



IPIC

Small Entity Declaration - (Rule 3.01(1))

Amongst the amendments to the Patent Rules that came into force on June 2, 2007, is the requirement that a small entity declaration be signed (Rule 3.01(1)(e)).

Where a fee is paid at the small entity rate on or after June 2, 2007, CIPO will accept the fee if 1) there is already a signed small entity declaration of record and the previously filed declaration complies with all the other requirements of new subsection 3.01(1) of the *Patent Rules* (a small entity declaration in the Petition is sufficient only if the Petition was signed), or 2) a signed small entity declaration is filed with the payment. Members should be aware that CIPO takes the position that if a fee is required to maintain an application in good standing and the fee is paid at the small entity level without there being a signed small entity declaration on file, the application would become abandoned upon the expiration of the time limit for paying the fee.

Accordingly, members should be aware that in any case where small entity status has been claimed, if there is not already a *signed* small entity declaration filed in connection with the application or patent a signed small entity declaration must be filed before or with the first small entity payment made on or after June 2, 2007.

Members are also encouraged to consider the status of the applicant or patentee under the new definition of "small entity" that came into force on June 2, 2007, and if small entity status can still be claimed, to file a new small entity declaration even if there is already a signed small entity declaration on file. However, presently CIPO is not rejecting payment of a small entity fee merely because the signed small entity declaration was filed before June 2, 2007.

A note about IPIC's actions in this area: as you know the Government did not adopt IPIC's proposal to replace the small entity regime by another incentive system. Anticipating this decision, IPIC examined the proposed *Rules* and raised with CIPO in January various issues regarding the new small entity provisions. However the Government chose to adopt the *Rules* now in place. Since June 2nd, the discussions about the new *Rules* have continued with CIPO in the Patent JLC and in a call between CIPO and IPIC. Regarding the small entity issues, after careful examination, IPIC has decided to take no further action (other than maintaining its position that the system should be replaced) because these issues ultimately depend on the interpretation by the courts.