

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE ADMINISTRATIVE LAW JUDGE  
OF THE DEPARTMENT OF COMMERCE

HARRY I. MOATZ,	)	
Director, Office of	)	
Enrollment and Discipline	)	
	)	
v.	)	Proceeding No. D06-16
	)	
STUART W. ROSE,	)	
Respondent	)	

ORDER GRANTING DIRECTOR'S MOTION FOR DEFAULT JUDGMENT

INITIAL DECISION

This disciplinary proceeding was initiated under 35 U.S.C. § 32 and 37 C.F.R. part 10 against Stuart W. Rose ("Respondent") of Hillsboro, Illinois. Respondent, a patent agent, is registered (Registration No. 32,801) to practice before the United States Patent and Trademark Office (the "PTO" or "USPTO") and is subject to the PTO Disciplinary Rules of Professional Conduct ("PTO Disciplinary Rules"), set forth in Section 10 of Title 37, Code of Federal Regulations. On November 16, 2006, the Director of Enrollment and Discipline for the PTO, Harry I. Moatz ("Complainant"), filed a Complaint and Notice of Proceeding Under 35 U.S.C. § 32 ("Complaint") alleging that Respondent committed several violations of the PTO Code of Professional Responsibility in 36 C.F.R. § 10.23. In the Complaint, Complainant requests entry of an Order pursuant to 37 C.F.R. § 10.154 excluding Respondent from practice before the USPTO.

The one Count in the Complaint asserts that Respondent was indicted by the State of Illinois on two counts of possession with intent to manufacture a controlled substance, (720 ILCS 570/401(a)(6.6)(B)(2000)), and controlled substance trafficking (720 ILCS 570/401.01(a)(2000)). *People v. Rose*, 342 Ill.App. 3d 203, 794 N.E.2d 1004 (Ill. App 2003), *aff'd*, 206 Ill. 2d 639, 806 N.E.2d 1071 (Ill. 2003). On or about February 2, 2006, Respondent pled guilty to one count of possession of chemicals with intent to manufacture a controlled substance, methamphetamine, 150<500 GR, in violation of 720 ILCS 570/401(a)(6.6)(B) (2000). On or about May 23, 2006, Respondent was convicted of the felony of intent to manufacture a controlled substance in violation of 720 ILCS 570/401(a)(6.6)(B) (2000), and he was sentenced to fourteen (14) years in the Illinois

Department of Corrections. Respondent was taken into custody on May 30, 2006. The Complaint alleges that Respondent's conduct violated PTO Disciplinary Rules 10.23(b)(3), (b)(4), (b)(6), and 10.23(c)(1).

The record reflects that on November 16, 2006, the Director served a copy of the Complaint on Respondent by certified mail at Illinois Dept. Of Corrections, Graham Facility, Inmate #: R52888, R.R. #1, Highway 185, P.O. Box 499 Hillsboro, IL. 62049. Complainant's Exhibits indicate the Director received notice that the Complaint was delivered on November 20, 2006, in Hillsboro, Illinois 62049, and that Respondent signed the return receipt. Compl. Ex. 1, 2.

Respondent never filed an Answer, despite the thirty (30) days from the date of the Complaint that Complainant afforded Respondent to do so, nor did Respondent request an extension. See 37 C.F.R. § 10.136(a) and (b).

On May 10, 2007, Complainant filed a Motion for Default Judgment<sup>1/</sup> asserting that, as a result of Respondent's failure to answer the Complaint, every allegation in the Complaint should be deemed as admitted and that the Court should enter judgment against Respondent and order the relief requested. See 37 C.F.R. §§ 10.136(d) ("Failure to timely file an answer will constitute an admission of the allegations in the complaint"), 10.134(a)(4) ("a decision by default may be entered against the respondent if an answer is not timely filed"); 37 C.F.R. § 10.154 ("The administrative law judge shall make an initial decision in the case"); see also Fed. R. Civ. P. 55(b)(1) (allowing entry of judgment on default upon request of plaintiff premised upon defendant's failure to appear).

#### **FINDINGS**

1. Based on this Tribunal's determination and finding that the Complainant has fully complied with the requirements for proper service of the Complaint, as set forth at 37 C.F.R. § 10.135, and that, despite such

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<sup>1/</sup> The certificate of service accompanying the Motion for Default Judgment certifies that on May 10, 2007 a copy of the Motion and attached exhibits were sent to Respondent by certified mail at Respondent's last known address, Illinois Dept. Of Corrections, Graham Facility, Inmate #: R52888, R.R. # 1, Highway 185, P.O. Box 499, Hillsboro, IL 62049. No response to the Motion has been received by this Tribunal or Complainant.

proper service, Respondent has failed to file an Answer, Respondent is hereby found to be in **DEFAULT**.

2. This Tribunal finds that Respondent's failure to timely file and Answer to the Complaint constitutes an admission of each and every allegation in the Complaint, as recounted below. The allegations in the Complaint, as well as the assertions in Complainant's Motion for Default Judgment, including the accompanying Exhibits 1 and 2, are incorporated into this Initial Decision by reference.
3. On or about December 28, 1987, Respondent was registered as a patent agent with the USPTO.
4. Respondent was indicted by the State of Illinois on two counts of possession with intent to manufacture a controlled substance (720 ILCS 570/401(a)(6.6)(B)) (2000), and controlled substance trafficking (720 ILCS 570/401.01(a))(2000). *People v. Rose*, 342 Ill.App.3d 203, 794 N.E.2d 1004 (Ill. App 2003), *aff'd*, 806 N.E.2d 1071 (Table)(Ill. 2003).
5. On or about February 2, 2006, Respondent pled guilty to one count of possession of chemicals with intent to manufacture a controlled substance, methamphetamine, 150<500 GR, in violation of 720 ILCS 570/401(a)(6.6)(B) (2000).
6. 720 ILCS 570/401(a)(6.6)(B)(2000) provided:

§ 401(a). Any person who violates this Section with respect to the following amounts of controlled or counterfeit substances or controlled substance analogs, notwithstanding any of the provisions or subsections (c), (c-5), (d), (d-5), (e), (f), (g), or (h) to the contrary, is guilty of a Class X felony and shall be sentenced to a term of imprisonment as provided in this subsection (a) and fined as provided in subsection (b):

(6.6) ...

(B) no less than 6 years and not more than 40 years for the possession of any methamphetamine manufacturing chemical set forth in paragraph (z-1) of Section 102 with intent to manufacture 150

grams or more but less than 500 grams of any substance containing methamphetamine, or salt of an optical isomer of methamphetamine, or an analog thereof ....

7. On or about May 23, 2006, Respondent was convicted of intent to manufacture a controlled substance in violation of 720 ILCS 570/401(a)(6.6)(B), a felony.
8. On or about May 23, 2006, Respondent was sentenced to fourteen (14) years in the Illinois Department of Corrections, and Respondent was taken into custody on May 30, 2006.
9. Respondent's conduct violated the following Disciplinary Rules of Professional Conduct, as outlined in 37 C.F.R.:
  - a. § 10.23(b)(3) in that Respondent engaged in illegal conduct involving moral turpitude;
  - b. § 10.23(b)(4) in that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation;
  - c. § 10.23(b)(6) in that Respondent engaged in conduct that adversely reflects on his fitness to practice before the Office; and
  - d. § 10.23(c)(1) in that Respondent has been convicted of a criminal offense involving moral turpitude, dishonesty, or breach of trust.

#### **CONCLUSIONS**

10. Under 37 C.F.R. § 10.130 an agent who violates a Disciplinary Rule may be reprimanded, suspended, or excluded from practice before the PTO. In the instant matter, Respondent, an agent registered to practice before the PTO, has been found to be in default for failing to answer the Complaint properly served on him. The effect of this failure to answer the Complaint is that each of the allegations in the Complaint have been admitted by the Respondent, under operation of 37 C.F.R. § 10.136(d).

11. The Complaint in this matter requests entry of "an Order excluding Respondent from practice before the USPTO." Compl. at 3. This Tribunal, in determining the appropriate sanction to be imposed, is to consider the public interest, the seriousness of the violation(s) of the Disciplinary Rule(s), the deterrent effects deemed necessary, the integrity of the legal profession, and any extenuating circumstances. 37 C.F.R. § 10.154(b)(1)-(b)(5).
  
12. This Tribunal has fully considered each of the penalty factors listed above. The seriousness of the violations of the cited Disciplinary Rules, the public interest, the integrity of the legal profession, and the deterrent effects deemed necessary, when considered in the absence of any extenuating circumstances, warrant and require the sanction of exclusion from practice before the USPTO. Specifically, this Tribunal notes that Respondent engaged in illegal conduct involving moral turpitude, and that such conduct adversely reflects on Respondent's fitness to practice before the PTO. Respondent's failure to file an Answer or to respond to the Motion for Default Judgment only serves to underscore the appropriateness of this sanction, which is fully warranted on the basis of the allegations in the Complaint alone.

#### ORDER

After careful and deliberate consideration of the above findings and conclusions, as well as the factors identified in 37 C.F.R. § 10.154(b),

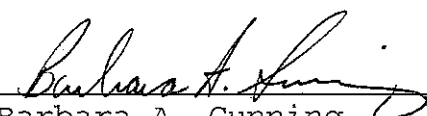
**IT IS HEREBY ORDERED that Respondent, Stuart W. Rose PTO Registration No. 32,801, be excluded from practice before the United States Patent and Trademark Office.**

Respondent's attention is directed toward 37 C.F.R. § 10.158 regarding responsibilities in the case of suspension or exclusion, and 37 C.F.R. § 10.160 concerning any subsequent petition for reinstatement.

**Pursuant to 37 C.F.R. § 10.155, any appeal by Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 10.154, must be filed in duplicate with the Director of Enrollment and Discipline, U.S. Patent and Trademark Office,**

P.O. Box 16116, Arlington, VA 22215 within thirty (30) days of the date of this Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision. Failure to file such an appeal in accordance with Section 10.155 above will be deemed to be both an acceptance by Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

The facts and circumstances of this proceeding shall be fully published in the U.S. Patent and Trademark Office's official publication.

  
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Barbara A. Gunning  
United States Administrative Law Judge<sup>2/</sup>

Dated: June 14, 2007  
Washington, DC

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<sup>2/</sup> This decision is issued by a United States Administrative Law Judge assigned to the U.S. Environmental Protection Agency ("EPA"). An Interagency Agreement authorizes Administrative Law Judges with the EPA to hear cases pending before the USPTO.