

Green is the New Black

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Inventions in the field of Green Technologies (or *Green Tech*) seem to be one of the hot topics in the patent world at the moment. Can we save the world one patent at a time?

Initiatives by Patent Offices to promote Green Tech

A patent application can be filed in most countries in the world but in most cases a patent will not be granted until it has undergone examination to determine if it contains patentable subject matter. In a number of countries the time between the filing of a patent application and the start of the examination process can be two years or more.

Driven by fears of climate change and limited natural resources, many developed countries are trying to encourage and accelerate the development of innovation in the field of Green Tech. With this goal in mind, some Patent Offices have initiated schemes to allow patent applications related to Green Tech to be examined ahead of the rest. Where these schemes are in place, the wait for examination of a patent application can be reduced from years to a few months.

Patent offices currently offering or planning schemes like this include Australia, Israel, Japan, Korea, the UK and the United States.

Some of these schemes (such as in Australia and the UK) are straight-forward to apply for and are providing great benefits for applicants who wish to have a patent granted quickly.

Pilot Scheme in the United States

The initial uptake of the pilot scheme in the US has been slow. When the pilot scheme was started in December 2009, the patent office announced it intended to accelerate the examination of the first 3000 eligible applications to apply for the scheme. However, from the beginning of the scheme until May 2010, only 342 applications were accepted.

In May 2010, the office announced they would expand the scheme to encompass a broader classification of what they considered to be a Green Tech invention (and therefore potentially eligible for the scheme). Previously, only a very limited range of technologies was eligible, which was found to be the main reason applications were being denied.

As of 26 August 2010, 716 applications have been accepted onto the scheme out of a total of 1477 applications. There is still some way to go before the full allocation of 3000 is filled. It is likely the scheme will receive diminishing applications, and may not meet its full allocation, as one of the main criteria is that the patent application

must be currently pending. Patent applications filed after 8 December 2009 are not eligible to enter the scheme. Therefore as these pending applications move towards being examined by the normal process, there will be less reason to apply and fewer applicants will who want to accelerate examination.

Problems of classification

What is Green Tech? The United States Patent and Trade Mark Office initially used a very narrow definition of the technology. In contrast, under the UK Patent Office scheme any patent application which relates to an invention in the *green* or *environmentally-friendly* technology space can request accelerated examination. Examples of patent applications in the scheme range from a hip prosthesis system which can allow a hospital to carry less stock and parts² to production of butanol using thermophilic Bacillaceae.³

It is clearly hard to define what Green Tech is. It can also be hard to search for previous patents in the area as the field can be very broad. In order to avoid infringing existing patents and to search for ideas that could be licensed from the patentee, it is essential that patent databases can be searched quickly and easily. However, traditional classification codes for Green Tech inventions are in some cases inadequate as the technology has moved on but the classification has not kept step.

The European Patent Office is responding to this problem by introducing new classification codes for patents in the Green Tech area. All patent applications are currently coded for searching purposes by their area of content. However, Green Tech can be found in so many areas that range over many of the current classification codes. Accordingly, the current codes may not group together technologies in areas of current research.

The new codes already up and running are for inventions relating to *Greenhouse gases – capture or storage/sequestration or disposal* and *Greenhouse gases – emissions reduction technologies related to energy generation, transmission or distribution*. Each of these codes encompass subclasses for more specific searches. More classification codes will be added as the project moves forward.

What effect will these schemes have?

These types of programs are designed to encourage development of technologies and businesses with products that protect or at least do less damage to the environment. They could also stimulate investment in companies with great ideas. However, since a large proportion of the cost of gaining a patent is incurred during the examination stage, bringing such costs forward can be a high financial burden. In situations where exploration of commer-

cial opportunities is ongoing and cash is short, delaying examination can be more preferable. These schemes can provide options for applicants, but it should be considered on a case by case basis whether they will be beneficial in each situation.

The improvements in classification of inventions by the major patent offices would appear to have more concrete benefits. By knowing what has already been achieved in an area, further ideas can be developed rather than repeating the work of others. It can also be a very important commercial tool. Patent searching gives information on what your competitors are doing.

The World Intellectual Property Organisation has opened up discussions for further options including reduction of fees for patent applications in the field of Green Tech. With the current financial climate this option would be well received by applicants. We will keep you informed if

these discussions eventuate into further initiatives in this area.

References

1. Either the International filing date or the filing date in the US must be before 8 December 2009.
2. Patent application publication number GB2467261
3. Patent application publication number GB2458818.

A reminder: if you have any queries regarding intellectual property related matters (including patents, trademarks, copyright or licensing), please contact:

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Katherine Hebditch and Tim Stirrup of Baldwins Intellectual Property in Auckland specialise in chemistry and biotechnology patents. Katherine obtained her PhD in organic chemistry from the University of Manchester in the UK in 2004. She is currently working towards registration as a patent attorney. Tim obtained his PhD in molecular biology from the University of Southampton in the UK in 2007. He is also working towards registration as a patent attorney.

