

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

In the Matter of:)	
)	
Arlene J. Powers,)	Proceeding No. D2011-33
)	
Respondent)	
_____)	

FINAL ORDER

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Arlene J. Powers (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and USPTO Director 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 the disciplinary action by the USPTO 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 Boston, Massachusetts, has been a patent attorney registered to practice before the Office and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.*

The USPTO Director has jurisdiction over this matter and the authority to approve the Proposed Settlement Agreement pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20 and 11.26.

Stipulated Facts

1. At all times relevant hereto, Respondent of Boston, Massachusetts, has been registered as an attorney to practice before the USPTO and is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility set forth at 37 C.F.R. § 10.20 et seq. Respondent’s registration number is 35,985.

2. In May 2003, Respondent filed a U.S. Patent Application (“the application”) with the USPTO.

3. Respondent was given the sole power of attorney in the application and was assigned by the Gauthier & Connors LLP law firm to handle its prosecution before the Office.

4. On July 7, 2003, the USPTO mailed a Notice to File Missing Parts in the application to the Gauthier & Connors LLP law firm. Receiving no response to the July 7th communication, the USPTO issued a Notice of Abandonment on September 8, 2004.

5. On July 7, 2009, Respondent filed a Petition to Revive the application, which included a copy of a receipted postcard bearing a USPTO date stamp of August 21, 2003. However, the postcard was not from the application but was a copy from another application being handled by the Gauthier & Connors LLP law firm. Thus, Respondent provided the Office with false or misleading information in connection with the petition to revive the abandoned application. None of the partners at the Gauthier & Connors LLP law firm knew of Respondent’s filing of the July 7th Petition.

6. On September 23, 2009, the USPTO mailed a Decision dismissing the July 7th Petition.

7. On November 25, 2009, Respondent filed a renewed Petition to Revive the application again relying on the false receipted postcard from the other patent application. None of the partners at the Gauthier & Connors LLP law firm knew of Respondent’s filing of the November 25th renewed Petition.

8. On or about March 22, 2010, the partners at the Gauthier & Connors LLP law firm became aware of the abandoned status of the application and questioned Respondent about it. Knowingly, Respondent falsely informed the partners that a response to the Notice to File Corrected Application Papers had been timely filed on August 19, 2003.

Legal Conclusion

9. Respondent acknowledges that, based on the information contained in paragraphs 1 through 8, above, her conduct violated:

- a. 37 C.F.R. §§ 10.23(b)(3), (b)(4), (b)(5) and (b)(6), via 37 C.F.R. § 10.23(c)(2)(ii), and 37 C.F.R. § 10.85(a)(5) by knowingly giving false or misleading information to the Office; and
- b. 37 C.F.R. § 10.77(c) by neglecting a matter entrusted to Respondent.

Mitigating Factors

10. Respondent has no prior disciplinary history before the Office during the over eighteen and a half years she has been registered as a patent practitioner.
11. The basis for the misconduct appears to have been aberrational.
12. Respondent has been further sanctioned for her conduct by her employer, including being placed on probation.
13. Respondent fully cooperated with the Office of Enrollment and Discipline during the investigation and resolution of this matter and is remorseful for her conduct.

Sanctions

14. Respondent agreed, and it is ORDERED that:
 - a) Respondent be, and hereby is, suspended from practicing patent, trademark, and other non-patent law before the USPTO for twenty-four (24) months commencing on the date the Final Order is signed;
 - b) Respondent be, and hereby 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);
 - c) Respondent comply with 37 C.F.R. § 11.58;
 - d) the USPTO dissociate Respondent's name from the Customer Numbers with which she is associated and dissociate Respondent's public key infrastructure ("PKI") certificate associated with those Customer Numbers;
 - e) Respondent may not apply for, or obtain a USPTO Customer Number or have her name added to a Customer number, unless and until she is reinstated to practice before the USPTO;
 - f) at any time after two (2) months from the date the Final Order is signed, Respondent may file a petition for reinstatement pursuant to 37 C.F.R. § 11.60 requesting reinstatement effective prior to the expiration of the 24-month period of suspension set forth in subparagraph a., above;
 - g) Respondent shall 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; (3) Respondent has complied with the provisions of the Final Order while suspended; and (4) Respondent has complied with the provisions of 37 C.F.R. § 11.58 while suspended;

h) Respondent serve an eighteen (18) month period of probation beginning on the date the OED Director reinstates Respondent pursuant to 37 C.F.R. § 11.60 ("Respondent's probationary period");

i) (1) if the OED Director is of the opinion that Respondent, during Respondent's probationary period, 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) issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for up to an additional twenty-two (22) months for the violations set forth in paragraph 9, above;

(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; 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 Respondent's probationary period, 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: (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, during Respondent's probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, and

(B) request that the USPTO Director enter an order immediately suspending Respondent for up to an additional twenty-two (22) months for the violations set forth in paragraph 9, above;

j) if the Respondent is suspended during her probationary period pursuant to the provisions of the preceding subparagraph:

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

(2) the USPTO shall promptly dissociate Respondent's name from all USPTO Customer Numbers and PKI certificates;

(3) Respondent may not apply for or obtain a USPTO Customer Number unless and until she is reinstated to practice before the USPTO;

k) in the event that the USPTO Director enters an order pursuant to the Final Order suspending Respondent during her probationary period, 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 USPTO Director's order;

l) the OED Director shall publish the Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at:
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;

m) the OED Director shall publish the following Notice of Suspension in the *Official Gazette*:

Notice of Suspension

Arlene J. Powers, a registered patent attorney (Registration Number 35,985). Ms. Powers has been suspended for twenty-four (24) months by the United States Patent and Trademark Office ("USPTO" or "Office") for violating 37 CFR §§ 10.23(b)(3), (b)(4), (b)(5) and (b)(6), via 37 CFR § 10.23(c)(2)(ii), and 37 CFR § 10.85(a)(5), by knowingly giving false or misleading information to the Office; and 37 CFR § 10.77(c) by neglecting a matter entrusted to Ms. Powers. Under the terms of the settlement agreement, Ms. Powers is eligible to request reinstatement after serving two (2) months of her 24-month suspension, and, if reinstated, Ms. Powers will be permitted to practice before the Office. Ms. Powers is also required to serve a probationary period if her request for reinstatement is granted.

The aforementioned Disciplinary Rule violations are predicated upon Ms. Powers having provided the Office with false or misleading information in connection with petitions to revive an abandoned application.

In agreeing to the above-described sanction, the OED Director took into account that (1) Ms. Powers has no prior disciplinary history before the Office during the over eighteen and a half years she has been registered as a patent practitioner, (2) the basis for the misconduct appears to have been aberrational, (3) her employer imposed additional sanctions, including placing Ms. Powers on probation, and (4) she fully cooperated with the Office of Enrollment and Discipline during the investigation and resolution of this matter.

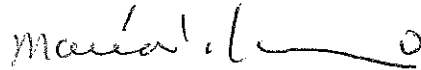
This action is the result of a settlement agreement between Ms. Powers and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 CFR §§ 11.20, 11.26, and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room located at:
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- n) Pursuant to 37 C.F.R. § 11.59, the OED Director shall 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;
- o) Nothing in the Proposed Settlement Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order, (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 (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (ii) to rebut any statement or representation by or on Respondent's behalf; and
- p) the OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this agreement.

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JUN 13 2011

Date



Maria C. Campo
Acting Deputy General Counsel for General Law
Office of General Counsel
United States Patent and Trademark Office

on behalf of

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

cc:

William J. Griffin, Acting Director
Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Ms. Elizabeth Mykytiuk
Vorys, Sater, Seymour and Pease LLP
1909 K Street NW
Suite 900
Washington, DC 20006-1152

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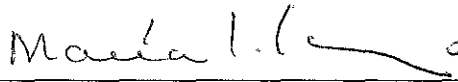
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JUN 13 2011

Date



MARIA C. CAMPO

Acting Deputy General Counsel for General Law
Office of General Counsel
United States Patent and Trademark Office

on behalf of

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