

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

In the Matter of)
)
Todd Wengrovsky,) Proceeding No.: 03-09
Respondent)
)
)
_____)

FINAL ORDER

The Director of the Office of Enrollment and Discipline (OED Director) of the United States Patent and Trademark Office (USPTO) and Todd Wengrovsky, Respondent, have submitted a settlement agreement in the above-identified proceeding that meets the requirements of 37 C.F.R. § 10.133(g).

In order to resolve the case without the necessity of a hearing, the OED Director and Respondent have agreed to certain stipulated facts, legal conclusions and sanctions, all of which are set forth below. It was further agreed between the OED Director and Respondent that this agreement resolves any and all disciplinary action by the USPTO arising from the allegations set forth in the Complaint.

Pursuant to that agreement, this Final Order sets forth the following stipulated facts, agreed-upon legal conclusions and sanctions.

STIPULATED FACTS

1. Herein, the act of “practicing patent law before the USPTO” includes the preparation, in whole or in part, of patent applications, amendments and other responsive materials under 37 C.F.R. §§ 1.111 and 1.116, briefs on appeal under 37 C.F.R. § 1.192, and any other documents to be submitted by any person, including persons other than Respondent, to the USPTO in the prosecution of a patent application before the USPTO. The “unauthorized” practice of patent law before the USPTO is the act of practicing patent law before the USPTO by a person not either registered under 37 C.F.R. § 10.6 or working under the supervision of a person registered under 37 C.F.R. § 10.6.
2. At all relevant times, Todd Wengrovsky (Respondent), of Calverton, New York was not registered, either as an agent or as an attorney, to practice patent law before the USPTO under 37 C.F.R. § 10.6.
3. At all relevant times, Respondent has been practicing patent law before the USPTO by preparing patent applications, patent amendments and other papers for filing with the USPTO despite the fact that Respondent did not sign each of the documents submitted to the USPTO.

4. On or about May 7, 1998, Respondent and XXXX formed, owned, and operated The Intellectual Resource Group, LLC, (hereinafter “IRG”), a business organized under the laws of the State of New York.
5. The original Articles of Organization for IRG list both Respondent and XXXX as co-owners.
6. IRG is “a private company specializing in intellectual property-related research, [and] patent drafting”
7. IRG’s website (<http://www.irginfo.com>) has stated that “IRG prepares patents for inventors who desire to file their own applications,” including written description, computer-generated drawings, and preparations of revisions and amendments.
8. IRG’s website has also stated that “[a]ll . . . applications for patents . . . are prepared by IRG’s attorney.”
9. Respondent is licensed by the State of New York to practice law, and at all times relevant has been IRG’s only attorney. However, Respondent has not been and is not registered to practice patent law before the USPTO.
10. XXXX is not now, nor has he ever been, an attorney. Further, XXXX is not now, nor has he ever been, registered as a patent agent or attorney authorized to practice patent law before the USPTO.
11. At all relevant times, no person employed by or having control or ownership interest in IRG at any time was or is registered to practice patent law before the USPTO.
12. IRG’s website presently states that patent applications are to be prepared by IRG for IRG’s clients based upon input and instruction from the client, but that the client is to actually “file” his/her application and filing fee directly with the USPTO.
13. Respondent agrees that the procedures described in Paragraph 12 constitute the practice of patent law before the USPTO by Respondent and/or IRG.
14. At all relevant times, IRG’s practice is that IRG does not receive correspondence from the USPTO after the clients send a patent application prepared by Respondent and IRG to the USPTO. Instead, all correspondence from the USPTO is to be sent to the clients.
15. IRG’s website has further stated that “The Intellectual Resource Group [IRG] does not charge any additional fees for the preparation of Patent Amendments, as we consider Amendments to be simply part of a larger overall plan.”

16. The clients of IRG include, but are not limited to, [Client 1], [Client 2], [Client 3], [Client 4], [Client 5] (President of Tortoise Enterprises), [Client 6], [Client 7], [Client 8], [Client 9], [Client 10], [Client 11], [Client 12], [Client 13], [Client 14] (President of XXXX.), and [Client 15] (hereinafter “the clients”).
17. Respondent and XXXX prepared, in whole or in part, the following patent applications:
 - Application Serial No. [#4-1], now abandoned;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. [#13-1], now abandoned;
 - Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
 - Application Serial No. [#4-2], now abandoned;
 - Application Serial No. [#13-2], now abandoned;
 - Application Serial No. [#6], which is currently pending before the USPTO; and
 - Application Serial No. XXXX, which issued as U.S. Design Patent No. XXXX.
18. Respondent admits that he prepared the written descriptions and that XXXX prepared the computer-generated drawings for each of the applications listed in Paragraph 17.
19. Respondent also prepared an Amendment that was mailed to the USPTO on February 21, 2000 in Application Serial No. XXXX (which issued as U.S. Design Patent No. XXXX). Respondent signed the Certificate Of Mailing for the Amendment. Respondent also signed the Fee Transmittal Letter accompanying the Amendment. Respondent also included with the Amendment a check dated February 21, 2000 that bears the heading “The Intellectual Resource Group” and Respondent’s signature. The Amendment itself bears the signature of the inventor, [Client 8].
20. Respondent mailed the Amendment, Certificate Of Mailing, Fee Transmittal Letter, and check referred to in Paragraph 19 to the USPTO.
21. Respondent did not associate with any registered patent agent or attorney to prepare the patent applications identified in Paragraph 17 or the Amendment identified in Paragraph 19.
22. IRG and Respondent’s typical practice is to prepare patent applications and amendments for IRG’s clients based on client input, and then to give to the respective clients any patent applications and/or amendments prepared by IRG and Respondent for the clients

- to sign and mail to the USPTO in an envelope provided and addressed by Respondent.
23. IRG and Respondent's typical practice is that patent applications and amendments prepared by IRG and Respondent do not bear either Respondent's signature or the signature of any other IRG employee.
 24. When Respondent prepares trademark applications, Respondent typically performs this work through Respondent's separate legal practice, in his own name and not that of IRG. Respondent also signs his name to the trademark applications and related documents that are filed with the USPTO. However, IRG's advertisements and website indicate that IRG also offers trademark services. (*See* Paragraph 49.)
 25. Respondent and XXXX prepared U.S. Design Application Serial No. XXXX, which issued as U.S. Design Patent No. XXXX, through IRG. (*See* Paragraph 17.)
 26. Respondent prepared U.S. Design Application Serial No. XXXX. The application was filed with an abstract, which although required in utility patent applications (*see* 37 C.F.R. § 1.72), is not proper in design patent applications (*see* 37 C.F.R. § 1.153).
 27. The declaration that was originally filed with U.S. Design Application Serial No. XXXX was defective due to the inclusion of the word "NONE" on the post office address portion of the form.
 28. The drawings prepared by IRG and originally filed with U.S. Design Application Serial No. XXXX were not shaded in the manner required by 37 C.F. R. § 1.152(a)(1).
 29. Respondent prepared U.S. Application Serial No. [#13-2] through IRG for [Client 13]. (*See* Paragraph 17.)
 30. The drawings prepared by Respondent or IRG and originally filed with U.S. Application Serial No. [#13-2] did not show every feature of the invention specified in the claims as required by 37 C.F.R. § 1.83(a).
 31. The patent claims prepared by Respondent or IRG and originally filed with U.S. Application Serial No. [#13-2] lacked the proper antecedent basis required under the definiteness requirement of 35 U.S.C. § 112, second paragraph.
 32. On August 26, 2002, the USPTO issued an Office Action detailing the objections and rejections to U.S. Application Serial No. [#13-2] listed in Paragraphs 30 and 31, as well as other objections and rejections.
 33. The August 26th Office Action specified a shortened period for reply of 3 months from the date the Office Action issued (*i.e.*, by November 26, 2002).

34. The only response to the August 26th Office Action ever received by the USPTO was received on December 9, 2002, *i.e.*, after the November 26, 2002 deadline.
35. The untimely December 9th Response included a Certificate Of Mailing that was signed by [Client 13] and dated November 30, 2002, *i.e.*, after the November 26th deadline.
36. The untimely December 9th response did not include a petition for extension of time or the fee required under 37 C.F.R. §§ 1.17(a) and 1.136.
37. Respondent instructed [Client 12] to review, sign and mail the December 9th Response in an envelope provided and addressed by Respondent.
38. [Client 13] states that the envelope Respondent provided with the Response, and which [Client 13] mailed, was addressed to IRG, and not the USPTO.
39. On May 3, 2003, the USPTO issued a Notice of Abandonment in U.S. Application Serial No. [#13-2] for failure to timely file a proper reply to the Office Action mailed on August 26, 2002.
40. On or about April 5, 2001, XXXX sent an email to an inventor's group in which he solicited business on IRG's behalf, and stated that together he and his "partner" run a "young I.P. firm on a service-intensive philosophy. We provide searches, applications, drafting and illustration to a wide variety of clients, ranging from 'Pro Se' individuals to international businesses." XXXX did not provide the name of any person associated with IRG who was registered under 37 C.F.R. § 10.6 to practice patent law before the USPTO.
41. On June 15, 2001, OED issued a First Requirement for Information to Respondent inquiring about IRG's patent-related services.
42. On or about June 28, 2001, Respondent amended the Articles of Organization for IRG to reflect that IRG would no longer be co-owned by Respondent and XXXX, but instead now be solely owned and managed by Respondent.
43. In an August 30, 2001 Response to the First Requirement for Information and in subsequent responses to inquiries made by OED, Respondent stated that IRG is now owned and operated solely by Respondent.
44. IRG charges a flat fee for the preparation of patent applications. This fee includes the preparation of any amendments and responses to be filed in the USPTO.
45. At all relevant times, all payments by the clients to IRG were deposited directly into IRG's Chase Manhattan business checking account. Respondent did not maintain a separate trust fund for payments from each of IRG's clients.
46. During all relevant times before and after June 28, 2001, IRG's website did and does not indicate whether the clients are afforded attorney-client privilege.

47. With respect to confidences, IRG's website indicates only that all services include a "Non-Disclosure Agreement" to protect the confidentiality of any items submitted to IRG."
48. Prior to June 28, 2001, IRG's confidentiality agreement was phrased in terms of the "Company." The agreement does not discuss the attorney-client privilege. The agreement does not discuss attorney-client privilege afforded by Respondent's status as an attorney.
49. IRG is advertised in the September 2001 edition of the Verizon telephone book for the New York Metro Area under the heading "Patent Attorneys & Agents." IRG's listing appeared as follows:

INTELLECTUAL RESOURCE GROUP
PATENTS-TRADEMARKS-COPYRIGHTS
Complete Legal & Graphic
Services for the Creative Mind
SEARCHES DRAFTING
APPLICATIONS ILLUSTRATION
www.IRGinfo.com
631 727 3400

50. No registered patent agent or attorney is listed in the advertisement (in Paragraph 49) as being associated with IRG.
51. Respondent placed the advertisement (in Paragraph 49).
52. In a First Requirement for Information dated June 12, 2001, OED asked Respondent to state whether any inventor had advanced funds to IRG for the preparation of a patent application and, if so, to identify the person(s), the amount of funds advanced, and where the funds were deposited. Respondent was also asked to produce all copies of documents, notes, correspondence, deposit slips account statements, emails, electronic records, electronic files, electronic documents, memoranda, reports, and other written materials related to any advance of funds to IRG for the preparation of patent applications.
53. In an August 30th Response to the First Request for Information, Respondent produced only copies of invoices for the preparation of the following patent applications:

Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;

Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX; and
Application Serial No. XXXX, which issued as U.S. Design Patent No. XXXX.

a copy of an article entitled “Intellectual Property: An Overview,” which IRG distributes to prospective clients; and a price list and description of IRG services.

54. The invoices from the clients produced by Respondent in his August 30th Response to the First Requirement for Information refer to “down payment” and “equal installments,” and “balance . . . due upon completion of patent preparation.” The invoices do not state whether they are in payment for work already completed.
55. In a Second Requirement for Information dated February 25, 2002, OED informed Respondent that his Response to the First Requirement for Information was not fully responsive.
56. In a Response to the Second Requirement for Information dated March 29, 2002, Respondent did not produce copies of all or a representative number of each of the documents requested in the First Requirement for information (*see* Paragraph 52), including the requested bank records.
57. In his Response to the Second Requirement for Information dated March 29, 2002, Respondent stated that all payments by the clients to IRG are deposited directly into IRG’s Chase Manhattan business checking account, and are not placed into separate trust accounts.
58. Monies from IRG’s Chase Manhattan business checking account were dispersed to Respondent and/or XXXX or other IRG employees.
59. In the First Requirement for Information dated June 12, 2001, OED asked Respondent to specifically identify by application number any patent applications prepared in whole or part by Respondent or any person associated with IRG.
60. In his August 30th Response to the First Requirement for Information, Respondent stated that he and XXXX “do not file or prosecute patent applications on behalf of any clients ever.” (emphasis original).
61. In his responses to OED’s request for information regarding patent applications prepared by Respondent or any person associated with IRG, Respondent provided information regarding only the following patent applications:

Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX;
Application Serial No. XXXX, which issued as U.S. Patent No. XXXX; and
Application Serial No. XXXX, which issued as U.S. Design Patent No. XXXX.

62. In addition to those patent applications listed in Paragraph 61, Respondent and XXXX also prepared, in whole or in part, the following patent applications:

Application Serial No. [#4-1], now abandoned;
Application Serial No. [#13], now abandoned;
Application Serial No. [#4-2], now abandoned;
Application Serial No. [#13-2], now abandoned; and
Application Serial No. [#6], which is currently pending before the USPTO.

63. Respondent and XXXX prepared components of the following patent applications for [Client 13], President of XXXX. (“XXXX”), and/or XXXX employees:

Application Serial No. [#4-1], now abandoned;
Application Serial No. 09/271,807, which issued as U.S. Patent No. XXXX; and
Application Serial No. [#4-2], now abandoned.

64. After [Client 13] hired IRG and Respondent to prepare patent applications for himself and/or XXXX employees, [Client 13] asked Respondent if he was registered to practice patent law before the USPTO.

65. Respondent told [Client 13] that he was not registered to practice patent law before the USPTO, and also told [Client 13] that Respondent did not need to be registered with the USPTO in order to prepare patent applications and amendments and responses to be submitted to the USPTO if the documents were signed and mailed by the clients.

66. Respondent acknowledges that a person needs to be registered with the USPTO under 37 C.F.R. § 10.6 in order to prepare patent applications and amendments and responses for clients to be submitted to the USPTO, even if the documents are signed and mailed by a client.

LEGAL CONCLUSIONS

Based upon the foregoing stipulated facts, Respondent acknowledges that his conduct violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility:

67. Rule 10.23(b)(2), in that Respondent circumvented 37 C.F.R. §§ 10.112(b) and (c) by maintaining client legal fees in IRG's business checking account.
68. Rule 10.23(b)(4), in that Respondent misrepresented to the USPTO that IRG "does not represent any clients in any way" before the USPTO in patent law matters, and that he and XXXX "do not file or prosecute patent applications on behalf of clients ever;" Respondent misrepresented to a client that he did not need to be registered to prepare documents for submission to the USPTO in patent matters; and Respondent failed to produce a complete list of requested documents during an investigation. (emphasis original).
69. Rule 10.23(b)(5), in that Respondent engaged in conduct prejudicial to the administration of justice by failing to cooperate in an investigation.
70. Rule 10.23(b)(6), in that Respondent engaged in conduct reflecting adversely on his fitness to practice.
71. Rule 10.24(a), in that Respondent failed to cooperate in an investigation.
72. Rule 10.32(c), in that Respondent advertised in a telephone directory without including the name of at least one registered practitioner responsible for the advertisement's content.
73. Rule 10.47(a) and/or (c), in that Respondent, as a member of a limited liability company, IRG, assisted IRG in the unauthorized practice of law before the USPTO.
74. Rule 10.48, in that Respondent, as a member of a limited liability company, IRG, shared legal fees with one or more nonpractitioner(s), including IRG and XXXX.
75. Rule 10.49, in that Respondent formed a partnership with a nonpractitioner, XXXX, and the activities of this partnership, through IRG, include the practice of patent, trademark, or other law before the USPTO.
76. Rule 10.57(c) and (d), in that Respondent failed to obtain, after full disclosure by Respondent, consent from the clients to disclose their inventions and patent applications to XXXX, or to exercise reasonable care to prevent IRG's employees and associates from disclosing or using the confidences or secrets of the clients.
77. Rule 10.68(a)(1), in that Respondent failed to obtain consent from the clients after full disclosure by Respondent of all conflicts arising from his compensation from IRG.
78. Rules 10.77(a), in that Respondent failed to associate with someone registered to practice patent law before the USPTO.
79. Rule 10.112(a), in that Respondent maintained client legal fees in IRG's business

checking account.

80. Rule 10.112(b), in that Respondent maintained client legal fees in IRG's business checking account.
81. Rule 10.112(c), in that Respondent maintained client legal fees in IRG's business checking account.

REPRIMAND AND PROBATION

Based on the foregoing, it is:

82. **ORDERED** that the Final Order incorporates the facts stipulated in Paragraphs 1-66 above.
83. **ORDERED** that Respondent is on probation for five (5) years from the date of this order.
84. **ORDERED** that Respondent's probation is on the following terms:
 - a. Respondent shall not practice and/or aid unregistered attorneys, laypersons, IRG or any other juristic entity in the practice of patent law before the USPTO by such acts as including, but not limited to, the preparation, in whole or in part, of patent applications, amendments and other responsive materials under 37 C.F.R. §§ 1.111 and 1.116, briefs on appeal under 37 C.F.R. § 1.192, and any other documents to be submitted to the USPTO in either the presentation to or prosecution of a patent application before the USPTO by any person, including persons other than Respondent;
 - b. Respondent, upon entry of the Final Order, shall cease to advertise or communicate any reference to Respondent preparing any patent application(s) or any other material(s) to be submitted to the USPTO in the presentation and prosecution of a patent application, and any reference to Respondent's ability to help another obtain a patent from the USPTO; Respondent shall remove from all existing advertisements and or commercial communications any reference to Respondent preparing any patent application(s) or any other material(s) to be submitted to the USPTO in the presentation and prosecution of a patent application, and any reference to Respondent's ability to help another obtain a patent from the USPTO; and Respondent shall submit proof of the cessation and the removal to the OED Director within 30 calendar days of the entry of the Final Order;
 - c. Respondent, upon entry of the Final Order, shall cause IRG, and any other juristic entity with which Respondent is associated or in which Respondent has an ownership interest that is engaged in the unauthorized practice of patent law before the USPTO, to cease the unauthorized practice of patent law before the

USPTO, and to cease to advertise or communicate any reference to Respondent, IRG or the entities preparing any patent application(s) or any other material(s) to be submitted to the USPTO in the presentation and prosecution of a patent application, or and any reference to the ability of Respondent, IRG, or the entities to help another obtain a patent from the USPTO; Respondent shall cause IRG and said entities to remove from all of their existing advertisements and/or commercial communications any reference to Respondent, IRG or the entities preparing any patent application(s) or any other material(s) to be submitted to the USPTO in the presentation and prosecution of a patent application, or and any reference to the ability of Respondent, IRG, or the entities to help another obtain a patent from the USPTO; and Respondent shall submit proof of the cessation and the removal to the OED Director within 30 calendar days of the entry of the Final Order;

- d. Respondent shall not include or permit any other party, or juristic entity engaged in the practice of patent law before the USPTO acting on his behalf, to include in any future advertisement or commercial communication any reference to Respondent preparing any patent application(s) or any other material(s) to be submitted to the USPTO in the presentation and prosecution of a patent application, or Respondent's ability to help another obtain a patent from the USPTO;
- e. Respondent shall not permit IRG, and any other juristic entity engaged in the unauthorized practice of patent law before the USPTO with which Respondent is associated, and any other juristic entity in which Respondent has an ownership interest, to include in any future advertisement or commercial communication any reference to Respondent, IRG or the entity providing or preparing any patent application(s) or any other material(s) to be submitted to the USPTO in the presentation and prosecution of a patent application, or any reference to Respondent's, IRG's, or the entity's ability to help another obtain a patent;
- f. Respondent shall enter into IRG's website the amendments found in ADDENDUM A, "Revisions to IRG's Website", which amendments shall constitute part of this Order, but which amendments *shall not constitute an approval or certification by the USPTO that the content of IRG's website is legally or factually correct*;
- g. Respondent shall be required to maintain the financial accounts and records of Respondent, IRG or any other juristic entity engaged in the practice of law with which Respondent is associated or in which Respondent has an ownership interest in accordance with the USPTO Disciplinary Rules as outlined in the terms of ADDENDUM B, "Maintaining Financial Records and Accounts in Compliance with USPTO Disciplinary Rules", which terms shall constitute part of this Order;
- h. Respondent shall be required to submit proof and documentation, including

documentation of accounts, trust accounts, income, disbursements, and funds advanced, to the OED Director at six (6) month intervals, starting from the date the final order is entered, for the duration of the five (5) year period of Respondent's probation that the financial accounts and records of Respondent, IRG and any other juristic entity engaged in the practice of law with which Respondent is associated or in which Respondent an ownership interest comply with the terms of Paragraph 84(g);

- i. The proof and documentation of compliance according to the terms of 84(h) shall be submitted to the OED Director for the limited purpose of confirming that Respondent, IRG and any other entity engaged in the practice of law with which Respondent is associated or in which Respondent an ownership interest comply with both the USPTO Disciplinary Rules and the Final Order;
- j. Respondent shall immediately inform the OED Director of any change in address or phone number that may occur during the five (5) year period of Respondent's probation;
- k. Respondent shall immediately inform the OED Director of Respondent acquiring an ownership interest in a business organization or partnership engaged in the practice of law during the five (5) year period of Respondent's probation; and
- l. Respondent shall not violate any USPTO Disciplinary Rule. *See* 37 C.F.R. §§ 10.23 - 10.112.

85. **ORDERED** that, if during the five (5) year probation Respondent does not comply with any of Respondent's obligations outlined in Paragraph 84:

- a. A complaint shall be filed against Respondent if Respondent violates any of the terms in the Final Order.
- b. During any hearing based on the complaint of Paragraph 95(a), Respondent shall not contest the admissibility of the Revised Settlement Agreement or this Order as evidence, and Respondent shall be deemed to have admitted the facts stipulated in Paragraphs 11-76 of the Revised Settlement Agreement for purposes of such a hearing.
- c. Any violation due to a failure by Respondent to comply with the Final Order shall result in Respondent's suspension from practice before the USPTO in all legal matters for three (3) years, notwithstanding any other discipline ordered by the USPTO Director for the violation of the USPTO Disciplinary Rules that constitutes the violation of the terms in the Final Order.
- d. Upon suspension, Respondent shall comply with the provisions of 37 C.F.R. § 10.158.

- e. After being suspended for three (3) years in compliance with 37 C.F.R. § 10.158, Respondent may petition for reinstatement in accordance with 37 C.F.R. § 10.160.
- f. The following Notice shall be published in the Official Gazette:

Notice of Suspension

Todd Wengrovsky, of Calvert, NY, a person not registered to practice patent law before the USPTO, has been suspended for three (3) years from practice before the United States Patent and Trademark Office in patent and trademark law cases beginning (*insert date of USPTO Director's order of suspension*) for violating the terms of his probation, which he received in connection with engaging in the unauthorized practice of patent law before the USPTO. This suspension is made pursuant to the provisions of 35 U.S.C. § 32, and 37 C.F.R. § 10.133(g).

- g. The OED Director shall give notice of the suspension to appropriate authorities of any State in which Respondent is known to be a member of the bar and any appropriate bar association.

86. **ORDERED** that the OED Director publish the Final Order.

87. **ORDERED** that the OED Director publish the following Notice in the Official Gazette:

Notice of Reprimand

Todd Wengrovsky, of Calvert, NY, a person not registered to practice patent law before the USPTO under either 37 C.F.R. § 10.6 or § 10.7. In settlement of a complaint, the General Counsel, on behalf of the Director of the United States Patent and Trademark Office, has ordered that Mr. Wengrovsky be reprimanded for violating the following USPTO Disciplinary Rules (“DR”): DR 10.23(b)(2) (circumventing Rules 10.112(b) and (c) through the acts of another, namely, The Intellectual Resource Group, LLC, (“IRG”)), 10.23(b)(4) (engaging in conduct involving misrepresentation before the USPTO), 10.23(b)(5) (engaging in conduct prejudicial to the administration of justice by failing to cooperate in an investigation), 10.23(b)(6) (engaging in conduct reflecting adversely on his fitness to practice), 10.24 (failing to cooperate in an investigation), 10.32(c) (advertising in a telephone directory without including the name of at least one registered practitioner responsible for the advertisement’s content), 10.47 (assisting another in the unauthorized practice of law before the USPTO), 10.48 (sharing legal fees with a nonpractitioner), 10.49

(forming a partnership with a nonpractitioner, and through this partnership practicing patent, trademark, or other law before the USPTO), 10.57(c)-(d) (failing to obtain, after full disclosure by Mr. Wengrovsky, consent from the clients to disclose their inventions and patent applications to a non-practitioner), 10.68(a)(1) (failing to obtain consent from the clients after full disclosure by Mr. Wengrovsky of all conflicts arising from his compensation from IRG), 10.77(a) (failing to associate with someone registered to practice patent law before the USPTO), 10.112(a) (maintaining client legal fees in IRG's business checking account), 10.112(b) (maintaining client legal fees in IRG's business checking account), and 10.112(c) (maintaining client legal fees in IRG's business checking account); and that Mr. Wengrovsky is prohibited from practicing and/or aiding others in the practice of patent law before the USPTO; and that Mr. Wengrovsky be placed on probation subject to terms. This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. 10.133(g).

88. **ORDERED** that the OED Director give notice to appropriate employees of the USPTO, courts, and authorities of any State in which Respondent is known to be a member of the bar; and any appropriate bar association. 37 C.F.R. § 10.159(a).

89. **ORDERED** that all parties shall bear their own costs.

On behalf of James E. Rogan,
*Under Secretary of Commerce For Intellectual
Property and Director of the United States Patent
and Trademark Office*

Date

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

cc: Harry I. Moatz
OED Director

Todd Wengrovsky
285 Southfield Road
P.O. Box 285
Calverton, NY 11933

ADDENDUM A

Revisions to IRG's Website

The following changes shall be made to IRG's website at the indicated places, where striking through indicates text that must be deleted and underlining indicates text that must be added:

At "Home":

“ Patents Trademarks Copyrights

Intellectual Property

Patent Inventions and Ideas. Copyright Creations.

Trademark Business Names, Logos, Internet Domain Names.

Welcome to the website of The Intellectual Resource Group®. IRG provides research, ~~writing~~, and graphic services to assist clients in protecting and advancing their inventions, trade names, logos or ideas. Specifically, IRG specializes in searches, preparation and drafting relating to ~~patents~~, trademarks and copyrights. We appreciate the opportunity to work with you in maximizing your intellectual property's potential.

Because all of the above services are performed in-house, confidentiality is assured. When you request our free information pack through our "More Information" page, your package will include a signed "Non-Disclosure Agreement" to protect the confidentiality of any items submitted to IRG. The package will also contain pricing and any samples you request. ”

At "Patents":

“ A patent legally protects inventions, including: tangible items, methods of operation, and systems. In order to receive a U.S. patent, your invention must be "novel", "useful", and "non-obvious." Novel, or new, basically means that the item hasn't been on the market for over a year. Useful means that your idea has some functional quality that can help someone or something. Non-obvious, the most important requirement, means that your concept possesses some element or elements that set it apart from patents already on the books.

A patent search will largely determine the success of your invention. IRG can search all issued U.S. Patents, provide an analysis of the results, and send you copies of all patents found. All we need to get started is a brief description of your idea, along with any sketches, or photographs you may have, following your receipt of our signed non-disclosure agreement.

~~If the results of the patent search are favorable, IRG will automatically apply the search fee you have paid towards the cost of patent preparation.~~ It should be noted that with over six million U.S. patents already on the books, most patents currently being issued are simple improvements of existing inventions.

~~IRG prepares patents for inventors who desire to file their own applications. We are not registered patent agents or patent attorneys and we do not represent inventors in their dealings with the patent office. An IRG patent application takes about 2 to 3 weeks to prepare, and will likely consist of 20 to 25 pages of written description, several pages of computer-generated drawings, and copies of forms required by the U.S. Patent and Trademark Office. The application is prepared based on the description and drawings submitted to IRG, as well as all other input / instruction from the client. Copies of the proposed application are sent to you for you to file directly with the U.S. Patent and Trademark Office. After you submit the application and filing fee, all USPTO correspondence will come directly to you.~~

~~The patent process, much like the process of inventing, is an effort of creation and refinement. The object is to create as broad a patent as possible, thereby affording maximum coverage. For this reason, IRG will prepare a patent that describes your invention widely and includes as many alternate features as possible.~~

~~Of course, the U. S. Patent and Trademark Office will not just accept everything you submit. In many cases, the PTO will object to parts of the application, most commonly because the invention was described and claimed a little too broadly.~~

~~Fortunately, the PTO Examiner will outline exactly why the patent can not be granted as written, and will give you ample opportunity to refine your patent application accordingly. The Intellectual Resource Group does not charge any additional fees for the preparation of Patent Amendments.~~

IRG does not prepare or assist clients in filing patent applications, or otherwise aid clients in obtaining a patent, such assistance can be obtained only through a registered patent agent and attorney. A list of currently registered patent agents and attorneys can be found on the PTO's website at <http://www.uspto.gov/web/offices/dcom/olia/oed/roster/index.html>.

Once the patent is issued, as long as you pay the scheduled issue fee and periodic maintenance fees, you can enjoy a "legal monopoly" of your invention. Any manufacture, sale, or license of the invention in the United States must first be approved by you. If you ever feel that your patent is being infringed upon, IRG can refer you to an attorney that specializes in enforcement and litigation.

If you desire greater coverage, you may be interested in filing a foreign or international patent application. The "Patent Cooperation Treaty" is a binding agreement signed by over 80 nations for the advancement of global patent rights.

Under the "PCT" all countries agree to honor the patents of any member nations' citizens. Specifically, by paying one filing fee and submitting several copies of your foreign application to the local PCT office in Washington, D.C., you can receive valid patent rights in all cooperating countries. IRG feels that as the world becomes smaller with the increased popularity of the Internet and tremendous advancements in global telecommunications, foreign patent protection is valuable and worthwhile.

SERVICES OFFERED

Patent Search Includes: Search of Issued Patents

Full Patent Copies and Shipping

~~Patent Preparation Includes: Written Description~~

Computer Generated Drawings

~~Preparation of Revisions and Amendments~~ ”

At “Patent Drafting”:

At title, delete the words “Patent Drafting”, or substitute therefor “Patent Drawings”

“ Sample Patent Drawings Prepared by The Intellectual Resource Group®

(~~Excerpts from issued U.S. Patents prepared by The Intellectual Resource Group® for pro se inventors~~) ”

ADDENDUM B

Maintaining Financial Records and Accounts in Compliance with USPTO Disciplinary Rules

The following shall serve as terms for maintenance of financial accounts and records in accordance with the USPTO Disciplinary Rules for Respondent, IRG any other entity engaged in the practice of law in which Respondent is associated or has an ownership interest:

Safekeeping property.

(a) All funds received or held by a practitioner or law firm on behalf of a client having immediate or prospective business before the Office, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the State, authorized by Federal or State law to do business in the jurisdiction where the practitioner or law firm is situated and which is a member of the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation, or successor agencies or, in the case of a practitioner having an office in a foreign country, in said financial institution in the United States or in a comparable financial institution in a foreign country, and no funds belonging to the practitioner or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein;
or

(2) Funds belonging in part to a client and in part presently or potentially to the practitioner or law firm must be deposited in said financial institution, and the portion belonging to the practitioner or law firm must be withdrawn promptly after it is due unless the right of the practitioner or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(b) A practitioner having an arrangement with an invention promoter for payment of his or legal fees for legal services rendered for a client referred to the practitioner by the promoter must ascertain upon accepting said referral whether the client advances funds for legal services to the promoter, and must take all reasonable steps to safeguard the advanced funds.

(c) When in the course of representation before the Office a practitioner is in possession of property in which both the practitioner and another person claim interests, the practitioner shall keep the property separate until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the practitioner shall keep the portion in dispute separate until the dispute is resolved.

(d) A practitioner, in connection with a client having immediate or prospective business before the Office, shall:

- (1) Promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the practitioner and render appropriate accounts to the client regarding them; and
- (4) Promptly pay and deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the practitioner that such person is entitled to receive.

(e) *Funds, securities or other properties.* Funds, securities or other properties held by a practitioner or law firm as a fiduciary in connection with a client having immediate or prospective business before the Office shall be maintained in separate fiduciary accounts, and the practitioner or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:

- (1) Funds may be maintained in a common escrow account subject to the provisions of paragraphs (a) and (c) of this section when authorized by professional conduct rules for lawyers in the jurisdiction where the practitioner or law firm is situated; or
- (2) Funds, securities or other properties may be maintained in a common account when authorized by professional conduct rules for lawyers in the jurisdiction where the practitioner or law firm is situated.

(f) *Record-keeping requirements, required books and records.* Every practitioner in regard to his or her practice before the Office shall maintain or cause to be maintained, on a current basis, books and records that establish compliance with paragraphs (a) and (d). Whether a practitioner or a law firm maintains computerized records or a manual accounting system, such system shall produce the records or information required by this subsection.

(1) In the case of funds held in an escrow account subject to this rule, the required books and records include:

(A) A cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(B) A cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(C) *Subsidiary ledger.* A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(D) Reconciliations and supporting records required under this section;

(E) The records required under this subsection shall be preserved for at least five full calendar years following termination of the fiduciary relationship.

(2) In the case of funds or property held by a practitioner or law firm as a fiduciary subject to paragraph (c), the required books and records include:

(A) An annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the practitioner is properly discharging the obligations of the fiduciary relationship;

(B) Original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under the preceding subparagraph (A), above;

(C) The records required under this subsection shall be preserved for at least five full years following the termination of the fiduciary relationship.

(g) *Required Escrow Accounting Procedures.* The following minimum accounting procedures are applicable to all escrow accounts subject to paragraphs (a) and (c) by practitioners in regard to practice before the Office.

(1) Insufficient fund check reporting.

(A) *Clearly identified escrow accounts required.* A practitioner or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identity of the account. Practitioner escrow accounts shall be maintained only in financial institutions authorized by these rules.

(B) *Overdraft notification.* A financial institution may report to the Office of Enrollment and Discipline if any instrument which would be properly payable if sufficient funds were available, is presented against a practitioner escrow account containing insufficient funds, irrespective of whether or not the instrument is honored.

(C) *Overdraft reports.* All reports made by a financial institution shall be in the following format:

(i) In the case of a dishonored instrument, the report shall be identical of the overdraft customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the practitioner or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;

(iii) *Practitioner cooperation.* Every practitioner or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(2) *Deposits.* All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item.

(3) *Deposit of mixed escrow and non-escrow funds other than fees and retainers.* Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.

(4) *Periodic trial balance.* A regular periodic trial balance of the subsidiary ledger shall be made at least quarterly, within 30 days after the close of the period and shall show the escrow account balance of the client or other period at the end of each period.

(A) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total monies received in escrow for the period and deducting the total escrow monies disbursed for the period; and

(B) The trial balance shall identify the preparer and be approved by the practitioner or one of the practitioners in the law firm.

(5) *Reconciliations.*

(A) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank Statement balance;

(B) A periodic reconciliation shall be made at least quarterly, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(C) Reconciliations shall identify the preparer and be approved by the practitioner or one of the practitioners in the law firm.

(6) *Receipts and disbursements explained.* The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be explained and supported by adequate records.

(h) All financial accounts kept by a registered practitioner must comply with the provisions of paragraph (f), except that:

(1) *Attorneys:* The financial records maintained by a practitioner who is an attorney in good standing of a bar of the highest court in a state will be deemed to be in substantial compliance with the provisions of paragraphs (f) and (g) if the attorney's principal place of business is in the United States, and the financial records are in compliance with the financial recordkeeping requirements of the state bar of which he or she is a member in good standing; or

(2) *Patent agents employed by a law firm:* The trust account records maintained by a law firm with regard to a patent agent employed by the law firm will be deemed to be in substantial compliance with the provisions of paragraphs (f) and (g) for the patent agent if the principal place of business of the law firm and the patent agent are in the United States, the patent agent is employed by the law firm, and the financial records maintained by the law firm comply with the financial record-keeping requirements that apply to at least one attorney in the law firm at the principal place of business.

(i) Conduct that constitutes a violation of paragraph (a) of this section includes, but is not limited to:

(1) Misappropriation of, or failure to properly or timely remit, funds received by a practitioner or the practitioner's firm from a client having immediate or prospective business before the Office to pay a fee which the client is required by law to pay to the Office.