



Large, Small & Micro-Entities: Determining Your Status as a United States Patent Applicant and Patent Owner

Between application and maintenance fees, filing for a patent in the United States can be an expensive process. In fact, for large entities, initial filing fees associated with new utility patent applications can be hefty, not including the even heftier fees at certain patent anniversaries along the way. In any case, the financial burden of securing and maintaining a patent can become overwhelming over time, especially for individuals and organizations without access to a seemingly bottomless supply of capital.

Fortunately, the United States Patent and Trademark Office (USPTO) allows for distinctions to be made based on the size and financial means of the applicant, so as not to subject smaller, less wealthy organizations or individuals to the same fees as larger ones.

If you are considering filing a patent application, one of the first things you should be clear about is your status as an applicant in the eyes of the USPTO, and to determine if you are entitled to any reduced fees.

Of course, making an accurate determination could prove more complicated than you might expect, so it is important to be properly educated about what constitutes a large, small, or micro-entity. Failure to make an honest evaluation about your status could result in serious penalties, and if the USPTO suspects that you have intentionally misrepresented your status, it could lead to the invalidation of your patent, as well as civil or criminal litigation.

Large Entities

Briefly, a large entity is most easily understood as any applicant who does not qualify as a small or micro entity. Once you are clear on what constitutes small and micro entities, it should become relatively obvious whether you meet those qualifications. If any doubt remains thereafter, it is likely appropriate to claim your status as a large entity and expect to pay standard application and maintenance fees.

Small Entities

Applicants who qualify as small entities are typically individual inventors, nonprofit organizations, and/or small business concerns. Nonprofit organizations eligible for small entity status include institutions of higher education, tax-exempt organizations under 26 U.S.C 501(a), and any scientific or educational institute protected under a state nonprofit statute. A small business concern, as defined by the Code of Federal Regulations (CFR) § 121.802(a), refers to any organization with less than 500 employees, including affiliates.

Additionally, there must be no evidence that an applicant in any of the above categories has assigned, granted, conveyed, or licensed any rights to the invention in question to any non-small entity, or any involved party who does not meet the above qualifications for small entity status.

Applicants that meet USPTO qualifications for small entity status will be entitled to a 50% reduction of most application and maintenance fees related to their patent.

Micro Entities

Applicants who qualify for small entity status may also qualify as “micro entities,” a relatively new designation for U.S. patent applicants as of December 2012, which will afford up to a 75% reduction of fees in many cases.

In addition to the above criteria for small entities, applicants claiming micro entity status must not be named as inventors on more than four previous patents (utility, design, or plant), and must have a gross income for the year prior to the application of less than three times the median household income as reported by the U.S. census. (The USPTO updates the [income limit for micro entities](#) on its website, which changes annually and is tied to median gross income in the US.) As you may expect, although an applicant may qualify, sometimes they elect not to – as this information is public and thereby a public statement about their gross income. There is, of course, no penalty for paying the greater small entity fees if this is what the applicant elects to do.

If the application names multiple inventors, each inventor must satisfy the above criteria *individually* in order to qualify for micro entity status.

If the above criteria do not apply, the applicant may still be eligible for micro entity status if the majority of their reported income is from a university (or any institution of higher learning offering no less an Associate’s degree), or if they are under obligation to assign or have already assigned the invention that is the subject of an application to be filed to such an institution.

Regarding Employees & Affiliates

Before making a good faith evaluation about your status as an applicant, it is important to be clear about the validity of your qualifications in the eyes of the USPTO. For small business concerns, one particular area that might prove more complicated than others is the evaluation of employees and affiliates—i.e., which employees and affiliates should be counted/how to calculate totals when an applicant is associated with multiple affiliate organizations. Again, the number of employees, *including* affiliates, must not exceed 500.

Employees of a small business concern that must be counted include any paid employee, whether full or part-time, acquired through any means of recruitment. (Unpaid volunteers should not be counted as employees in an evaluation.) In the case of a small business concern whose number of employees is inconsistent throughout any given year, an average should be calculated based on number of employees from the previous calendar year as related to the date of application. CFR § 121.106(b)(i).

Affiliates should be considered any individual, organization, or third-party by whom the small business concern is subject to any operational or economic control, regardless of whether the affiliate has ever exercised such control. There are a number of factors which might be used to determine whether control exists, but all consist of a general evaluation of the relationship between the applicant/small business concern and the possible affiliate(s). This can include contractual relationships, divided ownership of assets, and allocation of management obligations, to name a few. Common examples of affiliates include majority stockholders, managing board members, or partners who have control over the concern in addition to one or more other concerns. § 121.103(c)(1), § 121.103(e).

Small business concerns claiming one or more affiliates will therefore often need to make more careful calculations as to whether they qualify for small entity status. For example, to determine the number of employees of a concern with two affiliates, the applicant must add the average number of employees of the concern with the average number of employees in each affiliate, and the total must not exceed 500. § 121.106(b)(4)(i).

There may be affiliates, however, that are exempt from this count, and an applicant should evaluate whether this could be the case. Exempt affiliates include non-profit organizations, Indian tribes, charitable foundations, and investment companies with similar tax-exempt statuses.

Regarding both employees and affiliates, applicants should keep in mind the applicable period of measurement, or the relevant date listed for determining the size of the concern. For example, applicants need not include former affiliates as long as the relationship ceased *before* the relevant date used for measurement. § 121.106(b)(4)(ii).

Claiming Your Status and Maintaining Transparency

If you have made an honest evaluation as to your status as an applicant and believe in good faith that you qualify as a small or micro entity, then the only thing you need to do is make a legally binding declaration of either status or proceed with paying the reduced fee. This is one benefit of the current USPTO protocol regarding patent fees, as it allows for statuses to be claimed without wasting too much time or money on various processes for procuring the necessary documentation.

However, being transparent with the USPTO about any changes to your status along the way is absolutely critical. Should you or your small business concern come under obligation to assign or license your patent to a non-small entity or come into affiliation with any individual or organization that does not meet the above criteria, your small or micro entity status may no longer be valid, and any such change must be reported to the USPTO, in which case your fees will be adjusted accordingly.


The importance of making a truly honest evaluation to the best of your ability cannot be overstated here. Chances are, a lot of hard work and serious innovation has gone into the development of your invention to bring you to the point of filing for a U.S. patent, and it would be devastating to have your work invalidated based on an evaluation that is anything less than thorough. In the worst case, the USPTO will charge you and your organization with inequitable conduct for intentionally attempting to deceive the governing body in order to obtain reduced fees. Even in the most benign case, in which you have made an inaccurate evaluation without an intention to deceive, will leave you with a costly burden of proof and represent a significant hurdle to the process of securing your patent.

Keeping Up to Date on USPTO Fees and Requirements

The fees associated with U.S. patent applications are not static and are updated annually based on various determining factors. For this reason, it is critical that all applicants remain up to date on any regular changes to USPTO fees, requirements, and guidelines throughout the process of securing and maintaining a patent.

For these purposes, the USPTO updates its [website](#) as-needed with information on fee amounts, payment scheduling, and income limits for small and micro entities. Additionally, the website provides access to all relevant areas of the [CFR](#), which can and should be consulted wherever confusion exists about an entity's status and obligations.

Fee Waivers & Extensions for Small/Micro Entities Due to COVID-19

If you are a small or micro entity that has been negatively impacted by COVID-19, the USPTO has offered to waive certain fees and grant extensions depending on your specific needs. Details about these programs can be found in the [official statement](#) published on the USPTO website. 

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