

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

In the Matter of)	
)	
Gregg A. Peacock,)	Proceeding No. D2010-28
)	
Respondent)	
)	
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FINAL ORDER UNDER 37 C.F.R. § 11.26

Director of Enrollment and Discipline Harry I. Moatz ("OED Director") and Gregg A. Peacock ("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 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

At all times relevant hereto, Respondent of Minneapolis, Minnesota has been an attorney registered to practice before 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.* Respondent's registration number is 45,001.

The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20 and 11.26.

Stipulated Facts

1. Respondent of Minneapolis, Minnesota, is an attorney registered to practice patent law before the Office (Registration Number 45,001) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.*

Neglect of Matters Entrusted to Respondent by a Corporate Client

2. Generally speaking, from 2003 through May 2009, Respondent provided valuable patent law services to a corporate client.

3. Respondent represents that, as his work load for the client continued to increase, he became overwhelmed and unable to handle all of the client's patent law work.

4. In 2006, the client directed Respondent to file a provisional patent application with the USPTO and a Patent Cooperation Treaty (PCT) application for a given invention (jointly referred to as "Application 1"). In late 2007 or early 2008, the client directed Respondent to file a patent application on another invention ("Application 2"). Respondent completed the vast majority of the work necessary to file Application 1 and Application 2 but, because of other pending patent matters, did not file the applications for the two inventions.

Respondent's Misrepresentation Regarding Application 1 and Application 2

5. On Friday, May 8, 2009, Respondent was contacted by a legal-assistant working in-house for the client. The legal assistant sought the status for Application 2. Respondent realized that he had not yet filed the application as instructed. Nevertheless, Respondent misrepresented to the legal assistant that the application had been filed in June 2008. Later that day, Respondent was asked to provide a copy of the application and to file a PCT application on the invention. On Monday, May 11, 2009, Respondent altered a USPTO document to make it appear that Application 2 had been filed and provided it to the legal assistant.

6. Also on May 11, 2009, Respondent was contacted by a different legal assistant working in-house for the client about Application 1. Respondent realized that he had not filed the application as instructed. Nevertheless, Respondent provided the legal assistant with a fictitious filing date and a fabricated application number for Application 1. The legal assistant requested a copy of the allegedly filed application. In response to the request, Respondent altered USPTO documents and provided them to the legal assistant.

Failure to File Five Other Patent Applications

7. Between 2003 and 2008, the client also instructed Respondent to file five (5) additional patent applications.

8. Respondent neglected the client's instructions and did not file the additional patent applications.

Additional Information

9. On May 27, 2009, Respondent disclosed to the firm's senior partner that he had created false documents and provided them to the client in an attempt to cover up the fact that he had failed to file Application 1 and Application 2 as instructed by the client.

10. Respondent was discharged from employment by the firm where he was employed after he admitted making misrepresentations to the client.

11. Respondent deeply regrets his lack of judgment in engaging in the above detailed conduct.

12. Respondent, who is licensed to practice law in the State of Minnesota, conceded that he violated the Minnesota Rules of Professional Conduct for his ethical misconduct in connection with Application 1 and Application 2 and consented to a two-month suspension from practicing law in Minnesota by the Minnesota Supreme Court.

13. Respondent, who is also licensed to practice law in the State of Texas, was suspended for two months from practicing law in Texas by the Texas Board of Disciplinary Appeals based on the Minnesota suspension.

14. Respondent cooperated with the investigation of this matter conducted by the OED Director.

Legal Conclusions

15. Based on the information contained in paragraphs 1 through 14, above, Respondent acknowledges that his conduct violated 37 C.F.R. § 10.23(b)(4) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation and 37 C.F.R. § 10.77(c) by neglecting matters entrusted to him.

Sanction

16. Respondent agreed, and it is ORDERED that:

- a. Respondent is suspended for a period of twenty-four (24) months from the practice of patent, trademark, and non-patent law before the USPTO commencing on the date the Final Order is signed;
- b. Respondent comply with 37 C.F.R. § 11.58;
- c. Respondent is granted limited recognition to practice before the Office beginning on the date the Final Order is signed and expiring thirty (30) days after the date the Final Order is signed for the sole purpose of facilitating Respondent's compliance with the provisions of 37 C.F.R. § 11.58(b);
- d. the USPTO promptly dissociate Respondent's name from all USPTO customer numbers and public key infrastructure ("PKI") certificates;
- e. Respondent not use any USPTO customer number or PKI certificate unless and until he is reinstated to practice before the USPTO;
- f. Respondent not obtain a USPTO customer number or a PKI certificate unless and until he is reinstated to practice before the USPTO;

- g. Respondent remain suspended from the practice of patent, trademark, and non-patent law before the USPTO until the OED Director grants a petition requesting Respondent's reinstatement based upon Respondent showing proof to the satisfaction of the OED Director, as required under 37 C.F.R. § 11.60(c), that: (1) Respondent has the good moral character and reputation, competency, and learning in law required under 37 C.F.R. § 11.7 for admission, (2) the resumption of Respondent's practice before the Office will not be detrimental to the administration of justice or subversive to the public interest; and (3) Respondent has complied with the provisions of 37 C.F.R. § 11.58 for the full period of suspension;
- h. Respondent may not file a request for reinstatement under 37 C.F.R. § 11.60 during the first ninety (90) days from the date the Final Order is signed, but Respondent may file a request for reinstatement under 37 C.F.R. § 11.60 at any time after ninety (90) days from the date the Final Order is signed;
- i. Respondent comply with 37 C.F.R. § 11.60 when seeking reinstatement;
- j. the OED Director shall stay any remaining period of suspension if the OED Director grants a petition requesting Respondent's reinstatement and reinstates Respondent;
- k. (1) "remaining period of suspension" means Respondent's initial twenty-four (24) month suspension minus the period of time from the date the Final Order is signed until Respondent is reinstated;

and

(2) in the event that the Respondent is not reinstated after twenty-four (24) months from the date the Final Order is signed, there is no "remaining period of suspension";

- l. (1) if the OED Director is of the opinion that Respondent, during the twenty-four (24) month period commencing on the date the Final Order is signed, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) (i) if Respondent has not yet been reinstated: issue to Respondent an Order to Show Cause why the USPTO Director or his designate should not enter an order amending the Final Order such that Respondent is no longer eligible to file a request for reinstatement at any time after ninety (90) days from the date the Final Order is signed and, instead, must wait an additional period of time up to twenty-four (24) months after the date the Final Order is signed to be eligible to request

reinstatement, or

(ii) if Respondent has been reinstated and the OED Director has stayed the remaining period of suspension: issue to Respondent an Order to Show Cause why the USPTO Director or his designate should not enter an order lifting the stay of all or part of the remaining period of suspension and immediately suspend Respondent for all or part of the remaining period of suspension;

(B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a); and

(C) 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 response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the twenty-four (24) month period commencing on the date the Final Order is signed, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) deliver to the USPTO Director or his designate: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) evidence causing the OED Director to be of the opinion that Respondent, within twenty-four (24) months from the date the Final Order is signed, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, and

(B) (i) if Respondent has not been reinstated: request that the USPTO Director or his designate enter an order amending the Final Order such that Respondent is no longer eligible to file a request for reinstatement at any time after ninety (90) days from the date the Final Order and, instead, must wait an additional period of time up to twenty-four (24) months after the date the Final Order is signed to be eligible to request reinstatement, or

(ii) if Respondent has been reinstated and the OED Director has stayed the remaining period of suspension: request that the USPTO Director or his designate enter an order lifting the stay of all or part of the remaining period of suspension and immediately suspend Respondent for

all or part of the remaining period of suspension;

m. if Respondent is suspended pursuant to the provisions of subparagraph l., above:

(1) Respondent shall comply with 37 C.F.R. § 11.58;

(2) the OED Director shall disseminate information in accordance with 37 C.F.R. § 11.59;

(3) the USPTO shall promptly dissociate Respondent's name from all USPTO customer numbers and PKI certificates;

(4) Respondent shall not to use any USPTO customer number or PKI certificate unless and until he is reinstated to practice before the USPTO;

and

(5) Respondent may not obtain a USPTO customer number or a PKI certificate unless and until he is reinstated to practice before the USPTO;

- n. nothing in the Proposed Settlement Agreement or the Final Order shall limit the number of times the OED Director or the USPTO Director may act pursuant to the provisions of subparagraph l., above, for acts and/or omissions occurring during the twenty-four (24) month period commencing on the date the Final Order is signed;
- o. in the event that the USPTO Director or his designate enters an order
- (a) amending the Final Order such that Respondent must wait until the expiration of up to the entire period of suspension to seek reinstatement or
 - (b) lifting the stay of all or part of the remaining period of suspension and immediately suspending Respondent for all or part of the remaining period of suspension, and Respondent seeks a review of the USPTO Director's action, any such review shall not operate to postpone or otherwise hold in abeyance the Director's order;
- p. if Respondent is not suspended pursuant to the provisions of subparagraph l., above, for acts and/or omissions occurring during the twenty-four (24) month period commencing on the date the Final Order is signed, then Respondent is not required to serve the remaining period of suspension or any residual portion thereof;
- q. the OED Director publish the Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at:
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;

- r. the OED Director publish the following Notice of Suspension in the *Official Gazette*:

Notice of Suspension

Gregg A. Peacock of Minneapolis, Minnesota registered patent attorney (Registration No. 45,001). Mr. Peacock has been suspended for twenty-four (24) months by the United States Patent and Trademark Office ("USPTO" or "Office") for violating 37 C.F.R. § 10.23(b)(4) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation and 37 C.F.R. § 10.77(c) by neglecting matters entrusted to him. Under the terms of the settlement agreement, Mr. Peacock is eligible to request reinstatement after serving ninety (90) days of his twenty-four (24) month suspension subject to certain conditions and, if reinstated, Mr. Peacock will be permitted to practice before the Office unless the stay of any remaining portion of his suspension is subsequently lifted.

Mr. Peacock represented several clients for whom he rendered valuable patent legal services over a lengthy period of time. As Mr. Peacock's work load for a certain client increased, however, he found himself unable to handle all of the demands for his services. Therefore, he provided one client with false information about the status of certain patent applications rather than seeking assistance in keeping up with his workload. He also fabricated documents and provided them to the client to mask his failure to have filed the patent applications. Mr. Peacock represents that he is truly remorseful for his neglect of files, for having concealed his conduct from his client and firm, and for providing them with false documentation.

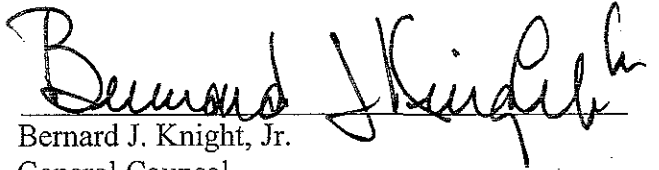
This action is taken pursuant to a settlement agreement between Mr. Peacock and the USPTO pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.26 and 11.59. Disciplinary decisions regarding practitioners are posted at the Office of Enrollment and Discipline's Reading Room electronically located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- s. pursuant to 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(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;

- t. nothing in the Proposed Settlement Agreement or the Final Order shall prevent the Office from seeking discipline against Respondent in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57 for the misconduct upon which an Order to Show Cause is issued by the OED Director under subparagraph l., above;
- u. the record of this disciplinary proceeding, including the 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
- v. the OED Director and Respondent bear their own costs incurred to date and in carrying out the terms of this agreement.

MAY 25 2010

Date



Bernard J. Knight, Jr.
General Counsel

United States Patent and Trademark Office

on behalf of

David Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

CERTIFICATE OF SERVICE


I certify that the foregoing Final Order under 37 C.F.R. § 11.26 was mailed first class certified mail, return receipt requested, this day to Respondent's counsel as follows:

Eric T. Cooperstein
Eric T. Cooperstein, PLLC
1700 U.S. Bank Plaza South
220 South Sixth Street
Minneapolis, MN 55402

Re: Gregg A. Peacock

MAY 25 2010

Date


United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 222313-1450

Notice of Suspension

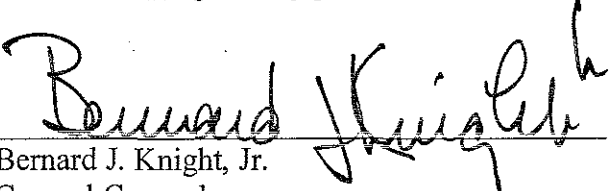
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