

Micro entity

ביום 19.3.2013 נכנסו לתוקפן האגרות החדשות של משרד הפטנטים וסימני המסחר בארה"ב.

כעת, משרד הפטנטים מציע תעריף אגרות מופחת למבקש של בקשת פטנט חדשה, אם המבקש עונה על הגדרת ה- micro entity.

כדי שמבקש יוגדר micro entity, עליו לעמוד בתנאים הבאים :

1. לענות על הגדרת ה- small entity*.
2. שם המבקש או הממציא לא יהיה רשום כממציא של יותר מ- 4 בקשות פטנט הקודמות** לבקשת הפטנט הנוכחית.
3. ההכנסה ברוטו של המבקש בשנה הקודמת להגשת בקשת הפטנט הנוכחית, הינה קטנה יותר מ- 3 פעמים ההכנסה הממוצעת בארה"ב (בערך \$150,000 דולר אמריקאי)
4. המבקש לא המחה את זכויותיו בבקשת הפטנט הנוכחית לצד ג' שההכנסה ברוטו שלו גבוהה - 3 פעמים ההכנסה הממוצעת בארה"ב.

מבקש העונה על הקריטריונים האמורים מעלה, זכאי להנחה של 75% מהסכום הקבוע של מרבית האגרות הממשלתיות. זאת, במובחן ממבקש המוגדר small entity, אשר זכאי להנחה של 50% מגובה האגרות הממשלתיות.

* small entity מתייחס לממציאים בודדים או לחברות קטנות המונות פחות מ- 500 עובדים, לרבות חברות בנות.

** במניין "4 בקשות פטנט קודמות" – לא יכללו – בקשות פטנט לגביהן שם המבקש צוין כממציא ואשר עונות על הגדרת "המצאת שירות", כלומר שפותחו תוך כדי העסקתו של המבקש וחלה עליו החובה להמחות זכויותיו בבקשה למעסיק.

Micro Entity

Effective March 19, 2013, new USPTO fees went into effect.

There is now a micro-entity discount at the PTO that gives an applicant 75% off most government fees. That is separate from the small entity discount, which is 50% off.

To qualify for the micro-entity discount, you have to:

1. Qualify as a small entity
2. Not be named as an inventor on more than 4 previous applications *
3. Previous year's gross income is less than 3x last year's median US income (roughly \$150,000 USD or less)
4. Did not assign rights to an entity that has gross income over 3x median income.

** Anytime an applicant was named as an inventor previously, if the invention was done in the course of employment and there was an obligation to assign the rights to the employer, it doesn't count against the 4 previous applications.*

Further details below as taken from the United States Patent and Trademark Office

Eligibility for Micro Entity Status

To qualify as a micro entity, an applicant must meet either of two sets of conditions. As a first option, an applicant can establish a limited income and limited experience with the patent application filings. As a second option, an applicant can establish employment by, or an assignment or obligation to assign to, an institution of higher education. Under either option, an application also must satisfy the requirements for small entity status.

Micro Entity Status under the Gross Income Basis

An applicant for micro entity status under the "gross income" basis and must satisfy four requirements.

First, the applicant must certify that he/she/it qualifies as a small entity.

Second, the applicant must certify that neither the applicant nor the inventor nor a joint inventor has been named as an inventor on more than four previously filed patent applications.

Third, the applicant must certify that neither the applicant nor the inventor nor a joint inventor had a gross income exceeding three times the median household income for the preceding calendar year, as most recently reported by the Bureau of the Census.

Lastly, the applicant must certify that neither the applicant nor the inventor nor a joint inventor has assigned, granted, or conveyed a license or other ownership interest (and is not obligated to do so) in the subject application to an entity that had a gross income in the preceding calendar year in excess of the gross income limit.

The USPTO will post the gross income limit on the USPTO website. The gross income limit will be referred to as the “maximum qualifying gross income.” **The “maximum qualifying gross income” for calendar year 2012 is \$150,162.**

For purposes of qualifying for micro entity status on the “gross income” basis, an applicant, inventor, or joint inventor cannot have a gross income during the calendar year when a fee is paid exceeding three times the median household income for the preceding calendar year, as reported on the USPTO website.

Notably, the gross income limit may change each calendar year. Therefore, if the prosecution of an application extends across multiple calendar years, an applicant, inventor, and joint inventor must verify that the gross income limit for the requisite calendar year is met to maintain eligibility for the micro entity discount. If the gross income limit is not met, then a notification of loss of entitlement to micro entity status must be filed in the application to remove micro entity status.

What types of applications count toward the application filing limit for purposes of establishing micro entity status under the “gross income” basis?

For purposes of establishing micro entity status under the “gross income” basis, the application filing limit includes: (i) U.S. nonprovisional applications (e.g., utility, design, continuation, and divisional applications), (ii) U.S. reissue applications, and (iii) U.S. national stage applications under the Patent Cooperation Treaty (PCT). It does not matter whether the applications are pending, patented, or abandoned; they are still included when counting to determine whether the application filing limit has been reached.

The application filing limit does not include: (i) foreign applications; (ii) international (PCT) applications for which the basic U.S. national stage filing fee was not paid; and (iii) provisional applications. In addition, the application filing limit does not include applications where an 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.

Paying Fees as a Micro Entity

If there is more than one inventor named in a patent application as the applicant, do all of the inventors have to qualify as a micro entity to pay fees in the micro entity amount?

Yes, if there is more than one inventor named in a patent application as the applicant, each inventor must qualify for micro entity status to pay fees in the micro entity amount. The inventors may qualify for micro entity status individually under either the "gross income" basis or the "institution of higher education" basis.

If an inventor is named in a patent application as the applicant and if the inventor assigns his ownership rights in the application to an assignee, what qualifications do the inventor and/or the assignee have to meet to secure the micro entity discount?

Under the "gross income" basis, the inventor and the assignee must certify that each meets the gross income limit. Additionally, the inventor must certify that he/she meets the application filing limit.

If an inventor assigns his ownership rights in an invention to an assignee and if the assignee files a patent application as the applicant, what qualifications do the inventor and/or the assignee have to meet to secure the micro entity discount?

Under the "gross income" basis, the inventor and the assignee must certify that each meets the gross income limit. Additionally, the inventor must certify that he/she meets the application filing limit, and if the assignee is a natural person, then the assignee also must certify that he/she meets the application filing limit.

If there is more than one inventor named in a patent application as the applicant, and if one of the inventors assigns his ownership rights in the application to an assignee, what qualifications do the inventors and/or the assignee have to meet to secure the micro entity discount?

Under the “gross income” basis, the inventor and the assignee must certify that each meets the gross income limit. Additionally, the inventor must certify that he/she meets the application filing limit.

Who can sign a certification of micro entity status?

A certification of micro entity status can be signed only by an authorized party which includes:

- (1) a registered patent practitioner, meaning a registered attorney or agent who is either of record or acting in a representative capacity
- (2) an inventor who is named as the sole inventor and identified as the applicant; or
- (3) all of the joint inventors who are identified as the applicant.

For joint inventor applicants, each joint inventor should sign a separate copy of the relevant micro entity certification form. However, if one joint inventor is appointed to prosecute the application on behalf of all the other joint inventors, then only that one joint inventor need sign the micro entity certification form. See USPTO form number AIA/81 titled Power Of Attorney to One or More of the Joint Inventors and Change of Correspondence Address available on the USPTO forms webpage at <http://www.uspto.gov/forms>.

Additionally, if any applicant is an assignee or other party under 37 C.F.R. 1.46, and the assignee or other party is a corporation or organization rather than a person; a registered practitioner must sign the certification of micro entity status. An officer of the assignee corporation, for example, is not authorized to sign a certification of micro entity status.

Loss of Entitlement to Micro Entity Status

If an applicant is no longer eligible for micro entity status, can the applicant make a simple statement of loss of status without identifying which requirement(s) for micro entity status is no longer satisfied?

Yes, an applicant can make a simple statement that he/she/it is no longer eligible for micro entity status without identifying the particular reason(s) for loss of entitlement to micro entity status.

If an applicant loses eligibility for micro entity status, can the applicant pay the fee in the small or undiscounted amount, as appropriate, without notifying the Office of loss of micro entity status?

An applicant who loses entitlement to micro entity status cannot pay a fee in the small or undiscounted amount without first or simultaneously notifying the Office in writing of loss of micro entity status.