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

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| In the Matter of: | ) | |
| | ) | |
| Richard J. Tholstrup, | ) | Proceeding No. D2012-33 |
| | ) | |
| Respondent | ) | |
| | ) | |

**FINAL ORDER PURSUANT TO 37 C.F.R. § 11.26**

The Deputy General Counsel for Enrollment and Discipline and the Director of the Office of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "Office") and Richard J. Tholstrup ("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 found in the Agreement.

**Jurisdiction**

1. At all times relevant hereto, Respondent of Houston, Texas, has been a patent attorney registered to practice before the Office (Registration No. 40,838) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq*.

2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 37 C.F.R. § 11.26.

**Stipulated Facts**

1. Respondent of Houston, Texas, has been a patent attorney registered to practice patent law before the Office (Registration Number 40,838) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq*.

2. Respondent was previously disciplined by the USPTO as set forth in a Final Order dated March 1, 2011, for knowingly offering or using evidence that Respondent knew to be false and for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

3. In connection with an attorney ethical grievance filed against Respondent in Texas, Respondent and the Texas Commission for Lawyer Discipline stipulated before the Grievance Committee for the State Bar of Texas District No. 4 on May 11, 2012, that Respondent failed to keep a client reasonably informed about the status of her legal matter,

failed to explain to his client a matter to the extent necessary to permit his client to make an informed decision regarding her representation, neglected a matter entrusted to Respondent for a second client, and failed to explain to his second client a matter to the extent necessary to permit his client to make an informed decision regarding his representation.

4. By order dated May 17, 2012, the Texas State Bar, District No. 4 Grievance Committee found that Respondent violated Rules 1.01(b)(1), 1.03(a), and 1.03(b) of the Texas Disciplinary Rules of Professional Conduct. Consequently, the Texas State Bar, District No. 4 Grievance Committee suspended Respondent from the practice of law for three (3) years, with the suspension being fully probated, provided that (i) Respondent not violate any term of the judgment, (ii) Respondent not engage in professional misconduct, (iii) Respondent not violate any state or federal criminal statutes, (iv) Respondent keep the State Bar of Texas informed of his current address, (v) Respondent comply with Minimum Continuing Legal Education requirements for the state of Texas, (vi) Respondent comply with Texas State IOLTA requirements, (vii) Respondent promptly respond to any request for information from the Texas State bar, (viii) Respondent pay attorney's fees to the Texas State Bar, and (ix) Respondent complete, in addition to the minimum continuing legal education ("CLE") requirements, three additional hours of Ethics CLE in a time period set by the Texas State Bar, District No. 4 Grievance Committee.

5. Respondent timely reported to the Office of Enrollment and Discipline the discipline imposed on him by Texas State Bar, District No. 4 Grievance Committee described in the preceding paragraph.

**Legal Conclusion**

6. Based on the foregoing stipulated facts, Respondent acknowledges that his conduct violated the Disciplinary Rules of the USPTO Code of Professional Responsibility, specifically 37 C.F.R. §§ 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(5), by being suspended from practice as an attorney on ethical grounds by any duly constituted authority of a State.

**Sanctions**

7. Respondent agreed, and it is ORDERED that:

   a. Respondent be, and hereby is, (i) suspended for a period of thirty-six months from the practice of patent, trademark, and non-patent law before the USPTO commencing on the date the Final Order is signed;

   b. Respondent's suspension be, and hereby is, immediately stayed as of the date of the Final Order is signed;

   c. Respondent shall serve a probationary period of thirty-six (36) months beginning on the date the Final Order is signed;

d. Respondent is permitted to practice patent, trademark, and non-patent law before the USPTO during his probationary period unless he is subsequently suspended or excluded by order of the USPTO Director;[1]

e. Respondent shall report any revocation of his probation in Texas to the OED Director within thirty days of the revocation;

f. (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 issue an order lifting the stay of Respondent's suspension and immediately suspending Respondent for up to thirty-six (36) months for the violation set forth in paragraph 6, 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 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 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: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) argument and evidence supporting the OED Director's Conclusion 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 or his designee lift the stay of Respondent's suspension and immediately suspend the Respondent for up to thirty-six (36) months for the violation set forth in paragraph 6, above;

g. In the event that the USPTO Director lifts the stay and immediately suspends Respondent pursuant to subparagraph f., above, and Respondent seeks a review

[1] Nothing herein relieves Respondent of his duty of complying with 37 C.F.R. § 11.14(a).

of the lifting of the stay and/or the suspension, any such review shall not operate to postpone or otherwise hold in abeyance the suspension;

h. If USPTO Director lifts the stay and immediately suspends Respondent pursuant to subparagraph f, 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 to 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;

i. The OED Director shall publish the Final Order at the Office of Enrollment and Discipline's Reading Room publicly accessible via the USPTO's web page http://des.uspto.gov/Foia/OEDReadingRoom.jsp;

j. The OED Director shall publish a Notice in the *Official Gazette* consistent with the following:

**Notice of Stayed Suspension and Probation**

This concerns Richard J. Tholstrup of Houston, Texas, registered patent attorney (Registration No. 40,838). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Tholstrup for thirty-six (36) months with the entirety of the suspension stayed and placed him on probation for thirty-six (36) months. Mr. Tholstrup is permitted to practice patent law before the Office during his probationary period unless he is subsequently suspended by order of the USPTO Director.

Mr. Tholstrup accepted from the Texas Commission for Lawyer Discipline a three-year, fully probated suspension. The Texas Commission for Lawyer Discipline imposed that discipline because Mr. Tholstrup failed to keep a client reasonably informed about the status of her legal matter, failed to explain to his client a matter to the extent necessary to permit his client to make an informed decision regarding her representation, neglected a matter entrusted to Mr. Tholstrup for a second client, and failed to explain to his second client a matter to the extent necessary to permit his client to make an informed decision regarding his representation. Mr. Tholstrup timely reported the discipline to the Office of Enrollment and Discipline ("OED") and acknowledged that his conduct violated 37 C.F.R. §§ 10.23(a) and (b), via 37 C.F.R. §10.23(c)(5), by being suspended from practice as an attorney on ethical grounds by any duly constituted authority of a State.

This action is the result of a settlement agreement between Mr. Tholstrup 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 publicly accessible via the USPTO's web page http://des.uspto.gov/Foia/OEDReadingRoom.jsp.

k. Nothing in the 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 f., above;

l. Nothing in the Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this Final Order, when (1) addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office, 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

m. The OED Director and Respondent bear their own costs incurred to date and in carrying out the terms of the Agreement and this Final Order.

NOV 15 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 J. Tholstrup
The Tholstrup Law Firm, L.P.
440 Louisiana Street
Suite 1150
Houston, Texas 77002

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NOV 15 2012

Date

James O. Payne

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