

**AGREEMENT ON THE
CLIMATE CHANGE MITIGATION PILOT PROGRAM BETWEEN THE
U.S. PATENT AND TRADEMARK OFFICE AND THE
PATENT OFFICE PROFESSIONAL ASSOCIATION**

The U.S. Patent and Trademark Office (USPTO, Office) and the Patent Office Professional Association (POPA) agree to a Climate Change Mitigation Pilot Program (Pilot). Management has determined that the Agency will implement the Pilot in accordance with the Notice on Expansion and Extension of the Climate Change Mitigation Pilot Program, Docket No. PTO-P-2023-0023 (2023 Notice) in Appendix A, which incorporates and modifies Climate Change Mitigation Pilot Program, [87 FR 33750](#) (June 3, 2022) (2022 Notice). The terms of the Agreement are as follows:

1. Applications: To qualify, an applicant must file a Petition to Make Special under the Pilot.
 - a. The Pilot will allow for granted Petitions to Make Special for patents applications that cover a product or process that mitigates climate change where the product or process is designed to: (a) remove greenhouse gases already present in the atmosphere; (b) reduce and/or prevent additional greenhouse gas emissions; and/or (c) monitor, track, and/or verify greenhouse gas emission reductions, if:
 - i. Applicant has a good faith belief that expediting the patent examination timeline will likely have a positive impact on the climate;
 - ii. The inventor or a joint inventor has not been named as the inventor or a joint inventor on more than twelve other nonprovisional applications in which a Petition to Make Special under this program has been filed; and
 - iii. The filing meets the formal filing requirements set forth in Part I of the 2022 Notice ([87 FR 33750](#)), as modified by Part II of Appendix A (2023 Notice).
 - b. The eligibility requirements for Continuations (CONs), Continuations in Part (CIPs), and Divisionals (DIVs) are captured in Part I, Section 1 of the 2022 Notice ([87 FR 33750](#)).
 - c. Requests for Continued Examinations (RCEs), regardless of whether they are pending at the implementation of this Agreement or filed subsequent to implementation (even on applications initially included in the Pilot), shall be excluded.
2. Special New Status: Applications granted Petitions to Make Special under this Pilot will be given Special New status for First Action on the Merits (FAOM) only.

Any Amendments or RCEs filed on these applications will be subject to regular processing thereafter.

3. Participants: The Pilot participants consist of examiners who examine technologies designed to: (a) remove greenhouse gases already present in the atmosphere; (b) reduce and/or prevent additional greenhouse gas emissions; and/or (c) monitor, track, and/or verify greenhouse gas emission reductions.

4. Size and Duration of Pilot: The Pilot will terminate on June 7, 2027 or the date that the USPTO accepts a total of 4,000 grantable new petitions, whichever comes first.

- a. Relevant terms of this Agreement remain in effect (and any modifications thereto) until processing of all applications under the Pilot are completed, regardless of Pilot termination.
- b. The USPTO may terminate the Pilot early, at its sole discretion, with prompt notification to POPA prior to termination.

5. Classification Questions: If an examiner determines a docketed Pilot application is improperly classified, the examiner may request guidance from their supervisor. The examiner will not be responsible for conducting a C* challenge in those situations.

6. Impact on Each Examiner's Docket: If an examiner determines a docketed Pilot application overburdens their docket, the examiner may request application reassignment from their supervisor.

7. Pilot Data: Data collected during the Pilot Program will be promptly shared with POPA, including, but not limited to: the number of Requests to Make Special, the percentage of approvals and denials, completed FAOMs, etc.

8. At the request of either party, the parties shall meet to discuss the progress of the Pilot.

9. POPA acknowledges that the Office's obligation to negotiate over the implementation of the Pilot has been fully satisfied.

Attachments:

Appendix A. Notice on Expansion and Extension of the Climate Change Mitigation Pilot Program, Docket No. PTO-P-2023-0023.

Appendix B. CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE CLIMATE CHANGE MITIGATION PILOT PROGRAM, PTO/SB/457.

FOR THE AGENCY Date
Jerry Lorengo
Assistant Commissioner

KDuda

FOR THE UNION Date 5/22/2023
Kathleen Duda
President, Patent Office Professional
Association

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2023-0023]

Expansion and Extension of the Climate Change Mitigation Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: On June 3, 2022, the United States Patent and Trademark Office (USPTO) implemented the Climate Change Mitigation Pilot Program as a component of its ongoing efforts to encourage and incentivize innovation in the climate space, and commitment to policies tackling climate change. The initial phase of the program—ending June 5, 2023—seeks to positively impact the climate by accelerating the examination of patent applications for products and processes designed to reduce greenhouse gas emissions. Through this notice, the USPTO is expanding the program to provide for innovations in any economic sector designed to make progress toward achieving net-zero greenhouse gas emissions. This includes innovations designed to: remove greenhouse gases already present in the atmosphere; reduce and/or prevent additional greenhouse gas emissions; and/or monitor, track, and/or verify greenhouse gas emission reductions. The USPTO is also increasing the filing limitations for petitions under the program, and extending the duration of the program. These changes will permit more applications to qualify for the program, thereby allowing more innovations that will aid in achieving national climate goals to be advanced out of turn for examination.

As with the existing program, applications accepted into the expanded program will be advanced out of turn (accorded special status) for first action on the merits. The conditions, eligibility requirements, and guidelines of the expanded program will be the same as those previously established for the existing program, unless modified by this notice. By expanding and extending the program, the USPTO aims to emphasize the urgency of zero and negative emissions solutions, and further encourage investment in an equitable, clean energy future.

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DATES: *Pilot Duration:* The Climate Change Mitigation Pilot Program, as expanded by this notice, will run from June 6, 2023, until either June 7, 2027, or the date the USPTO accepts a total of 4,000 grantable petitions (considering both the existing and expanded programs), whichever occurs first. The USPTO may, at its sole discretion, terminate the program depending on factors such as workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the program is terminated, the USPTO will notify the public. The USPTO will continue to indicate on its website the total number of petitions filed and the number of applications accepted into the program.

FOR FURTHER INFORMATION CONTACT: Kristie A. Mahone, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Kristie.Mahone@uspto.gov*; or Susy Tsang-Foster, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Susy.Tsang-Foster@uspto.gov*. For questions on electronic filing, please contact the Patent Electronic Business Center at: 866-217-9197 during their operating hours of 6 a.m. to midnight ET, Monday - Friday, or email at *ebc@uspto.gov*. For questions relating to a particular petition, please contact the Office of Petitions at 571-272-3282 during their operating hours of 8:30 a.m. to 5 p.m. ET, Monday – Friday.

SUPPLEMENTARY INFORMATION:

Part I. Background

Executive Order 14008, dated January 27, 2021, calls for immediately reducing greenhouse gas emissions, and achieving net-zero greenhouse gas emissions no later than 2050. *See E.O. 14008 of Jan. 27, 2021: Tackling the Climate Crisis at Home and Abroad*, 86 FR 7619 (Feb. 1, 2021). Net-zero greenhouse gas emissions means that the measure of greenhouse gas emitted into the atmosphere is equally counterbalanced by the measure of greenhouse gas removed from the atmosphere. While accelerating innovations designed to reduce emissions is foremost, solutions for removing greenhouse gases from the atmosphere are critical because of the unlikelihood of eliminating emissions in all sectors. *See The Long-Term Strategy of the*

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United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050 (Nov. 2021), available at <https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf> (2021 Long-Term Strategy).

In 2022, the USPTO published a notice implementing the Climate Change Mitigation Pilot Program, which aligns with and supports Executive Order 14008. *See Climate Change Mitigation Pilot Program*, 87 FR 33750 (June 3, 2022) (2022 Notice). The initial phase of the program focuses on innovations that reduce greenhouse gas emissions. Specifically, the existing program permits an application that claims certain products and/or processes designed to reduce greenhouse gas emissions to be advanced out of turn (accorded special status) for first action on the merits without meeting all of the requirements of the accelerated examination program, if the applicant files a petition to make special under 37 CFR 1.102(d) meeting all of the requirements in the 2022 Notice. In the petition to make special, the applicant must certify that: (1) the claimed invention covers a product or process that mitigates climate change; (2) the product or process is designed to reduce greenhouse gas emissions; (3) applicant has a good faith belief that expediting patent examination of the application will likely have a positive impact on the climate; and (4) the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than four other nonprovisional applications in which a petition to make special under this program has been filed. The USPTO, however, committed to periodically evaluating the program to determine whether and to what extent coverage should be expanded or limited.

Part II. Expansion of the pilot program

A. Subject matter coverage

As stressed in the 2021 Long-Term Strategy, reaching net-zero greenhouse gas emissions by 2050 necessitates robust pursuit of removal solutions, given the unlikelihood of

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completely eliminating greenhouse gas emissions from some activities. Further, technologies designed to monitor, track, and/or verify greenhouse gas emission reductions are anticipated as necessary expedients. *See U.S. Innovation to Meet 2050 Climate Goals: Assessing Initial R&D Opportunities* (Nov. 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/11/U.S.-Innovation-to-Meet-2050-Climate-Goals.pdf>. Considering this criticality and the experiential knowledge of the resources needed to deliver accelerated review in the climate space, the USPTO is expanding the program to provide for a more robust range of technologies designed to make progress towards achieving the goal of net-zero emissions. Specifically, the USPTO is replacing the second certification set forth in the 2022 Notice with a certification “that the product or process is designed to: (a) remove greenhouse gases already present in the atmosphere; (b) reduce and/or prevent additional greenhouse gas emissions; and/or (c) monitor, track, and/or verify greenhouse gas emission reductions.” Applicants must continue to certify that the claimed invention covers a product or process that mitigates climate change, and that applicant has a good faith belief that expediting patent examination of the application will likely have positive impact on the climate, as set forth in the 2022 Notice.

B. Filing limitations

The USPTO is also increasing the filing limitations to afford more opportunities to participate. In particular, an applicant may file a petition to participate in the program if the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than twelve—up from four—other nonprovisional patent applications in which a petition to make special under this program has been filed. Specifically, the USPTO is replacing the fourth certification set forth in the 2022 Notice with a certification “that the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than twelve other nonprovisional applications in which a petition to make special under this program has been filed.” If the inventor or any one of the joint inventors of the instant application has

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been named as the inventor or a joint inventor on more than twelve other nonprovisional patent applications in which petitions under this program have been filed, then the petition for the instant application may not be appropriately filed. Any petitions filed during the existing program count towards the filing limitations in the expanded program.

C. Office Form Required for Filing a Petition

Petition form PTO/SB/457, titled “CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE CLIMATE CHANGE MITIGATION PILOT PROGRAM” remains required to make the petition under the program. Other than the changes to the subject matter coverage and the filing limitations described above, the conditions, eligibility requirements, and guidelines of the program will be the same as those provided in the 2022 Notice. The USPTO will modify the certifications contained in petition form PTO/SB/457—at numbered items “2” and “11”—to correspond with the changes described above. The modified petition form will be available for use on June 6, 2023, at <https://www.uspto.gov/patents/apply/forms>.

Applicants are reminded that, under the 2022 Notice, the petition to make special (form PTO/SB/457) must be electronically filed using Patent Center, with the application or entry into the national stage under 35 U.S.C. 371, or within 30 days of the filing date or entry date of the application. Applicants interested in participating in the program are encouraged to review the 2022 Notice, along with the information provided on the program’s webpage, at <https://www.uspto.gov/patents/laws/patent-related-notices/climate-change-mitigation-pilot-program>.

Part III. Extension of the pilot program

The program, as expanded by this Notice, will run from June 6, 2023, until either June 7, 2027, or until the date that the USPTO accepts a total of 4,000 grantable petitions, whichever occurs first. The total of 4,000 grantable petitions includes petitions granted under the existing and expand programs, combined. Information concerning the number of petitions that have been filed and granted under the program will continue to be available on the program’s

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webpage. The USPTO may further extend the program (with or without modifications) depending on feedback from the participants and the effectiveness of the program.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Doc Code: PET.CLIMATE

Document Description: Petition for Climate Change Mitigation Pilot

PTO/SB/457 (05-23)

CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE CLIMATE CHANGE MITIGATION PILOT PROGRAM			
First Named Inventor:		Nonprovisional Application Number (if known):	
Title of Invention:			
<p>APPLICANT HEREBY CERTIFIES THE FOLLOWING AND PETITIONS FOR ADVANCEMENT OF EXAMINATION UNDER THE CLIMATE CHANGE MITIGATION PILOT PROGRAM FOR THE ABOVE- IDENTIFIED APPLICATION.</p> <ol style="list-style-type: none"> 1. The claim(s) of the above-identified application (the application) cover(s) a product or process that mitigates climate change (i.e., the claim(s) correspond(s) to one or more of the technical concepts within subclass Y02A, Y02B, Y02C, Y02D, Y02E, Y02P, Y02T or Y02W in the Cooperative Patent Classification (CPC) system). The full schedule of the Y02 class is available at https://www.uspto.gov/web/patents/classification/cpc/html/cpc-Y.html#Y02. 2. The product or process is designed to: (a) remove greenhouse gases already present in the atmosphere; (b) reduce and/or prevent additional greenhouse gas emissions; and/or (c) monitor, track, and/or verify greenhouse gas emission reductions. 3. The applicant has a good faith belief that expediting patent examination will likely have a positive impact on the climate. 4. The application is a non-continuing original utility nonprovisional application or an original utility nonprovisional application that claims the benefit of only one prior nonprovisional application or one prior international application designating the United States. 5. The application is or was filed electronically using Patent Center. 6. The specification, claim(s) and abstract on filing or on national stage entry are or were submitted in DOCX format. 7. A properly signed application data sheet meeting the conditions specified in 37 CFR 1.53(f)(3)(i) is or was filed in the application. 8. No nonpublication request was filed for the application or if such a request was previously filed, the nonpublication request is or has been rescinded. Form PTO/SB/36 may be used to rescind the nonpublication request. 9. The basic filing fee, search fee, and examination fee are filed with this request or have already been paid in the application. The applicant understands that any required application size fee must be paid for the application. The fee for a petition to make special under 37 CFR 1.102(d) has been waived for this pilot program. 10. The applicant agrees to the following: (a) the application may not contain, or be amended to contain, more than three independent claims, more than twenty total claims, or any multiple dependent claims, (b) any reply to a non-final Office action may not cancel all claims that meet the eligibility requirements of this pilot program, and (c) if a telephone restriction requirement is made, applicant must make an election without traverse to an invention that meets the eligibility requirements of this pilot program. 11. The inventor or any joint inventor has not been named as the inventor or a joint inventor on more than twelve other nonprovisional applications in which a petition to make special under this program has been filed. 12. This petition is either (a) electronically filed using Patent Center with the filing of the application or entry into the National Stage as to the United States, or (b) electronically filed using Patent Center within 30 days of the filing date of the application or entry into the National Stage as to the United States. 			
Signature		Date	
Name (Printed/Typed)		Practitioner Registration Number	
<p>Note: This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4(d) for signature requirements and certifications. Submit multiple forms if more than one signature is required.*</p>			
<p>*Total of _____ forms are submitted.</p>			

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. The United States Patent and Trademark Office (USPTO) collects the information in this record under authority of 35 U.S.C. 2. The USPTO's system of records is used to manage all applicant and owner information including name, citizenship, residence, post office address, and other information with respect to inventors and their legal representatives pertaining to the applicant's/owner's activities in connection with the invention for which a patent is sought or has been granted. The applicable Privacy Act System of Records Notice for the information collected in this form is COMMERCE/PAT-TM-7 Patent Application Files, available in the Federal Register at 78 FR 19243 (March 29, 2013), <https://www.govinfo.gov/content/pkg/FR-2013-0329/pdf/2013-07341.pdf>.

Routine uses of the information in this record may include disclosure to:

- 1) law enforcement, in the event that the system of records indicates a violation or potential violation of law;
- 2) a federal, state, local, or international agency, in response to its request;
- 3) a contractor of the USPTO having need for the information in order to perform a contract;
- 4) the Department of Justice for determination of whether the Freedom of Information Act (FOIA) requires disclosure of the record;
- 5) a Member of Congress submitting a request involving an individual to whom the record pertains, when the individual has requested the Member's assistance with respect to the subject matter of the record;
- 6) a court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel in the course of settlement negotiations;
- 7) the Administrator, General Services Administration (GSA), or their designee, during an inspection of records conducted by GSA under authority of 44 U.S.C. 2904 and 2906, in accordance with the GSA regulations and any other relevant (i.e., GSA or Commerce) directive, where such disclosure shall not be used to make determinations about individuals;
- 8) another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c));
- 9) the Office of Personnel Management (OPM) for personnel research purposes; and
- 10) the Office of Management and Budget (OMB) for legislative coordination and clearance.

If you do not furnish the information requested on this form, the USPTO may not be able to process and/or examine your submission, which may result in termination of proceedings, abandonment of the application, and/or expiration of the patent.