

From: Denis O'Brien [e-mail address redacted]
Sent: Monday, November 28, 2011 6:58 PM
To: aia_implementation
Subject: Micro-entity

Hello, Denis O'Brien, USPTO #42947, here.

I certainly appreciate the Office setting up this line of communication to help us better understand the AIA and how to advise our clients.

With respect to the micro-entity program, I must admit that I don't know whether I am grossly disappointed or just plain confused. The micro-entity definition appears to me, both as a patent lawyer and as a patent applicant and holder, to be incredibly unfair to the vast majority of small entity and individual inventors – particularly the ones who are not university employees of some sort.

I would be so grateful if you would please address the following questions:

Question #1: With respect to 35 USC §123(a)(2), I can understand the policy for limiting inventors to 4 micro-entity applications, but what possible reason or policy rationale is there for excluding inventors who have filed four or more US patent applications prior to the effective date of the micro-entity program? Why are we being penalized just because we have been active inventors prior to the AIA?

Question #2: Given that most small entities will be income tested as per 35 USC §123(a)(3), what possible reason or policy rationale is there for automatically providing micro-entity status under 35 USC §123(d)(1) to a college football coach who makes \$8M per annum? Or a college professor who makes \$200K per annum? Or a college dean who makes \$350K per annum? All they have to do to get micro-entity status is show that 50% of their income comes from their employer. These people would be excluded under the income testing provisions if they worked for anyone other than a institution of higher education.

Question #3: With respect to 35 USC §123(d)(1), why is an inventor who is a university grounds-keeper, or a college secretary, or a college police officer entitled to automatic, perpetual micro-entity status, even if their inventions have absolutely nothing to do with their employer or employment? All they have to do is show that 50% of their income comes from their employer.

Question #4: Why are these automatic university employee micro-entities allowed to file unlimited applications as micro-entities whilst the rest of us are limited to four micro-entity applications per life-time, or are permanently eliminated from the program altogether if we have already filed four applications before the AIA was even passed?

It appears to me that the micro-entity program was conceived with the best of intentions but that the final implementation and the definition of "micro-entity" as per 35 USC §123 is so full of anomalies and inexplicable restrictions as to be viewed by the inventor community as being grossly unfair. I would characterize many of these restrictions as arbitrary and capricious in that they are discriminatory without any apparent reason or justification.

I would be very appreciative if you could answer the above questions and point out any errors in my interpretation of §123.

Thanks,
Denis