

**§ 1.25 Deposit accounts.**

(a) For the convenience of attorneys, and the general public in paying any fees due, in ordering services offered by the Office, copies of records, etc., deposit accounts may be established in the Patent and Trademark Office upon payment of the fee for establishing a deposit account (§ 1.21(b)(1)). A minimum deposit of \$1,000 is required for paying any fees due or in ordering any services offered by the Office. However, a minimum deposit of \$300 may be paid to establish a restricted subscription deposit account used exclusively for subscription order of patent copies as issued. At the end of each month, a deposit account statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit. An amount sufficient to cover all fees, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted. A service charge (§ 1.21(b)(2)) will be assessed for each month that the balance at the end of the month is below \$1,000. For restricted subscription deposit accounts, a service charge (§ 1.21(b)(3)) will be assessed for each month that the balance at the end of the month is below \$300.

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular paper filed. An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular

fee to be charged unless sufficient funds are present in the account to cover the fee.

(35 U.S.C. 6, Pub. L. 97-247)

[49 FR 553, Jan. 4, 1984, as amended at 50 FR 31826, Aug. 6, 1985]

**§ 1.26 Refunds.**

(a) Any fee paid by actual mistake or in excess of that required will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account.

(b) [Reserved]

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of \$1,690 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

(35 U.S.C. 6; 15 U.S.C. 1113, 1123)

[47 FR 41274, Sept. 17, 1982, as amended at 50 FR 31826, Aug. 6, 1985; 54 FR 6902, Feb. 15, 1989; 56 FR 65153, Dec. 13, 1991; 57 FR 38195, Aug. 21, 1992; 62 FR 53183, Oct. 10, 1997]

**§ 1.27 Statement of status as small entity.**

(a) Any person seeking to establish status as a small entity (§ 1.9(f) of this part) for purposes of paying fees in an application or a patent must file a statement in the application or patent prior to or with the first fee paid as a small entity. Such a statement need only be filed once in an application or patent and remains in effect until changed.

(b) When establishing status as a small entity pursuant to paragraph (a) of this section, any statement filed on behalf of an independent inventor must be signed by the independent inventor except as provided in § 1.42, § 1.43, or § 1.47 of this part and must state that the inventor qualifies as an independent inventor in accordance with

§ 1.9(c) of this part. Where there are joint inventors in an application, each inventor must file a statement establishing status as an independent inventor in order to qualify as a small entity. Where any rights have been assigned, granted, conveyed, or licensed, or there is an obligation to assign, grant, convey, or license, any rights to a small business concern, a nonprofit organization, or any other individual, a statement must be filed by the individual, the owner of the small business concern, or an official of the small business concern or nonprofit organization empowered to act on behalf of the small business concern or nonprofit organization identifying their status. For purposes of a statement under this paragraph, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license as set forth in § 1.9 of this part.

(c)(1) Any statement filed pursuant to paragraph (a) of this section on behalf of a small business concern must:

(i) Be signed by the owner or an official of the small business concern empowered to act on behalf of the concern;

(ii) State that the concern qualifies as a small business concern as defined in § 1.9(d); and

(iii) State that the exclusive rights to the invention have been conveyed to and remain with the small business concern or, if the rights are not exclusive, that all other rights belong to small entities as defined in § 1.9.

(2) Where the rights of the small business concern as a small entity are not exclusive, a statement must also be filed by the other small entities having rights stating their status as such. For purposes of a statement under this paragraph, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license as set forth in § 1.9 of this part.

(d)(1) Any statement filed pursuant to paragraph (a) of this section on behalf of a nonprofit organization must:

(i) Be signed by an official of the nonprofit organization empowered to act on behalf of the organization;

(ii) State that the organization qualifies as a nonprofit organization as de-

defined in § 1.9(e) of this part specifying under which one of § 1.9(e) (1), (2), (3), or (4) of this part the organization qualifies; and

(iii) State that exclusive rights to the invention have been conveyed to and remain with the organization or if the rights are not exclusive that all other rights belong to small entities as defined in § 1.9 of this part.

(2) Where the rights of the nonprofit organization as a small entity are not exclusive, a statement must also be filed by the other small entities having rights stating their status as such. For purposes of a statement under this paragraph, a license to a Federal agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a conveyance of rights as set forth in this paragraph.

[62 FR 53183, Oct. 10, 1997]

**§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.**

(a)(1) The failure to establish status as a small entity (§§ 1.9(f) and 1.27 of this part) in any application or patent prior to paying, or at the time of paying, any fee precludes payment of the fee in the amount established for small entities. A refund pursuant to § 1.26 of this part, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if a statement under § 1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full fee. The two-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within two months of the date of payment of, the fee.

(2) Status as a small entity must be specifically established in each application or patent in which the status is available and desired. Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been established. The refiling of an application under § 1.53 as a continuation, division,