Promises to limit the offensive use of patents are on the increase among proponents of open source software. Companies such as IBM, RedHat, Google and Twitter have made varying kinds of pledges to limit the ways in which they enforce some or all of their patent portfolios. Patent pledges are also prevalent in areas such as developing drugs for neglected diseases and supporting the development of clean energies. This Article examines the use of patent pledges in three different contexts: open source software, patent pools for neglected disease, and the eco-commons, and asks two related questions. First, are these patent pledges enforceable? Second, what are the consequences if they are, and if they aren’t?

At first glance, these patent pledges are simply the latest installment in the efforts of disparate supporters of open source innovation to combat patent threats. But further study of these patent pledges suggests a more complicated story about the strategic use of promises to protect certain kinds of openness in complex innovation ecosystems. This Article suggests the need for a more careful examination of the intersection of contract law and patent law in the face of increasingly nuanced private contract and contract-like strategies. I argue that principles and doctrines of contract law such as the doctrine of good faith and promissory estoppel, along with expanded application of equitable estoppel and implied license doctrines under patent law, have an important role to play in ensuring that these apparently open and cooperative strategies are indeed open and cooperative. In other words, promises should mean something in patent law and contract law doctrines can provide the framework to give them a clear and innovation friendly meaning.