

Energy and Clean Technology Intellectual Property Alert: USPTO Announces Program to Accelerate Review of Green Technology

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Earlier this week, the U.S. Patent and Trademark Office (USPTO) announced a pilot program to accelerate the examination of certain “green” technology patent applications.

Pending patent applications in green technologies will be eligible for special status and given expedited examination, which is expected to reduce the amount of time required to patent these technologies by an average of one year. Applications that are accorded special status are generally placed on the patent examiner’s special docket prior to the first office action, and have special status in any appeal to the Board of Patent Appeals and Interferences (BPAI) and also in the patent publication process.

Patent applications are normally taken up for examination in the order that they are filed. The average pendency time for applications in green technology areas is approximately 30 months to a first office action and 40 months to a final decision. Under the pilot program, for the first 3,000 applications related to green technologies in which a proper petition is filed, the USPTO will examine the applications on an accelerated basis.

The USPTO will accord special status to patent applications for inventions which materially enhance the quality of the environment by contributing to the restoration or maintenance of the basic life-sustaining natural elements. The USPTO also will accord special status to patent applications for inventions that materially contribute to:

1. the **discovery or development of renewable energy resources**—including inventions relating to hydroelectric, solar, wind, renewable biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, and municipal solid waste, as well as transmission, distribution, or other services directly used in providing electrical energy from these sources
2. the **more efficient utilization and conservation of energy resources**—including inventions relating to the reduction of energy consumption in combustion systems, industrial equipment, and household appliances
3. **greenhouse gas emission reduction**—including inventions that contribute to advances in nuclear power generation technology, fossil fuel power generation, or industrial processes with greenhouse gas-abatement technology (*e.g.*, inventions that significantly improve the safety and reliability of these technologies).

To be eligible, the application must be a new non-reissue, non-provisional utility application filed before December 8, 2009. The application must:

- be classified in one of the eligible U.S. classifications at the time of examination
- contain three or fewer independent claims and 20 or fewer total claims, but not contain any multiple dependent claims
- only include claims directed to a single invention, pertaining to an eligible green technology.

There is no petition fee required to request special status under the Green Technology pilot program, but the petition must be filed electronically before (i) a first Office action and (ii) December 8, 2010. An eligibility statement regarding how the invention materially enhances the quality of the environment or contributes to certain green technologies, as well as a request for early publication and the publication fee, must accompany the petition. In addition, the applicant must agree to make a telephonic election of a single invention without argument if the USPTO determines that more than one invention is being claimed.

It has been estimated that there are approximately 25,000 pending applications eligible for this program and that 12,000 of these were filed in 2009. Although the USPTO may expand the pilot program beyond 3,000 applications, we recommend that petitions for eligible applications be filed as soon as possible.

If you have any questions about this program, please call your Mintz Levin service professional or any of those listed below.

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