

From: cannady [e-mail address redacted]
Sent: Thursday, October 13, 2011 5:05 PM
To: ai_implementation
Subject: question re micro entity

Dear Sirs and Madams:

I would like to understand whether universities in developing countries will be eligible for the micro-entity discount under the Smith Leahy AIA Act. Under 37 CFR 1.27(a) a small entity includes a nonprofit institution which is a "A university or other institution of higher education located in any country...."

This provision has not discriminated against foreign universities. Discrimination between nationals and non-nationals in IP protection is barred by the TRIPS agreement.

Under the new Act, a new micro entity status has been created by the AIA that provides for a 75% discount on fees for certain applicants (including universities with operating budgets of more than \$1 billion). Micro Entity is defined in section 123 of the Act. 123 (d) (1) deals with how micro entity is defined for public institutions of higher learning.

PUBLIC INSTITUTIONS OF HIGHER EDUCATION. –

“(1) IN GENERAL. –For purposes of this section, a micro entity shall include an applicant who certifies that–
(A) the applicant’s employer, from which the applicant obtains the majority of the applicant’s income, is an institution of higher education, as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), that is a public institution....”

The Higher Education Act section 101 defines an institution of higher learning as (emphasis added):

(a) INSTITUTION OF HIGHER EDUCATION- For purposes of this Act, other than title IV, the term ‘institution of higher education’ means an educational institution in any State that--

- “(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
- “(2) is legally authorized within such State to provide a program of education beyond secondary education;
- “(3) provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
- “(4) is a public or other nonprofit institution; and
- “(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

The word "State" is defined in section 103 (16) (a) the Higher Education Act as:

(A) STATE- The term ‘State’ includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

My questions are:

- 1.) Is my reading of the statutes correct?
- 2.) If yes, how can this be reconciled with TRIPS anti-discrimination provisions?
- 3.) How can we continue to encourage very poor researchers at research starved universities to use the IP system when they are discriminated against?

("L' =g' h\Y' gaU' 'Ybh] hmi df cj] g] cb! ! k\] W' XcYg' bch' X] gW] a] bUhY! ! ' gh] ' ' ' Uj U] ' UV Y' under the AIA?

5.) Is there flexibility to correct this oversight in the regulations which are planned? or in legislative refinements of the AIA?

Cynthia Cannady
Attorney at Law

www.ipseva.com
2828 Westshire Drive
Los Angeles, Ca. 90068