

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

In the Matter of:)

Richard H. Gibson,)

Respondent.)

Proceeding No. D2012-28

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27, the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation, executed by Richard H. Gibson (“Respondent”) on September 25, 2012. Respondent submitted the affidavit to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office effective on the date of this Final Order.

Jurisdiction

Respondent is not a registered patent practitioner, but he is an attorney licensed by the State of California. As an attorney in good standing in the State of California, Respondent was authorized to practice before the Office in trademark and other non-patent matters, *see* 37 C.F.R. § 11.14(a), and was the attorney of record in several trademark applications filed with the USPTO. Accordingly, Respondent is subject to the USPTO Code of Professional Responsibility. *See* 37 C.F.R. § 11.19(a).

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent's Affidavit of Resignation and to exclude Respondent on consent from the practice of trademark and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in his September 25, 2012 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.
2. He is aware that there is a disciplinary complaint is pending against him (*i.e.*, USPTO Disciplinary Proceeding No. D2012-28) and that the complaint alleges he filed a client's trademark applications in an untimely manner, did not inform the client about Office correspondence received in connection with trademark applications, failed to respond to Office correspondence, allowed trademark applications to become abandoned without the client's knowledge or consent, made false or misleading statements to the client about the status of its trademark applications, and did not obtain the client's consent after full disclosure of actual or potential conflicts of interests before simultaneously representing the client and another client of his with whom he had financial and business dealings.
3. He is aware that the disciplinary complaint pending against him alleges that he violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility:
 - a. 37 C.F.R. § 10.77(a) (proscribing handling a legal matter which the attorney knows or should know that he is not competent to handle without associating with another practitioner who is competent to handle it);
 - b. 37 C.F.R. § 10.77(c) (proscribing neglecting legal matters entrusted to the attorney);
 - c. 37 C.F.R. §§ 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(8) (proscribing failing to inform a client of Office correspondence where the correspondence

- (i) could have a significant effect on a matter pending before the Office,
 - (ii) is received by the attorney on behalf of a client, and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client should be notified);
- d. 37 C.F.R. § 10.23(b)(4) (proscribing engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation);
 - e. 37 C.F.R. § 10.62 (proscribing, except with the consent of a client after full disclosure, accepting employment if the exercise of the attorney's professional judgment on behalf of the client will be or reasonably may be affected by the attorney's own financial, business, property, or personal interests);
 - f. 37 C.F.R. § 10.66 (requiring that an attorney decline proffered employment if the exercise of the attorney's independent professional judgment in 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 the attorney in representing differing interests, except where it is obvious that the attorney can adequately represent the interest of each client and each client consents after full disclosure);
 - g. 37 C.F.R. § 10.84 (proscribing intentionally failing to seek the lawful objectives of a client through reasonably available means permitted by law and the USPTO Code of Professional Responsibility); and
 - h. 37 C.F.R. § 10.40(a) (proscribing withdrawing from employment in a proceeding before the Office without permission from the Office and prior to taking reasonable steps to avoid foreseeable prejudice to the rights of the client).

4. Without admitting to any of the allegations of the disciplinary complaint or to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility, Respondent acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in USPTO Disciplinary Proceeding D2012-28 are true and (ii) he could not have successfully defended himself against such allegations.

5. He has fully read and understands 37 C.F.R. §§ 11.5(b), 11.5(b)(2),

11.27, 11.58, 11.59, and 11.60, and is fully aware of the consequences of consenting to exclusion from practice before the USPTO in trademark and other non-patent matters.

6. He consents to being excluded from practice before the USPTO.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Hence, it is ORDERED that:

- a. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
- b. Respondent shall be, and hereby is, excluded on consent from the practice before the Office in trademark and other non-patent matters beginning on the date this Final Order is signed;
- c. The OED Director shall publish this Final Order at the Office of Enrollment and Discipline's Reading Room found at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;
- d. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns Richard H. Gibson of Woodland Hills, California. The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Gibson's affidavit of resignation and ordered his exclusion on consent from practice before the Office in trademark and other non-patent matters. Mr. Gibson is not a registered patent practitioner and is not authorized to practice before the Office in patent matters.

Mr. Gibson voluntarily submitted his affidavit at a time when a disciplinary complaint was pending against him. The complaint alleged that he filed a client's trademark applications in an untimely manner, did not inform the client about Office correspondence received in connection with trademark applications, failed to respond to Office correspondence, allowed trademark applications to become

abandoned without the client's knowledge or consent, made false or misleading statements to the client about the status of its trademark applications, and did not obtain the client's consent after full disclosure of actual or potential conflicts of interests before simultaneously representing the client and another client of his with whom he had financial and business dealings. The complaint alleged that he violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility: 37 C.F.R. §§ 10.77(a), 10.77(c), 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(8), 10.23(b)(4), 10.62, 10.66, 10.84, and 10.40(a). While Mr. Gibson did not admit to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in the disciplinary complaint were true, and (ii) he could not have successfully defended himself against such allegations.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 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>.

- e. Respondent shall comply fully with 37 C.F.R. § 11.58;
- f. The OED Director shall comply with 37 C.F.R. § 11.59;
- g. Respondent shall comply with 37 C.F.R. § 11.60 upon any request for reinstatement;
- h. The OED Director and Respondent shall jointly move the hearing officer to dismiss the pending disciplinary complaint within 14 days of the date of this Final Order; and
- i. The OED Director and Respondent shall bear their own costs incurred to date and in carrying out the terms of this agreement.

[only signature line follows]

OCT 4 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

cc:

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

Richard H. Gibson
c/o Kevin M. Murphy, Esq.
Carr Maloney PC
2000 L Street NW
Suite 450
Washington, DC 20036
Counsel for Respondent

Notice of Exclusion on Consent

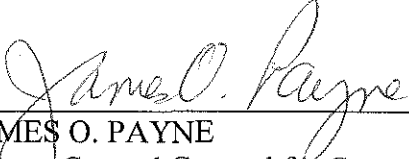
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[only signature line follows]

OCT 4 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