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USPTO Acts to Spur Innovation in Climate Mitigation Technologies with Expedited Review Pilot Program

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Written by **Jordan P. Glassman, Zachary S. Kelton** and **Jennifer Giordano-Coltart, Ph.D.**

As the looming consequences of climate change inch ever closer, the Biden administration has acted forcefully with both legislation and policy. Building on the prioritization of climate change policy announced in President Biden's 2021 Executive Order 14008, the administration is this Fall taking "the most aggressive action to confront the climate crisis in our nation's history."

In response to the President's 2021 directive, the USPTO announced in May its Climate Change Mitigation Pilot Program at the 2022 ARPA-E Energy Innovation Summit. During her keynote address, USPTO Director Kathi Vidal directly addressed the needs of innovators working in these spaces and unveiled the Program to address the lengthy patent process. The Program is designed to "positively impact the climate by accelerating examination of patent applications for innovations that reduce greenhouse gas emissions" and should help combat downward trends in patent applications for climate change mitigation technologies.

To take advantage of the Program, qualifying nonprovisional applications should be filed along with a petition to make special within 30 days of the application filing date. If the petition is granted, applications are advanced out of turn (accorded special status) and moved to the assigned examiner's special docket until a first office action on the merits has been issued. After that, the application is moved to the examiner's regular docket. Additionally, the Program waives the substantial fees associated with prioritized examination and avoids the arduous requirements of accelerated examination. Full details of the program are available in Federal Register Notice 87 FR 33750.

Among other requirements, applicants must certify that the claims cover a product or process that mitigates climate change; that the product or process is designed to reduce greenhouse gas emissions; and that the applicant has a good faith belief that expediting examination will likely have a positive impact on the climate. Qualifying applications must be classified as one or more subclasses of class Y02 under the CPC scheme. Interested applicants should draft their applications thoughtfully to ensure that they are classified accordingly, taking into account the USPTO's auto-classification tool that was launched in 2021 that leverages machine learning to classify applications under the CPC system.

The Y02 class covers a broad variety of technologies, including those that directly reduce greenhouse gas emissions and those that indirectly reduce greenhouse gas emissions. The USPTO offers the example of a

“process to capture or dispose of methane” as one claim that would receive consideration under the Program, because such a claim would fall under CPC subclass Y02C, which relates to the “capture, storage, sequestration or disposal of greenhouse gases.” Another example is technology classified under CPC group Y02E60 relating to “technologies with a potential or indirect contribution to [greenhouse gas] emissions mitigation.” Recent applications receiving this classification include energy generation technologies utilizing renewable energy sources like solar and wind. Another example includes wastewater treatment or waste management, both mitigation technologies covered by CPC subclass Y02W. Such technologies might directly mitigate climate change by treating sewage using renewable energies, or indirectly, by substituting packaging made from renewable resources or bio-plastics.

New technologies in the bioeconomy and agriculture industry can also have direct and indirect effects on climate change and are included in CPC group Y02P60. For example, technologies that enable the re-use of by-products of food processing for fodder production can both boost productivity and indirectly contribute to reductions in greenhouse gas emissions. Likewise for technologies that reduce energy consumption while operating greenhouses, reducing overhead and reducing a farm's carbon footprint. The administration's continuing focus on these technologies is also manifested in its recent Executive Order 14081, entitled “Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy”, which may also help to spur innovation in these areas.

The Pilot Program will last until June 5, 2023, or until 1,000 applications have been granted special status. As of November 15, 2022, 147 applications have applied for special status under this Program, and 83 have been granted. The opportunity remains ripe.

Beyond assisting clients in protecting their environmental technologies through expert patent prosecution, Kilpatrick Townsend has both broad and deep expertise in helping clients navigate through complex environmental regulations and laws, with dedicated Environmental, Social, and Governance (“ESG”) and Energy teams that serve innovative clients throughout the clean energy industry in all aspects of their business. Kilpatrick Townsend provides an integrated ESG service offering to assist our clients in developing an ESG program that will help them design, implement, monitor and improve ESG initiatives and efforts, leveraging its established practices in environmental and energy, corporate governance, government enforcement and investigations, and other well-established teams. Kilpatrick Townsend's Energy team serves innovative clean energy industry clients, who develop and finance solar, biomass, clean fuels, and energy storage projects, while also helping energy users implement sustainable energy programs and practices. The firm also has a particular focus in Agribusiness & Food, helping clients across a range of sectors in these industries.

Related People

Jennifer Giordano-Coltart, Ph.D.

t 919.420.1716

jgiordano-coltart@ktslaw.com

Zachary S. Kelton

t 919.420.1720

zkelton@ktslaw.com

Jordan P. Glassman

t 919.420.1743

jglassman@ktslaw.com