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CLIENT INFORMATION SHEET

CAUTION REGARDING SMALL ENTITY FEES

PATENT OFFICE FEES FOR AN INDEPENDENT INVENTOR, A SMALL BUSINESS, OR A NON-PROFIT ORGANIZATION

A small entity¹ may pay patent office fees that are half of the standard PTO fees. However, if there is a mistake and you are really not entitled to claim the status of a small entity, or if your status changes to that of a large entity, your patent could become invalid.

A SMALL ENTITY (or BUSINESS) OR AN INDEPENDENT INVENTOR OR A NON-PROFIT ORGANIZATION qualify for small entity status and are entitled to the lower small entity Patent and Trademark Office (PTO) fee schedule. Otherwise, official fees must be paid at the large entity rate which is double the small entity rate.

A SMALL ENTITY (or BUSINESS) is any business concern (1) whose number of employees, including those of its affiliates, does not exceed 500 (a SMALL BUSINESS CONCERN), and (2) which has not assigned, granted, conveyed, or licensed, and is under no obligation to assign, grant, convey or license any rights in the invention to anyone who could not be classified as an INDEPENDENT INVENTOR or a SMALL BUSINESS CONCERN or a NON-PROFIT ORGANIZATION. "Concerns" are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party (or parties) controls or has the power to control both. Employees are those persons employed on a full time, part time or temporary basis during the previous fiscal year of the concern.

It is VERY important that the status of a U.S. small entity patent applicant or patentee be reevaluated whenever an official fee is payable for the prosecution or maintenance of the U.S. patent. If a fee is wrongly paid at the small entity rate by an applicant or patentee who is or has become a large entity, and that error is not corrected in a short timely manner, the validity of the application or patent can be placed at risk. Therefore, every U.S. patent applicant or owner who seeks to qualify, or has qualified, for payment of PTO fees at the lower rate must be alert to this matter and has a duty to inform the PTO of an upward change in status. Similarly, an Independent Inventor must be alert to loss of that status due to agreements with parties who do not have small entity status in relation to PTO official fees.

If there is a question or uncertainty, it is safer to pay the PTO fees at the higher large entity rate.

¹ see 37 CFR § 1.27 through 37 CFR § 1.28 and 13 CFR 121.801 through 121.805



Paul B. Heynssens is the Managing Member and registered patent attorney with a substantial background in electrical engineering. He counsels clients in a variety of intellectual property and technology matters including patent prosecution and portfolio management, preparation of patent validity and infringement opinions, and preparation of licensing agreements, non-disclosure agreements and other intellectual property agreements. Mr. Heynssens has prepared and prosecuted many patent applications in the area of electronics, software, semiconductors, lasers and computers, among others.

Paul B. Heynssens Attorney at Law, PLC prepares Client Information Sheets to provide information about legal developments that may affect or be of interest to our clients. The information and opinions contained in this Client Information Sheet do not constitute legal advice.

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