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AIA: USPTO Proposed Rules for Micro Entity Status

On May 30, 2012, the United States Patent and Trademark Office (USPTO) has published proposed rules to implement micro entity status, resulting in a discounted patent fee payment. If an applicant qualifies as a micro entity under the America Invents Act (AIA), the applicant would be eligible to pay reduced fees of up to a discount of 75% for the fees set or adjusted related to filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The USPTO has stated that the reason for this discount is to make the patent system more accessible for smaller innovators so that they can move their ideas into the marketplace and accelerate U.S. economic growth. The new rule is likely to become effective during the first quarter of 2013.

The classification as a "micro entity" was first introduced by a section of the patent laws in the AIA. To qualify as a "micro entity," an applicant must certify that he/she (1) qualifies as a small entity; (2) has not been named an inventor on more than four (4) previously filed non-provisional patent applications in the United States; (3) did not have a gross income that exceeds three (3) times the median household income for that preceding calendar year; and (4) has not assigned, granted, or conveyed a license or other ownership interest in the application concerned to an entity that had gross income exceeding three (3) times the median household income for the preceding calendar year.

To specifically address this new classification, the USPTO will set out procedures by which an applicant can claim micro entity status and also pay the associated patent fees as a micro entity. There will also be a set of procedures to allow applicants to notify the USPTO of their loss of micro entity status and to correct erroneously paid patent fees.

It will be important to note that the USPTO does not plan to provide advisory opinions on whether a particular entity is entitled to claim micro entity status. Furthermore, if an application names more than one applicant, each applicant must meet the micro entity requirements in order for certification in the application. Finally, the USPTO is developing both paper and electronic forms by which applicants can provide certification of their micro entity status.



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The specific procedures for applicant to claim micro entity status will require a filing of a certification of entitlement. The USPTO will rely chiefly on this certification unless it conflicts with information already accessible by the USPTO, such as if an applicant already has filed more than four (4) non-provisional patent applications. It is unlikely that the USPTO will require any additional documents from applicants in order to prove their micro entity status.

A provision states that any attempt to fraudulently or improperly establish status as a micro entity, or pay fees as a micro entity, shall be considered as a fraud practiced or attempted on the USPTO. However, if status as a micro entity is established in good faith in an application or patent, and fees as a micro entity are paid in good faith in the application or patent, and it is later discovered that such micro entity status either was established in error, or that the USPTO was not notified of a loss of entitlement to micro entity status as required through error, the error will be excused upon compliance with the separate submission and itemization requirements and the payment of the deficiency owed.