place before sharing trade secrets with others. Failure to do so might invalidate trade secrets.

Trade secrets can show up in unexpected forms, and the same piece of technology might be held as a trade secret while simultaneously enjoying protection under a different type of IP right.

For example:

- Source code to proprietary software, while also a copyrightable work, can also be held as a trade secret.

- A patented invention or process may have trade secrets associated with the invention or process. A patent may include claims covering a new battery chemistry (or aspects of the process for manufacturing a battery with that chemistry), but information related to the detailed design or operating specifications for the claimed battery technology that is not detailed in the patent application may be held as a trade secret.

- A design drawing would generally be a copyrightable work, but information in the drawings (e.g., pressure, temperature, operating specifications, etc.) can be held as trade secrets.

Despite taking all the precautions, unauthorized disclosure of trade secrets may still occur. Disclosures of trade secrets can happen inadvertently, such as through observation of a manufacturing process, or during casual conversation. Developers should be cautious and share with third parties only the information which is required to achieve the business objective.

c. Copyrights

Copyrights protect original works of authorship, such as literature, artwork, music, video, photographs, software, scripts, and technical documentation. Unlike patents, registration of your copyrighted works is generally optional, but doing so is required to sue for copyright infringement.

As a general matter, a work must be created by a human to receive copyright protection. Works generated by generative artificial intelligence (AI) technology are not protectable by copyright. However, if a human makes significant contributions to an AI-generated work (e.g., by modifying it, or incorporating it into a larger work), then the human-authored portion of the resulting work may be eligible for copyright protection.

Developers will want to consider when and how to use generative AI technology in their research and development, to ensure that there is sufficient human authorship in the resulting work to qualify for copyright protection.

d. Trademarks

Trademarks serve as identifiers of a brand or source for a product or service. While registration is not required at the state level to maintain protection within that state, registering trademarks with the USPTO secures trademark rights across the U.S. Accordingly, developers often seek trademark registration for their names and logos with the USPTO. Similar to patents, trademarks may need to be registered in foreign jurisdictions in order to maintain protection in those jurisdictions.

e. Data

Although rights in data typically do not constitute a distinct category of IP rights, data rights are often specified separately in agreements. Considerations for developers include what data will be shared or generated during a project, and how that data will be collected, utilized, and protected. Data is typically protected as a trade secret. However, certain types of data and, in certain limited circumstances, collections of data, may be subject to copyright protection.

The table below summarizes the types of technology protected by each category of IP right and provides common examples of technology embodying those IP rights that might show up in the context of projects. Patents and trade secrets can be of particular importance in an IP protection strategy for climate technology, but developers will want to consider how each category may apply to their specific technology and planned deployments.

IP Right	Description of the Protected Technology	Common Examples of Technology Embodying the IP Right	How to Obtain and Protect
Patent	• Protects a "process, machine, manufacture, or composition of matter" that is novel, non-obvious, and useful. *May also protect the physical appearance or ornamental design of a product (design patent).* *Does not protect natural occurrences, scientific principles, formulas with no utility, or business forms.*	• Processes for manufacturing materials or product • Specialized equipment or other apparatus used in manufacturing a product • The product itself may be patentable in some cases	• Registration required for protection • File a patent application with the relevant patent office (e.g., USPTO in the U.S.) detailing the invention, including claims that define the scope of protection • Maintain confidentiality until the patent is filed to avoid public disclosure
Trade Secret	• Protects non-public information (including ideas) that derives economic value from not being generally known. *Does not protect information that is readily observable, or against independent invention or development by others.*	• Formula for catalysts or other materials • Operating specifications • Manufacturing know-how and processes • Data • Source Code	• Implement strict confidentiality agreements (NDAs) with employees and partners • Use physical and digital security measures to protect sensitive information • Regularly review and update security protocols to ensure ongoing protection
Copyright	• Protects original works of authorship fixed in a tangible medium that show some creative expression. *Does not protect ideas, themes, titles, short phrases, brand names, facts, or lists of ingredients or contents.*	• Design drawings • Software, scripts or algorithms used to operate equipment or manufacture product • Documentation • Databases or other collection of data or information* * *Applies only in some cases.*	• Automatically protected upon creation and fixation in a tangible medium; however, registration with the copyright office (e.g., U.S. Copyright Office) provides additional legal benefits when enforcing against third parties • Use copyright notices to inform others of ownership
Trademark	• Protects names, symbols, designs, and other identifiers used to distinguish one source of goods from another. *Does not protect against use of the same name by others in different territories or for different products/services.*	• Developer or project's name or logo • Trade dress (i.e., look and feel of a product or packaging)	• Registration required for protection in many jurisdictions • File a trademark application with the relevant trademark office (e.g., USPTO) to register the mark. • Use the trademark consistently in commerce to maintain rights and consider renewing registration as required.

III. Applied Concepts

Effective management of IP is a critical component to being able to successfully deploy and scale up projects over time. This section highlights various aspects of IP management for developers, including considerations for where the IP is held, strategically designing business models to protect core IP, structuring license grants and restrictions, collaboration complexities, and ways to address potential concerns from strategic partners to ensure continuity and the operating entity's ability to continue operating the project, even without further involvement from the developer or its other collaborators.

a. Where Is the IP Held?

Developers who are building multiple projects typically hold their IP at the parent level or sometimes in an IP holding company, and license the IP to each project's operating entity via an intercompany license agreement. Strategic partners will expect that a project has all rights necessary to stand on its own without the parent. The parent or IP holding company may also act as a master licensor or supplier for third-party intellectual property rights or technologies needed by each of the project companies to operate, with the right to sublicense to, or supply, the projects.

b. IP Protection Through Business Model

Developers can consider ways to protect their IP by strategically designing their business models to limit access to core developer IP. The types of IP protections available for protecting developer's core technology should inform how they implement their business model. If a strategic partner is involved, the business model will also need to ensure that the project can continue to operate even in the event of a developer bankruptcy (see Section III.e, below).

Some illustrative examples are provided below. However, these are not one-size-fits-all solutions. Any potential solution must be carefully considered, at a minimum, in light of the nature of the technology to be commercialized, the available IP protections, the business goals, and the nature of the strategic relationship:

> ***Example 1*:** A developer's core IP is centered around specific aspects of the manufacturing process. Patent protection is not available, and the developer therefore relies on trade secret protections to protect its core technology. As a result, the developer needs to determine how to enable projects to utilize the proprietary manufacturing processes without divulging trade secrets. One possible option might be to put the technology for the process into a technology escrow[2] for the benefit of the operating entity and provide services to the project performing the proprietary processes. Another option might be to separate the proprietary parts of the

[2] For more information on technology escrows, please see Section III.f.

manufacturing process into a separate room or location, accessible only to developer personnel.

***Example 2*:** The developer's proprietary process involves the use of a proprietary catalyst. The developer does not license the method to manufacture the catalyst to the operating entity. Instead, it manufactures and sells the catalyst to the operating entity. To address concerns of its strategic partners, the developer may put the technology for how to manufacture the catalyst into a technology escrow[3] for the benefit of the operating entity.

***Example 3*:** The developer has a patented process for how to make materials with desirable qualities for use in specific applications. The process can be tuned to change the qualities of the resulting materials, so that they are better suited for other applications. The developer opts to provide services to the operating entity to tune the process to achieve the desired output qualities. The licenses granted to the operating entity would be limited to performing the process as tuned by the developer and include restrictions prohibiting further modification by the operating entity.

c. License Grants and Restrictions

When structuring the agreements for projects, developers often carefully consider the license terms and restrictions associated with their technology and IP rights. It may be more beneficial for IP protection purposes to treat different categories of technology or IP rights distinctly from one another in these agreements.

It is essential to provide only the IP, and grant only the rights, that are necessary for the project to operate. For example, developers can limit the scope of the rights granted to (1) perform the licensed process at a specified facility or a specified manufacturing line, or (2) to use a licensed product for a specific purpose. Developers can also consider implementing restrictions that prohibit reverse engineering, modifying, or sharing developer's technology with third parties, or using the technology on behalf of, or to provide services to, a third party.

Likewise, when obtaining licenses from third-party licensors, developers may aim to cover both their current needs (e.g., ongoing R&D), and their future needs (e.g., commercialization). Developers typically consider whether the license should be sublicensable or transferrable, and whether the license terms permit developers to establish technology escrows, conduct technology transfers, or provide the licensor's technology to future collaborators or operating entities.

d. Collaboration and IP Complications

The IP landscape becomes more complex when a developer partners with strategic collaborators to scale-up, pilot, or commercialize the developer's technology. In projects where both the developer and the strategic collaborator contribute technology, expertise, or IP rights, or where modifications or

[3] *Ibid*.

improvements to either the developer's or the strategic collaborator's technology are expected, it is very likely that one or both parties will develop improvements to a party's technology, or entirely new technology, that would be of interest to one or both parties. In these cases, it is often helpful to establish a clear IP rights framework that governs how IP rights are licensed and transferred amongst the parties.

In determining what that framework looks like, developers assess the contemplated scope of collaboration to determine what kinds of improvements or new technology might arise from the project, and what rights it might want with respect to such improvements or technology.

Further, developers pay special attention to whether the collaboration will result in the collection or creation of data, and if so, who collects or creates the data, who "owns" the data, and who will have rights to access and use it (and for what purposes). The more parties involved, the more complicated this can become. For example, a typical project often includes one or more of: (1) the developer, (2) operating entity, (3) lender, and (4) collaborators. Different involved parties might generate different types of data, which may be useful or necessary to other involved parties, both in the context of the specific project, and more generally.

One common framework for apportioning IP rights divides up the potential categories of IP rights that might be implicated in the project into a distinct categories (delineated by who is expected to own the IP rights in that category) as follows: (1) IP rights that are owned by a party as of the date of the project, or obtained by the party independently from the collaboration or project (commonly referred to as background IP), and b) IP rights arising from the collaboration or project (commonly referred to as foreground IP), which may further be categorized into foreground IP expected to be owned by the developer, foreground IP expected to be owned by the strategic collaborator, and foreground IP expected to be jointly-owned by both.

Although each party typically retains ownership of its own background IP, there are many ways to address ownership of foreground IP. Some common options include:

> ***Option 1:*** The party who created the foreground IP owns the foreground IP. This approach is most suited where there is not a lot of close collaboration, and each party is typically making its own developments to its own technology. Sometimes parties specify that foreground IP that was jointly developed will be jointly owned. See below for risks associated with jointly owned IP.
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> ***Option 2:*** All foreground IP is jointly owned. This approach is often suggested by non-legal personnel as a "fair" or "simple" approach. However, joint ownership carries with it certain obligations or affords the joint owners certain rights, which may complicate future commercialization efforts. See below for risks associated with jointly owned IP.
>
> ***Option 3:*** Foreground IP primarily related to a party's technology is owned by that party (with all other foreground IP either defaulting to being owned by one of the parties or addressed via one of the options described above). This approach may be better suited for a scenario where there is a lot of close collaboration, or where the parties are expected to use, modify, or improve the other party's technology.

Joint ownership of IP rights means that, by default, each joint owner has an equal share and right to exploit the jointly owned IP rights. However, depending on the nature of the underlying IP rights, joint ownership may come with certain obligations (e.g., a duty to account for profits made to the other party), or may introduce complexity (e.g., the need to join each co-owner to an enforcement action, or obtain consent to grant exclusive licenses) in exploiting such jointly owned IP rights. Further, a joint owner may still need to obtain rights from other joint owners to pre-existing IP rights in order to effectively exploit the jointly owned IP rights. Joint owners may also agree in a contact to share revenues from exploiting the jointly owned IP rights, or allocate responsibility for prosecuting, maintaining, or enforcing the jointly owned IP rights.

In addition to ownership, the parties need to establish the rights each party will have to the various categories of IP rights:

- The parties might grant each other limited licenses to background IP and foreground IP for operating the project and performing the development.

- Each party might grant the other party a broad license to commercialize its foreground IP. This license might be limited to a field of use. When granting this right, consider whether rights to background IP are necessary to make use of the foreground IP, and if so, whether rights to the background IP should be granted, given the nature of the foreground IP.

In determining the categories of ownership and related license grants, climate tech developers need to be wary of potential "blocking technology," which refers to patentable improvements or technology developed in the course of the project, that is necessary for improving or commercializing the developer's own technology. If the strategic collaborator's foreground IP includes blocking technology, the strategic collaborator successfully obtains a patent covering the blocking technology, and the developer doesn't obtain sufficient rights to such blocking technology, the developer may need to seek a patent license from the strategic collaborator in order to commercialize or develop further improvements to developer's own technology, despite potentially having contributed to the development of the blocking technology.

e. Bankruptcy Considerations

Strategic partners have a vested interest in ensuring a project can continue to operate without disruption even in the event the developer or another partner or collaborator commences a bankruptcy case. Strategic partners may conduct diligence into the developer's IP rights, the source of those rights, and how the developer plans to enable the operating entity to seamlessly operate the project in the aftermath of a credit event, prior to agreeing to participate in or fund a project.

For example, the strategic partner may require a technology escrow be established with respect to IP owned by the developer[4], or, with respect to any critical IP owned by third parties that is licensed to the developer, for a license to be granted directly from the third party to the project's operating entity. If the developer has failed to adequately anticipate and address these concerns in advance, the

[4] *Ibid.*

developer may be at a disadvantage in trying to address these concerns at the same time it is negotiating with the strategic partner for their participation in or funding of the project.

In addition, funders may want to take a security interest directly in the IP or other assets of the developer or the operating entity. It is important to evaluate each situation on a case-by-case basis with counsel, particularly whether the scope of the security interest is appropriate, whether the interest should be subordinate to pre-existing liens or security interests, or whether granting a security interest might result in additional issues or complications.

f. Technology Escrow and Technology Transfer

A strategic partner may want additional assurances that the operating entity has—or can get access to—everything it needs to operate the project, even without the developer's involvement. However, this may require developer to share information or technology or grant rights that it would prefer not to, or that might enable the operating entity to compete with the developer. In these cases, a requirement to establish or maintain a technology escrow, or to conduct a technology transfer, may be effective options for balancing both parties' competing interests.

Technology escrows involve a third-party escrow agent who holds technology deposited by a party (a depositor) and releases it to another party (the beneficiary) if certain release conditions are met. There are three main components to an agreement regarding technology escrow: (1) specifying the technology that the depositor is required to deposit into escrow, (2) specifying the conditions that trigger a release of the escrowed technology to the beneficiary, and (3) specifying the rights that the beneficiary receives with respect to the released technology.

***Escrowed Technology*.** When determining what technology to deposit into escrow, developers consider what is truly required to ensure ongoing operation of the project. Examples of escrowed technology are software, data, and manufacturing designs or specifications, and information like supplier lists and bills of materials. Typically, an initial deposit is made, with updates to be provided at a regular cadence after the initial deposit is made (e.g., annually). The costs associated with the deposits, escrow services, and verification or validation are generally borne by the beneficiary. Where possible, developers try to align deposit requirements across all projects, such that deposits made for one project are sufficient to meet deposit requirements for other projects.

***Release Triggers*.** Release triggers often requested by strategic partners include:

- ***A change of control of the developer***. Agreeing to such a release trigger may raise concerns in future equity investments in, or potential acquisitions of, the developer. The potential investor or acquirer would be concerned that by investing in or acquiring the developer, they would trigger a release of the escrowed technology and thereby enable a potential competitor to compete with their new investment or acquisition. Often there is an underlying concern that the strategic partner has that can be more specifically addressed through alternate means.

- ***A breach by the developer of its obligations to the operating entity with respect to the project***. This release trigger creates a substantial risk of inadvertent release of the escrowed materials. Operating entities typically have alternate remedies for addressing a developer's breach of contract.

- ***Bankruptcy or insolvency of the developer***. This is a commonly requested release trigger, intended to ensure continuity of operations in the event of developer's financial distress.

***Resulting License*.** Developers typically aim to tailor the scope of the license granted to the operating entity to the released escrowed technology to the project's needs. Developers also determine whether the operating entity will be permitted to modify or further develop the technology in developer's absence, and whether the operating entity will be permitted to share the technology with a third party (including where the third party is receiving access for the purposes of performing services for the operating entity).

Technology transfer is an alternative to technology escrow, where, when the obligation is triggered, a party is contractually obligated to transfer knowledge, processes, and other technology to the other party to achieve a specified goal. In the context of climate tech development projects, the goal of a technology transfer is often to enable the operating entity to operate the project on a turnkey basis without further reliance on the developer.

Technology transfers can involve the transfer of various types of technology and information, including know-how, manufacturing methods, processes, specifications, and quality control procedures. Technology transfer provisions sometimes also require the transferor to assist the transferee in establishing its own relationship with key suppliers. The first step to most technology transfers is to collaborate in preparing and agreeing upon a transition plan, detailing the scope and timeline for the transfer. In doing so, developers determine what technology must be transferred, and to whom it must be provided, to achieve the agreed upon goal. The parties may wish to agree on a timeline for completing the technology transfer, as delays can impact project viability. Finally, additional license grants or restrictions might be appropriate to include with respect to the transferred technology.

IV.Conclusion

As developers navigate the transition from research and development to commercial deployment, the effective management and protection of IP rights become critical factors in their success. It's vital that developers structure their business, operations, and agreements in a way that not only protects their enterprise and their IP, but also acknowledges and addresses the sometimes-competing interests of their strategic partners.

While it is challenging to generalize across different technology sectors and project types, developers of well-protected projects engage in the following practices:

Comprehensive Technology Inventory: Developers conduct a detailed inventory of their technology assets and where they're held to pinpoint key value drivers and identify potential areas for strategic partnerships. The inventory informs the developer's IP protection strategy

and commercialization plan, ensuring that both are closely aligned with the developer's overarching business objectives.

IP Protection Strategy: Developers consistently implement their IP protection strategy, which may include:

- Proactively filing patent applications for their most significant innovations, thereby securing legal protection that can enhance their competitive advantage and attract investment.
- Establishing confidentiality protocols to safeguard trade secrets and sensitive information shared with potential partners and investors, minimizing the risk of unauthorized disclosure, including by ensuring all recipients of confidential information sign a non-disclosure agreement and are made aware of the confidential nature of the information that's being shared.
- Designing their business models to restrict access to core IP, ensuring that operating entities can maintain functionality independently, even in scenarios such as bankruptcy or other operational disruptions.

Clear IP Ownership and Licensing Frameworks: Developers carefully think through and implement explicit frameworks for IP ownership and licensing in collaboration agreements that clearly outline the rights and responsibilities of all parties involved. This approach preemptively addresses potential complications that may arise from collaboration and joint development efforts, while facilitating collaboration and partnership with strategic collaborators.

Being Responsive While Maintaining Clear Boundaries: Developers can be responsive to the needs and concerns of strategic partners, while maintaining clear boundaries intended to protect themselves and preserve their ability to continue to develop their technology and grow over time. Where a strategic partner requires additional assurances, for example, in the form of a technology escrow or a technology transfer, developers take care to give only which is required to address the strategic partner's reasonable concerns.

By applying these considerations to their own business, developers can significantly enhance the protection of their IP throughout the various stages of innovation, project development, and financing, ultimately contributing to their long-term success in the marketplace.

For more information on how to navigate IP issues that impact project developers, please contact Wilson Sonsini's Technology Transactions or Energy and Climate Solutions practices.

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