

America Invents Act of 2011 Changes Affecting Businesses

The America Invents Act was passed signed into law on September 16, 2011, and includes a number of changes for businesses and individual inventors to monitor. Here are a few highlights:

USPTO Fee Increases

Examples:

Application Type:	Current Cost to File - Large Entity	Large Entity Proposed Changes 2013	Current Cost to File - Small Entity	Small Entity Proposed Changes 2013
Provisional Application	\$250	\$260	\$125	\$130
Non-Provisional Application	\$1250	\$1840	\$530	\$920
Design Application	\$530	\$1180	\$265	\$590

New Micro Entity Business Classifications for Start- Up Businesses and New Inventors

If your business qualifies under this category, it is eligible for a 75% filing fee discount:

To qualify your business an applicant must meet the following criteria:

- ✓ Meet all the requirements of a small entity
- ✓ Must not be named on more than four previously filed patent applications
- ✓ Must not have had a gross income exceeding 3 times the median household income for the previous calendar year
- ✓ Not assigned, granted, or conveyed, and under no obligation by contract to assign, grant, or convey, or license or other ownership interest in the application concerned to an entity that would not meet the above requirement.

First-To-File an Application

Under the old law patents were awarded to the first individual to the individual who was first to document inventorship. Although this is technically a change, it will have little impact on inventors since reexamination and interference proceedings to challenging an earlier filed application have always been

impractical. **ATL editorial note: this provision of the law has gotten a disproportionate amount of press for the impact it will have.**

No More Reexamination ... New “Inter Partes Review Process”

The reexamination process has traditionally been feared by patent holders. It was the proceeding used by third parties to challenge an issued patent at the USPTO. Now that process is being replaced with the inter partes review process, which it makes it more difficult to challenging an issued patent by requiring a higher initial threshold. **ATL comment: This is good news for companies holding issued patents.** Under this new process, law a third party seeking to narrow invalidate a competitor’s patent must show a reasonable likelihood of success in invalidating or requiring a change with respect to at least one change.