

From: Dan Swanson <drsnls5@verizon.net>
Sent: Tuesday, September 18, 2012 5:19 PM
To: fee.setting
Subject: ATTN: Michelle Picard - Comment on proposed fee changes

Dear Sirs or Ms. Picard,

When I first read about the USPTO's desire to change USPTO fees I was excited. As an independent inventor and small business owner, USPTO fees are a big cost of my small business.

I thought your proposal would bring needed relief to struggling inventors in these turbulent economic times.

Especially since I agree with your Director when he said in a May Press Release:

"The one point on which all voices of the IP community agree is that the most important thing USPTO can do to help is to get their new inventions to the marketplace faster and more efficiently, in turn enabling them to create new jobs and opportunity," said Under Secretary of Commerce for Intellectual Property and USPTO Director David Kappos.

After reading the proposed fee changes and restrictions, I'm not sure you are going to accomplish what the Director said was the *"the most important thing USPTO can do"*.

I first thought maybe my fees would be cut as a new "Micro Entity" but I quickly found the rules are too restrictive. Though I clearly qualify as a small entity, rule 2 would eliminate me and I imagine most other independent inventors almost immediately. It states: "(2) has not been named as an inventor on more than four previously filed patent applications....."

If you spend a little time talking to "Independent inventors" at your various independent inventor conferences, (as I have done over the years) you will find that many, if not the vast majority of them, all have been inventors before. Even though nearly all of them operate as sole individual inventors, they worked for others (corporations, Universities etc.) and have already filed more than four applications. In fact, if you spend a little time with them you may find that the reason they want to invent, and start their own businesses(which will employ Americans) is because the last place they worked didn't reward them for all their patents and patent applications.

The big companies and universities, may have given the inventor a framed copy of their patent's first page, and \$100 or so, but the inventor knows their invention made the company \$1,000,000+ after tax.

As you can see, these people are experienced inventors (usually more than 4 applications). They are also the ones that want to start a business with their patent. Which, as mentioned above, creates jobs and prosperity for America. If you want to help them you may have missed.

I won't spend much time about the other restrictions (3) and (4) which deal with gross income and which will also knock out many other Americans from qualifying for the "Micro" strategy,

Most of my contact with the USPTO personnel has been great. The USPTO has top quality people. I was surprised though as I read the document, so much so that I thought this must be some kind of mistake. I found it very interesting that the USPTO believes this "Micro" option will be used by foreigners. From Page 37: "Therefore, the Office conservatively estimates that all foreign individuals will qualify for micro entity fee reductions" This amazed me. Not only will few, if any, Americans (who pay taxes to support the USPTO) be able to take the "Micro" status but, "all foreign individuals" will qualify for micro entity fee reductions"

If a patent is granted to an American independent inventor, he or she is likely to put his or her business in America, which means more prosperity for America, where the USPTO is located. If a patent is granted, at a lower cost with the "Micro" status, to a foreigner, there is no guarantee that the factory that will make the patented product will be in America. Obviously this does NOT guarantee jobs and prosperity for Americans, in fact it could result in the loss of even more American jobs. (These are same jobs of Americans, who pay the US taxes, to support the USPTO operations, so that more cost reductions can be passed on to "all foreign individuals")

I could write more, but I'd rather move directly to fees.

From the above discussion it's clear that many, if not nearly all, "independent American inventors" will not be able

to take advantage of the "Micro" classification. American small entity (i.e. Independent inventors and small businesses) will actually see many of their costs increase, while "nearly all foreign individuals" with the "Micro" status will see their costs decrease.

From Table 4 on page 48: For American small entities, the Basic Filing Fee – Utility, and the Utility Search Fee go down slightly, However, the Utility Examination Fee will go up by 188%. So the total will go up \$175 or 28% for the small entity American inventor. For "all foreign individuals" who can get the "Micro" classification the costs go down by \$225 or a decrease of 36%.

Filing fees are important for small entities, I am not sure that your conclusion that application filing will increase as a result of the proposed changes.

Also, while I wish it were true, I don't think I can agree with the following statement from the document: "The Office estimates that the additional aggregate revenue derived from the proposed fee schedule will enable a decrease in total patent pendency by 12 months for the five-year planning horizon (FY 2013 – FY 2017), thus permitting a patentee to obtain a patent sooner than he or she would have under the status quo fee schedule." (Page 4). Taking this further, essentially "all foreign individuals" with "Micro" classification will see both costs, and the time they wait for a patent go down.

Additionally, I think you may see an ACTUAL DECREASE in filings from Americans small entities, due to the increase in small entity fees upfront. (Granted there are decreases in Publication fees and Utility Issue fees but often these are years, sometimes many years, down the line and not front of mind for small businesses)

I do think you will see a significant increase in filings from "all foreign individuals" once word gets out how inexpensive it is (using the new formulae) for a foreign individual to get a US patent.

My suggestions:

- 1) eliminate the 4 application restriction for "Micro" status and you will see quite a few more American independent inventors fit into the category.
- 2) consider raising the income requirements to 4 or 5 times median household income to classify as a "Micro" entity. From my past experience with them, an independent inventor whose spouse also works will usually exceed the 3x number. (Your own data probably supports this from the fact that it is written "all foreign individuals" will qualify, but nothing was written about "x% of American individuals" will qualify)

If both of these are not possible for the USPTO, please reconsider raising the fees for small entities. Large entities often "sit" on their patents. These patents may not be used so much to create new businesses and new American jobs, as they are stored to have a "war chest" "just in case" they are needed.

I have yet to meet a small entity, independent inventor who does not want to build a business with his or her patent. These are the people who create new jobs and create new prosperity. From my conversations, many USPTO personnel know this to be true too.

With Regards,

Dan Swanson
Richmond, Virginia