

IP LAW ADVISORY

June 30, 2010

A Green Light for Green Technology

The United States Patent and Trademark Office (USPTO) has expanded its Green Technology Pilot Program which allows applications relating to environmental quality, energy conservation, development of renewable energy, and greenhouse gas emission reduction to be advanced out of turn for expedited examination. The initiative may reduce the pendency of qualifying applications without having to meet various formal requirements associated with the traditional accelerated examination program. The USPTO hopes that the program will bring green technologies to market more quickly and promote their funding.

Petitions decided on or after May 21, 2010 are no longer subject to the original requirement that applications must fall within an enumerated set of U.S. patent classifications to qualify. The expansion is a result of only 342 of the first roughly 950 requests filed under the program being granted. Petitions previously dismissed or denied due to the classification requirement may be resubmitted.

In order to participate, a petition to make special can be submitted in any new application filed prior to December 8, 2009, excluding reexamination and reissue applications, at least one day prior to issuance of a first Office Action (including Restriction Requirements). The associated \$130 petition fee has been waived. A request for early publication must accompany the petition.

The petition must also state that the application materially enhances the quality of the environment or materially

contributes to the discovery or development of renewable energy resources (a defined term), the more efficient utilization and conservation of energy resources, or the reduction of greenhouse gas emissions. It is not enough for some minor aspect of the claimed invention to be directed to eligible subject matter and a signed statement should accompany the petition explaining how the materiality standard is met if it is not clear on the face of the application.

An application must have three or fewer independent claims and twenty or fewer total claims to qualify, but a Preliminary Amendment may be filed simultaneously with the petition to bring it into compliance. The petition must also include a statement that if Restriction is required, an invention meeting the subject matter criteria will be elected. Petitions may be filed through December 8, 2010, but only the first 3000 to be submitted will be accepted unless the program is extended.

Please let us know whether this is something you wish to pursue, and identify the technologies that you believe may qualify for this expedited treatment, or let us know if you would like us to review your existing patent portfolio to identify potential candidates for this program. As long as the early publication requirement is not of business concern, this pilot program should be a good way to expedite handling of your applications pertaining to green technology.

This material is for general information purposes only, is current only as of the indicated date, and should not be regarded as legal advice. Provided this information is not intended to create an attorney-client relationship. You should not act upon this information without seeking professional legal advice.