Accelerated Review of Green Technology Patent Applications
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In December 2009, the United States Patent and Trademark Office (“USPTO”) announced a pilot program to speed up the review of patent applications relating to biotechnology related and non-biotechnology related green technologies. Companies and organizations in the biotechnology sector with green technology patent applications may be interested in this program if they want an expedited review of their patent applications.

Typically, patent applications are examined in the order in which they were filed. Due to the backlog of applications at the USPTO, however, it can take several years to obtain an initial review of a green technology patent application. The pilot program is expected to reduce the time it takes to obtain a green technology patent by an average of 12 months. This reduction in the time to obtain a patent is intended to allow inventors and companies to more quickly commercialize their green technologies.

In order to obtain the expedited review of their application, patent applicants must submit, by December 8, 2010, one of the first 3,000 petitions to the USPTO that meets the requirements of the pilot program. The USPTO may extend the program after December 8, 2010 depending on its success. If the petition is accepted, then the patent application will be examined on an accelerated basis.

The petition has many different requirements. The requirements include the need to have an application filed before December 8, 2009 that has not received a first office action. In addition, the application must fit within one of 79 different patent classifications which include many biotechnology related classifications such as agricultural waste, biofuels, chemical waste, genetically engineered organisms, animal waste disposal or recycling, fertilizer alternatives, pollution abatement, soil conservation, biodegradable materials, bio-hazards, carbon capture, genetic contamination, plants and plant breeding, and using microbes or enzymes to treat waste. Some of the additional requirements are that the application must have 20 or fewer claims and the early publication of the application must be requested. The applicant also must agree to not argue against a splitting up of their invention (i.e., restriction requirement) if there is more than one invention in the claims in the view of the USPTO.

Given the requirements of the program, patent applicants should carefully weigh the pros and cons of taking part in the program. The program may not be appropriate for all applicants or technologies. There may also be other strategies and avenues to expedite the review of a green technology application which are a better fit for an applicant.

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