Cooley

April 1, 2011

On March 29, 2011, U.S. Department of Energy ("DOE") Secretary Steven Chu launched the "America's Next Top Energy Innovator" challenge, which reduces upfront license fees to $1,000 (for a limited time) and simplifies the process for licensing technology from any of the DOE's 17 national laboratories. The DOE's goal is to "unleash America's innovation machine and win the global race for the clean energy jobs of the future."[1] This *Alert* provides background to this new initiative, summarizes the key dates and details, and includes links to relevant resources.

Background

In his second State of the Union address on January 25, 2011, President Barack Obama asked the country to recognize "this generation's Sputnik moment" and "invest in biomedical research, information technology, and especially clean energy technology" in order to "out-innovate" the rest of the world.[1]

Since the State of the Union address, the White House has rolled out an innovation and entrepreneurship strategy called Startup America based on the following policy initiatives: (1) to increase access to capital for high-growth startups; (2) to increase access to high-quality mentors for entrepreneurs; (3) to accelerate the commercialization of federally-funded research and development; and (4) to improve the regulatory environment for high-growth firms.[2] On January 31, 2011, the White House announced the launch of the Startup America Partnership, an independent private-sector alliance that will collaborate with the White House to achieve Startup America policy initiatives.[3]

The DOE's Energy Innovation Portal was developed by the DOE's Office of Energy Efficiency and Renewable Energy ("EERE") and the DOE's National Renewable Energy Laboratory ("NREL") as a tool for identifying clean technologies developed by national laboratories and available for licensing. On February 2, 2011, the DOE announced that the Energy Innovation Portal contains more than 300 technology marketing summaries and more than 15,000 DOE-funded U.S. patents and patent applications.

"America's Next Top Energy Innovator" Challenge

The DOE's new initiative supports the Startup America policy by seeking to increase the number of start-up companies that license clean technologies from national laboratories. Key dates and details are as follows:

- On May 2, 2011, the DOE will post a streamlined template option agreement online for entrepreneurs to submit to laboratories. Entrepreneurs must identify the technology of interest and submit a business plan to be considered for the program. Participants will have until December 15, 2011 to make their submission to the laboratory.
- Any of the 15,000 unlicensed patents and patent applications held by the national laboratories will be available for licensing by startup companies.
- From May 2 to December 15, 2011, the DOE will reduce the total upfront cost of licensing DOE patents in a specific technology to a $1,000 upfront fee for portfolios of up to three patents. This represents a savings of $10,000 to $50,000 on average in upfront fees.
- Other license terms, such as equity and royalties, will be negotiated on a case-by-case basis and will typically be due once the company grows and achieves wide-scale commercial success. These fees help support the DOE's continuing research activities to develop new technologies.
- The DOE will simplify the licensing process and establish a standard set of terms for start-up companies, which generally lack the resources, time, or expertise to negotiate individual licensing agreements. This is intended to significantly reduce both the time and cost required to process the license, allowing faster access to the DOE's patents and enabling the DOE to process more licenses in a shorter amount of time.
- Entrepreneurs who complete the process and demonstrate progress toward executing their business plan and commercializing the technology will have the opportunity to be showcased at the 3rd Annual ARPA-E Energy Innovation

Summit in 2012, which brings together leading technology start-up companies and clean energy investors from around the country.

- The DOE is making it easier for companies to use the national laboratories to conduct collaborative research and development activities. Previously, companies had to make an upfront payment covering the first 90 days of research work. Currently, the DOE has lowered the advance payment requirement to 60 days.

Resources

Further resources may be found at the following site:

- Startup America

Notes

1 Remarks by the President in State of Union Address, January 25, 2011.

2 Startup America website.

3 Startup America Partnership website.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Tom Coll **San Diego**	**collta@cooley.com** **+1 858 550 6013**
Jim Fulton New York	fultonjf@cooley.com +1 212 479 6103
Gordon Ho Palo Alto	gho@cooley.com +1 650 843 5190
Craig Jacoby San Francisco	cjacoby@cooley.com +1 415 693 2147

Ryan Naftulin Washington, DC	rnaftulin@cooley.com +44 (0) 20 7556 4540
Andrew Lustig Reston	alustig@cooley.com +1 703 456 8134
Alison Freeman-Gleason Seattle	afreemangleason@cooley.com +1 206 452 8755

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.