



Leveraging Political Capital for Your “Capitol” Ventures

“Capitol” Formation – “Capitol” Gains – “Capitol” Ideas



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Leveraging Political Capital for Your “Capitol” Ventures
“Capitol” Formation – “Capitol” Gains – “Capitol” Ideas



Today’s Presenters:

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Housekeeping



- This is an interactive program. You are encouraged to ask questions throughout the program verbally or via the Q & A box at the bottom of your screen.
- Today's program is being recorded and will be available on Foley's Web site
- For audio assistance please press *0
- For full screen mode, go to "View" on your toolbar and select "Full Screen" or press F5 on your keyboard



Foley's Energy Industry Team



- Multi-disciplinary team consisting of 70 attorneys and public affairs professionals across 17 offices throughout the U.S.
- Areas where we regularly assist our clients include:
 - Corporate and business transactions
 - Investigations and litigation
 - Federal, state and local government regulations and public affairs
 - Energy facility development
 - Renewable



Renewables: Water, Wind, Solar, Biofuels



- For nearly 20 years, Foley has been steadfast in its commitment to the renewable energy industry
- We have experience with:
 - Joint ventures, investments and acquisitions
 - Power purchase agreements
 - Turbine supply and construction contracts
 - Project financings, including Section 45 Production Tax Credit Financing Structures
 - Facility siting
 - Air permitting
 - Water supply
 - Discharge permitting
 - Intellectual property, including licensing, trademark, patent protection
 - Labor & employment



The Congressional Policy agenda now favors renewable energy and alternative fuels especially solar, wind, conservation, ethanol, and biodiesel.



- Increased funding for research, development, and demonstration (RD&D)
- Accelerated depreciation
- Extensions of existing energy tax credits
- Renewable portfolio standard





All options and opportunities are up for discussion.

- New technology is strongly favored – Congress open to and excited about fresh ideas and technology
- Good environment for the kinds of technologies represented by renewable energy start-ups
- Congress looking for guidance and ideas from entrepreneurs



Forming a Coalition of start-up companies helps build critical mass in favor of preferred policy approaches.

- Gets your message to the Hill now - critical or opportunities could be lost
- Sends a signal to Congress that there is depth and breadth to the issues and participants
- Gives you political gravitas and will be noticed by Members





Foley Government & Public Affairs can help you build and accumulate the political capital you need in Washington, D.C. to succeed.

- Comprehensive counsel with extensive experience in government relations
- Responsive and creative business solutions
- A bipartisan team of professionals with in-depth understanding of the statutory and regulatory framework
- We leverage our extensive relationships and our know-how to help you achieve your objectives



Case Study – The “11th Hour” Request

- The Client wanted a change in the tax code that would qualify their technology for significant investment tax credits as well as RDD funding.
- Foley Government & Public Affairs team members used their knowledge of the issues and their experience working within the legislative system and leveraged long-term contacts on the key tax and research congressional committees.
- The Client is now positioned for long-term legislative success on key agenda items.





Patent Reform

U.S. Patent and Trademark Office
(PTO)
Proposed Rule Changes

Patent reform



- The PTO is proposing substantial rule changes in patent practice.
- Most rules changes have not yet been published but are believed to focus on four major areas:
 - Claims Practice
 - Continuation Practice
 - Information Disclosure Practice
 - Accelerated Examination

Claims Practice



- Claims define the scope of protection for the invention (i.e. what the patent owner can prevent others from making/doing)
- Current rules permit an unlimited number of “claims” in a patent application
- Proposed new “25/5” rule may limit applicants to a total of 25 claims, including up to 5 independent claims
- Proposed new rule may also require applicants to identify “representative claims” to assist PTO



Continuation Practice



- A “continuation” patent application has the same subject matter as the original application, but with new/different claims, and is entitled to the “original” filing date
- Current rules permit an unlimited number of continuation application to be filed
- Proposed new rule may limit applicants to 2 continuation applications and 1 Request for Continued Examination (“RCE”)



Continuation Practice

- When a patent application has claims found to define more than one invention, “divisional” application(s) may be filed having claims limited to each invention
- Current practice permits divisional applications to be filed at separate times
- Proposed new rule may require applicants to file any divisional applications all at the same time



Information Disclosure Practice

- A patent applicant is required to disclose to the PTO all information known to be material to patentability of the invention
- Current practice does not require applicants to describe the relevance of English language information submitted
- Proposed new rule may require applicants to explain the relevance of English language documents submitted to PTO



Accelerated Examination



- Patents are examined by the PTO in the order in which they were received; typical time from filing an application until grant of a patent can be several years or more
- “Accelerated examination” is available (no fee) for certain types of inventions, including those “that will materially enhance the quality of the environment” or “contribute to the development or conservation of energy resources”
- Effective as of August 26, 2006



Accelerated Examination



- Accelerated examination requirements:
 - Conduct and submit a pre-filing search of the prior art
 - Conduct and submit an analysis of the relevance of the “most closely related” references identified by the search and an explanation of how the claims are patentable over the references



Patent Reform



- F&L closely monitoring the developments in patent reform and the potential impact on our clients
- Developing strategies to maximize the patent protection of our clients' innovations in view of the proposed rules
- Taking a proactive position in meeting with key government and industry representatives to influence the proposed rules to help advance our clients' interests



Your Technology is Your Competitive Advantage



- Protecting your patents should be a priority
- Your patents are only as strong as the laws that protect them
- Less expensive to lobby the government for favorable laws than to fight unfavorable laws in the courtroom



Patent Reform in 2007



- Post-grant opposition: patents are less secure
- Decreased damages: cheaper for competitors to infringe on your technology
- Prior-user rights: patents are less valuable
- Inventor filing reform: easier to file for your patent