UNITED STATES DEPARTMENT OF COMMERCE
OFFICE OF ADMINISTRATIVE LAW JUDGE

KAREN L. BOVARD **Director, Office of** **Enrollment and Discipline**	)	
v.	)	**Proceeding No. D99-02**
HARRY W. BARRON, **Respondent**	)	

INITIAL DECISION ON DEFAULT

PRELIMINARY STATEMENT

This disciplinary proceeding was initiated under 35 U.S.C. § 32 and the regulations promulgated thereunder at 37 C.F.R. Part 10, against Harry W. Barron (Respondent), an attorney registered to practice before the Patent and Trademark Office (PTO) (Registration No. 25,167). The Complaint and Notice of Proceedings (Complaint), issued by Karen L. Bovard, Director, Office of Enrollment and Discipline, was dated and served on the Respondent on May 25, 1999.[1] The Complaint charges Respondent with violating disciplinary rules by engaging in professional misconduct, failing to cooperate with the Office of Enrollment and Discipline (OED) in the United States PTO, and mishandling patent applications. For those violations, the Complaint requests an entry of any Order excluding Respondent from practice before the PTO or suspending him from practice before the PTO for a period of at least five (5) years. The Respondent was notified in the Complaint that, pursuant to the regulations, he was required to

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[1] Rule 10.135 provides that service of the Complaint on a registered practitioner may be made by either: (1) "handing a copy of the complaint *personally to the respondent*;" (2) by "mailing a copy of the complaint by "Express Mail or first class mail" *to the address for which separate notice was last received by the Director*;" or (3) by any other mutually agreeable method. 37 C.F.R. §10.135. The record indicates that on May 25, 1999, the OED Director sent the Complaint to Respondent by first class mail, return receipt requested, at "*his address of record*" at 8221 Glades Rd., Suite 202, Boca Raton, Florida, 33434 and also to him at *See*, Certificate of Service dated May 25, 1999, signed by Joseph G. Piccolo. The PTO Rules require the Director to maintain a register of attorneys entitled to practice before the Office and further require registered practitioners to notify the Director of any change of address *by separate notice*. 37 C.F.R. §§ 10.5 and 10.11. Therefore, while it would have been preferable for the Certificate of Service to have used the language provided for in Rule 10.135, that the Complaint was sent to the Respondent at "the address for which separate notice was last received by the Director," rather than the language "to Respondent at his address of record," the language is synonymous. Moreover, a Notice to the Court of Service of the Complaint (Notice), dated June 3, 1999, indicates that the Complaint was served by both certified mail and substitute service via a process server. A copy of the signed return receipt, indicating delivery on May 28, 1999, to the address, was attached to the Notice. Also attached to the Notice was an Affidavit indicating that the process server substitute served the Complaint on n as the spouse of Respondent, at the Glades Road address on May 27, 1999. Thus, I find that Respondent was properly served.

file an Answer to the Complaint within 30 days from the date of the notice, that is, on or before June 24, 1999, and that a default decision would issue if he failed to file his answer in a timely fashion.

To date, Respondent has failed to file an Answer or otherwise respond to the Complaint. The regulations provide that "[f]ailure to timely file an answer will constitute an admission of the allegations in the complaint." 37 C.F.R. § 10.136(d). The regulations provide further that "[a] complaint . . . shall . . . [s]tate that a decision by default may be entered against the respondent if an answer is not timely filed." 37 C.F.R. § 10.134(a)(4).

The Director served a Motion for Default Judgment on July 13, 1999. Therein, pursuant to 37 C.F.R. 2 10.143, counsel for the Director states that he attempted to contact Respondent by telephone on July 8, 1999, to resolve the issue of the failure to file an Answer. Counsel states further that only Respondent's answering machine was reached, that he left a message asking for a return call, and that Respondent has not returned the call. It is noted that the regulations provide at 37 C.F.R. § 10.143 that "[t]he administrative law judge will determine on a case-by-case basis the time period for a response to a motion . . . ." However, in the context of a motion for default, where the respondent has not answered the complaint or otherwise appeared in the proceeding, it is not necessary to allow time for a response to a motion for default. The regulations provide at 37 C.F.R. § 10.136(d) that failure to file timely an answer "*will* constitute an admission of the allegations in the complaint" (emphasis added), and do not provide a requirement for a motion for default or a response thereto. *See,* Federal Rule of Civil Procedure 55(b)(1) (allowing entry of judgment on default upon request of plaintiff, for failure of defendant to appear).

For his failure to file a timely Answer, Respondent is hereby found in default, and is deemed to have admitted of all of the allegations in the Complaint.

CHARGES

The Complaint charges Respondent in three counts. Specifically, Count 1 alleges that by engaging in conduct resulting in his disbarment from practice as an attorney by the Supreme Court of Florida and by failing to notify the Director of the order disbarring Respondent from the practice of law in Florida, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(c)(5) and 10.23(c)(14). Count 2 alleges that by failing to cooperate with OED's investigation concerning complaints and allegations therein made against Respondent, he engaged in professional misconduct, in violation of 37 C.F.R. §§ 10.23(c)(16) and 10.24(a). Count 3 alleges that by mishandling patent applications, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(b)(6), 10.23(c)(8), 10.77(b), 10.77(c). 10.84(a)(2), and 10.84(a)(3).

FINDINGS

COUNT 1
Failure to inform of disbarment

1. Respondent was a member of the bar of the State of Florida. While Respondent was a member of the bar, the Florida Bar disciplinary organization filed at least three complaints against him in the Supreme Court of Florida.

2. The Florida Bar charged that Respondent violated the following Rules Regulating the Florida Bar: Rule 4-1.4(a) requiring that the client be kept informed; Rule 4-1.4(b) requiring adequate explanations to client; Rule 3-4.3 requiring honest and just conduct; Rule 4-8.4(c) prohibiting dishonesty, fraud, deceit or misrepresentation; Rule 4-1.5(a) requiring reasonable fees; 4.1-1 requiring competence; Rule 4-1.3 requiring reasonable diligence and promptness; and Rules 3-4.8 and 4-8.4(g) requiring cooperation with a bar counsel investigation. Subsequently, The Florida Bar requested that the Supreme Court of Florida discipline Respondent appropriately in accordance with the Rules Regulating the Florida Bar.

3. The Florida Bar served the aforementioned three complaints on Respondent by certified mail, at 8221 Glades Rd., Suite 202, Boca Raton, Florida, 33434-4033.

4. The Supreme Court of Florida consolidated the three complaints and appointed a Referee to preside over the consolidated complaint.

5. Respondent did not answer the above charges and The Florida Bar moved for a default judgment. Respondent did not contest The Florida Bar's motion for a default judgment.

6. The Referee issued a written report containing findings of fact against Respondent. In this report, the Referee recommended that Respondent be found guilty of each charge made by The Florida Bar and that Respondent be disbarred.

7. The Supreme Court of Florida approved the Referee's uncontested report. In an Order dated March 6, 1997, the Supreme Court of Florida disbarred Respondent, effective thirty days after the date of the order.

8. Respondent failed to notify the Director of PTO's Office of Enrollment and Discipline of the Supreme Court of Florida's March 6, 1997, Order disbarring Respondent from the practice of law in Florida. In view thereof, Respondent has engaged in professional misconduct in violation of 37 C.F.R. § 10.23(c)(14).

9. In view of being disbarred from the practice of law by the State of Florida, Respondent has engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(c)(5).

COUNT 2
Failure to cooperate

1. Inventors hired Respondent to prepare and prosecute their respective patent applications before the PTO.

2. each submitted a written complaint to OED with regard to Respondent's conduct as representative before the PTO.

3. In view of each complaint, OED initiated investigations with regard to Respondent.

4. Respondent's address of record is 8221 Glades Rd., Suite 202, Boca Raton, Florida 33434.

5. In four letters, dated January 14, 1997, March 12, 1997, April 22, 1997, and August 8, 1997, sent by certified mail to Respondent's address of record, OED required Respondent to respond to the allegations made by . The latter three letters informed Respondent that OED had not received a response from him and informed him of his duty to cooperate in the pending OED investigation regarding the complaint.

6. Respondent did not respond to any of the four letters regarding the complaint.

7. In four letters, dated February 5, 1997, March 12, 1997, April 22, 1997, and August 8, 1997, sent by certified mail to Respondent's address of record, OED required Respondent to respond to the allegations made by The latter three letters informed Respondent that OED had not received a response from him and informed him of his duty to cooperate in the pending OED investigation regarding the complaint.

8. Respondent did not respond to any of the four letters regarding the complaint.

9. In a letter dated August 26, 1997, sent by certified mail to Respondent's address of record, OED required Respondent to respond to the allegations made by

10. Respondent did not respond to the letter dated August 26, 1997 regarding the complaint.

11. In a letter dated August 27, 1997, sent by certified mail to Respondent's address of record, OED required Respondent to respond to the allegations made by

12. Respondent did not respond to the letter dated August 27, 1997, regarding the complaint.

13. By failing to cooperate with OED's investigation concerning the above-identified complaints and allegations made therein against Respondent, he engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(c)(16) and 10.24(a).

COUNT 3
Mishandling Patent Applications

1. Respondent represented before the PTO in U.S. patent application , (the application). In a notice dated May 13, 1993, the PTO notified Respondent that all of the 21 claims in the application were allowable as patentable claims and that Respondent had to take certain procedural steps in order to be granted a United States patent on behalf of his client,

2. Respondent did not respond to the PTO's notice and did not prevent the application from going abandoned.

3. On August 16, 1993, the application went abandoned in view of Respondent's inaction. Respondent did not seek to revive within the PTO the abandoned application.

4. By mishandling the application, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(b)(6), 10.23(c)(8). 10.77(b). 10.77(c). 10.84(a)(2) and 10.84(a)(3).

5. Respondent represented before the PTO in U.S. patent application (the application). In a notice dated July 14, 1993, the PTO notified Respondent that all of the patent claims in the application were rejected under 35 U.S.C. § 103 and set a time period of three months for Respondent to respond to the rejection.

6. Respondent did not respond to the PTO's July 14, 1997 rejection of the patent claims in the application and did not prevent the application from going abandoned.

7. On October 15, 1993, the application went abandoned in view of Respondent's inaction.

8. In a document dated March 10, 1995, Respondent petitioned the PTO to revive the application. In a document dated April 20, 1995, the PTO issued an order dismissing Respondent's petition as not containing required materials, advised him what would be needed in any subsequent submission on the matter, and set a time period of two months for any such submission.

9. Respondent did not respond to the PTO's April 20,1995 order dismissing Respondent's petition as incomplete. retained a new representative and succeeded in reviving the application.

10. By mishandling the application, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(b)(6), 10.23(c)(8), 10.77(b). 10.77(c), 10.84(a)(2), and 10.84(a)(3).

11. Respondent represented before the PTO in U.S. design patent application (the application). In a notice dated April 18, 1995, the PTO notified Respondent that the application was allowable as a design patent and that Respondent had to take certain procedural steps in order to be granted a United States design patent on behalf of his client,

12. Respondent did not respond to the PTO's April 18, 1997 notice and did not prevent the application from going abandoned.

13. On July 19, 1995, the application went abandoned in view of Respondent's inaction. Respondent did not seek to revive within the PTO the abandoned application.

14. By mishandling the application, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(b)(6), 10.23(c)(8), 10.77(b). 10.77(c), 10.84(a)(2), and 10.84(a)(3)

15. Respondent represented before the PTO in U.S. provisional patent application (the application). In a letter dated April 11, 1996, Respondent stated to that his "Provisional Patent Application was mailed by U.S. Express Mail to the Patent and Trademark Office on In the April 11, 1996 letter, Respondent also stated to , "[w]hen we receive the Official Filing Receipt, in about four to six weeks, we will advise you of the official filing date and serial number."

16. On or about July 2 and July 12, 1996, telephoned Respondent requesting the official filing receipt. In a letter dated July 26, 1996, requested Respondent to provide him with the official filing date and the serial number for provisional patent application.

17. Respondent did not provide with the official filing receipt, the official filing date or the serial number for provisional application.

18. By mishandling the application, Respondent engaged in professional misconduct in violation of 37 C.F.R. §10.23(c)(8).

CONCLUSION

(a) Respondent's conduct set forth above and in the Complaint with regard to Count I constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(c)(5) and 10.23(c)(14).

(b) Respondent's conduct set forth above and in the Complaint with regard to Count II constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(c)(16) and 10.24(a).

(c) Respondent's conduct set forth above and in the Complaint with regard to Count III constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(6), 10.23(c)(8), 10.77(b), 10.77(c), 10.84(a)(2) and 10.84(a)(3).

(d) An indeterminate suspension is appropriate because there has not been a record developed respecting all of the circumstances surrounding the professional misconduct. The Respondent's default has prevented such an inquiry. The Respondent may show cause in the future as to why he failed to respond and may provide some explanation for the misconduct set forth and found herein. Until he does so his name should be removed from the rolls.

ORDER

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

IT IS HEREBY ORDERED, that Respondent, **HARRY W. BARRON**, 8221 Glades Road, Suite 202, Boca Raton, Florida 33434 and/or

PTO Registration No. 25,167, **be suspended for an indeterminate period from practice as an attorney before the Patent and Trademark Office.**

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

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

DATE: July 19, 1999

Susan L. Biro
Chief Administrative Law Judge[2]

Pursuant to 37 C.F.R. § 10.155, any appeal by the 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, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, P.O. Box 16116, Arlington, Va. 22215, within 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 § 10.155, above, will be deemed to be both an acceptance by the Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

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[2] This decision is issued by the Chief Administrative Law Judge of the United States Environmental Protection Agency. The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning March 22, 1999.