

# AgGateway Patent Policy

Draft 08 Jul 2020

**This version:** <https://aggateway.atlassian.net/wiki/x/EgL5RQ>

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## Abstract

The AgGateway Patent Policy governs the handling of patents in the process of producing agriculture-industry Digital Resources [PROCESS, section 2]. The goal of this policy is to assure that Digital Resources produced under this policy can be implemented on a Royalty-Free (RF) basis.

The term *digital resource* is defined as: *Refers to any digital content developed with the intent of assisting companies with implementing electronic connectivity between systems and devices within their own company, and between their company and other companies. Digital Resource includes standards, guidelines, communications tools, project-management tools, implementation tools, and requirements or proposals passed on to a Collaborating Digital Resources Body.* [PROCESS, section 2]

## Status of This Document

This is the 08 Jul 2020 version of the AgGateway Patent Policy.

This document has been approved by the AgGateway Board of Directors effective 08 Jul 2020 and has been endorsed by the AgGateway President as the AgGateway Patent Policy. It is a stable document and may be used as reference material or cited as a normative reference from another document. AgGateway's role in making this policy is to provide a stable policy for handling patent claims in the context of AgGateway Digital Resources and to enhance the interoperability of agriculture-related systems. This policy was produced by the AgGateway staff.

Please report errors in this document to [Member.Services@AgGateway.org](mailto:Member.Services@AgGateway.org). The list of known errors is public.

The English version of this policy is the only normative version.

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# 1. Overview

This patent policy describes:

1. licensing goals for AgGateway Digital Resources
2. licensing obligations that Working Group participants will undertake as a condition of Working Group [PROCESS, section 2] participation, along with means of excluding specific patents from those obligations
3. the definition of an AgGateway Royalty-Free license
4. disclosure rules for AgGateway Members
5. an exception-handling process for situations in which the Royalty-Free status of a specification comes under question
6. definition of Essential Claims (defined in Section 8 herein)

All numbered sections of this document (1-8), as well as hyperlinks to material within and outside of this document, are normative. All sections of The AgGateway Digital Resource-Development Process (“PROCESS”) referenced in this patent policy are incorporated into this policy.

# 2. Licensing Goals for AgGateway Digital Resources

In order to promote the widest adoption of agriculture-related Digital Resources, AgGateway seeks to issue Digital Resources that can be implemented on a Royalty-Free (RF) basis. Subject to the conditions of this policy, AgGateway will not publish a Digital Resource if it is aware that Essential Claims exist which are not available on Royalty-Free terms.

To this end, Working Group [PROCESS, section 2] charters will include a reference to this policy and a requirement that specifications produced by the Working Group will be implementable on an RF basis, to the best ability of the Working Group and AgGateway.

## **3. Licensing Obligations of Working Group Participants**

The following obligations shall apply to all participants in AgGateway Working Groups. These obligations will be referenced from each Working Group charter and Calls for Participation [PROCESS, sections 3 and 4].

### **3.1. AgGateway RF Licensing Requirements for All Working Group Participants**

As a condition of participating in a Working Group, each participant (AgGateway Members [PROCESS, sections 3 and 4], invited experts, and members of the public) shall agree to make available under AgGateway RF licensing requirements any Essential Claims related to the work of that particular Working Group. This requirement includes Essential Claims that the participant owns and any that the participant has the right to license without obligation of payment or other consideration to an unrelated third party. With the exception of the provisions of section 4 below, AgGateway RF licensing obligations made concerning the work the particular Working Group and described in this policy are binding on participants for the life of the patents in question and encumber the patents containing Essential Claims, regardless of changes in participation status or AgGateway Membership.

### **3.2. Limitation on Licensing Requirement for Non-Participating Members**

Only the affirmative act of joining a Working Group, or otherwise agreeing to the licensing terms described here, will obligate a Member to the AgGateway RF licensing commitments. Mere Membership in AgGateway alone, without other factors, does not give rise to the RF licensing obligation under this policy.

### **3.3. Licensing Commitments in AgGateway Submissions**

At the time an AgGateway Member Submission [PROCESS, section 7] is made, all Submitters and any others who provide patent licenses associated with the submitted document must indicate whether or not each entity (Submitters and other licensors) will offer a license according to the AgGateway RF licensing requirements for any portion of the Submission that is subsequently incorporated in an AgGateway Digital Resource. The AgGateway Team may acknowledge the Submission if the answer to the licensing commitment is either affirmative or negative, and shall not acknowledge the Submission if no response is provided.\

### **3.4. Note on Licensing Commitments for Invited Experts**

Invited experts participate in Working Groups in their individual capacity. An invited expert is only obliged to license those claims over which s/he exercises control.

## **4. Exclusion From AgGateway RF Licensing Requirements**

Under the following conditions, Working Group participants may exclude specifically identified and disclosed Essential Claims from the overall AgGateway RF licensing requirements:

### **4.1. Exclusion With Continued Participation**

Essential Claims may be excluded from the AgGateway RF licensing requirements by a participant who seeks to remain in the Working Group only if that participant indicates no later than 10 days after the Working Group delivers any Proposed New Digital Resource to the Digital Resource Center [PROCESS, sections 3 and 4] its refusal to license Essential Claims and specifically discloses the Essential Claims that will not be licensed on AgGateway RF. A participant who excludes Essential Claims may continue to participate in the Working Group.

If any claims are made essential by the Digital Resource's publication [PROCESS, sections 3 and 4] as a result of subject matter not present or apparent in the latest Proposed New Digital Resource [PROCESS, sections 3 and 4], the participant may exclude these new Essential Claims, and only these claims, by using this exclusion procedure within 60 days after the Digital Resource's publication [PROCESS, sections 3 and 4]. After that point, no claims may be excluded.

### **4.2. Exclusion and Resignation From the Working Group**

A participant may resign from the Working Group no later than 10 days after the Working Group delivers any Proposed New Digital Resource to the Digital Resource Center [PROCESS, sections 3 and 4] and be excused from all licensing commitments arising out of Working Group participation.

If a participant leaves the Working Group later than 10 days after the Working Group delivers any Proposed New Digital Resource to the Digital Resource Center [PROCESS, sections 3 and 4], that participant is only bound to license Essential Claims based on subject matter contained in the Proposed New Digital Resource delivered to the Digital Resource Center before the participant resigned from the Working Group. In addition, departing participants have 30 days after their actual resignation to exclude Essential Claims made essential by documents not referenced in the Call for Exclusion (see section 4.5) if:

1. such claims are essential to subject matter that is contained in the latest New Proposed Digital Resource delivered to the Digital Resource Center before the participant resigns, and
2. such subject matter is not present or apparent in the latest New Proposed Digital Resource delivered to the Digital Resource Center.

The participant follows the same procedures specified in this section 4 for excluding claims in issued patents, published applications, and unpublished applications. Participants resigning from a Working Group are still subject to all disclosure obligations described in section 6.

### **4.3. Joining an Already Established Working Group**

[There are no special provisions for this situation. This section is present to keep the numbered outline in sync with the W3C Patent Policy, from which this document is derived.]

### **4.4. Exclusion Procedures for Pending, Unpublished Patent Applications**

Exclusion of Essential Claims in pending, unpublished applications follows the procedures for exclusion of issued claims and claims in published applications in section 4.1 through 4.3.

Any exclusion of an Essential Claim in an unpublished application must provide either:

1. the text of the filed application; or
2. identification of the specific part(s) of the specification whose implementation makes the excluded claim essential.

If option 2 is chosen, the effect of the exclusion will be limited to the identified part(s) of the specification.

### **4.5. Exclusion Mechanics**

A Call for Exclusion will be issued by the Working Group Chair indicating the relevant documents against which participants must make exclusion statements as well as precise dates and deadlines for making any exclusions. In case there is any dispute about the dates for exclusion, the dates indicated in the Call for Exclusion are controlling. The Call for Exclusion will be sent to the Working Group mailing list and the Board of Directors. In the event that a Working Group produces more than one Proposed New Digital Resource, the exclusion procedure will be employed for each series of documents individually.

## **5. AgGateway Royalty-Free (RF) Licensing Requirements**

With respect to a Digital Resource developed under this policy, an AgGateway Royalty-Free license shall mean a non-assignable, non-sublicensable license to make, have made, use, sell, have sold, offer to sell, import, and distribute and dispose of implementations of the Digital Resource that:

1. shall be available to all, worldwide, whether or not they are AgGateway Members;
2. shall extend to all Essential Claims owned or controlled by the licensor;
3. may be limited to implementations of the Digital Resource, and to what is required by the Digital Resource;
4. may be conditioned on a grant of a reciprocal RF license (as defined in this policy) to all Essential Claims owned or controlled by the licensee. A reciprocal license may be required to be available to all, and a reciprocal license may itself be conditioned on a further reciprocal license from all.
5. may not be conditioned on payment of royalties, fees or other consideration;
6. may be suspended with respect to any licensee when licensor is sued by licensee for infringement of claims essential to implement any AgGateway Digital Resource;
7. may not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as the following: choice of law and dispute resolution;
8. shall not be considered accepted by an implementer who manifests an intent not to accept the terms of the AgGateway Royalty-Free license as offered by the licensor.

License term:

9. The RF license conforming to the requirements in this policy shall be made available by the licensor as long as the Digital Resource is in effect. The term of such license shall be for the life of the patents in question, subject to the limitations of Section 5(10) herein.
10. If the Digital Resource is rescinded by AgGateway, then no new licenses need be granted but any licenses granted before the Digital Resource was rescinded shall remain in effect.

All Working Group participants are encouraged to provide a contact from which licensing information can be obtained and other relevant licensing information. Any such information will be made publicly available along with the patent disclosures for the Working Group in question.

## **6. Disclosure**

### **6.1. Disclosure Requirements**

Disclosure is required when both of the following are true:

1. an individual in a Member organization receives a disclosure request as described in section 6.3; and
2. that individual has actual knowledge of a patent which the individual believes contains Essential Claim(s) with respect to the specification for which disclosure is requested.

Anyone in a Member organization who receives a disclosure request and who has such knowledge must inform their Primary Contact [[AgGateway Patent Policy#POLICIES](#), section 3.5]. Where disclosure is required, the Primary Contact will do so.

## **6.2. Disclosure Exemption**

The disclosure obligation as to a particular claim is satisfied if the holder of the claim has made a commitment to license that claim under AgGateway RF licensing requirements and the claim is no longer subject to exclusion under section 4. An Essential Claim is no longer subject to exclusion if a patent holder has affirmatively agreed to license the Essential Claim (effectively waiving its right to exclude such Essential Claim under section 4) or if the relevant exclusion period under section 4 has lapsed.

## **6.3. Disclosure Requests**

Disclosure requests will be included in the "Status of This Document" section of each Digital Resource track document as it reaches each new maturity level (Proposed New Digital Resource, Digital Resource). Separate requests may be issued by AgGateway to any party suspected of having knowledge of Essential Claims. Such disclosure requests will instruct the recipient to respond through their Primary Contact (in the case of Members) or an AgGateway contact (in the case of non-Members). Disclosure requests other than those that appear in the specification itself should be directed to the Primary Contact.

Disclosure requests will provide administrative details for making disclosures.

## **6.4. Disclosure Contents**

Disclosure statements must include:

1. the patent number, but need not mention specific claims
2. the Working Group and/or Digital Resource to which it applies

## **6.5. Disclosure of Laid-Open or Published Applications**

In the case of laid-open or published applications, the Member's good faith disclosure obligation extends to unpublished amended and/or added claims that have been allowed by relevant legal authorities and that the Member believes to be Essential Claims. To satisfy the disclosure obligation for such claims, the Member shall either:



1. disclose such claims, or
2. identify those portions of the AgGateway specification likely to be covered by such claims.

## **6.6. Disclosure of Pending, Unpublished Applications**

If an AgGateway Member includes claims in a patent application and such claims were developed based on information from an AgGateway Working Group or AgGateway document, the Member must disclose the existence of such pending unpublished applications.

## **6.7. Good Faith Disclosure Digital Resources**

Satisfaction of the disclosure requirement does not require that the discloser perform a patent search or any analysis of the relationship between the patents that the Member organization holds and the specification in question.

Disclosure of third-party patents is only required where a member of the AgGateway Executive Staff, a Director on the AgGateway Board of Directors, or Working Group participant has been made aware that the third-party patent holder or applicant has asserted that its patent contains Essential Claims, unless such disclosure would breach a pre-existing non-disclosure obligation.

## **6.8. Timing of Disclosure Obligations**

The disclosure obligation is an ongoing obligation that begins with the Call for Participation. Full satisfaction of the disclosure obligation may not be possible until later in the process when the design is more complete. In any case, disclosure as soon as practically possible is required.

## **6.9. Termination of Disclosure Obligations**

The disclosure obligation terminates when the Digital Resource is published or when the Working Group terminates.

## **6.10. Disclosure Obligations of Invited Experts**

Invited experts or members of the public participating in a Working Group must comply with disclosure obligations to the extent of their own personal knowledge.

## **6.11. Disclosures to Be Publicly Available on Digital Resource Track**

Patent disclosure information for each specification on the Digital Resource track will be made public along with each public Working Draft issued by the Working Group.

# 7. Exception Handling

## 7.1. PAG Formation

In the event a patent has been disclosed that may be essential, but is not available under AgGateway RF licensing requirements, a Patent Advisory Group (PAG) will be launched to resolve the conflict. The PAG is an ad-hoc group constituted specifically in relation to the Working Group with the conflict. A PAG may also be formed without such a disclosure if a PAG could help avoid anticipated patent problems. During the time that the PAG is operating, the Working Group may continue its technical work within the bounds of its charter.

## 7.2. PAG Formation After a Digital Resource Is Published

A PAG may also be convened in the event Essential Claims are discovered after a Digital Resource is published. In this case the PAG will be open to any interested Member, though the PAG may choose to meet without the holder of the Essential Claims in question.

## 7.3. PAG Composition

The PAG is composed of:

- Chairman of the AgGateway Board of Directors, who may delegate the assignment to the Vice Chairman
- The AgGateway President
- The AgGateway Chief Technology Officer
- The AgGateway Chief Operating Officer
- AgGateway counsel
- Working Group Chair, ex officio
- Others as designated by the AgGateway President

AgGateway Member participants in the PAG should be authorized to represent their organization's views on patent licensing issues. Any participant in the PAG may also be represented by legal counsel, though this is not required. Invited experts are not entitled to participate in the PAG, though the PAG may choose to invite any qualified experts who would be able to assist the PAG in its determinations.

AgGateway expects to provide qualified legal advice to all PAGs in the form of a Team member who develops experience with the PAG process and patent issues at AgGateway. Legal advice to the PAG will represent the interests of AgGateway as a whole. AgGateway plans to have lawyers present at meetings on a case-by-case basis as required by applicable agenda topics.

## **7.4. PAG Procedures**

### **7.4.1. PAG Formation Timing**

The PAG will be convened by the AgGateway Chief Technology Officer, based on a PAG charter developed by the AgGateway Chief Technology Officer, AgGateway counsel, and the Working Group Chair. The timing for convening the PAG is at the discretion of the AgGateway President, based on consultation with the Chief Technology Officer. In some cases, convening a PAG before a specific patent disclosure is made may be useful. In other cases, it may be that the PAG can better resolve the licensing problems at another point in the Digital Resource's development.

### **7.4.2. PAG Charter Requirements**

The PAG charter should include:

- clear goals for the PAG, especially a statement of the question(s) the PAG is to answer.
- duration.
- confidentiality status, which must follow the underlying Working Group (Member only, public, etc.).

The PAG charter must specify deadlines for completion of individual work items it takes on. The PAG, once convened, may propose changes to its charter as appropriate, to be accepted based on consensus of the PAG participants. The Chief Technology Officer will serve as PAG Chair. A single PAG may exist for the duration of the Working Group with which it is associated if needed.

In order to obtain input from the interested public at large, as soon as the PAG is convened, the PAG charter will be made public, along with all of the patent disclosure and licensing statements applicable to the Working Group in question.

## **7.5. PAG Conclusion**

### **7.5.1. Possible PAG Conclusions**

After appropriate consultation, the PAG may conclude:

1. The initial concern has been resolved, enabling the Working Group to continue.
2. The Working Group should be instructed to consider designing around the identified claims.
3. The Team should seek further information and evaluation, including and not limited to evaluation of the patents in question or the terms under which AgGateway RF licensing requirements may be met.
4. The Working Group should be terminated.
5. The Digital Resource (if it has already been published) should be rescinded.

6. Alternative licensing terms should be considered. The procedure in section 7.5.3 must be followed.

## **7.5.2. PAG Outcome**

Outcomes 4, 5 or 6 require a Board review and AgGateway President's decision. In any case, the PAG must state its Proposal and reasons in a public AgGateway document.

## **7.5.3. Procedure for Considering Alternate Licensing Terms**

After having made every effort to resolve the conflict through options 1, 2, and 3 under 7.5.1, the PAG, by consensus, may propose that specifically identified patented technology be included in the Digital Resource even though such claims are not available according to the AgGateway RF licensing requirements of this policy. In such case, the PAG Proposal must explain:

- why the chartered goals of the Working Group cannot be met without inclusion of the identified technology;
- how the proposed licensing terms will be consistent with widespread adoption.

Further, such PAG Proposal must include:

- a complete list of claims and licensing terms of the proposed alternative arrangements; and,
- a proposed charter for the Working Group, unless the Digital Resource has been published and no new work is required.

If the AgGateway President determines that the PAG Proposal is the best alternative consistent with the AgGateway mission, the interests of the agriculture-related community, and is clearly justified despite the expressed preference of the AgGateway Membership for RF licensing, then the Proposal shall be circulated for public comment and Board of Directors review. The AgGateway President may also circulate the Proposal for Board of Directors review without such endorsement. Should the PAG Proposal be rejected, then either sub-paragraph 4 or 5 of section 7.5.3 will apply as appropriate, without further action of the Board of Directors. Members of the Working Group who are bound to RF terms are not released from their obligations by virtue of the PAG Proposal alone. As with any newly chartered Working Group, new commitments must be made, along with possible exclusions. In order to expedite the process, the PAG Proposal should consider whether additional claims would be excluded under the new charter and include such information in the PAG Proposal.

# **8. Definition of Essential Claims**

## **8.1. Essential Claims**

"Essential Claims" shall mean all claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by implementation of the Digital Resource. A

claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no non-infringing alternative for implementing the normative portions of the Digital Resource. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the Digital Resource is published.

## 8.2. Limitations on the Scope of Definition of Essential Claims

The following are expressly excluded from and shall not be deemed to constitute Essential Claims:

1. any claims other than as set forth above even if contained in the same patent as Essential Claims; and
2. claims which would be infringed only by:
  - o portions of an implementation that are not specified in the normative portions of the Digital Resource, or
  - o enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Digital Resource and are not themselves expressly set forth in the Digital Resource (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like); or
  - o the implementation of technology developed elsewhere and merely incorporated by reference in the body of the Digital Resource.
3. design patents and design registrations.

## 8.3. Definition of Normative, Optional and Informative

For purposes of this definition, the normative portions of the Digital Resource shall be deemed to include only architectural and interoperability requirements. Optional features in the RFC 2119 [[AgGateway Patent Policy#KEYWORDS](#)] sense are considered normative unless they are specifically identified as informative. Implementation examples or any other material that merely illustrate the requirements of the Digital Resource are informative, rather than normative.

## Appendix A: Definitions

- **Digital Resource:** Refers to any digital content developed with the intent of assisting companies with implementing electronic connectivity between systems and devices within their own company, and between their company and other companies. *Digital Resource* includes standards, guidelines, communications tools, project-management tools, implementation tools, and requirements or proposals passed on to a Collaborating Digital Resources Body.

# References

## [KEYWORDS]

*Key words for use in RFCs to Indicate Requirement Levels*, S. Bradner. The Internet Society, March 1997. This RFC is available by FTP at <ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt>.

## [PROCESS]

*AgGateway Digital Resources-Development Process*, J. Wilson, Editor. AgGateway, 21 Mar 2016 . The [latest version](https://aggateway.atlassian.net/wiki/x/DQCGBQ) of this document is <https://aggateway.atlassian.net/wiki/x/DQCGBQ>.

## [BYLAWS]

*BYLAWS OF AgGateway, INC.*, R. Conner, Editor. AgGateway, 03 Mar 2016. The latest version of this document can be downloaded in PDF form at <https://aggateway.atlassian.net/wiki/x/1QCGBQ>.

## [POLICIES]

*AgGateway (AgGateway) Policies & Procedures*, R. Conner, Editor. AgGateway 02 Mar 2016. The latest version of this document can be downloaded in PDF form at <https://aggateway.atlassian.net/wiki/x/mwCGBQ>.

# Acknowledgments

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