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On September 16, 2011, President Obama signed the Leahy-Smith America Invents Act [P.L. 112-29] making the first major modifications to U.S. patent policy and procedures in almost sixty years. The Act contains several changes of special note to small businesses in keeping with the Act's Section 30 expression of the sense of Congress that "...the patent system should promote industries to continue to develop new technologies that spur growth and create jobs across the country which includes protecting the rights of small businesses and inventors from predatory behavior that could result in the cutting off of innovation."

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- Sec. 3 defines the "effective filing date" of a claimed invention as "the actual filing date of the patent or the application for the patent containing a claim to the invention." This switch from the previous "first to invent" system to a "first to file" system makes the U.S. system more congruent with the patent procedures in most of the rest of the world.
- Sec. 5 creates a defense to infringement based on prior commercial use of the invention through internal use, arm's length sale or other arm's length commercial transaction that occurred at least one year before the earlier of the effective filing date of the claimed invention or the date on which the claimed invention was disclosed to the public.
- Sec. 3 also requires that within one year of the effective date of the Act, the Chief Counsel for Advocacy of the SBA and the General Counsel of the U.S. Patent and Trademark Office (USPTO) are to submit to Congress a study which addresses the effects on small businesses of eliminating the "first to invent" standard, with an emphasis on the ability of small businesses to obtain patents, their costs, and whether the change creates practical advantages or disadvantages in the patent process for small businesses.

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- Section 10 gives the Commissioner of the Patent and Trademark Office the authority to set or adjust fees by rule and provides that fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent for any small entity qualifying for reduced fees under 35 U.S.C, 41(h)(1) [i.e. effectively any business meeting the SBA's small business definition at 13 CFR 121-80-121.805 and which has not assigned any rights in the claimed invention to any entity that would not meet that small business definition]. The same fees for "micro entities" shall be reduced by 75 percent. The Act adds new language defining "micro entity" as an entity meeting the definition of a small entity and not having been named as an inventor on more than 4 previously filed patent applications, and not having in the prior calendar year preceding the application a gross income [defined by reference to IRC Sec. 61(a)] exceeding 3 times the median household income for that year, and not having conveyed any interest in the invention to an entity that in the previous calendar year had a gross income greater than 3 times the median household income.
- Section 14 addresses "tax strategy" patents effectively eliminating the possibility of future patents of "any strategy for reducing, avoiding, or deferring tax liability" by stating that such strategy "shall be deemed insufficient to differentiate a claimed invention from the prior art" (and so not meeting the basic patentability requirement of improvement on prior art).
- Section 18 addresses the controversial "business method patents" whereby a patent is awarded for "a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service." [See *State Street Bank & Trust Co. v. Signature Financial Group*, 149 F.3d 1368 (Fed. Cir. 1998)]. That Section requires the Patent Office Director, within one year of enactment of the Act, to issue regulations establishing and implementing a transitional post-grant review of the validity of business method patents."
- Section 28 established, within the Patent and Trademark Office, the "Patent Ombudsman Program" whose duties include "providing support and services relating to patent filings to small business concerns and independent inventors."

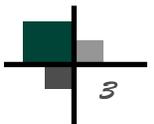
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Department of Employment and Economic Development

1st National Bank Building ■ 332 Minnesota, Suite E200 ■ Saint Paul, MN 55101-1351 USA ■ www.positivelyminnesota.com
651-259-7114 ■ Toll Free: 800-657-3858 ■ Fax: 651-296-5287 ■ TTY/TDD: 651-282-5909

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