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**To:** micro\_entity

**Subject:** Comments on Proposed Rulemaking [Docket No.: PTO-P-2011-0016; RIN 0651-AC78; 77FR31806, May 30, 2012]

Hon. Commissioner for Patents:

The proposed rulemaking regarding “**Changes to Implement Micro Entity Status for Paying Patent Fees**”, while it generally tracks the rules for small entity status, appears to not have a section corresponding to 37 CFR 1.27(g), which reads in part: “Once status as a small entity has been established in an application or patent, fees as a small entity may thereafter be paid in that application or patent without regard to a change in status until the issue fee is due or any maintenance fee is due.” Thus the micro entity rules as proposed are more burdensome on applicants in that they would require a determination of status for every payment of a fee. It is unclear whether this difference is due to an oversight, a requirement of the statute itself, or a choice of interpretation or implementation by the PTO. If it is not otherwise expressly prevented by a statutory requirement, I suggest adopting the language of 37 CFR 1.27(g) into the micro entity rules as well.

The proposed rulemaking does not carry forward any presumptions the PTO could make regarding continued entitlement to small entity status after any loss of entitlement to micro entity status. Instead, proposed 37 CFR 1.29(i) states: “Once a notification of a loss of entitlement to micro entity status is filed in the application or patent, a written assertion of small entity status under § 1.27(c)(1) is required to obtain small entity status.” However, since the definition of micro entity includes within it a requirement of small entity status [proposed 37 CFR 1.29(a)(1)], and small entity status must be asserted when establishing micro entity status [proposed 37 CFR 1.29(e)], the rules should instead expressly state that establishment of micro entity status automatically includes establishment of small entity status under 37 CFR 1.27 as well, and that any loss of micro entity status at the time of payment of any fee automatically reverts to small entity status, without needing any separate establishment of small entity status, until the issue fee or any maintenance fee is due.

Sincerely,

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The views expressed herein are my own, and do not necessarily reflect the opinions of Schneck & Schneck or any of its partners.