

dependent upon the application or patent in which the status has been established. The refiling of an application under § 1.53 as a continuation, division, or continuation-in-part (including a continued prosecution application under § 1.53(d)), or the filing of a reissue application requires a new determination as to continued entitlement to small entity status for the continuing or reissue application. A nonprovisional application claiming benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) of a prior application, or a reissue application may rely on a statement filed in the prior application or in the patent if the nonprovisional application or the reissue application includes a reference to the statement in the prior application or in the patent or includes a copy of the statement in the prior application or in the patent and status as a small entity is still proper and desired. The payment of the small entity basic statutory filing fee will be treated as such a reference for purposes of this section.

(3) Once status as a small entity has been established in an application or patent, the status remains in that application or patent without the filing of a further statement pursuant to § 1.27 of this part unless the Office is notified of a change in status.

(b) 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. Notification of any change in status resulting in loss of entitlement to small entity status must be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate pursuant to § 1.9 of this part. The notification of change in status may be signed by the applicant, any person authorized to sign on behalf of the assignee, or an attorney or agent of record or acting in a representative capacity pursuant to § 1.34(a) of this part.

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in

any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Office was not notified of a change in status as required by paragraph (b) of this section, the error will be excused upon payment of the deficiency between the amount paid and the amount due. The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full.

(d)(1) Any attempt to fraudulently (i) establish status as a small entity or (ii) pay fees as a small entity shall be considered as a fraud practiced or attempted on the Office.

(2) Improperly and with intent to deceive

(i) Establishing status as a small entity, or

(ii) Paying fees as a small entity shall be considered as a fraud practiced or attempted on the Office.

(35 U.S.C. 6, Pub. L. 97-247; 15 U.S.C. 1113, 1123)

[47 FR 40140, Sept. 10, 1982, as amended at 49 FR 553, Jan. 4, 1984; 57 FR 2033, Jan. 17, 1992; 58 FR 54509, Oct. 22, 1993; 60 FR 20222, Apr. 25, 1995; 62 FR 53183, Oct. 10, 1997]

## Subpart B—National Processing Provisions

### PROSECUTION OF APPLICATION AND APPOINTMENT OF ATTORNEY OR AGENT

#### **§ 1.31 Applicants may be represented by a registered attorney or agent.**

An applicant for patent may file and prosecute his or her own case, or he or she may be represented by a registered attorney, registered agent, or other individual authorized to practice before the Patent and Trademark Office in patent cases. See §§ 10.6 and 10.9 of this subchapter. The Patent and Trademark Office cannot aid in the selection of a registered attorney or agent.

[50 FR 5171, Feb. 6, 1985]

#### **§ 1.32 [Reserved]**

#### **§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.**

(a) The applicant, the assignee(s) of the entire interest (see §§ 3.71 and 3.73)