

**Denis R. O'Brien, PhD**

**"The Patent Guy"<sup>SM</sup>®**

Registered U.S. Patent Attorney

21852 16th Ave.  
Langley, BC, Canada  
V2Z 1K5  
604-533-3114

www.ThePatentGuy.net  
denis@ThePatentGuy.net

US mailing address:  
PO Box 1699  
Blaine, WA 98231-1699

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The Honorable Senator Patrick Leahy  
United States Senate  
Washington, D.C. 20510

The Honorable Representative Lamar Smith  
U.S. House of Representatives  
Washington, DC 20515

The Senate Judiciary Committee  
United States Senate  
Washington, D.C. 20510

The House Judiciary Committee  
U.S. House of Representatives  
Washington, DC 20515

**Re: Leahy-Smith America Invents Act, 2011 – 35 U.S.C. §123, Micro-Entity**

Dear Senator Leahy, Representative Smith, and Committee members

As an American and a U.S. patent attorney, I congratulate you all on passing the Leahy-Smith America Invents Act of 2011. I have been a patent lawyer since 1998, and I can both appreciate the hard work that went into this Act and recognize the many benefits that will result from it.

I write to ask for your advice as to how to counsel my clients with respect to the new micro-entity, as it is defined by §10 of the AIA. I am writing in behalf of individual inventors not associated with any companies or educational institutes, and with no, or inadequate, voice in Congress. In fact, I am such an inventor myself, with three patents issued on five patent applications, one of which is still pending.

I anticipate the following questions from such individual inventors:

1. Given that subsection (a)(2) of the new §123 of Title 35 prohibits small entity inventors from qualifying as micro-entities if they have filed four previous applications, and given that this subsection does not make an exception for applications filed prior to the effective date of §123, my clients need to know:

**What possible reason or policy rationale is there for excluding inventors who have filed four or more US patent applications prior to the effective date of the micro-entity program?**

One might agree that it is not unreasonable for the micro-entity discount to be limited to four applications, but those of us who have already filed four applications without receiving any benefits under the micro-entity program whatsoever are being discriminated against because of applications we filed years or decades prior to any talk of a "micro-entity." This discrimination,

although it may be unintended, will be perceived as being unfair, arbitrary, and capricious.

2. Section 123(d)(1) defines employees of institutions of higher education as micro-entities regardless of how much they make and regardless of whether their invention is in any way associated with or connected to their institution or their employment. This special class of inventors is permitted to file an unlimited number of applications as micro-entities. Consequently, my clients need to know:

**Given that most micro-entity applicants are income-tested under §123(a)(3), what possible reason or policy rationale is there for automatically designating as a micro-entity a college football coach who makes \$10M per annum? Or a college professor who makes \$200K per annum? Or a college dean who makes \$300K per annum?**

**Why is an inventor who is a university grounds-keeper, or a college secretary or college police officer entitled to automatic micro-entity status, even if their inventions have absolutely nothing to do with their employer or employment?**

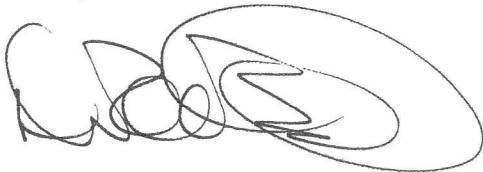
**And why are these automatic university employee micro-entities allowed to file unlimited applications as micro-entities when the rest of us are limited to four micro-entity applications, or are eliminated from the program altogether if we have already filed four applications?**

Although the micro-entity idea may have been well-intentioned, with all due respect, the definition of micro-entity as set forth in §123 is going to cause tremendous and well-deserved criticism by tens of thousands of individual inventors who are being discriminated against. I do not see how regulations can possibly remedy these statutory inequities.

Please find such criticism in a blog article authored by me and titled: "The Leahy-Smith Micro-entity: Less than advertised" at <http://www.thepatentguy.net/AIA2011/> . You may also be interested in my more detailed paper titled: "Leahy's Micro-entity: What Tom-Foolery (WTF) Is This?" <http://thepatentguy.net/News-Views/N&V-Oct26-11.pdf> .

If you feel that I am not interpreting §123 properly, I would be delighted if you or your staff would take a couple of minutes and correct me. My Email and US postal address are given above.

Thank you,



Denis R. O'Brien, PhD/Esq.  
U.S. Pat. Registration 42,947