

Increased Opportunities in Massachusetts for Life Science Industry

by Lisa Treannie

In June 2008 Governor Deval Patrick signed into law a ten-year, \$1 billion initiative designed to encourage and support the life sciences industry in Massachusetts. The initiative includes a commitment to \$500 million in capital funding over the ten-year period, \$25 million per year for ten years for the MA Life Sciences Investment Fund, and \$25 million per year for ten years in tax incentives for certified life sciences projects. In addition, the law creates the MA Life Sciences Center (MLSC) Life Sciences Investment Program, and creates five regional technology and innovation centers from among existing centers. Finally, the package adds four life sciences-related funds to be administered by the MLSC.

One of the four funds created by the law, the MA Small Business Matching Grant Fund, incorporates a proposal made by the Smaller Business Association of New England (SBANE). This fund leverages the Federal Small Business Innovation Research Grant and Small Business technology transfer grant programs, and unlike many other provisions of the initiative does not require a recipient to be a certified life sciences company. Recipients can be Com-

The Small Business Matching Grant Fund is believed to be the first state incentive in the country directed toward speeding commercialization-ready technologies into production.

monwealth-based public agencies, independent research institutions, nonprofits, life science companies, or high technology companies and must have commercialization-ready technology.

Eligible entities will have received a small business innovation research Phase IIB, Phase III and/or Commercialization Pilot Project grant from the Small Business Administration, and recipients may receive dollar-for-dollar matching of these grants from the Matching Grant Fund, up to a cap of \$500,000 annually. Funding may be in the form of a loan, grant or other investment. According to the legislation, funding is intended to assist companies that have developed new commercialization-ready technologies to reach production and create manufacturing jobs in the Commonwealth. For example, funds may be used to create production facilities, for

capital improvements on production facilities, for workforce training and product marketing, and to purchase infrastructure for product manufacture.

The Matching Grant Fund provision in the initiative provides guidance as to the factors to be considered in awarding funds. Consistent with the goal of growing the life sciences industry in Massachusetts, funds will generally be awarded to support efforts providing a definite benefit to the Commonwealth's economy. Specific factors to be considered in this analysis include whether the funding will stimulate increased financing for the life sciences industry; whether the enterprise has a reasonable

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chance of success; whether MLSC participation is necessary; whether the enterprise has reasonable potential to create substantial new employment in the Commonwealth; the commitment of the principals to the enterprise; whether reasonable effort has been made to engage a professional investor and the outcome of such effort; and the willingness of the enterprise to adequately report financial data to the MLSC to enable monitoring of the investment.

A further consideration will be the willingness of the enterprise to afford the MLSC control over the management of the company to the extent that the MLSC considers it prudent to protect the investment. Potential applicants will no doubt need to consider this aspect carefully before accepting funding.

Grants from the Matching Grant Fund will be awarded by the MLSC in consultation with SBANE, and

the development of rules, procedures and conditions for the application process is underway. The Small Business Matching Grant Fund is believed to be the first state incentive in the country directed toward speeding commercialization-ready technologies into production.

If you would like to learn more about these funding opportunities, please contact Lisa Treannie at ltreannie@mbbp.com.

MBBP represents biotechnology, medical device and pharmaceutical companies and institutions in a wide range of legal matters that arise in connection with the development, protection and commercialization of their unique life sciences technologies.

Protection and exploitation of technology are often key components to gaining competitive advantage in the life sciences industry. Our life sciences practice features professionals experienced in counseling clients with regard to intellectual property, licensing and collaboration and product development and distribution.

We assist clients with the protection of their intellectual property by designing and implementing value-oriented patent strategies, and assisting them in assessing and avoiding the patent rights of others. We also advise clients on the:

- * Selection, clearance and protection of trademarks, trade names and domain names in the United States and abroad
- * Protecting trade secrets and copyrights
- * Confidentiality, invention assignment, consulting, non-competition and non-solicitation agreements
- * Scope and duration of non-competition covenants, which can have a profound effect upon the enforceability of the agreements of which they are a part.

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