The submission proposes a reform to increase the involvement of the private sector in order to solve global challenges. The reform regards the insertion of social conditionality in intellectual property agreements. The granting of a patent would require licensees to abide by similar industry best practices as licensors. The inclusion of such conditionality would be promoted and facilitated through the foundation of a Global Partnership for Social Patents. This organization would also liaise with civil society, provide technical expertise to licensees, and would ensure accountability by acting as an interested party in license agreements regarding the intellectual property.
1. Abstract

This submission argues that to address today’s global challenges in a meaningful manner, no single issue is as urgent as the need to revisit the involvement of the private sector. The economic importance of the private sector to production, employment, investment and the exploitation of shared resources is self-evident. Consequently, challenges ranging from climate change and human trafficking to economic development, global health and gender equality cannot hope to be resolved without considerable involvement of the private sector.

Previous efforts at supplementing gaps left by the state-centric nature of the international system have, however, come to no avail. On the one hand, voluntary initiatives such as the Global Compact have sought to unite national representatives, civil society and the private sector, but have lacked accountability and enforceability. On the other hand, regulatory efforts to ensure compliance through legislation are costly to implement and impractical to enforce internationally, while traditional incentive schemes are limited by budget constraints, exposure to abuse, and the legitimacy of the use of public funds for this purpose.

This submission offers a novel solution to this problem. It proposes to employ the international patent system to promote corporate social responsibility “horizontally” between competitors and their peers, as well as “vertically”, within value chains. Specifically, it proposes to facilitate the attachment of social conditionality to patent licensing agreements, rendering the use of such intellectual property dependent on the implementation of industry best practices. By offering a means to promote best practices across industries and markets, the model in this submission provides “best-in-class” corporations with a means of influencing their peers and introduces a domino effect to social advocacy campaigns.

Under this proposal, a newly-established Global Partnership for Social Patents (GPSP) would undertake four main roles: (1) to liaise with expert institutions to define basic standards for each industry and make available legally-binding amendments covering social conditions for inclusion into patent agreements; (2) to work with civil society and other stakeholders to promote the inclusion of these amendments; (3) to provide technical assistance and oversight to licensees; and (4) to ensure accountability by acting as an “interested party” in license agreements and pursuing enforcement, as a last resort, in the end markets of licensees where the patents are registered.

This proposal argues that including social conditionality as part of licensing agreements provides corporations with a simple economic rationale to engage on global challenges – much like the idea of the carbon credit. This intervention allows for a greater impact of advocacy initiatives, by ensuring that changes in a company’s culture are not limited to its value chain, but are propagated throughout its industry. As patents cut across supply chains and sectors, the participation of leading corporations can secure change well outside their primary markets. At the same time, it rewards such efforts by offering participating corporations a more level playing field and ensuring that companies benefiting from their patents are held to similar social standards as their own.
A key innovation offered by this submission is its mechanism for ensuring accountability. The system puts corporations’ social commitments on a contractual basis and enables the GPSP to seek legal remedies as a last resort. First, by being designated an “interested party” as part of its amendments, the problem of personal jurisdiction is overcome by permitting the GPSP to pursue legal claims on its own authority. Second, by tying social conditionality to the patent system, this proposal permits non-compliance to be challenged in any market where the patents are registered. As this implies the possibility of having products barred from end markets, the mechanism provides a strong incentive for compliance to licensees, in exchange for their continued access to a larger pool of intellectual property.

In the description of its model, this submission expands on key details of implementation. As a primary matter, it identifies various avenues by which the GPSP may seek to expand the number of patent agreements that fall under its umbrella, including patents held by the private sector as well as patents currently released into the public domain, and patents held by not-for-profit organisations. It also recognises that to ensure licensees have an incentive to enter into a license agreement, the extent of social conditionality must be in line with the importance of the patent, with penalties pre-defined to be punitive but non-catastrophic. Furthermore, the description of the model highlights the need to establish measurable performance criteria, monitoring procedures, and appeal mechanisms.

Finally, this submission devotes special attention to the nature and institutional structure of the GPSP. It proposes that an executive secretariat be responsible for codifying best practices into legal amendments. To limit its funding requirements and maintain its focus on implementation, it proposes that the GPSP cooperate, rather than compete, with other institutions by drawing on their expertise with respect to issue-specific best practices. To safeguard the GPSP’s own accountability and legitimacy, this proposal proposes that the secretariat reports to a board of trustees, itself elected by a general assembly of national representatives, to supervise its functioning. This proposal also recommends the establishment of an advisory board to support the work of the secretariat.

In sum, this proposal offers an extension to the international system that aims to increase its ability to implement social change. Rather than being resigned the lowest common standard that might be agreed upon in a regular state-centric body, the mechanism described here offers a means for best-in-class policies to be promoted instead. The model does not depend on wider institutional or legal reform, and solely depends on the establishment of the GPSP as a facilitating body and the expansion of advocacy efforts to promote the participation of selected partner corporations. The model requires few financial resources and may be started, initially, at a pilot scale. Ultimately, the mechanism may contribute to achieving a paradigm change within the private sector and offer a cost-effective, high-impact step forward in tackling global challenges.
1. INTRODUCTION
This submission brings together two seemingly unconnected notions. First, this proposal argues that to successfully address global challenges, a more effective means will be required of promoting cooperation between state actors and civil society on the one hand, and the private sector on the other. Second, this submission proposes a unique mechanism to address the lack of progress on industry involvement, proposing that the international patent system may provide an unexpected vehicle by which to promote solutions to global challenges throughout the private sector.

As the private sector dominates the world’s economy and some corporations outsize many of the world’s national economies, ensuring effective private sector participation remains of paramount importance in addressing global challenges. Following the declaration of new Sustainable Development Goals in 2015, initiatives aimed at exploring the direct role for businesses have identified over 100 themes where the involvement of businesses may prove critical, ranging from the abolition of child labour and the improvement of air quality to the promotion of renewable energy, women’s empowerment and the avoidance of conflict over water resources (1).

To date, however, involvement of the private sector in international initiatives has proven problematic. Since the inception in 1945 of the United Nations system, membership of international institutions has typically been restricted to member states, albeit observer status has been granted to some civil society groups. Direct participation by the private sector has been limited, in part owing to concerns over excessive business influence in these bodies. Notable exceptions, such as successes of the International Labour Organisation (ILO) in reducing forced labour and the prevention of HIV, have therefore been difficult to replicate in other spheres.

Initiatives aimed at addressing this gap have only achieved limited impact. In 2000, the formation of the UN Global Compact aimed to provide a direct platform bringing together governments, companies, labour organisations and civil society. In terms of its membership, the Global Compact may be deemed to have been a success, involving stakeholders from more than 170 countries, 9,000 businesses participants and 4,000 other participants (2). However, although it has made some useful contributions, owing to its voluntary nature and lack of monitoring and enforcement mechanisms, critics have argued that the Global Compact may represent more of a public relations tool than a vehicle for effecting change (3).

In a subsequent initiative in 2004, the Cardoso report on the relationship between the UN and civil society called for the private sector to “become partners in policy-making and decision-making”, but gave little indication of how stronger partnerships might be achieved in practice (4). The panel’s recommendations once again stoked civil society fears over the role of the private sector in international institutions and the UN Secretary General’s response to the report accordingly did not adopt many of the proposals on closer involvement of the private sector (5). Little further headway has been made on the issue since.

This submission proposes a radically different approach to promoting private sector participation in global challenges. While this proposal considers existing

2. Description of the model
initiatives such as the Global Compact to be useful, it argues such initiatives must be supported by a more effective means to ensure implementation and accountability. It also recognises that the efforts by some businesses to put in place sustainable practices demonstrate that change is possible, but must be supported by mechanisms that incentivise their wider adoption. This submission offers such a mechanism by attaching social and environmental standards to an existing legal instrument – the patent system. The use of the patent system not only cuts across sectors and industries, but offers a more viable means of enforcing compliance on social responsibility than provided by current legal avenues.

2. MECHANISM

This proposal notes that some major corporations have taken a progressive stance in addressing major global issues. These corporations, referred to in this proposal as “best-in-class” businesses, have made headlines on various fronts, by committing to the adoption of carbon-neutral production processes, by increasing reliance on clean energy, by promoting fair labour practices throughout their value chain, or through their involvement in developmental initiatives. Some such initiatives have been self-initiated, out of economic self-interests, strategic repositioning, or a corporate identity committed to sustainability, while others have been the result of public advocacy.

As such, this proposal argues that the problem of private sector involvement in addressing global challenges is not one of a lack of best practices or examples to follow – rather, the problem is the difficulty of ensuring the wider adoption of enhanced standards, through a means more effective than advocacy campaigns targeting individual corporations. Efforts by “best-in-class” companies are noteworthy, but their impact is typically limited to companies within their own value chain. Although such companies may have a significant footprint, this leaves large segments of industries unaffected.

The mechanism proposed in this submission is to employ the international patent system to provide a more effective means of promoting private sector commitment to global challenges. Specifically, it proposes to work with “best-in-class” corporations to require licensees of their patents and intellectual property to agree to implement measurable social and environmental standards. Attaching social conditionality to the patent system provides a means for leading corporations to influence their competitors and peers even outside their own value chain. Most critically, however, the reliance on the patent system permits instances of non-compliance to be challenged legally, not in the jurisdiction where the violation occurred but in any end markets of a corporation where the patents are registered, where non-compliance could see products barred from these jurisdictions.

As illustrated in Figure 1, attached to this proposal, the mechanism proposed is a simple one. This submission proposes the establishment of a technical body, which would have the task of codifying best practices from existing international institutions into legally-binding amendments, suitable for inclusion in commercial patent license agreements. This body, the Global Partnership for Social Patents (GPSP), would play a facilitating role, promoting the participation of leading companies with the mechanism, providing technical assistance to licensees in their implementation of standards, and monitoring their compliance. By having the GPSP designated as an “interested party” in these amendments, it also gains powers of enforcement and the ability to raise legal challenges on its own authority.
In section 3, this submission provides a more extensive overview of the role of the GPSP in implementing this mechanism. Section 4 provides several examples of how social conditionality may contribute to addressing a broad range of global challenges. Section 5 delves into the processes of defining corporate social standards, ensuring the participation of license-holders, and monitoring of licensees’ implementation of the standards. It also highlights the unique features of this proposal in introducing a means for ensuring accountability and enforcement via end markets. Section 6 provides a more detailed overview of the institutional structure of the GPSP itself and its checks and balances. In section 7, the submission describes how the mechanism proposed here might be put in place and expanded. Finally, section 8 aims to provide a balanced account of the advantages and disadvantages of the proposed system.

3. ROLE OF THE GLOBAL PARTNERSHIP FOR SOCIAL PATENTS
The mission statement of the GPSP would be to identify and promote industry best-practices and support their industry-wide adoption and implementation. In the pursuit of this goal, the GPSP would take up the following main roles:

1. Define standards: The GPSP would liaise with other expert institutions, civil society and the private sector to identify recommended business practices, measurable performance indicators, and feasible timelines for their implementation. This is further explored in section 5.1.

2. Offer legally-binding amendments: The GPSP would aim to make available amendments suitable for inclusion into license agreements that would specify legally-binding social and environmental conditions. The depth and breadth of such conditionality would be variable in accordance with the commercial significance of the patent, as further explored in section 5.2.

3. Promote participation: The GPSP would collaborate with other stakeholders, including civil society organisations, academic institutions and corporations to promote adoption of GPSP-sponsored license agreements that include this type of social conditionality, as further explored in section 5.3.

4. Depository of public patents: The GPSP would also make itself available to be designated as the license holder of patents that companies or non-profit institutions presently opt to release into the public domain for public use. The GPSP would guarantee the continued free accessibility to these patents, provided licensees agree to implement basic standards of responsibility. This, too, is further explored in section 5.3.

5. Technical assistance: The GPSP would collect, produce and make available resources to assist licensees in the implementation of the standards they have agreed to commit to, as part of a collaborative partnership. This is further described in section 5.4.

6. Monitor implementation: To ensure compliance and accountability, the licensees would be required to submit annual compliance report, subject to further verification by the GPSP where it deems further investigations to be required, or based on appeals by civil society partners, as further described in section 5.4.

7. Ensure enforcement: Perhaps most importantly, GPSP-sponsored amendments would designate the GPSP as an “interested party” in the license agreement. This would permit the GPSP to pursue legal action as a last resort in the event of non-compliance, and pursue such action in any of the end markets of a licensee where the patent is registered, as further described in section 5.5.
4. EXAMPLES OF SOCIAL CONDITIONALITY

The mechanism proposed in this submission revolves around the use of the patent system, but offers a flexible means of promoting social change across a range of themes. Some examples are provided below, and although the list is not intended to be exhaustive, demonstrate the key role that the use of social conditionality in patent license agreements can play in advancing progress on global challenges:

**Environmental:** Social conditionality might require corporations to curtail their CO2-emissions, report air toxicity levels, increase their reliance on renewable forms of energy, or achieve set recycling targets. Similarly, corporations may be asked to improve their ability to re-use water, or to commit to the reclamation of decommissioned sites.

**Gender equality:** Social conditionality might require licensees to report the gender composition of governance bodies, or declare their policies with respect to sexual harassment and complaint procedures. Licensees may be expected to reduce pay gaps, implement support for maternity and paternity leave, and to re-balance executive bodies.

**Social:** Social conditionality might require corporations to disclose lowest and median wage levels, to implement safe working practices, to put in place provisions to prevent human trafficking or hazardous child labour within their value-chain, or to commit to the creation of positions suitable for persons with physical or mental disabilities.

**Health:** GPSP-sponsored amendments might be used to promote the dissemination of health education, to ensure non-discrimination against HIV-positive individuals, to limit the use of damaging pesticides or antibiotics, and to implement guarantees for employees’ rights to annual, sick and compassionate leave.

**Conflict/disaster management:** Licensees might be expected to participate in communal water management boards and non-judicial grievance mechanisms. Social conditionality might cover mechanisms to avoid sourcing materials from combatants in conflict zones, or might require companies to put in place disaster risk preparedness plans.

It bears repeating that the examples above are merely a selection of the possible range of standards that social conditionality might be used to promote. The examples demonstrate that the mechanism is a flexible one, with a broad scope, and offers an opportunity to flexibly incorporate evolving policy guidance.

5. PROCESSES AND PROCEDURES

5.1 Defining Standards

At the heart of the work of the GPSP would be its promotion of improved social and environmental standards. This submission, however, does not aim to replicate the existing expertise among international institutions, such as the ILO, UNIDO, WHO, FAO, UNESCO, UNICEF, the World Bank, UNDP, the Global Compact, and others. Rather, the GPSP would seek to pursue a consultative approach involving the participation of such expert bodies, as well as the input from the GPSP’s Advisory Council, aimed at identifying appropriate best practices and ensuring their codification into standard amendments for inclusion in commercial license agreements.
To facilitate monitoring and evaluation, the GPSP would specify objectively-verifiable indicators that provide an indication of the extent to which commitments have been achieved. For instance, to measure progress on environmental commitments, specific targets on CO2 emissions, recycling rates and reliance on renewable energy might be specified, using so-called logical frameworks (6). This approach has been widely adopted by agencies including USAID, the European Commission and the UNDP, and is a tool familiar within the private sector.

Finally, it should be noted that the standards defined by the GPSP may evolve over time, as industry practices improve or as new issue areas emerge. The GPSP would therefore make available successive generations of its amendments. Newly-concluded license agreements provide opportunities to introduce these revised conditions into industrial value chains. By this process, the mechanism in this proposal can respond in a dynamic manner to evolving global challenges.

5.2 Depth and Breadth of Conditionality

To ensure that the costs of social conditionality do not outweigh the benefits of the license agreement to licensees, this submission proposes to codify industry best practices into distinct, staged levels.

With respect to the depth of conditionality, conditions included in the GPSP’s amendments would range from those involving the lowest cost of compliance to those with more profound impact on addressing global challenges. At the lowest level, social conditionality might focus solely on improving transparency and reporting practices, supporting the public dialogue and raising the public profile of these issues. At more advanced levels, however, licensees would be expected to uphold “best-in-class” standards, such as stringent reductions in emissions, ambitious targets for adoption of clean energy, or recycling.

The breadth of conditionality, on the other hand, refers to the scope of affiliated and subsidiary businesses that such conditions would be affect. At its most basic, the social conditions specified in amendments would apply solely to the business of the licensee and its subsidiaries. However, conditions may include requirements for corporations to work with their upstream suppliers to promote change all the way to up their value chain, as has been the model pursued in advocacy campaigns targeting the use of conflict minerals or child labour (7). An additional expansion of the scope of conditionality may require licensees to agree to include GPSP-sponsored amendments as part their own patent license agreements to contribute to a greater domino effect within industries.

5.3 Promoting Participation

The impact of this proposed mechanism and of the GPSP is largely determined by the number of patents under its umbrella. One such source of patents may be found among non-profit research institutions, which may represent a natural partner owing to their shared social agenda, and which may readily agree to attach social conditions to the use of their patents. A second source of patents might consist of patents released into the public domain, out of goodwill or as part of companies’ attempt to promote the standardisation of certain technologies. With respect to such patents, the GPSP might be considered as an alternative depository for these patents – ensuring the patents remain freely accessible, but subject to licensees’ adherence to basic social standards.
The most important source of commercially-significant patents, however, are likely to be patents held by corporations and licensed on an inter-company basis. With respect to these patents, this submission proposes to expand current advocacy campaigns to promote the inclusion of social conditionality in inter-company license agreements. The GPSP would, in cooperation with civil society organisations, engage directly with companies to enlist their participation in the scheme.

Initially, such efforts would focus on the “best-in-class” companies with a pre-existing commitment to corporate social responsibility. To such companies, the mechanism proposed in this submission offers several advantages. First, their participation may contribute to internal sustainability goals and support these companies’ public relations objectives. Second, their participation provides a means for these companies to influence their wider industry and address social issues that may negatively affect their industry’s image and brand value. Third and most importantly, however, participating companies can ensure that their peers and competitors are held to similar standards as their own, creating a more level playing field and improving their competitive position.

A further means of promoting the further propagation of social conditionality throughout the industry is the option to require licensees to agree themselves to include GPSP-sponsored amendments as part of license agreements to their own patents, as outlined in section 5.2. Separately, the mechanism also lends itself well to incentivization by participating national governments, which may agree to offer tax rebates or a rebate on the cost of registration of the patent license to companies participating in the mechanism.

### 5.4 Monitoring and Technical Assistance

The GPSP would not merely promote the wider adoption of improved social standards in business and industry, but would aim to actively contribute to their implementation. In this role, the GPSP would aim to act as a first point of contact for any resources required by licensees to meet their social commitments. Such resources may, for instance, include collections of previous case studies, sample policy documents on which licensees may model their own internal guidance documents, as well as a pool of experts that may provide reviews and advice specific to the circumstances of individual businesses and industries.

To allow the GPSP to monitor the degree to which such commitments have indeed been met, licensees will be expected to submit annual compliance reports. Where the GPSP believes there to be a need for further investigation, the organisation may undertake further on-site investigations to assess the degree to which the social conditions in its amendments have been met.

In addition to such self-initiated investigations the GPSP will also make available a reporting mechanism by which local stakeholders can alert the GPSP to potential infractions. Any such requests for further investigation would need to be validated by a local civil society organisation certified by the GPSP. Upon receipt of such a validated request, the licensee would be provided an opportunity for clarification or amendment of its policies, prior to the GPSP’s decision to launch a further investigation. An appeals process would be made available in those cases where the GPSP determines there is not sufficient cause to launch an investigation.
GPSP-sponsored amendments will include provisions for warnings or penalties that the GPSP may issue in cases of non-compliance. Such penalties would be guided by the principle that they need only be sufficiently punitive to render implementation of social standards more economic than the cost of a potential legal claim, and not so high as to represent an unacceptable risk to the shareholders of a corporation. This approach recognises that companies face a cost-benefit analysis as to whether to enter into a license agreement, and safeguards the economic rationale to do so. The unique legal means available to the GPSP for enforcing such penalties are described in the next section.

5.5 Accountability and Enforcement

Arguably, this submission's most crucial feature is its introduction of an effective means of enforcement of the conditions in its sponsored amendments by legal means, which is discussed below. As outlined in the introduction, the ability to hold corporations accountable for their actions and commitments has been a long-standing problem in international relations and in partnerships between the public and private sector. The innovation of this proposal is that it not only offers a mechanism to promote social change, but the ability to enforce compliance once companies have committed themselves to GPSP-sponsored standards.

Despite the legally-binding nature of GPSP-sponsored amendments, it is an unfortunate reality that even where social standards have been enshrined in national or international law, jurisdictional problems have hampered enforcement, particularly where multinational corporations have been concerned. Even in egregious cases of violations of social or environmental standards, affected communities may lack the legal or financial means to pursue their claims. At the same time, personal jurisdiction limits the ability to challenge misbehaviour outside of states or countries where the violation occurred (8). However, pursuing legal remedies locally may not be viable where the jurisdiction where the violation occurred lack a viable legal system or an independent judiciary.

This submission, however, offers two further innovations that provide an effective remedy to this situation:

1. **GPSP as interested party:** The first innovation is that by explicitly naming the GPSP as an “interested party” within its sponsored amendments, this submission overcomes the present problem that requires claimants to have been directly affected by a corporation’s actions for their claims to be heard before a court. In such cases, the inclusion of the GPSP as a recognised interest party permits claims to be pursued on the GPSP’s own authority.

2. **Enforcement in end markets:** The second innovation in this submission is that by linking itself to the patent system, the number of jurisdictions in which cases may be pursued is dramatically expanded. By attaching social conditions to patent agreements, violations are challengeable in any jurisdiction where the patent has been registered. As such, a company’s non-compliance with social standards at any of its manufacturing sites could, as a last resort, feasibly see its products ordered off the shelves in end markets elsewhere in the world.

If the threat of blocking products from end markets seems extreme, it must be kept in mind that the social standards that this submission would promote would
not simply be enforced on companies by third parties, but by their peers within the industry. Moreover, although acceptance by licensees of social conditionality is incentivised by their ability to retain access to the patents of industry leaders, their decision to pursue a license agreement is ultimately their own, with financial risks strictly ring-fenced through the fixed, transparent penalties described in the previous section.

6. INSTITUTIONAL STRUCTURE

6.1 General Assembly

As outlined in Figure 2, attached to this proposal, the senior body in the GPSP would be the General Assembly (GA). Given that the work of the GPSP would not be a traditional, state-led effort but depend on partnerships with the private sector and civil society, the GA's proposed membership resembles the tripartite nature of organisations such as the UN Global Compact and the ILO (9). One third of the GA would be composed of government representatives, and one third would be reserved for civil society representatives, nominated by the board of trustees and approved by the GA.

The final third of the seats would be reserved for representatives of the private sector and non-profit research institutions, nominated initially by the board of trustees and later elected by these groups themselves. Voting rights for the election of these representatives would be granted in accordance with the number of patents of each patent-holder featuring GPSP-sponsored amendments. This latter principle ensures that corporations agreeing to enter into partnerships with the GPSP receive fair representation and recognition for their status as best-in-class leaders on corporate social responsibility.

The GA would have the ultimate authority in determining the direction and priorities of the GPSP, and would have the following specific powers:

**Supervision of Board of Trustees:** The GA will elect the members of the Board of Trustees and to approve the annual report submitted by the board. The GA has the right to approve the nomination of the Secretary-General by the Board of Trustees.

**Budget approval:** The GA will approve the budget of the GPSP as proposed by the Secretariat and endorsed by its Board of Trustees and will have the right to propose amendments to this budget by simple majority.

**Power of initiative:** The GA has the right to propose resolutions providing direction and instruction to the Board of Trustees and the Secretary-General, with such resolutions requiring a simple majority to pass.

**Power of reform:** The GA has the right to make amendments to the GPSP’s charter. Given the more profound nature of any such changes, modifications of the charter require a simple majority among each of the three segments (government representatives, civil society and private sector) of the GA's membership.

6.2 Board of Trustees

Appointed by the GA and reporting directly to it, the Board of Trustees is responsible for ensuring appropriate oversight of the ongoing operations of the GPSP. Trustees would be expected to be reputable, capable individuals with extensive experience in fields related to the work of the GPSP or their individual
responsibilities within the Board. The Board of Trustees would, amongst themselves, appoint a President, Vice-President, Secretary and Treasurer, as well as the Secretary-General, subject to the approval of the GA.

The Trustees are responsible for ensuring that appropriate finance and accounting procedures are put in place, and ensure regular reviews and audits are completed. The Trustees will also play a primary role in any fundraising activities required by the GPSP. In addition, the Trustees are responsible for ensuring the implementation of the GA’s resolutions and to provide strategic direction to the Secretary-General. As such, the Trustees play an important role in determining the priorities of the GPSP and contribute to its work by supporting outreach activities and the building of partnerships with other international institutions, civil society, the private sector, and national governments.

6.3 Secretariat
The Secretariat would be led by the Secretary-General, nominated by the Board of Trustees and approved by the GA. The Secretary-General is responsible for supervising the day-to-day operations of the GPSP and would be the primary representative of the GPSP in any of its outward relationships with its partners or the wider public.

The Secretariat would, aside from financial and administrative support departments, comprise three main divisions:

- **Policy research:** This unit would be responsible for identifying industry standards, for translating these into measurable performance targets, and for incorporating these into the legally-binding amendments that the GPSP would make available for inclusion in patent license agreements. The unit would work closely with the Advisory Council, other expert international institutions, and its various national and international stakeholders. The process of defining standards has been described in more detail in section 5.1.

- **Liaison and advocacy:** This unit would be the primary point of contact for patent-holders in the private sector and non-profit institutions. The unit would actively pursue new partnerships within these groups and aim to secure their agreement to include GPSP-sponsored amendments as part of their own license agreements, as well as to commit to the standards enshrined in these amendments within their own businesses and value chains. The process of promoting participation has been described in more detail in section 5.3.

- **Monitoring and assistance:** This unit would be the primary point of contact for the licensees of any patent agreements including GPSP-sponsored amendments. Monitoring procedures and the provision of technical assistance has been described in more detail in section 5.4. This unit also has the power to issue warnings and penalties where licensees fall short of commitments and, as a last resort, to ensure enforcement via legal means based on the GPSP’s designation as an “interested party” in its amendments. The process by which accountability and enforcement are ensured has been described in section 5.5.

6.4 Advisory Council
The Advisory Council of the GPSP provides a supporting role, appointed by the Board of Trustees and intended to endow the GPSP with a greater range
of knowledge and expertise. The Advisory Council may be called upon by the
Secretariat or the Board of Trustees to provide its opinion on various policy issues
that concern the GPSP. The Council may undertake such work in plenary sessions,
but may more frequently consider specific questions in separate committees
established for the purpose.

Representatives from the various international institutions that the GPSP will seek
to develop partnerships with may be invited to participate in the Advisory Council,
to provide a direct link between the GPSP and these expert bodies. Dedicated
committees comprised of licensors on the one hand, and licensees on the other,
also offer a means for these stakeholders to provide input at a more detailed level
than their representation within the GA may provide.

7. START-UP, FUNDING AND LATER DEVELOPMENT
This proposal does not depend on legal reform or structural changes to any of the
present international institutions. The mechanism proposed here utilises the legal
structure of the patent system and draws on the expertise of existing expert bodies,
but complements rather than competes with their mandate. As such, this proposal
depends solely on the establishment of the GPSP as a facilitating body and on the
expansion of advocacy campaigns to encourage the participation of “best-in-class”
corporations.

The mechanism proposed here may be initiated on a pilot scale, focusing on
a select number of industries. In this initial stage, the GPSP would depend on
financial support from participating governments or other stakeholders. However,
given that the body does not aim to replicate the role of other institutions but
merely serves to codify existing policy guidance into binding amendments, the
financial requirements of the GPSP are comparatively modest. With increased
participation, only the GPSP’s monitoring and assistance unit is likely to grow
in direct proportion to the number of license agreements supported, to ensure
adequate oversight and provision of technical support.

The GPSP’s income may also be supplemented by earnings from the imposition
of penalties, although such revenue may be limited by the GPSP’s own efforts
in assisting licensees achieve compliance with GPSP-sponsored conditions. In
addition, in consultation with the GA and its private sector stakeholders the GPSP
may also consider charging licensees an administrative fee, scaled in accordance
with the commercial significance of the patent. However, given the modest overall
requirements of the GPSP, it may be deemed preferable for the GPSP to continue to
rely on donor grants or endowments.

8. ADVANTAGES AND DISADVANTAGES
The proposal in this submission targets one of the most long-standing problems
in the international system, related to the lack of participation and accountability
of the private sector’s role in addressing global challenges. Given that the private
sector has been estimated to account for 86% of global employment and 84% of the
GDP of developing countries (10), it plays a central role in major global challenges
ranging from human trafficking to climate change.

The mechanism proposed in this submission offers an alternative means
of promoting the greater involvement of the private sector, and addresses
jurisdictional problems that have hampered the ability to enforce corporations’
social commitments. In addition, it does so not by enforcing restrictions externally, but by building partnerships with “best-in-class” corporations and empowering them to promote the improvement of standards across their industry. The participation of these partners, moreover, is incentivised by providing these corporations with a means of “levelling the playing field” and ensure that the costs of compliance are shared equally among their peers.

The submission offers the potential for high impact, at low cost. As outlined in this proposal, social conditionality in patent license agreements can feasibly contribute to the advance of a broad range of global challenges, but does not itself depend on institutional or legal reforms that may be difficult to achieve and have stranded past initiatives. From a financial side, too, the mechanism has a low overhead, requiring only the support of the GPSP as a facilitating body.

That said, the submission does of course have limitations. The mechanism may not present an effective means of addressing global challenges that affect the private sector only tangentially, such as nuclear non-proliferation or the resolution of territorial disputes, but such issues are the exception. Similarly, owing to its dependence on the patent system, some industries may be impacted more directly than others, although by extending licensees’ compliance to their upstream value chain, this problem may be minimised. The informal sector, too, may only be impacted indirectly via the broader social, environmental and cultural initiatives of larger corporations.

As this submission does not pretend to offer a cure-all to all problems facing the international system, these limitations are openly acknowledged. However, this submission argues that the mechanism proposed here offers a feasible and scaleable means of promoting social change. In so doing, it offers a first, genuine opportunity to achieve a paradigm change within the private sector, which must be deemed a vital step forward to effectively address the global challenges of these and future generations.

3. Motivation

1. CORE VALUES

This proposal supports the view that significant progress on addressing major global challenges is realistically achievable. However, it argues that such progress depends on making available an expanded range of tools by which those stakeholders committed to advancing these issues can take up a more effective, leading role. The solution proposed in this submission is rooted in the following principles:

**Leadership by example:** One does not need to look far to find examples of governments and corporations that have taken bold, progressive steps to address issues of key concern, with unilateral initiatives on climate change a key example. Such efforts have been noteworthy, but have not resulted in a paradigm change, as treaties dealing with international issues necessarily result in scaled-down versions of such initiatives. This submission does not rely on a treaty-based approach, and rather provides a mechanism to empower such “best-in-class” leaders. It offers such leaders a mechanism by which to establish progressive
coalitions of companies offering access to their pool of patents (still on a commercial basis) to any licensees willing to adopt best-in-class, practices, rather than merely adhere to nationally-defined minimum standards.

**Economic realism:** This proposal also submits to the view that to achieve a true paradigm change within the private sector, the pursuit of corporate social responsibility must be tied in directly with market mechanisms offering a clear cost-benefit pay-off. Much like the carbon credit system offering companies an option between reducing their emissions or paying an offsetting fee, the mechanism in this submission offers corporations the choice between implementing social standards or accepting the opportunity cost of restricted access to intellectual property. This simple intervention has a fundamental impact: it transforms discussions on social responsibility within corporate board rooms from one revolving around a company’s public image to one centered on the company’s future commercial and technological exploits, likely to inspire radically greater consideration.

**Universal basic standards:** In opposition to this proposal, it might be argued that governments ought to be responsible for specifying minimum standards, rather than such industry standards being promoted by other peers. This submission argues that while this argument may limit the ability to enforce worldwide standardisation of corporate practices, this ought not to limit the ability to incentivise corporations’ voluntary submission to a stricter regime of corporate practices. In this, this proposal does not dispel the need for minimum standards to be agreed on an inter-governmental basis, but facilitates a multi-speed approach whereby increasing portions of the private sector may be encouraged to go beyond such basic standards.

**Accountability:** Section 8 below explores the mechanisms by which the institution proposed in this submission, the GPSP, may itself be held accountable for its actions. However, aside from the need for oversight of the GPSP, this proposal is rooted in a core belief that it is just and right that corporations be held accountable for their actions and as members of the world community take responsibility for their part in the propagation and resolution of global challenges. This submission, therefore, goes beyond initiatives of a purely voluntary nature, such as the Global Impact. Instead, the mechanism introduced by this proposal offers an innovative means to hold licensees accountable to their commitments, making such obligations legally enforceable, and overcoming jurisdictional restrictions.

2. DECISION-MAKING CAPACITY

Current international institutions have great consultative capacity and the ability to compile helpful recommendations on best practices to address global challenges. However, agreement on common standards to effect change depends on the consent of member states, so that resulting agreements will typically reflect the lowest level of commitment deemed palatable by the most reluctant members. Moreover, few institutions have the power to enforce their decisions or impose penalties, while those that do have a limited mandate.

This submission addresses this problem of collective action by proposing a mechanism that does not depend on the simultaneous adoption of industrial or social policies by member states. Instead, it proposes a means whereby leaders
on these issues can incentivise others to follow their lead on social issues. Rather than adopting the lowest common standard as the benchmark to follow, this mechanism thus enables best-in-class policies to be followed more widely.

Implementing the system proposed in this submission, moreover, does not depend on any rigorous overhaul of the present system. It does not aim to reform the UN system, but rather adds a means for promoting its policy advice. Also, this proposal requires no reform of the patent system, and merely recognises it as a useful, efficient point of leverage. Adoption of this proposal, thereby, solely depends on the establishment of the GPSP as a facilitating institution and the participation of a selected group of companies that have already taken the lead on issues ranging from climate change, to responsible sourcing strategies, or equal opportunities.

3. EFFECTIVENESS
As outlined in this proposal, this submission does not seek to replicate the role of existing expert institutions, but rather to contribute a means for implementing their recommendations. It offers a targeted intervention designed to improve the effectiveness of the international system and, particularly, the linkage between civil society and nation states on the one hand, and the private sector on the other.

This submission argues that current means for facilitating a dialogue between corporate and other stakeholders have been ineffective. Voluntary initiatives lack accountability or means of enforcement, while campaigns focused on individual companies have a narrow impact, limited to their direct value chain. This proposal, by contrast, provides a means for companies to influence not only their own and affiliated businesses, but those of their competitors and peers in other industries.

The expected impact of the mechanism proposed in this submission is reinforced by three considerations. First, by tying social conditionality to patent license agreements, it provides a clear and transparent rationale for companies to implement social change. Second, it provides a direct means of enforcement and penalties for non-compliance and overcomes, and in a wider range of jurisdictions. Third, the possibility of strong types of conditionality in which licensees would not only themselves commit to social standards but also be expected to propagate such conditionality in their own license agreements introduces an industrial ripple effect. In combination, these factors contribute to securing a paradigm change within the private sector that few companies can afford to ignore.

4. RESOURCES AND FINANCING
One of the main advantages of this submission is its comparative cost-efficiency. Rather than replicating an entirely new system of governance or costly adjustments to the bloated UN system, this proposal suggests a limited, target intervention. This intervention, moreover, piggy-backs on an existing element of the economic order – the patent system – to effect global change in a manner that pervades industries across all levels, sectors, and countries.

To implement the mechanism proposed in this submission, only a facilitating, technical body is required. By drawing, where possible, on the policy guidance of existing expert institutions, not only does the intervention derive greater legitimacy, but also faces fewer costs. Therefore, although some financial resources are required, these are comparatively modest. There are also only limited up-front costs, making the trial of the system an attractive proposition.
The mechanism proposed here is entirely scaleable, and could be initiated with even a handful of patents. During this start-up phase, a small team of research and legal experts would be required, alongside some funding to reach out to prospective targets, focusing initially on companies with a pre-existing record on corporate social responsibility.

In the event of the expected, successful scale-up of the mechanism to cover a larger number of licensors, patents and licensees, additional staff would be required to facilitate tailored approaches to each industry sector. Staff requirements would not, however, need to increase linearly, given the use of standardised amendments, with the exception of the GPSP’s monitoring capacity, which would need to be scaled up in line with the number of licensees.

While initial funding for the GPSP would depend on an external grant, progressively the GPSP might be expected to achieve self-financing ability, should its General Assembly choose to pursue this goal. Sources of revenue may include a fee charged to licensees that, compared with typical license costs by licensors, would represent a trivial added cost. In addition, some revenue may be earned from penalties issued for delayed compliance – as well as from any endowments or patents donated directly to the GPSP by donors wishing to support its operations.

5. TRUST AND INSIGHT

Given that the GPSP would seek out the voluntary participation of license-holders, including private and public corporations as well as non-profit institutions, the success of the initiative will be critically determined by the transparency of its mission and operations. Public recognition of the role of the GPSP and the social conditions it would sponsor provides corporations with an added incentive to participate, raising their public image as corporations committed to corporate social responsibility. An active outreach effort will therefore be required as part of the GPSP’s mission.

This submission achieves this goal in four ways. First, this submission proposes one of the core divisions of the GPSP’s Secretariat to be fully-dedicated to advocacy and outreach. The purpose of this unit would be to explain the purpose of the GPSP and the benefits of participation to license holders, and to establish partnerships within the private sector and civil society.

Second, the GPSP would secure further transparency through its tripartite General Assembly, composed of private sector, government and civil society representatives. In addition, its reliance on an Advisory council for added support provides an additional platform that is suited to broad, participative consultations, including cooperation with other international institutions, in the form of dedicated sub-committees, or through public fora.

Third, all of the work undertaken by the GPSP would be public. While it would need to respect the confidentiality of the commercial details of specific license agreements that may include GPSP-sponsored amendments, the amendments themselves and the standards that they would seek to propagate would be available publicly and open to further scrutiny.

Fourth, this submission outlines a process by which local communities, civil society organisations or members of the public may bring perceived infractions
of social conditions to the attention of the GPSP. This mechanism, as well as an appeals process, ensures that the GPSP would not operate in a vacuum, and ensures the transparency of its decision and its accessibility to local stakeholders.

6. FLEXIBILITY
The mechanism proposed in this submission is a general one, adaptable to different industries and the global challenges they may help to address. Whereas in manufacturing industries, GPSP-sponsored conditions may focus on environmental controls and fair labour conditions, in agricultural sectors conditions might instead consider issues such as fair water use, controls on the use of antibiotics and land rights. In logging or mining sectors, the General Assembly and Advisory Council of the GPSP might prioritise a commitment to land reclamation, reforestation, and the protection of natural habitats. Meanwhile, in the financial services industry, the GPSP and its stakeholders might opt to focus on promoting standards on data protection, gender pay gaps, and safeguards against the promotion of excessive personal debt.

As per the details of this proposal, the pursuit of greater corporate engagement on global challenges would be accomplished through the inclusion of binding amendments specifying social standards that licensees and their subsidiaries are expected to pursue. The contents of these amendments may, however, change over time, as standards improve and progressively higher standards become achievable, or as new global challenges emerge. The steady stream of new patents and their re-licensing provides an opportunity to include successive generations of amendments, thereby providing a means to respond flexibly to those issues deemed to be of the greatest priority.

In this manner, the mechanism proposed in this submission is adaptable and responsive. Moreover, the proposal provides for different levels of conditionality both in terms of the level of the standards corporations would be expected to achieve, as well as in terms of the extent to which standards are to be enforced throughout a company's subsidiaries, value chain and affiliates. Thereby, the mechanism is also sensitive to the need for an approach that supports rather than threatens the commercial viability of an industry, introducing standards only in accordance with the benefits received by licensees from their access to patents.

Finally, the GPSP itself has a focused, technical character. Its general assembly is proposed to be composed of national delegates, private sector representatives, and civil society partners in equal proportion. As nation states play a valued but only supportive role to the GPSP, it provides no powers of veto. Instead, the General Assembly is proposed to make decisions by simple majority. Changes to the institution's charter would require a simple majority among each of the three segments of its membership (i.e. national, industry and civil society representatives), maintaining the institution's ability for self-reform.

7. PROTECTION AGAINST THE ABUSE OF POWER
The role of the GPSP is a facilitating one, supporting the inter-company and intra-industry spread of best practices. As such, while it will seek to promote the adoption of corporate social responsibility, its powers are checked by its need to successfully engage with civil society and industry partners to ensure their support and participation.
Moreover, as the GPSP is proposed to draw on the expertise of other institutions, this proposal introduces a degree of separation between the identification of appropriate responses to global challenges on the one hand, and the GPSP’s focus on ensuring their effective implementation on the other. This separation also serves to ensure that the GPSP will work within the policy space defined by the wider international system.

The strongest power exercised by the GPSP is in its role as a designated “interested party” to the social clauses in GPSP-sponsored amendments. As described in this proposal, this feature underlies its ability to, as a measure of last resort, issue a legal challenge in the event of a licensee’s non-compliance. With no powers of enforcement of its own, however, such legal action would be brought before regular courts, in the same manner as other patent infractions are currently decided. As such, the GPSP’s responses are subject to judiciary control.

8. ACCOUNTABILITY

This proposal has outlined a system of governance and oversight by a board of trustees and a general assembly, with the further support of an advisory council. While much of the daily work of the GPSP would be undertaken by its Secretariat, its Secretary-General would be appointed by the Board of Trustees and be accountable to this same body.

In addition, this proposal recognises that if the global challenges that this proposal seeks to address have a truly global impact, then the stakeholders in the GPSP’s mission are similarly broad and diverse. For this reason, this proposal argues that it is a necessity that the GPSP be held accountable not only to member states and must provide equal opportunity for non-state representatives to play an active, guiding role. This submission thus proposes the inclusion of civil society representatives as part of its core bodies. Civil society groups not only contribute to the GPSP’s governance structure, but are also an important partner in its functioning, participating in advocacy efforts and warning of possible instances of the inappropriate implementation of standards.

In a similar vein, given that the GPSP seeks to develop partnerships with “best-in-class” corporations in the private sector, the GPSP’s bodies include industry representatives, completing its tripartite membership and ensuring the transparency of its governance structures.
References