

'Green' technology gets a green light



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Green-collar jobs in Oklahoma received a much-needed helping hand from the **United States Patent and Trademark Office**, which recently announced the **Green Technology Pilot Program**.

The program, which runs through December 8, accelerates patent examination for inventions directed toward alternative energy production, energy conservation, greenhouse gas emission reduction, environmentally friendly farming and environmental protection or remediation.

Under the pilot program, the PTO will examine on an accelerated basis the first 3,000 green technology applications submitted for which a proper petition is filed. Accelerated examination will offer an important time advantage in obtaining patent protection.

According to Under Secretary of Commerce for Intellectual Property and Director of the PTO **David Kappos**, "Every day an important green tech innovation is hindered from coming to market is another day we harm our planet and another day lost in creating green businesses and green jobs.

"Applications in this pilot program will see a significant savings in pendency, which will help bring green innovations to market more quickly."

Patent applications are normally examined by the PTO in the order of their filing date, on a first in, first out basis. Currently, an estimated 1.2 million patent applications are pending before the PTO, with 700,000 of these applications having not yet received their first review or office action from the PTO.

Without accelerated examination, a newly filed application could wait in line behind these other applications for 12 to 18 months (or longer) before receiving its first office action.

It could then take another 12 to 18 months for the application to make its way through the entire examination process.

The average pendency time for applications in green technology areas is about 30 months to a first office action and 40 months to a final decision.

With accelerated examination, the application receives its first office action more quickly. The application is also placed on a special docket so that each subsequent review takes place out of turn.

The PTO already allows for accelerated examination of inventions that "materially enhance the quality of the environment" or "contribute to the development or conservation of energy resources." However, to be eligible for accelerated examination under this exception, the applicant must pay a \$130 fee and explain in detail how the invention materially enhances the environment. In providing this explanation, hypothetical examples cannot be used.

The Green Technology Pilot Program waives both the fee and the explanation requirement.

Accelerated examination does not guarantee that a patent will issue. To be eligible for patent protection, an invention must be unique and inventive. In other words, the invention cannot be an obvious or trivial advance over what already exists.

It often takes two or more rounds of office actions by the PTO to determine whether the invention is a patentable one. The first office action is called a "non-final" action and affords the applicant the opportunity to make amendments to the patent "claims." The patent claims define the boundaries of the invention and are analogous to the legal description that defines a tract of land.

If the amendments do not make the invention patentable, a second office action called a "final" action is received. The applicant may then request continued examination or appeal the PTO's rejection of the application to the PTO's appeals board.

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