

**From:** Dale Zetocha [e-mail address redacted]  
**Sent:** Friday, July 27, 2012 12:55 PM  
**To:** micro\_entity  
**Subject:** FW: Micro Entity

**RE:** Comments provided in response to “Changes to Implement Micro Entity Status for Paying Patent Fees” from Vol. 77, N. 104 of the Federal Register, in reference to the Leahy-Smith America Invents Act

To whom it may concern:

The Leahy-Smith America Invents Act has provided for the definition of a “micro entity” under 35 U.S.C. 123(d) that allows for the micro entity status to be applied to institutions of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), or to applicants who have assigned, granted, conveyed, or are under an obligation to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

However, it is not clear whether the Leahy-Smith America Invents Act was intended to cover a separate non-profit corporation, research foundation, or other institution that is legally separate from an institution of higher education but whose stated mission is to represent that institution of higher education, to act on its behalf, and/or to commercialize the intellectual property of that institution of higher education.

For example, North Dakota State University (NDSU) in Fargo, ND, has selected the non-profit entity for which I am Executive Director, the NDSU Research Foundation, as the entity responsible for protecting and commercializing all of its intellectual property. NDSU’s official intellectual property policy states:

*“NDSU may assign or transfer ownership rights in Intellectual Property to independent foundations created for the purpose of obtaining or administering and marketing NDSU Intellectual Property, receiving gifts, or supporting or promoting NDSU or NDSU research. For NDSU, the NDSU Research Foundation (NDSU/RF) is the independent foundation recipient of assignments of patents, copyrights, trademarked cultivars, and plant variety protection. NDSU/RF files for the appropriate Intellectual Property protection and is responsible for subsequent enforcement.”*

When the NDSU Research Foundation is acting on behalf of North Dakota State University, it is acting as an extension of the institution of higher education itself, and therefore should be treated as an institution of higher education (and therefore qualify as a micro entity) under the Leahy-Smith America Invents Act. However, it does not appear that the current wording specifically addresses foundations or other, similar institutions which file or own patents on behalf of institutions of higher education.

We highly recommend that the Leahy-Smith America Invents Act or regulations be updated such that it specifically addresses these representative research foundations acting on behalf of institutions of higher education, and further recommend that these representative research foundations be allowed to claim micro entity status when filing patents on behalf of a higher education institution that would qualify as a micro entity.

Regards,  
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