

America Invents Act: U.S. Will Become a First-to-File Patent System

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Protection of the intellectual property around a cleantech innovation can be crucial to the success of both start-up and established renewable energy companies. One form of intellectual property protection is a patent granted by the **United States Patent and Trademark Office (“USPTO”)**. A patent owner, for a term of 20 years, is granted the right to prevent others from making, using, offering to sell, or selling the patented invention in the United States.

Recently, the **America Invents Act** was signed into law. The America Invents Act comprises several significant changes to U.S. patent laws and rules, one of which is changing the U.S. patent system from a first-to-invent to a first-to-file system. Given this change in the U.S. patent system, renewable energy companies considering filing a future patent application(s) will need to strategize business decisions accordingly to accommodate the change to a first-to-file system.

In the previous first-to-invent system, a person may be entitled to a patent, amongst other stipulations, if the individual was the first inventor. For instance, if two different individuals claimed to be the inventor for the same invention, the USPTO would hold proceedings to determine which individual was the first inventor and thus may be entitled to a patent. In the new first-to-file system, however, it will no longer matter who was the first inventor. Instead, it will matter, amongst other stipulations, which inventor is the first to file a patent application at the USPTO.

The U.S. patent system will become a first-to-file system effective on March 16, 2013. Those with renewable energy innovations interested in filing a future patent application(s) should consult with a patent attorney or patent agent regarding how the switch to a first-to-file system may affect filing strategies for a patent application(s).

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