

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE USPTO DIRECTOR**

In the Matter of)	
)	
Flynn H. Barrison,)	
)	Proceeding No. D08-09
Respondent)	
_____)	

Final Order

Office of Enrollment and Discipline Director Harry I. Moatz (“OED Director”) and Flynn H. Barrison (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) or his designate for approval.

The OED Director and Respondent’s Proposed Settlement Agreement sets forth certain stipulated facts, legal conclusions, and sanctions to which the OED Director and Respondent have agreed in order to resolve voluntarily a disciplinary complaint against Respondent. The Proposed Settlement Agreement, which satisfies the requirements of 37 C.F.R. § 11.26, resolves all disciplinary action by the United States Patent and Trademark Office (“USPTO” or “Office”) arising from the stipulated facts set forth below.

Pursuant to such Proposed Settlement Agreement, this Final Order sets forth the parties’ stipulated facts, legal conclusions, and agreed upon discipline.

Jurisdiction

1. At all times relevant hereto, Respondent of New York, New York, has been an agent registered to practice before the United States Patent and Trademark Office (“USPTO” or “the Office”) and is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility set forth at 37 CFR § 10.20 et seq.
2. The USPTO Director has jurisdiction over this matter pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.26.

Stipulated Facts

3. Since July 22, 2003, Respondent of New York, New York, has been an agent registered to practice patent law before the Office (Registration Number 53,970) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 et seq.
4. At all relevant times, Respondent was employed under the supervision of a more senior registered patent agent or patent attorney.

5. In or around early February 2006, Respondent prepared for a client's signature a "Revocation of Power of Attorney with New Power of Attorney and a Change of Correspondence Address" and a "Statement Under 37 C.F.R. 3.73(b)" for three U.S. Patent Applications.

6. Each "Statement Under 37 C.F.R. 3.73(b)" expressed that the client was assignee of the entire right, title, and interest of the patent applications. The representation was false.

7. At the time the client signed the documents, Respondent was aware of an assignment of record showing that the client was assignee of record of only 98% of the right, title, and interest and brought such fact to the attention of an experienced registered patent attorney employed at the same firm as Respondent. Respondent referenced the reel and frame numbers for that assignment in the documents he filed in the Office. Respondent was also aware that the client was involved in litigation concerning the remaining 2% ownership interest. In preparing and filing the aforementioned documents, Respondent relied on statements made by the experienced registered patent attorney, who was representing the client in the litigation over the disputed 2% ownership interest. That attorney informed Respondent, "The fact of the fraudulently retained 2% interest is the central basis for the lawsuit we just filed against the inventor and the patent attorney."

8. Respondent did not research the issue of whether, under the facts known and available to him, Respondent could properly file the aforementioned documents with the USPTO.

9. Respondent mistakenly believed that the client could properly file the aforementioned documents in the Office and did not intend to mislead the Office.

10. On February 13, 2006, Respondent filed the aforementioned documents with the USPTO via facsimile transmission under Certificates of Transmission under 37 C.F.R. 1.8 bearing Respondent's signature.

11. On February 26, 2006, the inventor filed in the USPTO a "Request to Refuse Demands for Revocations of Power of Attorney with New Powers of Attorney and Changes in Correspondence Address" objecting to the attempted change of power of attorney.

12. On April 6, 2006, the USPTO issued an Office communication concerning each of the three applications stating that the "Revocation of Power of Attorney with New Power of Attorney and a Change of Correspondence Address" had not been accepted because it had not been signed by the applicant/inventor or by the assigned of record of the entire interest.

13. On July 7, 2006, a "Petition Under 37 C.F.R. § 1.183 by Third-Party to Patent Office Proceedings to Permit Action by Assignee Having an Of-Record 98% Interest" was filed in the Office on behalf of the client in one of the applications.

14. On November 8, 2006, a "First Supplemental Statement in Support of Petition Under 37 C.F.R. § 1.183 by Third-Party to Patent Office Proceedings to Permit Action by Assignee Having an Of-Record 98% Interest" was filed in the Office on behalf of the client.

15. On November 19, 2006, the named inventor filed in the USPTO an "Opposition to Petition Under 37 C.F.R. 1.83 to Permit Action By Assignee of A 98% Interest."

16. On December 12, 2006, the USPTO dismissed the petition because there was insufficient basis for allowing a third-party to have standing to object to the way in which the UPSTO treats the patent application of others.

17. The USPTO is not the appropriate forum for resolving a dispute concerning the ownership of a patent application or invention.

Legal Conclusion

18. Based on the information contained in paragraphs 3 through 17, above, Respondent acknowledges that his conduct violated 37 C.F.R. § 10.23(b)(4) by submitting papers in the Office containing a false representation of ownership and 37 C.F.R. § 10.77(b) by filing papers in the Office without preparation adequate under the circumstances.

Sanction

19. Respondent agreed, and it is ORDERED that:
- a. Respondent be suspended from practicing patent, trademark and other non-patent law before the Office for six (6) months and that all six months of the suspension be immediately stayed;
 - b. Respondent serve a six-month probationary period commencing on the date on which this Final Order is signed;
 - c. Respondent not sign (electronically or otherwise) any paper filed in the Office for a six-month period commencing on the date on which this Final Order is signed;
 - d. Respondent may use his Public Key Infrastructure ("PKI") certificate number for electronically mailing papers to the Office that have been signed by other registered practitioners;
 - e. the OED Director publish this Final Order;
 - f. the OED Director publish the following Notice in the *Official Gazette*:

Notice of Suspension

Flynn H. Barrison of New York, New York, an agent whose registration number is 53,970, has been suspended for six months with the entirety of the suspension stayed; restricted for six months from signing electronically or otherwise any paper filed in the Office; and placed on probation for six months by the

United States Patent and Trademark Office for violating 37 C.F.R. § 10.23(b)(4) by signing and filing papers in the Office on behalf of a client containing a false representation of ownership and 37 C.F.R. § 10.77(b) by signing and filing papers in the Office without preparation adequate under the circumstances. Mr. Barrison filed "Revocation of Power of Attorney with New Power of Attorney" and "Change of Correspondence Address" forms containing the representation that the client was the owner of the entire right, title, and interest in certain patent applications. In fact, the client was the assignee of record of only 98% of the ownership interest and was involved in litigation with the inventor over the remaining 2% interest. Prior to filing aforementioned documents in the Office, Mr. Barrison did not adequately research the issue of whether, under the facts known and available to him, he could properly assert that the client was the owner of the entire intellectual property interest. Instead, Respondent mistakenly relied on the statements made by a more experienced patent attorney representing the same client. There was insufficient evidence that Mr. Barrison intended to mislead the Office. The USPTO, however, is not the appropriate forum for resolving a dispute concerning the ownership of a patent application or invention. This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. §§ 11.26 and 11.59. Disciplinary decisions regarding practitioners are posted at the Office of Enrollment and Discipline's Reading Room located at:
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- g. in accordance with 37 C.F.R. § 11.59, the OED Director give notice of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the State where the practitioner is admitted to practice, to courts where the practitioner is known to be admitted, and the public; and
- h. (1) in the event that the OED Director is of the opinion that Respondent, during the six-month probationary period, failed to comply with paragraphs 19.c. or 19.d., above, and/or any current or future Disciplinary Rules of the USPTO Code of Professional Responsibility, the OED Director shall issue to Respondent an Order to Show Cause why Respondent should not be suspended for up to six (6) months, send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to § 11.11(a), and grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

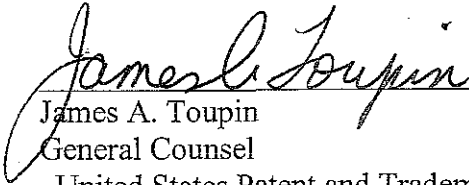
(2) in the event after the 15-day period for response and consideration of the responsc, if any, received from Respondent, the OED Director continues to be

of the opinion that Respondent, during the six-month probationary period, failed to comply with paragraphs 19.c. or 19.d., above, and/or any current or future Disciplinary Rules of the USPTO Code of Professional Responsibility, the OED Director shall: (a) deliver to the USPTO Director or his designate for imposition of an immediate suspension: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, and (iii) evidence causing the OED Director to be of the opinion that during the six-month probationary period that Respondent failed to comply with paragraphs 19.c. or 19.d., above, and/or any current or future Disciplinary Rules of the USPTO Code of Professional Responsibility and (b) request that the USPTO Director suspend Respondent for up to six months;

- i. in the event that the USPTO Director suspends Respondent pursuant to this Final Order and Respondent seeks a review of the USPTO Director's decision to suspend Respondent, any such review shall not operate to postpone or otherwise hold in abeyance the immediate suspension of Respondent;
- j. if Respondent is suspended during any portion of his six-month probationary period pursuant to the terms of this Final Order, Respondent shall comply with 37 C.F.R. § 11.58;
- k. if Respondent is suspended during any portion of the six-month probationary period pursuant to the terms of this Final Order, the OED Director shall comply with 37 CFR § 11.59;
- l. nothing in the proposed Settlement Agreement or this Final Order shall limit the number of times during the six-month probation that Respondent may be suspended pursuant to this Final Order;
- m. nothing in the proposed Settlement Agreement or this Final Order shall prevent the Office from seeking discipline against Respondent for the same misconduct that causes a suspension pursuant to any of the subparagraphs above;
- n. that the record of this disciplinary proceeding, including this Final Order, be considered: 1) when addressing any further complaint or evidence of the same or similar misconduct brought to the attention of the Office, and/or 2) in any future disciplinary proceeding: a) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or b) to rebut any statement or representation by or on Respondent's behalf; and
- o. the OED Director and Respondent bear their own costs incurred to date and in carrying out the terms of this agreement.

JUN 18 2009

Date


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

on behalf of

John J. Doll
Acting Under Secretary of Commerce for
Intellectual Property and Acting Director of the
United States Patent and Trademark Office

cc:

Harry I. Moatz
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U.S. Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450

Flynn H. Barrison