



4. The parties agreed that the Settlement Agreement resolved any and all disciplinary action by the USPTO that arose from the allegations set forth in the Complaint.
5. On March 15, 2006, a Final Order was issued suspending Respondent from practicing patent, trademark, and other law before the USPTO for a period of six months. The Final Order incorporated all of the terms agreed to by Respondent in the Settlement Agreement.
6. In fulfillment of the March 15, 2006 Final Order, the OED Director published the following Notice in the USPTO's Official Gazette:

**Notice of Suspension**

Bradley P. Sylvester, of Wichita, Kansas, a patent attorney whose registration number is 36,944, has been suspended from practice before the Office for a period of six months. This action was taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 10.133(g).

7. The OED Director also gave notice of Respondent's suspension to appropriate employees of the USPTO, the courts, the Kansas Supreme Court, and appropriate bar association(s).
8. Under the terms of the Final Order, Respondent was ordered to surrender each of his clients' active USPTO case files to either each of his clients or a practitioner designated by each client and then to provide proof thereof with the OED Director within 30 days.
9. The Final Order also specified that Respondent was to forward any communications he received from the USPTO related to a client matter to the client or the practitioner designated by the client.
10. The Final Order expressly stated that Respondent was not to take legal action, enter an appearance or provide legal advice in any matter that was the subject of a communication made during the suspension period.
11. The Final Order further required Respondent to return to any client having immediate or prospective business before the USPTO any unearned legal funds, including any unearned retainer fee and any securities and property of the client within 30 days, and to provide proof thereof with the OED Director no later than the filing of his petition for reinstatement under 37 C.F.R. § 10.160.
12. Respondent was further ordered to file an affidavit describing the precise nature of the steps taken and to provide proof of compliance with §§ 10.158(b)(3),

(b)(5), (b)(6), and (b)(7) with the OED Director upon filing a petition for reinstatement under 37 C.F.R. § 10.160.

13. As part of the Settlement Agreement, which was incorporated into the March 15, 2006 Final Order, Respondent acknowledged and agreed that he would remain subject to disciplinary action by the USPTO with respect to any violations not specifically addressed in the Settlement Agreement.
14. On or about September 10, 2004, Respondent and Jack C- entered into an agreement concerning Mr. C-'s invention ("Invention Agreement").
15. Under the terms of the Invention Agreement, Respondent would prosecute and pay all costs associated with patenting Mr. C-'s invention, and Respondent and Mr. C- would share any profits made from the invention 25%-75%, respectively:

This agreement in essence divides the entire program up on a **25% (Brad) and 75% (J-) for all and any profits**, royalties, or other income derived from this program. **Brad will be responsible for all costs associated with the patent and other legal forms or documents needed to support this program.**

(Emphasis added.)

16. The Invention Agreement further specified that, if Respondent were to develop a new device based on Mr. C-'s invention, Respondent and Mr. C- would share any profits made from the new invention 50%-50%, respectively:

**If Brad Sylvester develops a new device**, as a result of this invention disclosed, and royalties can be determined specifically to the new development, **the division between the parties shall be 50% and 50%.**

(Emphasis added.)

17. As previously stated, on March 15, 2006, Respondent was suspended from practice before the USPTO for a period of six months, beginning March 15, 2006, and ending at earliest on October 15, 2006, upon application for reinstatement and satisfaction of the provisions of 37 C.F.R. § 10.158 and 10.160. To date, Respondent has not applied for reinstatement.
18. On or about May 31, 2006, Respondent sent Mr. C- a letter that stated, **"I am wishing to terminate our partnership in the agreement . . . I am currently ceasing my patent practice for a while, and am no longer practicing as a Patent Attorney."** (Emphasis added.) During this same time period, Respondent

also informed Mr. C- via telephone that he was “not currently licensed” to practice patent law.

19. On or about July 12, 2006, Mr. C- sent Respondent a letter via email, informing Respondent that he expected Respondent to file a patent application related to the “RLAWS” invention under the terms of their Invention Agreement by August 15, 2006, otherwise, Mr. C- would repudiate their contract:

Per our recent phone conversation[,] I am making you aware that I expect you to honor your contract with me regarding RLAWS. I will not accept your attempt to forego your responsibilities to this contract. In fact[,] **I am demanding that you resume your activities to compete this project. I expect you to file the RLAWS Patent . . . by August 15<sup>th</sup>, 2006.**

\* \* \*

Your continued delays and attempt to scuttle this project is costing me time and money. **I need you to provide me with documentation showing that the RLAWS Patent was filed by August 15<sup>th</sup>, 2006** or I am prepared to turn this over to a local Dallas Patent Attorney.

(Emphasis added.)

20. On or about July 25, 2006, Respondent sent Mr. C- an inventor’s declaration for his review and signature:

I am attaching two Word [P]erfect [d]ocuments for you to sign and return to me. These are the necessary declarations that must accompany your specification. . . . Per your request, **I will pay your filing fee for the application, and . . . file what was previously prepared as the application that you approved earlier.** . . . If you send these documents back to me, the application will be able to get a filing date forthwith.

(Emphasis added.)

21. On or about August 2, 2006, Respondent sent Mr. C- an email, acknowledging his receipt of the signed declaration: “I’m sure you are aware that I received your signed papers today, but I just wanted to advise you by email.”
22. On or about September 18, 2006 (*i.e.*, during his suspension), Respondent sent Mr. C- an email, informing Mr. C- that Respondent had mailed Mr. C-’s patent application to the USPTO: **“I am writing to let you know that your patent application has been received in the Patent Office.** They should generate an application number for it shortly.” (Emphasis added.)

23. On September 16, 2006, the USPTO received Mr. C-'s patent application, and assigned it U.S. Serial No. 11/521,760.
24. Although the transmittal accompanying Mr. C-'s patent application listed a "Declaration of Inventorship" as being included, no declaration was included with the application materials.
25. Mr. C-'s patent application also did not include a correspondence address.
26. Sometime in between September 16, 2006, and October 5, 2006, Mr. C- contacted the USPTO to inquire about the status of his application and was informed that, because his patent application failed to include any contact information, the application could not be processed.
27. On or about October 5, 2006, Mr. C- sent Respondent an email, informing Respondent that Mr. C- had contacted the USPTO and been informed that his application materials did not include required contact information and, therefore, could not be processed. Mr. C- also gave Respondent a USPTO fax number and instructed Respondent to send the USPTO the required contact information via facsimile.
28. Respondent did not respond to Mr. C-'s October 5, 2006 email, and did not provide the USPTO with the requested information.
29. On or about October 13, 2006, Mr. C- sent Respondent a letter, stating that Respondent had again contacted the USPTO and been informed that the required contact information still had not yet been given to the USPTO.
30. On or about October 13, 2006, Mr. C- also advised Respondent that he, "might not want to fax this information [because] . . . I was advised . . . that you have been suspended from practicing Patent Law. . . [Y]ou are fired and our previous agreement is null and void."
31. Respondent filed Mr. C-'s patent application, *i.e.*, U.S. Serial No. 11/521,760, with the USPTO during the time that he was suspended from practice before the USPTO.
32. Respondent failed to inform Mr. C- that at the time his patent application was filed with the USPTO that he was not yet reinstated to practice before the USPTO as required by the March 15, 2006 Final Order.

## LEGAL CONCLUSIONS

33. Based upon the foregoing stipulated facts, Respondent acknowledges that his conduct violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility:
- a. § 10.23(b)(4), when he failed to adequately inform Mr. C- that he was suspended from practice before the USPTO at the time he filed Mr. C-'s patent application with the USPTO;
  - b. § 10.23(b)(5), when he failed to inform Mr. C- that he had been suspended from practice before the USPTO and continued to represent Mr. C- before the USPTO;
  - c. § 10.23(b)(6), when Respondent practiced patent law before the USPTO during the period he was suspended;
  - d. § 10.23(c)(2)(i), when he failed to inform Mr. C- that he had been suspended from practice before the USPTO and at the time he filed Mr. C-'s patent application with the USPTO;
  - e. § 10.23(c)(2)(ii), when he practiced patent law before the USPTO during the period Respondent was suspended from such practice; and
  - f. § 10.40(b)(2), by failing to withdraw representation of a client before the Office when he knew or it was obvious that his continued employment would result in violation of a Disciplinary Rule.

## SANCTIONS

34. Based on the foregoing, it is:
- a. **ORDERED** that the Final Order incorporates the above-stipulated facts and legal conclusions.
  - b. **ORDERED** that Respondent is excluded from practicing patent, trademark and other non-patent law before the USPTO "on consent."
  - c. **ORDERED** that the OED Director publish the Final Order.
  - d. **ORDERED** that the OED Director publish the following Notice in the Official Gazette:

### Notice of Exclusion

Bradley P. Sylvester, of Wichita, Kansas, a patent attorney whose registration number is 36,944, has been excluded from practice before the Office “on consent.” This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 10.133(g).

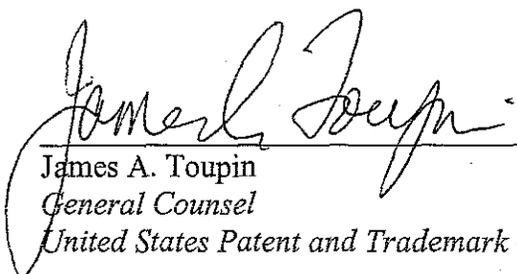
- e. **ORDERED** that the OED Director give notice to appropriate employees of the USPTO, courts, and authorities of Kansas and any other state in which Respondent is known to be a member of the bar; and any appropriate bar association. 37 C.F.R. § 10.159(a).
- f. **ORDERED** that that within 30 days of the date of this Final Order, Respondent shall, in accordance with 37 C.F.R. § 10.158(b)(1) notify all bars of which Respondent is a member and all clients of Respondent for whom he is handling matters before the Office in separate written communications of the suspension or exclusion and shall file a copy of each written communication with the OED Director.
- g. **ORDERED** that within 30 days of the date of this Final Order, Respondent shall, in accordance with 37 C.F.R. § 10.158(b)(2), surrender each client’s active USPTO case file(s) to (1) each client or (2) another practitioner designated by each client.
- h. **ORDERED** that during the period Respondent is excluded from any communication relating to a client matter that is addressed to Respondent and/or received by him shall be immediately forwarded to the client or the practitioner designated by the client, and that Respondent will take no other legal action in the matter, enter any appearance, or provide any legal advice concerning the matter that is the subject of the communication, all in accordance with 37 C.F.R. §§ 10.158(a), (b)(2), and (b)(6).
- i. **ORDERED** that within 30 days of the date of this Final Order, Respondent shall, in accordance with 37 C.F.R. §§ 10.158(b)(8) and 10.160(d), return to any client having immediate or prospective business before the Office any unearned legal funds, including any unearned retainer fee, and any securities and property of the client, and Respondent shall file a proof thereof with the OED Director no later than filing his petition for reinstatement.
- j. **ORDERED** that after the date of this Final Order, Respondent shall promptly take steps to comply with the provisions of 37 C.F.R. §§ 10.158(b)(3), (b)(4), (b)(5), (b)(6), and (b)(7); and further, within 30 days of taking steps to comply with § 10.158(b)(4); Respondent shall file with the OED Director an affidavit describing the precise nature of the steps

taken; and still further Respondent shall submit proof of compliance with §§ 10.158(b)(3), (b)(5), (b)(6), and (b)(7) with the OED Director upon filing a petition for reinstatement under 37 C.F.R. § 10.160.

- k. **ORDERED** that after the date of this Final Order, Respondent shall promptly take steps to fully comply with the provisions of 37 C.F.R. §§ 10.158(c) and (d).
- l. **ORDERED** that all parties shall bear their own costs.

April 9, 2008

Date

  
James A. Toupin  
General Counsel  
United States Patent and Trademark Office

On behalf of  
Jon W. Dudas  
*Under Secretary of Commerce  
For Intellectual Property and  
Director of the United States  
Patent and Trademark Office*

cc: Harry I. Moatz  
OED Director

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