

APRIL 2023

VOL. 23-4

PRATT'S

# ENERGY LAW

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ISBN: 978-1-6328-0836-3 (print)

ISBN: 978-1-6328-0837-0 (ebook)

ISSN: 2374-3395 (print)

ISSN: 2374-3409 (online)

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT'S ENERGY LAW REPORT [page number]

(LexisNexis A.S. Pratt);

Ian Coles, *Rare Earth Elements: Deep Sea Mining and the Law of the Sea*, 14 PRATT'S ENERGY LAW REPORT 4 (LexisNexis A.S. Pratt)

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# Options for Accelerating Examination of Renewable Technology Patent Applications

*By Peter A. Jackman and Haley Ball\**

*Recognizing the urgent need to address climate change, certain patent offices around the world have established programs to expedite the examination of patent applications directed to renewable technologies. Presently, 10 countries have fast-track programs for “green” technology patent applications. The authors of this article summarize the international options for expediting examination of green technology patent applications.*

Building a patent portfolio is an important part of new product development. For renewable technology companies, patents help credential innovations and attract investment. However, backlogs at the U.S. Patent and Trademark Office (USPTO) and other international patent offices can delay the grant of a patent by years. Recognizing the urgent need to address climate change, certain patent offices around the world have established programs to expedite the examination of patent applications directed to renewable technologies. Presently, 10 countries have fast-track programs for “green” technology patent applications (Figure 1). The international options for expediting examination of green technology patent applications are summarized below.



**Figure 1.** Countries with fast-track programs for green technology patent applications: Australia, Brazil, Canada, China, Israel, Japan, South Korea, Taiwan, the United Kingdom, and the United States.

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## AUSTRALIA<sup>1</sup>

Australia's intellectual property office, IP Australia, announced its expedited patent examination to patents directed to green technology on September 15, 2009. Any "environmentally beneficial" technologies are eligible for the program, provided applicants file a statement that the technology provides some environmental benefits. Unlike the United States, Australia operates a deferred examination system where applicants have five years from filing to request examination. After filing their application, applicants can request expedited examination via phone or in writing. If applicants request expedited examination via phone, a supervising examiner will determine whether the examination should proceed on an expedited basis. Currently, it can take over a year from the date examination is requested to the start of examination. IP Australia's expedited examination aims to reduce the waiting time to between four to eight weeks. There are no additional fees for the program.

## BRAZIL<sup>2</sup>

Since the Brazilian National Institute of Industrial Property (INPI) piloted its Green Patents Program on April 17, 2012, Brazil has sought to reduce its patent application backlog and promote the commercialization of environmentally sensitive technologies (ESTs). Brazil fully integrated its Green Patents Program on December 6, 2016 – its 2016 offerings extended expedited examination to EST-related international applications filed under the PCT and eliminated the pilot program's filing date restriction. On July 30, 2020, INPI further extended its offerings to include sustainable agriculture patent applications.

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<sup>1</sup> Antoine Dechezleprêtre, *Fast-tracking Green Patent Applications: An Empirical Analysis*, ICTSD Global Platform on Climate Change, Trade and Sustainable Energy, Issue Paper No. 37, <https://www.files.ethz.ch/isn/161230/fast-tracking-green-patent-applications-an-empirical-analysis.pdf>; Patent Manual of Practice and Procedure, 2.13.4.3 Expedited Examination, IP Australia, December 16, 2020, <https://manuals.ipaustralia.gov.au/patent/2.13.4.3-expedited-examination>; Examination of a Standard Patent, Australian Government: IP Australia, <https://www.ipaustralia.gov.au/patents/applying-patent/standard-patent-application-process/examination-standard-patent> (last updated January 6, 2022); Expedited examination for standard patents, updated 16 June 2020, IP Australia, <https://www.ipaustralia.gov.au/patents/applying-patent/standard-patent-application-process/examination-standard-patent/expedited-examination-standard-patents>; IP Australia 2020 Expedited Examination Procedure.

<sup>2</sup> Updated landscape on expedited protection of "green" inventions in Brazil, May 2021, [https://www.wipo.int/wipo\\_magazine\\_digital/en/2021/article\\_0003.html](https://www.wipo.int/wipo_magazine_digital/en/2021/article_0003.html); IPC Green Inventory, WIPO, <https://www.wipo.int/classifications/ipc/green-inventory/home> (accessed July 7, 2022); How to Accelerate Patent Prosecution in Brazil, Daniel Law, <https://www.daniel-ip.com/en/ebooks/how-to-accelerate-patent-prosecution-in-brazil/> (accessed July 13, 2022); Green Patents, Instituto Nacional da Propriedade Industrial (INPI), <https://www.gov.br/inpi/en/services/patents/prioritized-examination/pilot-projects/green-patents> (updated November 16, 2020).

Currently, any technologies in line with the Green Inventory of the International Patent Classification are eligible, i.e.:

- (1) Alternative energy production;
- (2) Transportation;
- (3) Energy conservation;
- (4) Waste management;
- (5) Agriculture/forestry;
- (6) Administrative, regulatory, or design aspects; and
- (7) Nuclear power generation.

Qualifying patents are marked with an official “Patentes Verdes” (Green Patents) stamp, which can confer additional market value and technological recognition useful for attracting customers and investors.

Under the program, the average timeframe from request to fast-track acceptance is 118 days, and the average timeframe from request to formal examination is 75 days. The average timeframe from request to first office action is 223 days, and the average timeframe from request to allowance is 379 days (reduced from just over 10 years for standard examination). As of April 2020, 34 percent of qualifying applications received were rejected, 38 percent were accepted, and 27 percent were pending examination – only one percent of qualifying applications were abandoned. Between 2018 and March 2021, there were 327 requests for entry into INPI’s Green Patents Program, and 80% of requests for entry were accepted. Nearly 850 patent applications have been filed under INPI’s Green Patents Program as of May 2021. There is no filing date restriction, and no claim number restriction.

### CANADA<sup>3</sup>

The Canadian Intellectual Property Office (CIPO) announced its program for advanced examination of green technologies on March 3, 2011. Patent

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<sup>3</sup> Advanced Examination for Green Technologies, CIPO, <https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr04746.html#Section1> (updated June 8, 2021); File a Canadian Patent Application: Request Examination, CIPO, <http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr04792.html> (last updated April 27, 2022); Manual of Patent Office Practice, Chapter 11 Administrative Practice of Examination, 11.03.02 Applications related to green technology – September 2020, CIPO, <https://manuels-manuals.opic-cipo.gc.ca/w/ic/MOPOPPreviousNov2021-en#!fragment/zoupio->; Canadian Patents Database / Green Technologies - Canadian Patents Database, CIPO, [https://www.ic.gc.ca/opic-cipo/cpd/eng/greenTechnologies/green\\_technologies.html](https://www.ic.gc.ca/opic-cipo/cpd/eng/greenTechnologies/green_technologies.html) (accessed July 12, 2022); Patent Statistics: 2020 to 2021, CIPO, <https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr04976.html> (last modified September 9, 2021).



applications relating to green “technology that if commercialized would help to resolve or mitigate environmental impacts or to conserve the natural environment or natural resources” are eligible. Unlike the United States, Canada operates a deferred examination system where applicants have four years from filing to request examination, at which point the examination process begins. Applicants must file their application with a declaration stating that their “application relates to technology that if commercialized would help to resolve or mitigate environmental impacts or to conserve the natural environment or natural resources;” however, CIPO will not question applicants’ declarations. To qualify for advanced examination, applicants must also make their applications open to public inspection.

After an applicant’s request for advanced examination is processed, a first office action can be expected within approximately three months (reduced from approximately 13 months for standard examination). Per CIPO’s Green Technologies – Canadian Patents Database, 38 patents and nine patent applications were accorded green technology status in 2020. In 2021, 23 patents and 28 patent applications were accorded green technology status. Considering that examination of 28,193 patent applications was requested between 2020 and 2021, accelerated examination for green technology patent applications is not highly used. No additional fees are required to request advanced examination.

## CHINA<sup>4</sup>

The China National Intellectual Property Administration (CNIPA) began prioritizing examination of green technology patent applications on August 1, 2012. Technologies relating to “energy conservation and environmental protection, new-generation information technology, biologics, high-end equipment manufacturing, new energy, new material, new energy vehicle, intelligent manufacturing, etc.,” are eligible. CNIPA updated its prioritized examination procedures for green technology on August 1, 2017. CNIPA’s updated procedures extend prioritized examination of green technology from invention patent applications in the stage of substantive examination to include utility

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<sup>4</sup> Administrative Measures on Prioritized Examination of Invention Patent Applications, State Intellectual Property Office, Order No. 65, August 1, 2012, <https://www.cpahk ltd.com/EN/info.aspx?n=20120803172041697130>; Administrative Measures for Prioritized Patent Examination, State Intellectual Property Office, Order No. 65, August 1, 2017, [http://www.lindapatent.com/en/law\\_patent/674.html](http://www.lindapatent.com/en/law_patent/674.html); Aaron Winger & Lei Tan, Tips for Accelerating Patent Prosecution in China, *The National Law Review*, July 16, 2020, <https://www.natlawreview.com/article/tips-accelerating-patent-prosecution-china>; China National Intellectual Property Administration 2021 Annual Report, <https://english.cnipa.gov.cn/col/col2936/index.html>.

model or design patent applications, and reexamination of invention, utility model and design patent applications.

A request for prioritized examination can be filed after the application has entered the substantive examination stage, and all prioritized patent application or reexamination cases must be performed electronically. Foreign applicants should first submit their request to the local IP office of Beijing. The local IP office will examine the request and, if approved, transfer the request to the CNIPA for final approval. Foreign applicants must submit the following documents in electronic form:

- (a) A sealed request form;
- (b) A sealed statement regarding why the application is qualified for prioritized examination;
- (c) A sealed Power of Attorney dedicated for prioritized examination;
- (d) Copies of prior art;
- (e) A sealed company register or other official document that proves the identity of the applicant;
- (f) A Chinese translation of (e); and
- (g) A copy of Notification of Entry into Substantive Examination Stage.

Immediately after examining the request for expedited examination, CNIPA will inform applicants if their request has been accepted or denied. For invention patent applications, a first office action will issue within about 45 days of acceptance into the program (reduced from about 8-10 months for standard examination), and the final decision will be provided within one year (reduced from approximately 19 months for standard examination in 2021). For prioritized utility model and design patent applications, a final decision will be provided within about two months of acceptance into the program. For prioritized patent reexaminations, a final decision will be provided within about seven months of acceptance into the program. No additional fees are required for the program.

## ISRAEL<sup>5</sup>

The Israel Patent Office (ILPO) launched its accelerated examination program for “Green Applications” on December 27, 2009. Patent applications

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<sup>5</sup> Green applications, Ministry of Justice, Israel Patent Office, <https://www.gov.il/en/departments/general/green-app> (last updated April 7, 2021); Israeli Patent Office 2020 Annual Report, <https://www.gov.il/en/departments/publications/reports/new-annual-reports> (published September 5, 2021).

“in which the invention described [improves] the environment, inter alia, by preventing the causes of global warming, reducing the air or water pollution, promoting nonpolluting agriculture, dealing with alternative energy sources, etc.,” are eligible for the program. According to ILPO, the pendency from the start of examination start to the first search and examination report is three months (reduced from 27.5 months for standard examination in 2020). Considering that the average pendency from filing to end of examination was 42 months in 2020, this is a significant reduction in patent prosecution time. In 2020, 61 green technology patent applications were examined under the program – a significant increase over the average 15.4 green applications examined between 2015 and 2019. This increase could be partly attributed to the Commissioner’s Notice updating the classification of green technology applications to include applications dealing with coronavirus. No additional fees are required for accelerated examination.

## JAPAN<sup>6</sup>

Since November 1, 2009, the Japan Patent Office (JPO) has offered accelerated examination of “green-technology related applications.” Green inventions “that [have] an energy-saving effect and contribute[] to CO<sub>2</sub> reduction” are eligible for the program. Unlike the United States, a request for examination can be filed with the JPO any time within three years of the filing date of the patent application (or within three years of the international filing date in the case of a PCT international application). Applications for accelerated examination must be made by submitting a written explanation (in Japanese) of the need for accelerated examination, and applicants who are not domiciled in Japan (and do not maintain a Japanese address) must apply through a Japanese patent attorney who has an address or domicile in Japan.

To explain why accelerated examination is needed, applicants must describe why their application is green technology related based on the specification and must submit comments distinguishing their claims from the most relevant prior art. Providing all prior art documents is not necessary, but an applicant should provide the most relevant prior art references and a succinct and clear explanation about why the claims are distinguished from the prior art. The JPO has the discretion to deny accelerated examination requests if it believes that the requirements are not met, and such denials are not appealable.

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<sup>6</sup> Outline of Accelerated Examination and Accelerated Appeal Examination, Japanese Patent Office, <https://www.jpo.go.jp/e/system/patent/shinsa/jp-soki/index.html> (last updated September 24, 2021); FAQs: Patent, Japan Patent Office, <https://www.jpo.go.jp/e/faq/yokuaru/patent.html> (accessed July 12, 2022); JPO Status Report 2022, <https://www.jpo.go.jp/e/resources/report/statusreport/2022/index.html>.

In 2021, JPO's accelerated examination program reduced the average first office action pendency to 2.7 months (reduced from 10.2 months for standard examination). Considering the total average pendency of a standard patent examination was 15 months in 2021, this is a significant reduction in patent prosecution time. No additional fees are required for accelerated examination.

## REPUBLIC OF KOREA<sup>7</sup>

The Korean Intellectual Property Office's (KIPO's) super-accelerated examination program for green technology was abolished in 2015; however, patent applications related directly to "green technology" are still eligible for accelerated examination. "Green technology" is broadly interpreted to include technologies that prevent or decrease pollution. Eligible green technology applications may include:

- (1) Applications directed to a technology given a green technology certificate according to "The Basic Act on Low Carbon Green Growth;"
- (2) Applications filed by a company that have a certificate indicating it is a green technology specialized company;
- (3) Applications filed by a company within a green technology industrial park according to the Act;
- (4) Applications filed by an applicant given subsidy according to the Act;
- (5) Applications filed by an applicant who received an investment from a green technology industry investment company according to the Act; or
- (6) Applications given financial support or certification connected to other government policies.

Applicants requesting accelerated examination must provide documentation that demonstrates how the application qualifies as green technology accompanied by a statement of explanation. Applicants must also submit a prior art search report comparing the claimed invention and the prior art. KIPO may provide applicants with the opportunity to supplement their request with additional information or supporting documents, as needed, before allowing or dismissing the request for accelerated examination. KIPO allows accelerated

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<sup>7</sup> Korean Intellectual Property Office, 2020 Annual Report [https://www.kipo.go.kr/en/HtmlApp?c=60114&catmenu\\_01\\_20](https://www.kipo.go.kr/en/HtmlApp?c=60114&catmenu_01_20); Korean Intellectual Property Office, 2019 Annual Report [https://www.kipo.go.kr/en/HtmlApp?c=60114&catmenu=ek07\\_01\\_01\\_19](https://www.kipo.go.kr/en/HtmlApp?c=60114&catmenu=ek07_01_01_19); KIPO, Fees and Payments, [https://www.kipo.go.kr/en/HtmlApp?c=92004&catmenu=ek03\\_04\\_01](https://www.kipo.go.kr/en/HtmlApp?c=92004&catmenu=ek03_04_01) (last updated August 9, 2021).

review for more than about 95% of requests. Under the accelerated program, applicants can receive a first office action in about two months (reduced from 11.1 months for standard examination in 2020). According to KIPO's 2019 Annual Report, patents eligible for accelerated examination are patented up to 10 months earlier than standard patents – the average total pendency for registration of accelerated patent applications is 5.5 months. A fee of 200,000 KRW (approximately 153 USD) must accompany each request for accelerated examination.

### **TAIWAN<sup>8</sup>**

The Taiwan Intellectual Property Office (TIPO) added green technology as a category eligible for its existing Accelerated Examination Program (AEP) on January 1, 2014. Green technologies that improve energy conservation, develop new energy sources, develop renewable energy vehicles, reduce carbon, or save resources are eligible. Applicants for the program must provide (1) an AEP request form and (2) a written explanation indicating how the invention is a green technology. The applicants should ensure that the claims of the invention directly relate to the aforementioned green technology areas. The applicant can provide supporting documents (e.g., specification or drawings) to demonstrate how the invention is a green technology. The program aims to return examination results (notification of responsive examination opinions, final notice or written decision of examination) within about six months of receiving all relevant documents; however, the actual pendency may vary depending on the green technology field(s) of the application.

In 2021, the average first office action pendency for green-technology related AEP applications was 66.6 days (reduced from 8.7 months for non-AEP applications), and the average total pendency was 174.2 days (reduced from 14 months for non-AEP applications). Forty green technology related AEP requests were filed in 2021. A payment of 4,000 NTD (approximately 135 USD) is required per request.

### **UNITED KINGDOM<sup>9</sup>**

The UK became the first country to implement a fast-track program for green technology patent applications when the UK Intellectual Property Office

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<sup>8</sup> Accelerated Examination Available for Green Tech Patent Application Since January 1, 2014, <http://tipa.com.tw/site/?p=6303> (published January 1, 2014); Accelerated Examination Program (AEP), <https://www.tipo.gov.tw/en/cp-824-873219-841ee-2.html> (updated January 1, 2022); TIPO 2021 Annual Report, <https://www.tipo.gov.tw/en/dl-282443-efaaa338984e48739b2043fcd3293dbd.html>.

<sup>9</sup> Patents: Accelerated Processing, UK IPO, <https://www.gov.uk/guidance/patents-accelerated-processing>

(UKIPO) launched its “Green Channel” program on May 12, 2009. The Green Channel is not limited to any specific areas of green technology – any environmentally beneficial technologies are eligible. To apply, applicants must (1) make a request in writing (2) describing how their invention is environmentally friendly and (3) specifying which actions they would like to accelerate (search examination, combined search and examination, and/or publication). Generally, applications clearly relating to environmentally beneficial technologies, e.g., solar panels or wind turbines, need only provide a simple statement describing how they are environmentally friendly. However, applications relating to technologies with less obvious environmental benefits, e.g., efficient manufacturing processes that use less energy, may require a more detailed explanation. In either case, the perceived environmental benefit need only be based on a reasonable assertion – the UKIPO will not conduct detailed investigations into these assertions.

Requests for the Green Channel can be made during filing or prosecution and can be made electronically or by post. Applicants who request the Green Channel at filing may have an issued patent in approximately 9 to 12 months (reduced from an average of three to four years from filing for standard patent examination). From 2020 to 2021, UKIPO met 94.9% of requests for accelerated patent processing with a two-month turnaround. Over 400 patent applications were filed through the Green Channel in 2020, which was the highest number of applications per year since the Green Channel was introduced in 2009. Generally, an average of approximately 300 applications, comprising approximately 1% of all UK applications and about 20% of all possibly eligible “green” UK applications, are filed via the Green Channel each year. As of June 2022, the UK IPO’s “Published Green Channel Patent Applications” database contained 3,028 published applications. No additional fees are required to participate in the Green Channel.

## UNITED STATES<sup>10</sup>

On June 3, 2022, the USPTO announced the launch of its Climate Change Mitigation Pilot Program. The program is intended to be a component of the

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(updated December 18, 2019); The Patent Office Annual Report and Accounts 2020/21, UK IPO, <https://www.gov.uk/government/publications/ipo-annual-report-and-accounts-2020-to-2021>; Published Green Channel Patent Applications, <https://www.ipo.gov.uk/p-gcp.htm> (accessed June 24, 2022).

<sup>10</sup> USPTO announces launch of Climate Change Mitigation Pilot Program, Press Release, June 3, 2022, <https://www.uspto.gov/about-us/news-updates/uspto-announces-launch-climate-change-mitigation-pilot-program>; USPTO, Climate Change Mitigation Pilot Program, <https://www.uspto.gov/patents/laws/patent-related-notices/climate-change-mitigation-pilot-program>.

USPTO's commitment to accelerate the review of "patent applications pertaining to climate-related topics."

The program, which began accepting petitions to participate on June 3, 2022, will be available until June 5, 2023, or until the USPTO accepts 1,000 grantable petitions, whichever is earlier (and subject to its discretion to terminate prior). Eligible applications must contain one or more claims to a product or process that mitigates climate change by reducing greenhouse gas emissions. The program is open to (1) non-continuing original utility non-provisional applications, and (2) original utility non-provisional applications that claim the benefit of the filing date under 35 U.S.C. §§120, 121, 365(c), or 386(c) of only one prior application that is either a non-provisional application or an international application designating the United States.

To apply, the application or national stage entry and Form PTO/SB/457 (which contains the petition and requisite certifications) must be electronically filed using Patent Center, and the specification, claims, and abstract must be submitted in DOCX format. Applicants must file the petition to make special (1) with the application or entry into the national stage, or (2) within 30 days of the filing date or entry date of the application. Applicants may not participate if the inventor or any joint inventor has been named as the inventor or a joint inventor on more than four other non-provisional applications in which a petition to make special under this program has been filed. There is no additional fee to apply for the program. As of November 29, 2022, 97 applications have been granted special status for this pilot program.