



United States Patent and Trademark Office

Office of the Commissioner for Patents

MEMORANDUM

DATE: October 24, 2025

TO: Patent Examining Corps

FROM: Brian E. Hanlon, Assistant Commissioner for Patents *Brian E. Hanlon*

SUBJECT: Advance notice of change to the MPEP with respect to false assertions or certifications of entity status

This memorandum is to provide advance notice of changes made to the Manual of Patent Examining Procedure (MPEP) §§ 410, 509.03(b), subsection II, 509.04, subsection I, and 1002.02(b) related to the USPTO's determination of false assertions or certifications of entity status. On June 12, 2025, the USPTO issued an Official Gazette Notice titled "Statutory Penalties for False Assertions or Certifications of Small and Micro Entity Status," 1536 OG 204, July 8, 2025. The notice states that the USPTO may institute a review of pending patent applications or patents to determine whether there is a false entity status claim that resulted in the payment of at least one fee in an unentitled reduced amount. As a result, the following changes are made to the MPEP and supersede the 9th Edition, Revision 01.2024, November 2024 publication of the MPEP.¹

The ante-penultimate and penultimate paragraphs in MPEP § 410 are revised to read:

37 CFR 1.4(d)(~~5~~)(4)² and 11.18 are intended to discourage the filing of frivolous or clearly unwarranted correspondence in the Office; the Office may ~~does not~~ ~~routinely~~ review correspondence for compliance with 37 CFR 11.18(b)(2) and impose sanctions under 37 CFR 11.18(c).

Where the circumstances of an application or other proceeding warrant a determination of whether there has been a violation of 37 CFR 11.18(b), the file or the application or other proceeding may be forwarded to the Deputy Commissioner for Patents who oversees the Office of Petitions for a determination of whether there has been a violation of 37 CFR 11.18(b). See, e.g., MPEP §§ 509.03(b), subsection II, 509.04, subsection I, and 1002.02(b) (At USPTO's discretion, employees reporting to the Assistant Commissioner for Patents that oversees the Office of Petitions may review an entity status claim to

¹ These changes do not suggest that the USPTO previously lacked authority or procedure to review pending applications or patents in connection with entity status claims or that the USPTO previously refrained from doing so. Although the USPTO did not routinely undertake such reviews, the USPTO has done so where, for example, the record contains *prima facie* evidence that an entity status certification is erroneous.

² 37 CFR 1.4(d)(4) was renumbered as 37 CFR 1.4(d)(5). 89 FR 20321, March 22, 2024.

determine whether an applicant (or patent owner) is entitled to the entity status claimed as well as the reasonableness of their conduct in making the entity status claimed.). See also MPEP § 714.25. In the event that a provision of 37 CFR 11.18(b) has been violated, the USPTO Director will determine what (if any) sanction(s) under 37 CFR 11.18(c) is to be imposed in the application or other proceeding.

MPEP § 509.03(b), subsection II, is revised to read:

37 CFR 1.27(h) indicates that any attempt to fraudulently establish status as a small entity or pay fees as a small entity will be considered as a fraud practiced or attempted on the Office. Applicants should not rely on any oral advice inadvertently given by an Office employee as to entitlement to small entity status. In addition, applicants (or patent owners) that, improperly and with intent to deceive, establish establishing status as a small entity or paying fees as a small entity will be considered as practicing or attempting a fraud practiced or attempted on the Office. At USPTO's discretion, employees reporting to the Assistant Commissioner for Patents that oversees the Office of Petitions may review a small entity status claim to determine whether an applicant (or patent owner) is entitled to small entity status.

The second paragraph of MPEP § 509.04, subsection I, is revised to read:

Any attempt to fraudulently establish status 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 or paying fees as a micro entity shall be considered as a fraud practiced or attempted on the Office. See 37 CFR 1.29(j). The provisions of 37 CFR 1.29(j) for micro entity correspond to the provisions of 37 CFR 1.27(h) for small entity. Applicants should not rely on any oral advice inadvertently given by an Office employee as to entitlement to micro entity status.

The following is added to the end of MPEP § 1002.02(b):

51. Requests for reconsideration of any assessed fine or issued sanction based upon a determination an entity status claim was falsely made and not in good faith under 35 U.S.C. 41(j), 123(f) and 37 CFR 11.18(b).

These changes to the MPEP are effective on issuance of this memo and supersede the content in the Ninth Edition, Revision 01.2024, November 2024 publication of the MPEP. The MPEP will be revised to include these changes in due course.