

# **Energy and Clean Technology Intellectual Property Alert: USPTO Expands Green Technology Pilot Program to Cover More Inventions**

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The U.S. Patent and Trademark Office (USPTO) recently announced revisions to its Green Technology Pilot Program to allow more categories of technology to be eligible for expedited processing. Eligibility for the pilot program, which was designed to promote the development of green technologies, had previously been limited to applications within a select number of U.S. classifications. Such requirements have been removed so that any patent application meeting the requirements described below can be eligible regardless of USPTO technology classification. By allowing more inventions related to green technologies to be accorded special status and receive expedited examination, the Green Technology Pilot Program will accelerate the development and deployment of green technology, create green jobs, and promote U.S. competitiveness in this vital sector.

As stated in our previous alert, 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. As of the date of the recent announcement, more than 950 requests had been filed by applicants who wish for their application to be eligible for the Green Technology Pilot Program. Only 342 of those have been granted, primarily because many of the inventions were not in classifications that were eligible. The lifting of the classification requirements is expected to allow many more applications to be eligible for the program.

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; and
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; and
- 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 (1) a first Office action and (2) 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.

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*For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.*

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