

Mintz Levin Energy & Sustainability

Energy & Sustainability Connections Newsletter

Your Law Firm Link to Industry News

AUGUST 2017

A Note from the Editors

This month's edition of *Energy & Sustainability Connections* brings the latest developments in energy investing, legal insights, company activity, and industry events straight to your inbox. August's **Leader in the News** is our client **Vionx Energy**, which has been named one of *Inc.* magazine's "25 Most Disruptive Companies" for its work in long-term power storage of renewable energy from solar and wind. This month's **Legal Feature**, "**Software Is Still Patent Eligible**," breaks down exactly why software patents remain critical in today's market. Learn the where, when, and how of the **2017 Hult Prize Global Finals and Awards Gala** in the **Event Highlights** section. Finally, don't miss updates related to Hurricane Harvey and other energy policy news in the **Washington Update**.

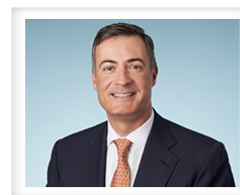
For links to industry grant opportunities and stories from the business, policy, and research sectors of the energy and sustainability industry, please [see our Energy Navigator](#).

You can [subscribe to our Energy & Sustainability Matters blog here](#).

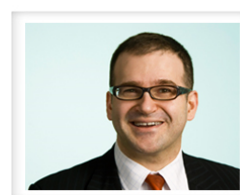
We would also like to remind our readers that you can always ask us anything at <http://mintzedge.com/ask-anything/>. We built the MintzEdge website as a resource for entrepreneurs and investors, and hope that all of you take advantage of the site and discover how it can help you.

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Leaders in the News

Vionx & Its Renewable Energy Storage Solution

We're excited to extend our congratulations to **Vionx Energy** for being named one of *Inc.* magazine's "[25 Most Disruptive Companies of the Year!](#)" Each year, *Inc.* highlights companies putting groundbreaking ideas into sustainable action. **Vionx** is being recognized for tackling one of the biggest issues in renewable energy: making renewable energy accessible year-round through long-term power storage from solar panels and wind turbines.

Backed by several premier partner companies in the industry, Massachusetts-based **Vionx Energy** is led by a team of top veterans in the energy storage industry aiming to make renewable energy sources practical, resilient, and economical for communities nationwide. **Vionx** is honing in on the issue of energy storage, which has proven to be an obstacle for energy suppliers seeking to modernize and expand their power grids. The problems often encountered by renewable energy suppliers are those of reliability and flexibility: how can we make sure the people depending on this energy will remain supported even when the sun isn't shining and the wind isn't blowing? Additionally, how can we ensure that when our grid needs to expand in order to accommodate a growing population or evolving infrastructure, energy suppliers will have the capacity to keep delivering power?

Indeed, many power grids across the country are actively seeking new methods of ensuring reliable, long-lasting capacity from solar and wind, particularly in growing cities or areas without substantial access to traditional power sources. In response, **Vionx** is developing a revolutionary battery with a cycle life that can last up to 20 years. **Vionx's** durable, high-capacity, and low-cost energy storage units not only make it possible to harness today's energy for tomorrow's rainy day, they also enable suppliers to transport energy collected at one site and distribute it in another region. This feature has the potential to make renewable energy sources more accessible in areas that aren't otherwise conducive to solar or wind-based power generation.

Vionx is already working on implementing a new energy distribution system in Worcester, Massachusetts, where a storage unit collects energy generated from local wind turbines and powers the surrounding communities through the regional utility company, National Grid. With the support of global energy, tech, and finance companies standing behind an impressive team of visionary engineers, there is no doubt that **Vionx** will continue to redefine the future of renewable energy in the United States.

Congratulations to **Vionx Energy** for this much-deserved recognition. We look forward to keeping up with you as you continue to pave the way for sustainable energy!

Legal Feature

Software Is Still Patent Eligible

This feature by Mike Van Loy, Mike Renaud, Sandra Badin, Matt Karambelas, and Nick Mouton was originally published in the [March 2017 Mintz Levin TechConnect Newsletter](#).

In recent years, software patents have come under fire from legislation (the American Invents Act) that has generally made patents easier to invalidate, and from court decisions (the Supreme Court's decision in *Alice v. CLS Bank*^[1] and its progeny) that have made computer-implemented inventions more vulnerable to subject matter eligibility challenges. Some observers have concluded that software patents are no longer worth pursuing. We disagree. Although there are real challenges, and patents on some software or other computer-implemented inventions may now be quite difficult (or even impossible) to obtain or enforce, a well-written and well-prosecuted patent application can circumvent many of these obstacles.

Recent Federal Circuit opinions have provided much-needed clarity and guidance on how to avoid having a patent application rejected or an issued patent invalidated for lack of patent eligibility. For example, in *Enfish v. Microsoft*, the court held that a software patent for a self-referential table was patent-eligible because it was directed to a specific, asserted improvement in computer capabilities.^[2] In *BASCOM v. AT&T*, the court held that a software patent on a specific, new customized content filter program on a remote ISP server was eligible where "the patent describes how its particular arrangement of elements is a technical improvement over prior art ways of filtering such content."^[3] And, in *McRO v. Bandai*, the court held that a software patent requiring specific rules to render 3-D animations in a specific way was patent-eligible because the use of the rules did not preempt others from animating with generic rules.^[4]

These cases highlight the importance of showing how a claimed invention implemented by software (or software in combination with computing hardware) is both different from and provides advantages over prior solutions to a technological problem, and, more broadly, to existing approaches that might be considered well-known, routine, or conventional. In our experience, providing explanations on this point within a patent application can have the effect of making the eligibility requirement a simple threshold issue, like making sure a patent claim is written clearly. Drafting patent claims so that they recite a specific and unconventional way of solving the problems described in the application may be all that is needed to satisfy the eligibility requirement. Of course, in order to strengthen the chances of success, the patent claims should be directed to a technological improvement that solves a technological problem, not to the mere automation of known economic practices or ways of organizing human activity.

The line between what is and what is not patent eligible is becoming clearer—provided you know how to interpret and apply the evolving jurisprudence governing patent-eligibility requirements. Mintz Levin does. It is monitoring the evolving landscape closely and continues to help our software clients successfully navigate through the obstacles they face in obtaining and litigating patents. Mintz Levin's insight comes in part from over a decade of writing and prosecuting patent applications in foreign patent systems that have a more stringent test for the patentability of computer-implemented inventions—one closer to the *Alice* standard now governing patent eligibility in the United States.

Endnotes

- 1 *Alice Corp. v. CLS Bank Int'l*, 134 S.Ct. 2347 (2014).
- 2 *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335-36 (Fed. Cir. 2016).
- 3 *BASCOM Global Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016).
- 4 *McRO, Inc. v. Bandai Namco Games Am.*, 837 F.3d 1299, 1315 (Fed. Cir. 2016).

Event Highlights

8th Annual Hult Prize Global Finals and Awards Gala

The [2017 Hult Prize](#) will be awarded on September 16 at the United Nations Headquarters in New York. This year's Hult Prize Global Finals and Awards Gala will serve as the official opening event for the 2017 United Nations Global Goals Week for UNGA. The program will commence with opening remarks on the current state of the involuntary migrant crisis and will immediately be followed by presentations from six different university teams offering start-up enterprise solutions to address the 2017 Hult Prize Challenge. The 2017 Hult Prize Challenge is Refugees—Reawakening Human Potential, focused on "restoring the rights and dignity of people and societies who may be, or are forced into motion due to social injustices, politics, economic pressures, climate change and war." This year's Hult Prize finalists have been selected from a pool of over 50,000 participants, representing more than 100 countries. The winner will receive US \$1 million in start-up capital to realize and scale their enterprise.

The Hult Prize is the world's largest social entrepreneurial competition for budding young entrepreneurs emerging from the world's universities. Named as one of the top five ideas changing the world by President Bill Clinton and *Time* magazine, the annual competition for the Hult Prize aims to identify and launch the most compelling social business ideas—start-up enterprises that tackle grave issues faced by billions of people. Mintz Levin is proud to serve as the exclusive legal mentor for finalists for the third consecutive year. Our own [Sue Finegan](#) and [Kristin Gerber](#) will be in attendance at this flagship competition. Follow along on social media: #HP17

Washington Update

Congressional Calendar

Summer isn't quite over yet, but the congressional August recess is ending and the House of Representatives and Senate return next week to resume work on a number of outstanding issues, some with end of September deadlines.

The House is scheduled to be in session for just 12 days in September, while the Senate is scheduled for 17 days of legislative work. Before September 30, Congress needs to act on Fiscal Year 2018 appropriations, an increase in the federal government's debt limit, reauthorization of the Children's Health Insurance Program (CHIP), reauthorization of the National Flood Insurance Program, and reauthorization of the Federal Aviation Administration.

Competing for bandwidth will be reform of the nation's tax code, a priority for the White House and congressional Republicans. The White House has laid out an ambitious plan to see tax reform passed by Congress and signed into law by the end of the year.

Hurricane Harvey

With nearly a dozen oil refineries closed in Texas due to Hurricane Harvey and related energy infrastructure impacts for customers, the Department of Energy (DOE) is closely monitoring developments and managing the federal response. President Trump traveled to Houston on August 29 to assess developments there, and when Congress returns next week we expect to see a swift move to pass an emergency spending package for impacted areas. The effects of climate change on the hurricane and subsequent flooding will also see heated debate.

House FY 2018 Appropriations Package

Before leaving for the August recess, the House of Representatives approved a spending package that included the Defense, Military Construction/Veterans Affairs, Energy and Water Development, and Legislative Branch bills. Next week the House is expected to move on a second spending package that will include the remaining eight appropriations bills: Agriculture, Commerce/Justice/Science, Financial Services, Homeland Security, Interior and Environment, Labor/HHS/Education, State/Foreign Operations, and Transportation/HUD. The Senate is also working its way through the various spending bills. The eight-bill House package cuts spending for the Environmental Protection Agency; authorizes the withdrawal of the Waters of the US rule, which defines which bodies of water are protected under the Clean Water Act; prevents the EPA from implementing an update to National Ambient Air Quality Standards for ground-level ozone; provides \$25 million in new funding for loan subsidies from the Water Infrastructure Finance and Innovation (WIFIA) program; and increases offshore energy funding for the Bureau of Ocean Energy Management.

As noted above, when Congress returns it faces a September 30 deadline for Fiscal Year 2018 appropriations. Since it is unlikely that the House and Senate will complete all twelve spending bills before September 30, committee staff members are drafting a Continuing Resolution that could run well into December.

Senate Bipartisan Energy Bill

As previously reported, the Senate's bipartisan energy bill, the *Energy and Natural Resources Act* (ENRA), led by Senate Energy and Natural Resource Committee chair Lisa Murkowski (R-AK) and ranking member Cantwell (D-WA), skipped the committee process and was placed directly on the Senate calendar in July. While that could be interpreted as a promising start, whether or not the bill is taken up in September, with all of the competing measures discussed above, is unclear. Committee staff members have spent the August recess readying for floor time in the event that the bill is brought up. Prior to the bill's introduction in July, committee staff sorted through approximately 90 amendments. This was one-third the number of amendments offered when the bill was introduced in the last Congress.

Senate Nomination Hearing

Upon return next week, the Senate Energy and Natural Resources Committee is scheduled to hold a hearing on September 7 to consider the nomination of Joseph Balash for Assistant Secretary of the Interior for Land and Minerals Management, and Richard Glick and Kevin McIntyre for membership on the Federal Energy Regulatory Commission.

DOE Report on Electricity Markets and Reliability

The DOE has released a [report](#) that includes an assessment of the reliability and resilience of the electric grid and an overview of the evolution of energy markets. The study contains a comprehensive analysis and series of recommendations from the DOE meant to inform and guide policy makers, regulators, and the general public.

DOE Funding for Fossil Fuel Projects

On August 24, the DOE [announced](#) a \$50 million funding opportunity for the design, construction, and operation of two large-scale pilots for "transformational coal technologies that improve coal-powered system' performance, efficiency, emission reduction, and cost of electricity." The funding opportunity has three phases: feasibility, design, and construction/operation.

New Deputy Secretary of Energy

Earlier this month, Dan Brouillette was sworn in as Deputy Secretary of Energy. Most recently, he served as Senior Vice President and head of public policy for USAA, the leading provider of financial services to the military community. Before joining USAA, he was a vice president of Ford Motor Company. Prior to his private sector career, Brouillette was Chief of Staff of the House Energy and Commerce Committee, and served as Assistant Secretary of Energy for Congressional and Intergovernmental Affairs in the George W. Bush administration. He is also a former state energy regulator, having served as a member of the Louisiana State Mineral and Energy Board from 2013 to 2016.

Recent M&A Activity

- **August 14, 2017:** Mirabito Natural Gas, a subsidiary of Angus Energy, was [acquired](#) by Genie Energy (NYSE: GNE, GNEPRA) for \$3 million.
- **August 14, 2017:** Tesco reached a definitive agreement to be [acquired](#) by Nabors Industries (NYSE: NBR) in an all-stock transaction.
- **August 10, 2017:** Frontier Aspen reached a definitive agreement to be [acquired](#) by Holly Energy Partners (NYSE: HEP).
- **August 10, 2017:** SLC Pipeline reached a definitive agreement to be [acquired](#) by Holly Energy Partners (NYSE: HEP).
- **August 8, 2017:** Panther Asset Management was [acquired](#) by American Midstream Partners (NYSE: AMID) for \$52 million.
- **August 7, 2017:** NuVision Engineering was [acquired](#) by Carr's Group (LON: CARR) for \$20 million.
- **August 3, 2017:** ARM Energy was [acquired](#) by Chesapeake Utilities (NYSE: CPK) for an undisclosed amount.
- **August 2, 2017:** Epic Midstream has entered into an agreement to be [acquired](#) by International Matex Tank and Terminal for \$171.5 million.
- **July 31, 2017:** Energy Power was [acquired](#) by Scallon Controls for an undisclosed amount.
- **July 26, 2017:** Advanced Combustion Technology was [acquired](#) by Doosan Heavy Industries & Construction Company for an undisclosed sum.
- **July 24, 2017:** SHV Energy entered into a definitive agreement to [acquire](#) the propane business of American Midstream Partners (NYSE: AMID) for \$170 million.
- **July 24, 2017:** NextDecade [acquired](#) Harmony Merger (NASDAQ: HRMNU) through a reverse merger, resulting in the combined entity trading on the NASDAQ Stock Exchange under the ticker symbol NEXT.
- **July 21, 2017:** Stronghold was [acquired](#) by Quanta Services (NYSE: PWR) for \$550 million.

*Source: Pitchbook

Upcoming Events

Catalysts of the Climate Economy National Innovation Summit

September 6-8, 2017
Burlington, VT

[More Info »](#)

Climate Week NYC

September 18-24, 2017
New York, NY

[More Info »](#)

EnergyBar – Greentown Labs

September 7, 2017
Somerville, MA

[More Info »](#)

Solar Power International

September 10-13, 2017
Las Vegas, NV

[More Info »](#)

2017 Energy Storage & Microgrid Conference

September 11, 2017
Boston, MA

[More Info »](#)

Massachusetts Water Week, presented by NEWIN

September 11-18, 2017
Greater Boston, MA

[More Info »](#)

The Battery Show North America

September 12-14, 2017
Novi, Michigan

[More Info »](#)

Yale Sustainability Leadership Forum

September 12-15, 2017
New Haven, CT

[More Info »](#)

NEWIN Water Pitch Night – Water IOT – Boston

September 14, 2017
Boston, MA

[More Info »](#)

8th Annual Hult Prize Global Finals and Awards Gala

September 16, 2017
New York, NY

[More Info »](#)

ICV Manhattan 2017: Investing in the Global Goals

September 17-20, 2017
New York, NY

[More Info »](#)

NEWIN 2017 Symposium on Water Innovation

September 18, 2017
Worcester, MA

[More Info »](#)

VERGE 2017

September 19-21, 2017
Santa Clara, CA

[More Info »](#)

South Carolina Clean Energy Summit

September 21, 2017
Columbia, SC

[More Info »](#)

**Reducing Emissions by Pricing Carbon:
How Microsoft and Yale are leading the charge**

September 21, 2017
Boston, MA

[More Info »](#)

**4th Annual Michigan Energy Future Conference:
Powering Mobility**

September 25, 2017
Detroit, MI

[More Info »](#)

**NECEC's Emerging Trends Series:
The Road to Our Clean Transportation Future**

September 26, 2017
Boston, MA

[More Info »](#)

New York REV Future 2017 – Greentech Media

September 26-27, 2017
Brooklyn, NY

[More Info »](#)

NECA 2017 Fuels Conference

September 27, 2017
Marlborough, MA

[More Info »](#)

SEIA Northeastern States Lobby Day

September 28, 2017
Washington, DC

[More Info »](#)

Student Clean Energy Symposium 2017

September 29, 2017
Worcester, MA

[More Info »](#)

3rd Annual Northeastern University Energy Conference

September 29, 2017
Boston, MA

[More Info »](#)

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Learn more about the Mintz Levin Energy & Sustainability group [here](#).

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