

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

In the Matter of)	
)	
William H. Bollman,)	Proceeding No. D2010-40
)	
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 William H. Bollman (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and USPTO Director for approval.

The Proposed Settlement Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties’ stipulated facts, legal conclusions, and sanctions to which the OED Director and Respondent have agreed in order to resolve voluntarily the disciplinary complaint against Respondent.

Jurisdiction

1. At all times relevant hereto, Respondent of Washington, D.C., has been an attorney registered 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 36,457.

2. 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

Background

3. Respondent of Washington, D.C., is an attorney registered to practice patent law before the Office (Registration Number 36,457) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 et seq.

4. Respondent was the attorney of record in the prosecution of U.S. Patent No. 6,985,748 (“the ‘748 Patent”), which is assigned to Telecommunication Systems, Inc. (“TCS”).

5. At all relevant times, Respondent also was the attorney of record in three co-pending patent applications related to the '748 Patent, namely: U.S. Application No. 11/174,419 ("the '419 application"), U.S. Application No. 12/073,262 ("the '262 application"), and U.S. Application No. 11/516,593 ("the '593 application").

Patent Infringement Suit and Protective Order

6. On July 12, 2006, TCS filed *Telecommunication Systems, Inc. v. Mobile 365, Inc.* (Civil Action No. 06CV485) in the Richmond Division of United States District Court for the Eastern District of Virginia against Mobile 365, Inc. ("Mobile 365") alleging infringement of the '748 Patent ("the patent infringement suit").

7. Registered practitioner John C. Janka, *et alia*, represented TCS in the patent infringement suit.

8. On December 6, 2006, the district court entered a protective order in the patent infringement suit requiring designated discovery materials to be received and used only for purposes directly related to the patent infringement suit and not for any other purpose. The protective order prohibited documents labeled "CONFIDENTIAL — NON-PROSECUTING ATTORNEY EYES ONLY" from being disclosed or communicated in any manner, either directly or indirectly, to Respondent, because Respondent was then prosecuting patent applications on behalf of TCS before the USPTO.

9. Respondent was not a signatory on the protective order, but Respondent knew about it at all relevant times.

Filing of Litigation Information Disclosure Statement in *Inter Partes* Reexamination

10. On May 25, 2007, after a nine-day trial, the jury returned its verdict expressly finding that Mobile 365 willfully infringed fourteen asserted claims of the '748 Patent.

11. While post-trial motions were pending, and while the protective order was still in effect, Mobile 365's parent company, Sybase, Inc. ("Sybase"), initiated an *inter partes* reexamination of the '748 patent in the USPTO. The reexamination was assigned Control No. 95/000,353 ("the '353 proceeding").

12. At all relevant times, Respondent was the attorney of record for TCS in the '353 proceeding.

13. Mr. Janka assembled and sent Respondent six boxes of documents to be filed by Respondent as a litigation Information Disclosure Statement in the '353 proceeding. According to Respondent, Mr. Janka did so pursuant to 37 C.F.R. § 1.933(a).

14. The protective order entered in the patent infringement suit covered several documents within the six boxes.

15. In late May 2008, Respondent filed the six boxes with the USPTO in the '353

proceeding.

16. Respondent filed the six boxes with the USPTO in the '353 proceeding without ever having held, read, reviewed, or inspected any of the documents contained within the six boxes.

17. According to Respondent, he was "merely a conduit" for Mr. Janka's filing of the litigation Information Disclosure Statement in the '353 proceeding.

18. Respondent did not file the documents in the '353 proceeding as confidential documents. *See generally* Manual of Patent Examining Procedure (MPEP) § 724.02. Hence, the documents covered by the protective order entered by the district court in the patent infringement suit were available for public inspection.

Filing of Information Disclosure Statement in Patent Applications

19. In early June 2008, Respondent also filed the six boxes of documents as Information Disclosure Statements in the related '419, '262, and '593 applications. He filed the Information Disclosure Statements in the related '419, '262, and '593 applications on his own initiative without being requested to do so by his client or Mr. Janka.

20. Respondent did not file the documents in the applications as confidential documents. *See generally* MPEP § 724.02. Hence, the documents covered by the protective order were available for public inspection.

Violation of Protective Order and Finding of Contempt of Court

21. Subsequent to the filing of the litigation Information Disclosure Statement in the '353 proceeding and the Information Disclosure Statements in the '419, '262 and '593 applications, Mobile 365 petitioned the district court in the patent infringement suit to determine the applicability of the protective order to the documents filed by Respondent in the USPTO.

22. On August 5, 2008, Mobile 365 filed a motion for TCS to be held in contempt for violating the protective orders predicated, in part, on Respondent's filing the documents in the USPTO.

23. On March 31, 2009, the district court entered an order granting Mobile 365's motion to hold TCS in contempt of court and ordered TCS to pay Mobile 365 costs and attorney fees in the amount of \$322,810.98.

24. In part, the district court's determination that its protective order had been violated was predicated upon Respondent's filing of the documents in the USPTO. The district court stated: "Further, despite TCS's and Mr. Bollman's contentions, this Court is not convinced of Mr. Bollman's *de minimis* role and alleged blind filing of documents in the PTO, but rather holds that Mr. Bollman's continued participation in the prosecution of TCS's ongoing patents,

after having access to Mobile 365's confidential documents, is a blatant violation of the Court's Protective Order."

Legal Conclusions

25. Based on the information contained in paragraphs 3 through 24, above, Respondent acknowledges that his conduct violated:

- a. 37 C.F.R. §§ 10.23(a) and (b), via 37 C.F.R. § 10.23(c)(15), by signing and filing Information Disclosure Statements in the Office without having reviewed any of the documents comprising the statements;
- b. 37 C.F.R. § 10.23(b)(5) by engaging in conduct that violated a protective order issued by a district court; and
- c. 37 C.F.R. § 10.77(b) for handling a legal matter without preparation adequate under the circumstances by not taking reasonable steps to determine whether documents filed in the Office were subject to a protective order prohibiting their disclosure and/or without taking reasonable steps to file such documents in accordance with customary and acceptable practice (see generally MPEP § 724.02).

Agree Upon Sanction

26. Respondent agreed, and it is ORDERED that:

- a. Respondent be, and hereby is, publicly reprimanded;
- b. Respondent serve a twenty-four (24) month probationary period commencing on the date the Final Order is signed;
- c. (1) in the event that the OED Director is of the opinion that Respondent, during the 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 order that Respondent be immediately suspended for up to twenty-four (24) months for the violations set forth in paragraph 25, 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(a); and

(C) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

(2) in the event after the fifteen-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 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 or his designate: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) evidence and argument causing the OED Director to be of the opinion that Respondent failed to comply with the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the probationary period, and

(B) request that the USPTO Director immediately suspend Respondent for up to twenty-four (24) months for the violations set forth in paragraph 25, above;

- d. 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>;
- e. The OED Director shall publish the following notice in the *Official Gazette*:

Notice of Reprimand and Probation

William H. Bollman of Washington, D.C., a registered patent attorney (Registration Number 36,457).—The United States Patent and Trademark Office ("USPTO" or "Office") has publicly reprimanded Mr. Bollman and placed him on probation for twenty-four (24) months for violating 37 C.F.R. §§ 10.23(a) and (b), via 37 C.F.R. § 10.23(c)(15), by filing Information Disclosure Statements in the Office without having reviewed any of the documents comprising the statements; 37 C.F.R. § 10.23(b)(5) for engaging in conduct that is prejudicial to the administration of justice by violating a protective order issued by a federal district court; and 37 C.F.R. § 10.77(b) for handling a legal matter without preparation adequate under the circumstances by not taking reasonable steps to determine whether documents filed in the Office were subject to a protective order prohibiting the disclosure and/or without taking reasonable steps to file such documents in accordance with customary and acceptable practice (*see generally* Manual of Patent Examining Procedure § 724.02). Mr. Bollman is permitted to practice before the Office during his probation

unless subsequently suspended by the USPTO Director for violating the terms of his probation.

Another patent practitioner, who was representing the same party in a patent infringement suit that Mr. Bollman was representing in an *inter partes* reexamination proceeding and in three co-pending and related patent applications, assembled and sent Mr. Bollman six boxes of documents to be filed by Mr. Bollman as a litigation Information Disclosure Statement in the *inter partes* reexamination proceeding. According to Mr. Bollman, the other practitioner did so pursuant to 37 C.F.R. § 1.933(a). Mr. Bollman filed the six boxes of documents in the *inter partes* reexamination proceeding and in three co-pending patent applications. The six boxes consisted, in part, of documents covered by a protective order entered by a United States District Court in a contemporaneously pending patent infringement suit. Mr. Bollman represents that he filed the six boxes with the USPTO without ever having held, read, reviewed, or inspected any of the documents contained within the six boxes. Nor did he file the documents as confidential documents under available patent rules. Hence, the documents covered by the protective order, entered by the district court in the patent infringement suit, were available for public inspection. On March 31, 2009, the district court entered an order granting a motion to hold a party in contempt of court predicated, in part, upon the violation of its protective order arising from Mr. Bollman's filing of the confidential documents in the USPTO. The court ordered attorney fees and costs in the amount of \$322,810.98 to be paid by the party who violated the protective order.

Pursuant to 37 C.F.R. § 11.18(b)(2)(i) (formerly 37 C.F.R. § 10.18(b)(2)(i)), a registered practitioner who presents a paper to the Office certifies to the best of his or her knowledge, information, and belief formed after an inquiry reasonable under the circumstances that, *inter alia*, the paper is not being presented for any improper purpose. A practitioner who submits an information disclosure statement without inspecting the submitted documents —*i.e.*, merely acts as a conduit for another person—is considered to have made a false certification to the Office.

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

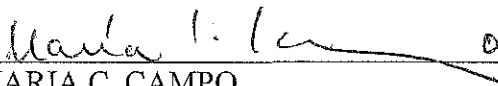
- f. (i) within thirty days of the date on which the Final Order is signed, Respondent shall provide a copy of the Final Order to TCS and (ii) within forty-five days of the date on

which the Final Order is signed, Respondent provide the OED Director with an affidavit and corroborating document(s) (e.g., a copy of the letter mailed to TCS) demonstrating his compliance with this subparagraph;

- g. If, Respondent is suspended pursuant to the provisions of subparagraph c., above:
- (1) the USPTO shall promptly dissociate Respondent's name from all USPTO customer numbers and public key infrastructure (PKI) certificates;
 - (2) Respondent shall not use any USPTO customer number or PKI certificate unless and until he is reinstated to practice before the USPTO;
- and
- (3) Respondent may not obtain a USPTO customer number or a PKI certificate unless and until he is reinstated to practice before the USPTO;
- h. In the event that the USPTO Director suspends Respondent pursuant to subparagraph c., above, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;
- i. Nothing in the proposed Settlement Agreement or this 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 that caused Respondent to be suspended pursuant to subparagraph c., above;
- j. Nothing in the Proposed Settlement Agreement or this Final Order 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 (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
- k. The OED Director and Respondent shall bear their own costs incurred to date and in carrying out the terms of this agreement.

OCT 19 2011

Date


MARIA C. CAMPO
Acting Deputy General Counsel for General Law
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:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

William H. Bollman (PERSONAL AND CONFIDENTIAL)
Manelli Selter PLLC
2000 M Street, N.W.
7th Floor
Washington, D.C. 20036

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United States Patent and Trademark Office

on behalf of

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