

Quick Reference for Small and Micro Entities

Small Entity

Requirements

The patent is not owned or subject to an obligation to be owned by a for-profit organization having 500 or more full and part time employees.

Discount

Small entity discount: 50% of original government fee

Costs for asserting a claim for small entity

Legal fees: \$100.00 USD

Government fees: none

Micro Entity - Gross Income Basis*

*There is also an "Institute of Higher Education Basis" set forth in 37 C.F.R. § 1.29(d), whereby a patent might be entitled to micro entity status if the applicant's employer is an institute of higher education or if the applicant has or is under an obligation to transfer ownership of the patent to an institute of higher education.

Requirements

1) The patent meets the requirements for small entity status;

2) No inventor or applicant named in the patent was named as an inventor in more than four previously filed applications for patent, not including provisional applications or foreign applications;

3) In the preceding calendar year, no inventor or applicant had a gross income exceeding the Maximum Qualifying Gross Income* for the preceding calendar year; and

4) No inventor or applicant has transferred ownership or is under an obligation to transfer ownership of the patent to an entity that in the preceding calendar year, had a gross income exceeding the Maximum Qualifying Gross Income* for the preceding calendar year.

Discount

Micro entity discount: 75% of original government fee

Costs for asserting a claim for micro entity

Legal fees: \$100.00 USD

Government fees: none

*The Maximum Qualifying Gross Income is reported on the USPTO website at http://www.uspto.gov/patents/law/micro_entity.jsp which is equal to three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.



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Small Entity - 37 C.F.R. § 1.27(a)(1) - (5)

§1.27 (a) Definition of small entities. A small entity as used in this chapter means any party (person, small business concern, or nonprofit organization) under paragraphs (a)(1) through (a)(3) of this section.

(1) Person. A person, as used in paragraph (c) of this section, means any inventor or other individual (e.g., an individual to whom an inventor has transferred some rights in the invention) who has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention. An inventor or other individual who has transferred some rights in the invention to one or more parties, or is under an obligation to transfer some rights in the invention to one or more parties, can also qualify for small entity status if all the parties who have had rights in the invention transferred to them also qualify for small entity status either as a person, small business concern, or nonprofit organization under this section.

(2) Small business concern. A small business concern, as used in paragraph (c) of this section, means any business concern that:

- (i) Has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify for small entity status as a person, small business concern, or nonprofit organization; and
- (ii) Meets the size standards set forth in 13 § 121.801 through 121.805 to be eligible for reduced patent fees¹.

(3) Nonprofit Organization. A nonprofit organization, as used in paragraph (c) of this section, means any nonprofit organization that:

- (i) Has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify as a person, small business concern, or a nonprofit organization; and
- (ii) Is either:
 - (A) A university or other institution of higher education located in any country;
 - (B) An organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a));
 - (C) Any nonprofit scientific or educational organization qualified under a nonprofit organization statute of a state of this country (35 U.S.C. 201(i)); or
 - (D) Any nonprofit organization located in a foreign country which would qualify as a nonprofit organization under paragraphs (a)(3)(ii)(B) of this section or (a)(3)(ii)(C) of this section if it were located in this country.

(4) License to a Federal agency.

- (i) For persons under paragraph (a)(1) of this section, a license to the Government resulting from a rights determination under Executive Order 10096 does not constitute a license so as to prohibit claiming small entity status.
- (ii) For small business concerns and nonprofit organizations under paragraphs (a)(2) and (a)(3) of this section, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license for the purposes of paragraphs (a)(2)(i) and (a)(3)(i) of this section.

(5) Security Interest. A security interest does not involve an obligation to transfer rights in the invention for the purposes of paragraphs (a)(1) through (a)(3) of this section unless the security interest is defaulted upon.

Micro Entity - Gross Income Basis - 37 C.F.R. § 1.29(a)-(c)

§ 1.29 (a) To establish micro entity status under this paragraph, the applicant must certify that:

(1) The applicant qualifies as a small entity as defined in § 1.27;

(2) Neither the applicant nor the inventor nor a joint inventor has been named as the inventor or a joint inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid;

(3) Neither the applicant nor the inventor nor a joint inventor, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census²; and

(4) Neither the applicant nor the inventor nor a joint inventor has assigned, granted, or conveyed, nor is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census².

(b) An applicant, inventor, or joint inventor is not considered to be named on a previously filed application for purposes of paragraph (a)(2) of this section if the applicant, inventor, or joint inventor has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's, inventor's, or joint inventor's previous employment.

(c) If an applicant's, inventor's, joint inventor's, or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's, inventor's, joint inventor's, or entity's gross income exceeds the threshold specified in paragraph (a)(3) or (4) of this section.

¹Generally, the size standard refers to 500 or less full and part time employees.

²The Maximum Qualifying Gross Income is reported on the USPTO website at http://www.uspto.gov/patents/law/micro_entity.jsp which is equal to three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

Small Entity - 37 C.F.R. § 1.27(a)(1) - (5)

§1.27 (a) Definition of small entities. A small entity as used in this chapter means any party (person, small business concern, or nonprofit organization) under paragraphs (a)(1) through (a)(3) of this section.

(1) Person. A person, as used in paragraph (c) of this section, means any inventor or other individual (e.g., an individual to whom an inventor has transferred some rights in the invention) who has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention. An inventor or other individual who has transferred some rights in the invention to one or more parties, or is under an obligation to transfer some rights in the invention to one or more parties, can also qualify for small entity status if all the parties who have had rights in the invention transferred to them also qualify for small entity status either as a person, small business concern, or nonprofit organization under this section.

(2) Small business concern. A small business concern, as used in paragraph (c) of this section, means any business concern that:

- (i) Has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify for small entity status as a person, small business concern, or nonprofit organization; and
- (ii) Meets the size standards set forth in 37 § 1.27.801 through 1.27.805 to be eligible for reduced patent fees¹.

(3) Nonprofit Organization. A nonprofit organization, as used in paragraph (c) of this section, means any nonprofit organization that:

- (i) Has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify as a person, small business concern, or a nonprofit organization; and
- (ii) Is either:
 - (A) A university or other institution of higher education located in any country;
 - (B) An organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a));
 - (C) Any nonprofit scientific or educational organization qualified under a nonprofit organization statute of a state of this country (35 U.S.C. 201(i)); or
 - (D) Any nonprofit organization located in a foreign country which would qualify as a nonprofit organization under paragraphs (a)(3)(ii)(B) of this section or (a)(3)(ii)(C) of this section if it were located in this country.

(4) License to a Federal agency.

- (i) For persons under paragraph (a)(1) of this section, a license to the Government resulting from a rights determination under Executive Order 10096 does not constitute a license so as to prohibit claiming small entity status.

¹ Generally, the size standard refers to 500 or less full and part time employees.

(ii) For small business concerns and nonprofit organizations under paragraphs (a)(2) and (a)(3) of this section, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license for the purposes of paragraphs (a)(2)(i) and (a)(3)(i) of this section.

(5) Security Interest. A security interest does not involve an obligation to transfer rights in the invention for the purposes of paragraphs (a)(1) through (a)(3) of this section unless the security interest is defaulted upon.

Micro Entity - Gross Income Basis - 37 C.F.R. § 1.29(a) - (c)

§ 1.29 (a) To establish micro entity status under this paragraph, the applicant must certify that:

(1) The applicant qualifies as a small entity as defined in § 1.27;

(2) Neither the applicant nor the inventor nor a joint inventor has been named as the inventor or a joint inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid;

(3) Neither the applicant nor the inventor nor a joint inventor, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census²; and

(4) Neither the applicant nor the inventor nor a joint inventor has assigned, granted, or conveyed, nor is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census².

(b) An applicant, inventor, or joint inventor is not considered to be named on a previously filed application for purposes of paragraph (a)(2) of this section if the applicant, inventor, or joint inventor has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's, inventor's, or joint inventor's previous employment.

(c) If an applicant's, inventor's, joint inventor's, or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's, inventor's, joint inventor's, or entity's gross income exceeds the threshold specified in paragraph (a)(3) or (4) of this section.

² The Maximum Qualifying Gross Income is reported on the USPTO website at http://www.uspto.gov/patents/law/micro_entity.jsp which is equal to three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.