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To: ai_a_implementation
Subject: Micro-entity

I would draw your attention to the following questions as to exactly how new Section 123 is to be interpreted.

Firstly:

S. 123(a) sets out four requirements, all of which must be met for an applicant to qualify as a micro entity.

S. 123(d) sets out two different requirements, either of which must be met for an applicant to qualify as a micro entity.

S. 123(d) makes sense only if an applicant can qualify as a micro entity under 123(d) without qualifying under 123(a).

But, does qualification under 123(d) exempt the applicant from all requirements of 123(a), or only from some of those requirements?

One reasonable interpretation is that a micro entity who files a certification under 123(d) qualifies as a micro entity notwithstanding that his assignee is not an eligible assignee under 123(a)(4), but still has to qualify under 123(a)(1)-(3). Another reasonable interpretation is that a certification under 123(d) completely replaces certification under 123(a).

Secondly:

New S. 123 assumes implicitly that the "applicant" is the inventor. How is it to be interpreted when, under new S. 118, first sentence, the applicant is an assignee?

Thirdly:

How is new S. 123 to be interpreted where there is more than one inventor, and at least one but fewer than all inventors qualify as micro entities? That can happen, for example: because the inventors have different incomes; because one of the inventors has many previous patents; because the inventors have different assignees; or because some but not all of the inventors are employed by a university under new S. 123(d)(1).

The USPTO's interpretation would not be binding on the Courts, but would likely be given Chevron deference, and thus would be highly persuasive in the long run, as well as being very helpful in the mean time. Such rulemaking would therefore IMHO be useful.

The views expressed in this message are my personal views, and do not represent the views of any law firm with which I may be associated, or of any client of any such law firm.

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