

Canada Patent Official Fees Reduction Rules

Version : 2024-01-01

1. Definitions / Requirements

A “small entity”, in respect of an invention, means an entity (including an individual person) that employs less than 100 employees or that is a university, but does not include an entity that:

- (1). is controlled directly or indirectly by an entity, other than a university, that employs 100 or more employees; or
- (2). has transferred or licensed or has an obligation, other than a contingent obligation, to transfer or license any rights relating to the invention to an entity, other than a university, that employs 100 or more employees.

According to “A guide to patents” promulgated by the Canadian Intellectual Property Office (CIPO) online¹, small entity status is determined at the time of filing the patent application, or the date of Canadian national phase entry for a PCT application. If a company employed 10 people at the time of filing and then grows to 200 people five years later, it still qualifies as a small entity.

Prior to paying any small entity fees, the CIPO requires the submission of a Small Entity Declaration executed by an authorized person on behalf of the applicant. The name and title of the individual signing the declaration should be provided. This declaration can be submitted at any time, but large Entity fees paid before it is filed cannot be refunded.

※ Notes:

Although the requirements for small entity status are laid out in the patent rules, the language is complex and imprecise.

- As our Canadian counsel explains, Canadian courts have observed that “no matter how diligently an applicant for a patent attempts to make these factual determinations, there is some risk of being wrong.” For example, in the absence of guidance from the courts, applicants cannot be certain as to the meaning of “controlled directly or indirectly” or that of “contingent obligation.” Moreover, in some circumstances, it may not be straightforward to determining an individual’s status as an employee for the purpose of the small entity definition.
- Correction of small entity payments is subject to the discretion of the Commissioner of Patents in the CIPO. The CIPO, nevertheless, has provided little guidance as to when the extension will or will not be granted.

The fees charged by the Patent Office and, therefore, the financial savings are relatively small. Due to the risk of **patent invalidation if a large entity is discovered to have improperly paid small entity fees in instances wherein the error is not corrected in time**, our Canadian partner counsel suggests that full (large entity) fees be paid.

2. Fee Reduction

Certain fees and maintenance fees are subject to a reduction of 50%.

Remarks :

- (1) The information above was collected on **1 January 2024**. In the event of any patent law changes in the said country, the new amendments shall prevail.
- (2) We are not responsible for verifying the client’s fee reduction qualification status and will follow the client’s instructions to process the patent renewals payment. In case of any changes of client’s fee reduction qualification status, please inform us for processing in order to comply with the payment regulations of the patent laws of various countries.
- (3) We do not assume any legal liability in case of the case abandoned, payment failed or any other rights losses or damages caused due to the above mentioned client’s instructions or incorrect data.

¹ https://s3.ca-central-1.amazonaws.com/manuels-manuals-opic-cipo/MOPOP_English.html#_Toc112149368.