

**CHANGES TO UNITED STATES PATENT LAW
WIN, LOSE OR DRAW FOR SMALL AND STARTUP BUSINESSES
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The Federal Government instituted sweeping changes to United States Patent Law this past fall with enactment of the “America Invents Act”. While many of the substantive changes do not take effect until fall of 2012, it is important to understand the likely consequences, both intended and unintended, of these changes in order to avoid costly and potentially disastrous surprises in the future.

The ten aspects of the America Invents Act which will likely have the biggest impact upon small and startup businesses are listed below. These enumerated topics will be covered in more detail in subsequent issues of Corporate Cranium. Should you desire an immediate detailed explanation of any of these topics, please feel free to call Sherrill Law Offices at 651.426.2400 and ask for Michael Sherrill.

1. **Fees:** Fees are increased, with a significant reduction provided for “Micro-Entities”.
2. **Virtual Marking:** Option to use the internet to inform potential infringers that a product is covered by a patent.
3. **Uncooperative Inventors:** Filing of a patent application that includes an uncooperative inventor is simplified.
4. **Tollway:** Patent applicants may pay a fee (\$4,800) in order to have their application moved through the system on an expedited basis.
5. **Expressway:** Patent applications directed to “Important Technologies” entitled to have their application moved through the system on an expedited basis without paying a toll.
6. **Commercial Use Defense:** Expands Prior Commercial Use as a defense to patent infringement.
7. **Administrative Validity Challenges:** Administrative procedures for contesting validity of an issued patent in the United States Patent and Trademark Office (Ex Parte Reexamination and Inter-Partes Reexamination) are replaced with expedited procedures (“Post Grant Review” and “Inter Partes Review”).
8. **Mulligans:** Administrative procedure for “fixing” an issued patent in the United States Patent and Trademark Office (“Reissuance”) is replaced with an expedited procedure (Supplemental Examination).
9. **Business Method Patent Review Program:** Persons charged with infringing a business method patent are entitled to request that the USPTO reevaluate validity of the asserted business method patent.
10. **First to File:** The United States transitions from a “First to Invent” system to a “First to File” system.

Changes in the Fee Structure and creation of the new “miro-entity” discount will be covered in the next issue of Corporate Cranium.