

## § 1.29

## 37 CFR Ch. I (7-1-14 Edition)

§ 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section:

(1) *Separate submission required for each application or patent.* Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error), required by paragraph (c)(2) of this section, for one application or one patent. Where more than one application or patent is involved, separate submissions of deficiency payments (e.g., checks) and itemizations are required for each application or patent. See § 1.4(b).

(2) *Payment of deficiency owed.* The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(i) *Calculation of the deficiency owed.* The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;

(ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

(3) *Failure to comply with requirements.* If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.

(d) *Payment of deficiency operates as notification of loss of status.* Any deficiency payment (based on a previous erroneous payment of a small entity fee) submitted under paragraph (c) of this section will be treated under § 1.27(g)(2) as a notification of a loss of entitlement to small entity status.

[65 FR 54661, Sept. 8, 2000]

### § 1.29 Micro entity status.

(a) To establish micro entity status under this paragraph, the applicant must certify that:

(1) The applicant qualifies as a small entity as defined in § 1.27;

(2) Neither the applicant nor the inventor nor a joint inventor has been named as the inventor or a joint inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid;

(3) Neither the applicant nor the inventor nor a joint inventor, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and

(4) Neither the applicant nor the inventor nor a joint inventor has assigned, granted, or conveyed, nor is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

(b) An applicant, inventor, or joint inventor is not considered to be named on a previously filed application for purposes of paragraph (a)(2) of this section if the applicant, inventor, or joint inventor has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's, inventor's, or joint inventor's previous employment.

(c) If an applicant's, inventor's, joint inventor's, or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's, inventor's, joint inventor's, or entity's gross income exceeds the threshold specified in paragraph (a)(3) or (4) of this section.

(d) To establish micro entity status under this paragraph, the applicant must certify that:

(1) The applicant qualifies as a small entity as defined in § 1.27; and

(2)(i) 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(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or

(ii) The applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular application to such an institution of higher education.

(e) Micro entity status is established in an application by filing a micro en-

tity certification in writing complying with the requirements of either paragraph (a) or paragraph (d) of this section and signed either in compliance with § 1.33(b) or in an international application filed in a Receiving Office other than the United States Receiving Office by a person authorized to represent the applicant under § 1.455. Status as a micro entity must be specifically established in each related, continuing and reissue application in which status is appropriate and desired. Status as a micro entity in one application or patent does not affect the status of any other application or patent, regardless of the relationship of the applications or patents. The re-filing of an application under § 1.53 as a continuation, divisional, or continuation-in-part application (including a continued prosecution application under § 1.53(d)), or the filing of a reissue application, requires a new certification of entitlement to micro entity status for the continuing or reissue application.

(f) A fee may be paid in the micro entity amount only if it is submitted with, or subsequent to, the submission of a certification of entitlement to micro entity status.

(g) A certification of entitlement to micro entity status need only be filed once in an application or patent. Micro entity status, once established, remains in effect until changed pursuant to paragraph (i) of this section. However, a fee may be paid in the micro entity amount only if status as a micro entity as defined in paragraph (a) or (d) of this section is appropriate on the date the fee is being paid. Where an assignment of rights or an obligation to assign rights to other parties who are micro entities occurs subsequent to the filing of a certification of entitlement to micro entity status, a second certification of entitlement to micro entity status is not required.

(h) Prior to submitting a certification of entitlement to micro entity status in an application, including a related, continuing, or reissue application, a determination of such entitlement should be made pursuant to the requirements of this section. It should be determined that each applicant qualifies for micro entity status under

paragraph (a) or (d) of this section, and that any other party holding rights in the invention qualifies for small entity status under § 1.27. The Office will generally not question certification of entitlement to micro entity status that is made in accordance with the requirements of this section.

(i) Notification of a loss of entitlement to micro entity status must be filed in the application or patent prior to paying, or at the time of paying, any fee after the date on which status as a micro entity as defined in paragraph (a) or (d) of this section is no longer appropriate. The notification that micro entity status is no longer appropriate must be signed by a party identified in § 1.33(b). Payment of a fee in other than the micro entity amount is not sufficient notification that micro entity status is no longer appropriate. A notification that micro entity status is no longer appropriate will not be treated as a notification that small entity status is also no longer appropriate unless it also contains a notification of loss of entitlement to small entity status under § 1.27(f)(2). Once a notification of a loss of entitlement to micro entity status is filed in the application or patent, a new certification of entitlement to micro entity status is required to again obtain micro entity status.

(j) Any attempt to fraudulently establish status as a micro entity, or pay fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office. Improperly, and with intent to deceive, establishing status as a micro entity, or paying fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office.

(k) If status as a micro entity is established in good faith in an application or patent, and fees as a micro entity are paid in good faith in the application or patent, and it is later discovered that such micro entity status either was established in error, or that the Office was not notified of a loss of entitlement to micro entity status as required by paragraph (i) of this section through error, the error will be excused upon compliance with the separate submission and itemization requirements of paragraph (k)(1) of this section and the deficiency payment re-

quirement of paragraph (k)(2) of this section.

(1) Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error) required for a single application or patent. Where more than one application or patent is involved, separate submissions of deficiency payments are required for each application or patent (see § 1.4(b)). The paper must contain an itemization of the total deficiency payment for the single application or patent and include the following information:

(i) Each particular type of fee that was erroneously paid as a micro entity, (*e.g.*, basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a small or non-small entity, as applicable;

(ii) The micro entity fee actually paid, and the date on which it was paid;

(iii) The deficiency owed amount (for each fee erroneously paid); and

(iv) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts as set forth in paragraph (k)(2) of this section.

(2) The deficiency owed, resulting from the previous erroneous payment of micro entity fees, must be paid. The deficiency owed for each previous fee erroneously paid as a micro entity is the difference between the current fee amount for a small entity or non-small entity, as applicable, on the date the deficiency is paid in full and the amount of the previous erroneous micro entity fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously and erroneously paid as a micro entity.

(3) If the requirements of paragraphs (k)(1) and (2) of this section are not complied with, such failure will either be treated at the option of the Office as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month time period that is not extendable under § 1.136(a) to avoid the return of the fee deficiency payment.

(4) Any deficiency payment (based on a previous erroneous payment of a micro entity fee) submitted under this paragraph will be treated as a notification of a loss of entitlement to micro entity status under paragraph (i) of this section.

[77 FR 75033, Dec. 19, 2012, as amended at 78 FR 62396, Oct. 21, 2013]

### Subpart B—National Processing Provisions

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

#### § 1.31 Applicant may be represented by one or more patent practitioners or joint inventors.

An applicant for patent may file and prosecute the applicant's own case, or the applicant may give power of attorney so as to be represented by one or more patent practitioners or joint inventors, except that a juristic entity (*e.g.*, organizational assignee) must be represented by a patent practitioner even if the juristic entity is the applicant. The Office cannot aid in the selection of a patent practitioner.

[77 FR 48813, Aug. 14, 2012]

#### § 1.32 Power of attorney.

(a) *Definitions.* (1) *Patent practitioner* means a registered patent attorney or registered patent agent under § 11.6.

(2) *Power of attorney* means a written document by which a principal authorizes one or more patent practitioners or joint inventors to act on the principal's behalf.

(3) *Principal* means the applicant (§ 1.42) for an application for patent and the patent owner for a patent, including a patent in a supplemental examination or reexamination proceeding. The principal executes a power of attorney designating one or more patent practitioners or joint inventors to act on the principal's behalf.

(4) *Revocation* means the cancellation by the principal of the authority previously given to a patent practitioner or joint inventor to act on the principal's behalf.

(5) *Customer Number* means a number that may be used to:

(i) Designate the correspondence address of a patent application or patent such that the correspondence address for the patent application, patent or other patent proceeding would be the address associated with the Customer Number;

(ii) Designate the fee address (§ 1.363) of a patent such that the fee address for the patent would be the address associated with the Customer Number; and

(iii) Submit a list of patent practitioners such that those patent practitioners associated with the Customer Number would have power of attorney.

(6) *Patent practitioner of record* means a patent practitioner who has been granted a power of attorney in an application, patent, or other proceeding in compliance with paragraph (b) of this section. The phrases practitioner of record and attorney or agent of record also mean a patent practitioner who has been granted a power of attorney in an application, patent, or other proceeding in compliance with paragraph (b) of this section.

(b) A power of attorney must:

(1) Be in writing;

(2) Name one or more representatives in compliance with paragraph (c) of this section;

(3) Give the representative power to act on behalf of the principal; and

(4) Be signed by the applicant for patent (§ 1.42) or the patent owner. A patent owner who was not the applicant under § 1.46 must appoint any power of attorney in compliance with §§ 3.71 and 3.73 of this chapter.

(c) A power of attorney may only name as representative:

(1) One or more joint inventors (§ 1.45);

(2) Those registered patent practitioners associated with a Customer Number;

(3) Ten or fewer patent practitioners, stating the name and registration number of each patent practitioner. Except as provided in paragraph (c)(1) or (c)(2) of this section, the Office will not recognize more than ten patent practitioners as being of record in an application or patent. If a power of attorney names more than ten patent practitioners, such power of attorney must be accompanied by a separate