

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

In the Matter of)	
)	
Christopher D. Harrington,)	Proceeding No. D2012-14
)	
Respondent)	

FINAL ORDER

The Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Christopher D. Harrington (“Respondent”) have submitted a proposed settlement agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and USPTO Director for approval.

The 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.

Jurisdiction

1. At all times relevant hereto, Respondent 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. 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

2. Respondent of Grand Rapids, Michigan, is an attorney registered to practice patent law before the Office (Registration Number 34,837).

3. Invention Submission Corporation (“ISC”) is a company that solicited and contracted with inventors who hoped to obtain patents on their inventions. ISC arranged with patent practitioners, like Respondent, to prosecute patent applications for the inventors before the Office.

Representation of ISC-Referred Clients

4. Between 2005 and 2008, many inventors entered into contracts with ISC to assist them in obtaining patents on their inventions.

5. Between 2005 and 2008, ISC referred a significant volume of clients to Respondent, including W.J. and others (hereinafter referred to as "the ISC-referred clients").

6. ISC allegedly placed the funds paid by the ISC-referred clients for patent legal services in an escrow account maintained by a third-party. Thereafter, it sent the ISC-referred clients' patent application materials to Respondent.

7. Respondent and the ISC-referred clients entered into respective attorney-client relationships wherein Respondent agreed to prepare, file, and prosecute their patent applications before the Office.

8. Generally speaking, during the course of the attorney-client relationship:

- a. Respondent did not speak directly with ISC-referred clients about their inventions, the patent legal services he intended to render on their behalf, the patentability opinion prepared for the ISC-referred clients, or the patent prosecution process before the Office;
- b. Respondent did not divulge the actual or potential conflict of interest that ISC's purported escrowing of attorney fees presented to Respondent's representation of ISC-referred clients' interests.
- c. Respondent did not divulge his business relationship with ISC to ISC-referred clients nor the actual or potential conflict of interest the business relationship presented to Respondent's representation of their interests, nor did Respondent obtain ISC-referred clients' consent after full disclosure to represent them in light of Respondent's business relationship with ISC; and
- d. During the course of the prosecution of their patent applications, Respondent did not engage in pre-filing discussions with ISC-referred clients about their patent applications; did not timely inform ISC-referred clients of Office actions he received on their behalf nor explain the significance of the Office actions; did not counsel ISC-referred clients on options when responding to Office actions; did not advise ISC-referred clients about the legal consequences of not responding to Office actions; did not assist ISC-referred clients in making decisions regarding Office actions but, instead, took action on their applications without their knowledge; did not keep ISC-referred clients fully and timely apprised of the status of their applications directly; allowed certain applications of ISC-referred clients to become abandoned without the clients' consent; and did not provide legal advice to an ISC-referred client when the client's patent application became abandoned.
- e. Respondent voluntarily ceased receiving client referrals from ISC in 2008.

Legal Conclusions

9. Based on the information contained in the Stipulated Facts, Respondent acknowledges that his conduct violated:

- a. 37 C.F.R. §§ 10.23(a) and (b) via 10.23(c)(8) by failing to inform clients of correspondence received from the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client or former client, and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified;
- b. 37 C.F.R. § 10.62(a) by not refusing employment and, instead, accepting referred clients from a referring entity without the consent of the referred client after full disclosure, including not adequately describing the escrow and payment arrangement for patent legal services performed for the referred clients, where the exercise of Respondent's professional judgment on behalf of the referred client will be or reasonably may be affected by the practitioner's own financial, business, property, or personal interests (e.g., Respondent's business relationship with the referring entity);
- c. 37 C.F.R. § 10.66(a) by not declining employment from a referring entity where the exercise of Respondent's independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment or if it would be likely to involve Respondent in representing differing interests; and
- d. 37 C.F.R. § 10.77(c) by failing to act on legal matters entrusted to him, including not communicating with referred clients adequately and in a timely manner about their applications.

Mitigating Factors

10. Respondent has no prior disciplinary history before the Office during the over twenty years he has been registered as a patent practitioner.

11. Respondent experienced a serious medical condition that impaired his ability to practice law and allegedly adversely affected his judgment during a portion of the period that he represented ISC-referred clients.

12. Respondent fully cooperated with the Office of Enrollment and Discipline during the investigation and resolution of this matter.

Sanction

13. Respondent agrees, 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 thirty-six (36) 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 shall comply with 37 C.F.R. 11.58;
- d. The USPTO shall dissociate Respondent's name from any Customer Numbers and the public key infrastructure ("PKI") certificate associated with those Customer Numbers;
- e. Respondent shall not apply for or obtain a USPTO Customer Number, or have his name added to a Customer number, unless and until he is reinstated to practice before the USPTO;
- f. At any time after six (6) 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 36-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;
- h. Respondent shall serve a twenty-four (24) month period of probation beginning on the date the OED Director grants a petition pursuant to 37 C.F.R. § 11.60 reinstating Respondent ("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 this 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 thirty (30) 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) If 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 this 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 and argument causing the OED Director to be of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of this 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 thirty (30) months for the violations set forth in paragraph 9, above;

j. If, Respondent is suspended during his 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; and

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

k. In the event that the USPTO Director enters an order pursuant to this Final Order suspending Respondent, 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.isp>;
- m. The OED Director shall publish in the *Official Gazette* a notice materially consistent with the following;

Notice of Suspension and Probation

This notice concerns Christopher D. Harrington of Grand Rapids, Michigan, a registered patent attorney (Registration No. 34,837). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Respondent from practicing patent, trademark, and other non-patent law before the Office for thirty-six months for violating 37 C.F.R. §§ 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(8) by failing to inform clients of correspondence received from the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client or former client, and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified; § 10.62(a) by not refusing employment and, instead, accepting referred clients from a referring entity without the consent of the referred client after full disclosure, including not adequately describing the escrow and payment arrangement for patent legal services performed for ISC-referred clients, where the exercise of a practitioner's professional judgment on behalf of the referred client will be or reasonably may be affected by the practitioner's own financial, business, property, or personal interests (e.g., Mr. Harrington's business relationship with the referring entity); § 10.66(a) by not declining employment from a referring entity where the exercise of Mr. Harrington's independent, professional judgment on behalf of a client would be or was likely to be adversely affected by the acceptance of the proffered employment or if it would be likely to involve Mr. Harrington in representing differing interests; and § 10.77(c) by failing to act on legal matters entrusted to him, including not communicating with referred clients adequately and in a timely manner.

Under the terms of the settlement agreement, Mr. Harrington is eligible to request reinstatement after serving six months of his 36-month suspension subject to certain conditions and, if reinstated, Mr. Harrington will be permitted to practice before the Office. Mr. Harrington is also required to serve a probationary period.

Invention Submission Corporation ("ISC") is a company that solicited and contracted with inventors who hoped to obtain patents on their inventions. ISC arranged with patent practitioners, like Mr. Harrington, to prosecute patent applications for the inventors before the Office. Between 2005 and

2008, ISC referred a significant volume of clients to Mr. Harrington. Generally speaking: (a) Mr. Harrington did not speak with ISC-referred clients about their inventions, the patent legal services he intended to render on their behalf, the patentability opinion provided by ISC, or the patent prosecution process before the Office; (b) Mr. Harrington did not divulge the actual or potential conflict of interest that ISC's purported escrowing of attorney fees presented to Mr. Harrington's representation of ISC-referred clients' interests; (c) Mr. Harrington did not divulge his business relationship with ISC to ISC-referred clients nor the actual or potential conflict of interest that it presented in representing their interests, nor did he obtain ISC-referred clients' consent after full disclosure to represent them in light of his business relationship with ISC; and (d) during the course of the prosecution of their patent applications: Mr. Harrington did not engage in pre-filing discussions with ISC-referred clients about their patent applications and the documents accompanying the initial filing of patent applications, did not timely inform ISC-referred clients of Office actions, did not adequately explain to ISC-referred clients the significance of Office actions, did not adequately counsel ISC-referred clients on options when responding to Office actions, did not adequately advise ISC-referred clients about the legal consequences of those options, did not adequately advise ISC-referred clients about the legal consequences of not responding to Office actions, did not adequately assist ISC-referred clients in making decisions regarding Office actions, took action on their applications without their knowledge, did not keep ISC-referred clients fully and timely apprised of the status of their applications directly and/or through adequate supervision of his staff, allowed certain applications of ISC-referred clients to become abandoned without the clients' consent, and did not provide sufficient legal advice to an ISC-referred client when the client's patent application became abandoned. Mr. Harrington voluntarily discontinued receiving referrals from ISC in 2008.

The OED Director considered the following mitigating factors in reaching this settlement: (a) Mr. Harrington has no prior disciplinary history before the Office during the over twenty years he has been registered as a patent practitioner; (b) Mr. Harrington experienced a serious medical condition that impaired his ability to practice law and affected his judgment during a portion of the period that he represented ISC-referred clients; and (c) Mr. Harrington cooperated with the Office of Enrollment and Discipline during the investigation and resolution of this matter.

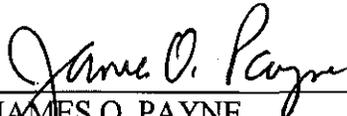
This action is taken pursuant to a settlement agreement between Mr. Harrington and the USPTO pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20, 11.26, and 11.59. Disciplinary decisions regarding practitioners are posted electronically in

the Office of Enrollment and Discipline's 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 Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this Final Order, (1) when addressing any further complaint or evidence of the same or similar misconduct brought to the attention of the Office concerning Respondent, and/or (2) in any future disciplinary proceeding concerning Respondent: (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.

APR 18 2012

Date



JAMES O. PAYNE
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

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