

BPO's "Green Patents" pilot program to be extended

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Launched on April 2012, the Brazilian Patent Office's pilot program that establishes prioritized examination for the so-called "green patents" has now been extended for a further year, being available up to April 16, 2015.

This program's purpose is to prioritize the examination procedures of patent applications involving "green technologies", reducing the current average time for concluding the examination of patent applications – which currently takes more than 10 years – to a promised lag time of about 2 years.

Until now, only Paris Convention filed applications, or Brazilian originated national applications, were eligible to enter into this special program.

The big novelty in extending the "green patents" program is that, in this new phase, also Brazilian national phases of PCT applications can benefit from this prioritized route. These can be either new patent applications, still to be filed, or pending patent applications, already filed at the Brazilian Patent Office. For this stage, 500 additional slots have been made available for consecutive adherence thereto.

Upon requesting the adherence to this program, several requirements must be observed in order to be eligible for acceptance.

The inventions, objects of the candidate patent applications, must concern environmentally friendly technologies or green technologies, following an inventory published by the World Intellectual Property Organization – WIPO (please, see Annex I).

The patent applications must contain, at the most, 15 claims, of which up to 3 claims can be drafted as independent claims.

A specific form must be completed and presented at the Patent Office. The application must have already been published, or its publication has to be anticipated upon Request of the Applicant. Examination must also be requested upon submission to this Program.

Moreover, concerning pending applications already filed at the Patent Office, they must not have undergone substantive examination and should not be on hold for compliance with a technical Office action previously issued by the Patent Office.

We are at your disposal should you need any further information or clarifications in this regard.

**FEDERAL PUBLIC SERVICE
MINISTRY OF DEVELOPMENT, INDUSTRY AND FOREIGN TRADE
BRAZILIAN PATENT AND TRADEMARK OFFICE
PRESIDENCY**

RESOLUTION No. 131/2014, of 15 April 2014

Subject:

Expand and regulates the prioritized examination of green patent applications within the Brazilian PTO, the proceedings relative to the Pilot Program in this regard and makes other provisions.

THE PRESIDENT OF THE BRAZILIAN PATENT AND TRADEMARK OFFICE - BTPO, and the **PATENT DIRECTOR**, under their invested attributions, in view of the dispositions of Law no. 9,279, of 14 May 1996, Industrial Property Law – IPL and Normative Guideline PR no. 17, of 18 March 2013, in alignment with the public policies on fighting climate change as provided in Law no. 12,187, of 29 December 2009, which sets out the National Climate Change Policy – PNMC, and Decree no. 7,390, of 9 December 2010, also with basis on the provisions of the Environmental Agenda in Public Administration, also known as A3P, and Decree no. 3,201, of 6 October 1999,

DECIDE:

Art. 1 – This resolution expands and regulates the prioritized examination of green patent applications, the proceedings relative to the Pilot Program in this regard, and makes other provisions.

Art. 2 – Green patent applications are to be understood as patent applications with focus on environmentally friendly technologies or green technologies known as such, those technologies being set out and presented in an inventory published by the World Intellectual Property Organization – WIPO – excluding the following areas: a) administrative, regulatory or design aspects; and b) nuclear power generation. The green technologies are listed in Annex I of this Resolution.

**CHAPTER I
THE PILOT PROGRAM**

**SECTION I
ELIGIBILITY**

Art. 3 – The patent applications that may be submitted to the Pilot Program under this Resolution will be under the responsibility of the Patent Department – DIRPA.

§ 1 – The Patent Department – DIRPA shall pass on responsibility for selecting and analyzing the applications submitted to the Pilot Program to the Technical Commission of the Working Group on the Green Patent Project.

§ 2 – The Working Group on the Green Patent Project shall designate the members of the Technical Commission.

Art. 4 – The Pilot Program will deal with national applications directed to the technologies listed in Annex I of this Resolution. In addition, the applications submitted to this Pilot Program must contain 15 (fifteen) claims at most, up to 3 (three) of which may be independent claims.

§ 1 - National application is to be understood as the one that has been accepted in the preliminary formal examination or in the examination on acceptability for entrance into the national phase.

§ 2 - If the technology described in the patent application is not included in Annex I of this Resolution, said application will not be considered eligible to participate in the Green Patent Pilot Program.

Art. 5 – The request for acceptance of the application into the Green Patent Pilot Program shall be submitted through form FQ013 – “REQUEST FOR GREEN PATENT PROGRAM”, available at the BTPO’s website or by electronic filing.

Art. 6 – In order for a patent application to be eligible to participate in the Pilot Program under this Resolution, it is necessary that the same has been published, as set forth in Art. 30¹ of the IPL, or its publication has to be anticipated upon request of the Applicant, as set forth in paragraph 1² of Art. 30 of the IPL.

Art. 7 - In order for a patent application to be submitted to the Green Patent Pilot Program and considered eligible to participate of that program, the examination of the patent application must be requested by the Applicant or any interested party, as per Art. 33³ of the IPL.

Art. 8 - In order for a patent application to be submitted to the Green Patent Pilot Program and considered eligible to participate in that program, the strategic prioritized examination (Green Patents) must be requested by the Applicant.

Art. 9 - Patent applications eligible to participate in this Pilot Program, in addition to meeting the dispositions of all previous articles in this section:

- I. cannot have undergone regular technical examination duly published in the Official Gazette;
- II. cannot refer to a patent application of which the examination is on hold for compliance with official action previously issued by the Patent Department – DIRPA;
- III. cannot refer to a patent application that has been the subject of a granted request for prioritized examination already published in the Official Gazette;
- IV. can only refer to a patent application, where applicable, of which annuity fees addressed in Art. 84 of the IPL have been regularly paid.

Art. 10 - If the object of the patent application can be derived from access to a sample of a component of the genetic heritage or associated traditional knowledge, it is necessary to submit the request for Green Patent together with the petition contained in Annex I of Resolution no. PR 69/2013 (information on the access authorization number or negative declaration of access).

Art. 11 - If the Applicant has already requested technical examination of the patent application, and, in addition, the application is to be amended for compliance with the provisions of Art. 4 of this Resolution, it is necessary to fulfill the dispositions of Art. 32 of the IPL, which prohibits any change in scope and insertion of new subject matter into the claims, so that the Applicant must amend the application up to the date of the examination request, provided that such amendments are limited to subject matter initially disclosed in the application.

SECTION II PARTICIPATION

Art. 12 – The number of applications participating of the extension of Pilot Program is limited to 500 (five hundred) requests filed at most.

Art. 13 – The request for acceptance into the Brazilian PTO’s Green Patent Pilot Program must be submitted up to 16 April 2015, bearing in mind the limitation of Art. 12.

Art. 14 – The applications exceeding the limit number set out in Art. 12, respecting the chronological order of the date of the request, shall not be included in the Pilot Program.

Sole paragraph – The BPTO shall notify, by means of a specific publication in the Official Gazette and at the BPTO’s website, whenever the patent applications exceed the limit number of applications allowed in this Pilot Program.

¹ **Article 30** – A patent application will be kept secret during 18 (eighteen) months counted from the date of filing or of the earliest priority, if any, after which it will be published, with the exception of the case provided for in article 75.

² **Art. 30, § 1** – Publication of the application may be anticipated on request by the applicant.

³ **Article 33** – Examination of a patent application must be requested by the applicant or by any interested party, within 36 (thirty-six) months counted from the date of filing, under pain of shelving of the application.

Art. 15 – The Working Group on the Green Patent Project referred to in Art. 3 of this Resolution shall notify, by means of a specific publication in the Official Gazette, whenever a patent application submitted is eligible to participate of the Green Patent Pilot Program.

Art. 16 - The Working Group on the Green Patent Project referred to in Art. 3 of this Resolution shall notify, by means of a specific publication in the Official Gazette, whenever a patent application submitted is not eligible to participate of the Green Patent Pilot Program.

Art. 17 – The date of the request for acceptance into the Green Patent Pilot Program shall correspond to that of the receipt of the petition “REQUEST FOR GREEN PATENT PROGRAM” at the BPTO’s headquarters or at the respective Regional Divisions and/or Representations in each state of the federation, or by means of electronic filing.

Sole Paragraph – In the case of postal delivery, the date of the request shall be considered that of postage.

CHAPTER II GENERAL DISPOSITIONS

Art. 18 – The acts dealt with in this resolution, when not performed by the very interested party, shall be accompanied by the power of attorney, under the terms of § 1 of Art. 216⁴ of the IPL.

Art. 19 – This Resolution shall enter into force at this date, and its publication will be made in the Official Gazette.

Art. 20 – Resolution PR no. 122/2013 is hereby revoked.

Júlio César Castelo Branco Reis Moreira
Patent Director

Otávio Brandelli
Presidente

⁴ **Article 216** – The acts provided for in this law will be practiced by the parties or by their attorneys who should be duly qualified.

§ 1 - Powers of attorney, in the form of an original, an official copy or an authenticated photocopy, must be in the Portuguese language, consular legalization and notarial recognition being waived.

ANNEX I
LIST OF GREEN TECHNOLOGIES, BASED ON THE WIPO'S INVENTORY

1. Alternative Energy

- Biofuels
 - Solid fuels
 - Liquid fuels (vegetable oils, biodiesel, bioethanol)
 - Biogas
 - Biofuels from genetically engineered organisms
- Integrated gasification combined cycle (IGCC)
- Fuel cells
- Pyrolysis or gasification of biomass
- Harnessing energy from manmade waste
 - From agricultural waste
 - Gasification
 - Chemical waste
 - Industrial waste
 - Using top gas in blast furnaces
 - Pulp liquors
 - Anaerobic digestion of industrial waste
 - Industrial wood waste
 - Hospital waste
 - Landfill gas
 - Separation of components
 - Municipal and domestic waste
- Hydro energy
 - Water-power plants (PCH and MCH)
 - Tide or wave power plants
 - Regulating, controlling or safety means of machines or engines powered by liquids
 - Propulsion of marine vessels using energy derived from surrounding water movement
- Ocean thermal energy conversion (OTEC)
- Wind energy
- Solar energy
 - Photovoltaic solar energy (PV)
 - Solar heat energy
 - Hybrid solar thermal-PV systems (thermal-photovoltaics)
 - Propulsion of vehicles using solar power
 - Producing mechanical power from solar energy
 - Roof covering aspects of energy collecting devices
 - Steam generation using solar heat
 - Refrigeration or heat pump systems using solar energy
 - Use of solar energy for drying materials or objects
 - Devices for concentrating solar irradiation
 - Solar heat collectors with working fluid conveyed through collector
 - Geothermal energy
 - Other production or use of heat not derived from combustion
 - Using waste heat
 - Devices for producing mechanical power from muscle energy

2. Transportation

- Hybrid vehicles
- Electric vehicles
- Charging stations for electric vehicles
- Vehicles fed from energy extracted from forces of nature (sun, wind, waves, etc.)
- Vehicles fed from external power supply (electric energy, etc.)
 - Vehicles fed from fuel cells
 - Vehicles fed from hydrogen
 - Vehicles with propulsion by muscle power
- Vehicles with regenerative brakes
- Vehicle's body with low aerodynamic drag
- Vehicles with electromagnetic clutches (less gearing loss)

3. Energy Conservation

- Storage of electrical energy
- Power supply circuitry
- Measurement of electricity consumption
- Storage of thermal energy
- Low energy lighting
- Recovering mechanical energy (e.g. swinging, rolling, pitching)

4. Waste Management

- Waste disposal
- Treatment of waste
 - Consuming waste by combustion
 - Reuse of waste materials
 - Use of rubber waste in footwear
 - Manufacture of articles from waste metal particles
 - Production of hydraulic cements from waste materials
 - Use of waste materials as fillers for mortars or concrete
 - Use of waste for the production of fertilizers
 - Recovery or working-up of waste materials
 - Pollution control
 - Carbon capture and storage
 - Air quality management
 - Treatment of waste gases
 - Separating dispersed particles from gases or vapors
 - Use of additives in fuels or fires to reduce smoke and facilitate soot removal
 - Arrangement of devices for treating smoke or fumes from combustion apparatus
 - Dust-laying or dust-absorbing materials
 - Pollution alarms
 - Control of water pollution
 - Treatment of waste-water or sewage
 - Materials for treating liquid pollutants
 - Removing pollutants from open water
 - Plumbing installations for waste water
 - Management of sewage
 - Means for preventing radioactive contamination in the event of reactor leakage

5. Agriculture

- Forestry techniques
- Alternative irrigation techniques
- Pesticide alternatives
- Soil improvement (e.g. organic fertilizers derived from waste)