

ENOUGH BY DESIGN · CHAPTER SIX

Opening the Library

Chapter Six of Enough by Design

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THE LICENCE

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Chapter Six of Enough by Design. The whole book, with every chapter, is at business.hautelumiere.life/library/enough-by-design (DOI https://doi.org/10.5281/zenodo.23989348).

A NOTE BEFORE YOU READ

This work is offered for education and leadership development. It is not legal, financial, accounting, investment, medical or psychological advice; take the advice of a qualified professional who knows your circumstances. Companies and events are described from the public record as the author understands it; characterisations are the author's analysis. Examples are illustrative, and no particular outcome is promised to any reader.

ABSTRACT

On 12 June 2014 the chief executive of a young car company published a short post on its blog. It began with a piece of furniture. "Yesterday, there was a wall of Tesla patents in the lobby of our Palo Alto headquarters," Elon Musk wrote. "That is no longer the case." The title of the post was a joke borrowed from a mistranslated video game, "All Our Patent Are Belong To You", and the grammar in it was deliberate. The substance was not a joke. Tesla, the post said, "will not initiate patent lawsuits against anyone who, in good faith, wants to use our technology." Five years later, on 3 April 2019, a much older and much larger car company made a move of a different shape. Toyota Motor Corporation announced from Toyota City that it would grant royalty-free licences on "nearly 24,000 patents it holds (including some pending applications) for vehicle electrification-related technologies", and that it would sell technical support to other manufacturers who used its systems.

CHAPTER SIX

Opening the Library



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A wall in a lobby

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Two firms, two continents, two very different legal instruments. Both did something that the textbook account of a firm says a firm should not do. They took knowledge they had paid a great deal to make scarce, and they made it less scarce on purpose.

This chapter reads those two decisions closely. It reads them through the four properties of intangible investment that chapter 5 introduced, and through the house's claim that much of the scarcity a well-resourced firm lives inside is designed. It also says plainly what the public record does not show, which is a good deal. Neither company has published how many others took up the offer, and neither has published what the decision did to its own profit. The cases are useful for their shape, not for a result.

What a patent is, in this book's terms

A patent is a fence put up around something that would otherwise have none.

An idea, once stated, can be used by a second person without being taken from the first. Economists call this non-rivalry, and Paul Romer's 1990 paper on endogenous growth made it the centre of an account of why economies grow at all.[59] A patent answers the question non-rivalry raises. If anyone can use an invention the moment it is published, who will pay to make one? The answer the law gives is a temporary right to exclude: for a period, the inventor may stop others from using it, and may charge for permission.

In the language of chapter 1, a patent is the clearest example there is of designed scarcity. Nothing about the knowledge itself is scarce. The scarcity is written into law, by people, for a purpose that is often a good one. A fence around a field can protect a harvest. It can also keep a field fallow that would have fed a village.

Ammanuel Santa Anna's short book *Scarcity Is a Design Choice* states the house's position in two sentences that this chapter will keep returning to:

> *Scarcity thrives on fences. Abundance thrives on gates that swing both ways.*[60]

The sentence does not say that fences are wrong. It says what each arrangement favours. The two cases below are two different gates, and the difference between them is the most useful thing in the chapter.

Tesla, 2014: a pledge not to sue

Read the post first, then the legal page, because they are not the same document.

The post gives the reasons in Musk's own words. "Tesla Motors was created to accelerate the advent of sustainable transport," he wrote. "If we clear a path to the creation of compelling electric vehicles, but then lay intellectual property landmines behind us to inhibit others, we are acting in a manner contrary to that goal."[57]

He then explains why the patents had been taken out at all. The company had feared that "the big car companies would copy our technology and then use their massive manufacturing, sales and marketing power to overwhelm Tesla." His verdict on that fear is blunt: "We couldn't have been more wrong." Electric programmes at the major manufacturers, he wrote, were "small to non-existent, constituting an average of far less than 1% of their total vehicle sales."[57] That figure is Musk's characterisation in a blog post, not a measured statistic with a source, and it should be read as such.

The argument that follows is the one that matters for this book. "Our true competition is not the small trickle of non-Tesla electric cars being produced," the post says, "but rather the enormous flood of gasoline cars pouring out of the world's factories every day." And then the claim about where advantage actually lives: "Technology leadership is not defined by patents, which history has repeatedly shown to be small protection indeed against a determined competitor, but rather by the ability of a company to attract and motivate the world's most talented engineers."[57]

That is an argument about intangibles, made by a chief executive in plain language. The patent was the visible asset. The thing he believed created value was a capability in people, which no patent wall can hold.

The legal page tells you what was actually given. Tesla's published pledge reads: "Tesla irrevocably pledges that it will not initiate a lawsuit against any party for infringing a Tesla Patent through activity relating to electric vehicles or related equipment for so long as such party is acting in good faith."[61]

Everything turns on the definition of good faith. A party is acting in good faith, the page says, so long as it and its affiliates have not asserted patents or other intellectual property against Tesla, or patents against a third party over electric-vehicle technology; have not challenged a Tesla patent; and have not "marketed or sold any knock-off product".[61] The page is also careful about what the pledge is not. It "is not a waiver of any patent claims", "is not a license, covenant not to sue, or authorization to engage in patented activities",

and it is described as a "standstill": a forbearance of enforcement that lasts only as long as the other party keeps the conditions.[61]

So the gate Tesla built swings one way at a time, and it is attached to a tripwire. Anyone may walk through. Anyone who then sues Tesla over patents, or challenges a Tesla patent, finds the gate shut behind them. One reasonable reading makes the pledge as much a defensive arrangement as a gift: it discourages the very lawsuits a small company most fears. That reading and Musk's stated reasons are not in conflict. A gate can be generous and prudent at once.



Toyota, 2019: a licence, with a price beside it

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Toyota, 2019: a licence, with a price beside it

Toyota's release reads like the work of a different institution, which it is.

The count is precise. "Toyota will offer approximately 23,740 patents awarded over more than 20 years of electrified vehicle technology development," the release says, and it gives the breakdown: approximately 2,590 patents related to electric motors, 2,020 related to power control units, 7,550 related to system controls, 1,320 engine transaxle patents, 2,200 charger patents and 2,380 fuel cell patents.[58] The fuel cell patents add to 5,680 that Toyota had already offered royalty-free from January 2015, bringing that family to 8,060.[58]

The term is fixed. "The grant period will start immediately and last through the end of 2030."[58] It is the same year that Keynes put at the top of his letter, which chapter 1 and chapter 2 open on, though nothing in Toyota's release suggests the date was chosen for that reason. It was the end of Toyota's own published sales plan for electrified vehicles, which the release names.[58]

The method is a conversation, not a broadcast. "Contracts for the grants may be issued by contacting Toyota and discussing specific licensing terms and conditions."[58] Royalty-free does not mean term-free. A firm wanting the patents must ask, and the terms are agreed one firm at a time.

And beside the free licence sits a paid service. Toyota said it would "provide fee-based technical support to other manufacturers developing and selling electrified vehicles when they use Toyota's motors, batteries, PCUs, control ECUs, and other vehicle electrification system technologies as part of their powertrain systems."[58]

The executive who announced it, Shigeki Terashi, Member of the Board and Executive Vice President, gave the reason as demand already in the building: "Based on the high volume of inquiries we receive about our vehicle electrification systems from companies that recognize a need to popularize hybrid and other electrified vehicle technologies, we believe that now is the time for cooperation." And the larger aim: "If the number of electrified vehicles accelerates significantly in the next 10 years, they will become standard, and we hope to play a role in supporting that process."[58]

Put the two halves together and the design becomes visible. The patents were made free to read and use. The know-how needed to use them well — the parts, the integration, the twenty years of tacit engineering that no patent document contains — was kept, and offered for a fee. Toyota opened the library and stayed on as the librarian, and the librarian is paid.



The two gates, side by side

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The two gates, side by side

It helps to set the two decisions out plainly, because they are often spoken of as if they were the same act.

	TESLA, JUNE 2014	TOYOTA, APRIL 2019
Instrument	A unilateral pledge not to sue; "not a license"	Royalty-free licences, by contract
Scope	All Tesla patents, for activity relating to electric vehicles or related equipment	Approximately 23,740 electrification patents, listed by category

	TESLA, JUNE 2014	TOYOTA, APRIL 2019
Duration	Described as irrevocable, for as long as the user acts in good faith	Immediately through the end of 2030
How a firm takes it up	No application; it simply uses the technology	Contacts Toyota and agrees terms
Condition	No patent suits against Tesla, no challenges to its patents, no knock-offs	Terms agreed case by case
What is sold beside it	Nothing named in the pledge	Fee-based technical support
Stated reason	Grow the electric-vehicle market; advantage lies in engineers, not patents	High volume of inquiries; help electrified vehicles become standard

The figures and words in the table are taken from the two companies' own documents.[5][7][5][8][6][1] What the table shows is that "opening the patents" names at least two quite different designs. One removes a threat and asks for nothing except restraint. The other grants a right, asks for a conversation, and sells the help.

Reading them through the four properties

Chapter 5 set out the four properties that Jonathan Haskel and Stian Westlake, in *Capitalism without Capital*, argue intangible investments tend to share: scalability, sunkenness, spillovers and synergies.[6][2] They were introduced there as a way to see where a firm's knowledge is stuck. They read these two cases well.

Scalability. A patent document can be used by one firm or by a thousand at no extra cost to its owner. While it is fenced, its scale is limited by the number of licences the owner chooses to negotiate. Both firms, in different degrees, let the scale of their documented knowledge rise towards its natural ceiling. Tesla removed the limit without a negotiation. Toyota kept a negotiation but removed the price.

Sunkenness. Haskel and Westlake note that intangibles are hard to sell if a firm fails. Patents are the exception that proves the rule, because they are among the few intangibles with a market: they can be licensed, sold and litigated. Both firms gave up some of that resale value. Toyota capped what it gave up with a date. Tesla, by its own account, gave it up for as long as the other party behaves. What neither gave up was the deeper sunk investment, the engineering capability held in people, which is the part that cannot be sold in any case.

Spillovers. Spillovers are the benefits others take from your investment. Most firms work to reduce them. These two firms invited them, on the reasoning that a larger market for electric and hybrid vehicles was worth more to them than the rent their patents could collect. That reasoning is stated in both documents. Whether it was correct is not shown in either.

Synergies. Intangibles are worth more in combination. This is where Toyota's design is the more instructive of the two. A patent is worth more beside the parts it describes, the engineer who has built it a thousand times, and the supplier relationships that make it cheap. Toyota gave away the patent and sold the combination. The free asset raises demand for the paid one. Tesla's post makes the same point from the other side: if technology leadership lives in "the ability of a company to attract and motivate the world's most talented engineers", then the patent was never the valuable half of the pair.[57]

Santa Anna's essay on the commons puts the underlying idea in a single line:

> *Value doesn't sit in objects; it emerges from the relationships between them.*[63]

Read with that sentence in mind, both decisions look less like charity and more like a correct reading of where the value already was.

What the record does not show

The cases are often told with endings. The public record does not supply them, and this book will not invent one.

Uptake is not published. Neither company's announcement, nor any later primary document found for this chapter, gives a count of how many firms used the Tesla pledge or signed a Toyota licence. Press reports over the years have named individual firms and offered estimates. None has been verified here against a company record, and none is repeated.

The effect on profit is not known. No accounts published by either company separate the effect of the decision from everything else that happened to them. Tesla's growth after 2014 and Toyota's hybrid sales after 2019 have many causes, and a reader who credits either to the patent decision is telling a story the data does not tell.

The counterfactual is invisible. The question that matters, what would have happened without the decision, cannot be answered from two cases. A firm that opens its patents is already a firm that believes its advantage lies elsewhere; the belief and the decision arrive together.

The motive is mixed, and that is fine. Both documents give public-spirited reasons, and both decisions also served the firms' interests. Chapter 3 described abundance language that asks more of people for less. These are not cases of that kind. A decision can be good for the world and good for the firm at once, which is what the house would expect when knowledge is non-rival.

Santa Anna names the larger habit these firms stepped outside of, in *Ecstatic Economics*:

> *It elevates scarcity to an ontological principle and then builds an entire civilization on that foundation.*[64]

The two cases are small acts against that principle, made by firms whose engineers had reason to know which of their scarcities were real.



What this means for a firm that holds no patents

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What this means for a firm that holds no patents

Most readers of this book do not hold twenty-three thousand patents. Most do hold a library. It is made of procedures, templates, client lessons, internal tools, training material and the habits of their longest-

serving people. Chapter 5's Intangible Inventory was a way of listing it. This chapter asks a narrower question of each item on that list: who is it fenced from, and does the fence still earn its keep?

The finer points of implementation come from the two designs.

Separate the document from the know-how. Toyota's move works because a patent and the ability to use it are different things. The same is usually true inside a firm. A written procedure can be shared widely at almost no risk; the judgement of the person who wrote it cannot be shared that way at all. Open the first. Pay, protect and develop the second.

Choose the gate's shape before opening it. A pledge, a licence and a free-for-all are three different designs. Decide which one you are building. Is there a condition, as Tesla's good-faith clause was a condition? Is there a date, as 2030 was a date? Is there a conversation, as Toyota's contracts were a conversation? A gate with no stated shape tends to become one nobody trusts.

Name what you will sell beside it. Where opening a library raises demand for something you still provide, say so. Toyota did, in the same release. It makes the decision legible to a finance committee, and it keeps the gift honest by not pretending it is costless.

Start inside the firm. Most designed scarcity in a firm is internal: one team's tool fenced from another, one office's lessons never reaching the next. Opening the library to your own people carries almost none of the risk of opening it to a competitor, and chapter 5's composite studio found most of its stuck value there.

Write down what you expect, before you do it. Neither case published a prediction, and so neither can be judged against one. A firm that writes down in advance what it expects to change — fewer repeated questions, faster onboarding, more use of a tool — gives itself a way to know. Chapter 9 is about this discipline in full.

The same reasoning works at a kitchen table. A household's library is its recipes, its knowledge of the money, its family history and its skills. The question is the same: who in the household, or in the street, is fenced from something that would cost nothing to share? Chapter 11 takes this up.

Santa Anna, writing about Ostrom's commons, compresses the chapter's argument into one claim:

> *abundance is not a dream—it's a design outcome*[63]

The neighbouring series on the commons, , reads Ostrom's design principles for exactly this kind of shared library, and reads why knowledge, once it begins to circulate, tends to compound. The book from which this one grows is .



The wall, again

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The wall, again

There is a detail in the Tesla post that is easy to pass over. The patents had been on a wall, in a lobby, where visitors could see them. A wall of patents is a display of what a firm owns. Taking it down was a statement that the firm intended to be judged by what it could do.

Every organisation has a wall like that somewhere. It is usually smaller and less literal: a folder with restricted access, a method only one office uses, a lesson that lives in an award submission and never in the train-

ing. The work of this chapter is to walk up to that wall, read each plaque, and ask which ones are still protecting a harvest.

The Tool: The Open-Library Test

One page per item of knowledge. Use it on the five most valuable entries in your Intangible Inventory from chapter 5. Done first by the person closest to the knowledge, then reviewed with one sceptic.

1 · The item

What it is, in one line:

Who made it, and roughly what it cost to make:

Where it lives now (a person, a folder, a system, a patent):

Date of this test:

2 · The fence

Who can use it today:

Who cannot, and would benefit:

Why the fence was put up, as best anyone remembers:

- Is that reason still true? yes / no / unsure

3 · Document or know-how

What part of this can be written down and shared:

What part lives only in judgement or practice:

Which of the two is the valuable half?

4 · The four properties (from chapter 5)

PROPERTY	QUESTION	ANSWER
Scalability	How many more people could use it at no extra cost?	
Sunkenness	What would be lost if the one person holding it left?	
Spillovers	Does its value leak out faster than it circulates in?	
Synergies	What other item is it worth more beside?	

5 · The shape of the gate

Choose one, and write the terms in a sentence.

- [ ] Keep the fence; the reason still holds.
- [ ] Open inside the organisation (or household) only.

[ ] A pledge: free to use, with a stated condition. Condition:

[ ] A licence: free or priced, by agreement, with an end date. Date:

- [ ] Open fully.

6 · What sits beside it

What do you still provide that becomes more valuable if this is open (support, training, the know-how)?

Will that be offered, and on what terms?

7 · The prediction

Written before anything changes.

What you expect to change, and by how much:

How you will count it:

The date you will look:

What result would tell you to close the gate again:

Keep the page. Chapter 8 places this test in week five of the twelve-week charter, chapter 9 adds the prediction to the register, and the workbook at the back gathers it with every other tool.

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