

Response to Notice of Payment Deficiency & Show Cause Order – Options II & III

(This form is only to be used to respond under Options II and III to the small entity version of the Notice of Payment Deficiency & Show Cause Order)

(page 1 of 3)

Application or Patent No.:	First Named Inventor:
Filing Date:	Title of Invention:

Notification of Loss of Small Entity Status

Applicant or patentee hereby notifies the Office that small entity status is no longer appropriate in this application or patent. Applicant or patentee will pay undiscounted fees in this application or patent:

This form must be signed (see bottom of page 2). If you owe a fee deficiency, you must also complete the following "Fee Deficiency Payment" section and enclose payment for the full amount of the deficiency.

Fee Deficiency Payment

(please complete this section if you are correcting prior payments that were erroneously made in the small entity amount)

- ☐ The assertion was erroneous but in good faith. A good faith explanation and itemization of the total deficiency owed is provided along with payment of the total deficiency.
- ☐ The assertion was erroneous and a good faith explanation is not being provided. An itemization of the total deficiency owed is provided along with payment of the total deficiency and an offer to pay the fine once assessed.

As required by 37 CFR 1.28(c)(2)(ii), you MUST ITEMIZE the fee deficiency. Failure to itemize and pay the total deficiency will result in abandonment of the application or expiration of the patent. Please use the chart below to itemize the amounts for the above-identified application or patent. If you need more space to list the fees, please submit multiple forms. See below*.

Fee Description or Type	Current Fee Amount [✧]	Amount Previously Paid	Date Previously Paid	Deficiency Owed
Total Deficiency Owed (sum of all entries in "Deficiency Owed" column)				

[✧] The "current fee amount" refers to the small entity or undiscounted rate (whichever is applicable) listed on the fee schedule as currently in force at the time this paper is submitted and the deficiency is paid in full. The USPTO fee schedule is available at www.uspto.gov/Fees. For more information about submitting fee deficiencies, see MPEP 509.04(f). The MPEP is available at www.uspto.gov/MPEP.

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Fee Deficiency Payment (cont'd)

If you owe a fee deficiency, you must enclose payment for the total fee deficiency amount for prior payments erroneously made in the small entity amount in this application or patent. Do NOT combine fee deficiency payments with fine payments. Do NOT combine payments for multiple applications or patents. If you owe a fee deficiency in multiple applications or patents, you must submit a separate form and payment for each application or patent. Failure to pay the total deficiency will result in abandonment of the application or expiration of the patent.

Please check the applicable box for the form of payment, and follow the corresponding instructions for submitting this form and payment. Note, this section should only be used for the fee deficiency payment and not the fine payment.

- ☐ A check or U.S. Postal Service money order is enclosed. Please make payable to "Director of the USPTO," and mail this form with the check or money order to:
- Mail Stop Petition
Commissioner for Patent
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
- ☐ Payment by credit card. Do NOT provide credit card information on this form. Instead, include a completed Credit Card Payment Form (Form PTO-2038), which is available at www.uspto.gov/sites/default/files/documents/PTO-2038.pdf. Submit this form and Form PTO-2038 by facsimile to (571) 273-8300, or by mail to the address shown above.
- ☐ The Director is hereby authorized to charge \$ _____ to USPTO Deposit Account No. _____. If you select this option, this form must be signed by someone who is an authorized user of the deposit account, and who is permitted to sign in accordance with 37 CFR 1.33. If you are paying by deposit account, you may submit this form via the USPTO's patent electronic filing system (Patent Center), by facsimile to 571-273-8300, or by mail to the address shown above.

For more information on accepted payment methods, please see www.uspto.gov/learning-and-resources/fees-and-payment/accepted-payment-methods. Payment must be made in U.S. dollars, and if payment is made from a foreign country, the payment must be payable and immediately negotiable in the United States for the full amount of the fee required.

Penalty Payment Offer

- ☐ The entity offers to pay the fine once assessed by the USPTO.
- ☐ Payment of the penalty up to ____ times the total deficiency payment is authorized from deposit account _____.

Signature

This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4(d) for signature requirements and certifications.

If applicant or patentee is a juristic entity (e.g., an LLC or corporation), this form must be signed by a registered practitioner. See 37 CFR 1.31.

If applicant or patentee is a person or persons, this form may be signed by either a registered practitioner, or the applicant or patentee. Note that if multiple people together are the applicant or patentee (e.g., there are joint inventors who together are the applicant), then a signature is required from each person who is an applicant or patentee. *Submit multiple forms if more than one signature is required, see below*.*

Signature	Date
Name (Print/Type)	Practitioner Registration Number (if applicable)

☐ * Total of _____ forms are submitted

Instructions for Response to Notice of Payment Deficiency & Show Cause Order – Options II & III

(page 3 of 3; this page is not to be submitted to the USPTO)

Small entity status permits reductions to fees for filing, searching, examining, issuing, appealing and maintaining patent applications and patents. The current USPTO fee schedule reflects which specific fees are subject to small entity status reductions. All fees in the present application that were paid in an unentitled reduced amount due to an erroneous entity status need to be itemized in terms of current fee amount for the corrected entity status, amount previously paid for each fee, payment date for each previously paid fee and the deficiency owed for each previously paid fee. Then all fee payment deficiencies need to be added together to determine the total deficiency owed. The deficiency payment must include the deficiency for all the itemized fees in a single application or patent paid in an unentitled reduced amount due to the erroneous entity status assertion. Where more than one application or patent is involved, separate submissions for payment of the total deficiency determined for each application or patent is required. A stepwise instruction for itemization of the total deficiency payment for a single application or patent is as follows:

- (i) Audit the fee history of the application for fees paid in an unentitled reduced amount by consulting the current USPTO fee schedule to determine whether each fee paid was subject to an entity status discount. The current USPTO fee schedule can be found at: <https://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule>
- (ii) List each current fee amount due in the “Current Fee Amount” column based upon the proper entity status for each previously paid fee identified in step (i).
- (iii) List the amount paid in the “Amount Previously Paid” column, for each fee identified in step (i) that was paid in an unentitled reduced amount due to an erroneous entity status assertion.
- (iv) List the date each previously paid fee was paid in the “Date Previously Paid” column.
- (v) Subtract the fee amount listed in each row’s “Amount Previously Paid” box from the corresponding amount listed in the “Current Fee Amount” box for each row, and place the difference in the “Deficiency Owed” box for that row. Repeat this calculation for each row, until all rows have been addressed.*
- (vi) Add up all the amounts listed in the “Deficiency Owed” column and place it in the “Total Deficiency Owed” box at the bottom of the “Deficiency Owed” column; and
- (vii) Go to the “Fee Deficiency Payment” section on page two and follow the payment instructions for the method of payment chosen to pay the amount listed in the “Total Deficiency Owed” box.

* When the fee amount listed in the “Amount Previously Paid” box was subject to a fee decrease as reflected in the “Current Fee Amount” box, the amount that must be listed in the “Deficiency Owed” box is the same amount listed in the “Amount Previously Paid” box. See 37 CFR 1.28(c)(2)(i)

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. The United States Patent and Trademark Office (USPTO) collects the information in this record under authority of 35 U.S.C. 2. The USPTO's system of records is used to manage all applicant and owner information including name, citizenship, residence, post office address, and other information with respect to inventors and their legal representatives pertaining to the applicant's/owner's activities in connection with the invention for which a patent is sought or has been granted. The applicable Privacy Act System of Records Notice for the information collected in this form is COMMERCE/PAT-TM-7 Patent Application Files, available in the Federal Register at 78 FR 19243 (March 29, 2013), www.govinfo.gov/content/pkg/FR-2013-03-29/pdf/2013-07341.pdf.

Routine uses of the information in this record may include disclosure to: 1) law enforcement, in the event that the system of records indicates a violation or potential violation of law; 2) a federal, state, local, or international agency, in response to its request; 3) a contractor of the USPTO having need for the information in order to perform a contract; 4) the Department of Justice for determination of whether the Freedom of Information Act (FOIA) requires disclosure of the record; 5) a Member of Congress submitting a request involving an individual to whom the record pertains, when the individual has requested the Member's assistance with respect to the subject matter of the record; 6) a court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel in the course of settlement negotiations; 7) the Administrator, General Services Administration (GSA), or their designee, during an inspection of records conducted by GSA under authority of 44 U.S.C. 2904 and 2906, in accordance with the GSA regulations and any other relevant (i.e., GSA or Commerce) directive, where such disclosure shall not be used to make determinations about individuals; 8) another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)); 9) the Office of Personnel Management (OPM) for personnel research purposes; and 10) the Office of Management and Budget (OMB) for legislative coordination and clearance.

If you do not furnish the information requested on this form, the USPTO may not be able to process and/or examine your submission, which may result in termination of proceedings, abandonment of the application, and/or expiration of the patent.