

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

In the Matter of	)	
	)	
Steven Bruce Lehat,	)	
	)	Proceeding No. D2013-05
Respondent	)	
_____	)	

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

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 Steven Bruce Lehat (“Respondent”) have submitted a Proposed Settlement Agreement (“the 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. Respondent is not registered to practice before the Office in patent matters. At all times relevant to this Complaint, however, Respondent has been an attorney licensed by the State of California and by the District of Columbia and was the attorney of record in trademark applications filed with the USPTO. Accordingly, Respondent is an individual authorized under 37 C.F.R. § 11.14(a) to practice before the USPTO in trademark or other non-patent matters and is subject to the USPTO Code of Professional Responsibility and Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.* See 37 C.F.R. §§ 11.1 and 11.19.

2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20 and 11.26.

**Stipulated Facts**

Background

3. Respondent has been licensed to practice law in the State of California since May 30, 1980, and has been licensed to practice law in the District of Columbia since December 4, 2000. Respondent is not, and never has been, a registered patent practitioner and is not, and never has been, authorized to represent others before the USPTO in patent matters.

4. As an attorney licensed and in good standing in the State of California as well as in the District of Columbia, Respondent is authorized to practice before the Office in trademark matters, and he is attorney of record in numerous pending trademark applications pending before the Office.

5. Pre-Paid Legal Services, Inc. is a company that develops and markets pre-paid legal services plans. It provides access to legal services through a network of provider law firms through membership-based participation.

6. [REDACTED] of Washington, D.C., became a member of Pre-Paid Legal Services in October 2003.

7. Weinstock, Friedman & Friedman, P.A., ("Weinstock") is a law firm located in Baltimore, Maryland, and identifies itself as Pre-Paid Legal Services's legal service provider for Maryland and the District of Columbia.

8. [REDACTED] of Irvine, California, is a registered patent practitioner.

9. At all times relevant to this Complaint, Respondent knew that he was not authorized to represent [REDACTED] before the Office in a patent matter.

10. At all times relevant to this Complaint, Respondent did not have a registered patent practitioner who was a partner or an associate in his law firm; Respondent was a solo practitioner who hired [REDACTED] as a contract attorney to do patent work for his client.

11. In March 2011, [REDACTED] invented an improvement to a hair weave and method of use invention on which [REDACTED] already held U.S. Patent No. [REDACTED] ("the [REDACTED] patent).

12. On June 14, 2011, [REDACTED] contacted Weinstock about obtaining patent protection on the improvement to the [REDACTED] patent.

13. Weinstock referred [REDACTED] to Respondent.

14. [REDACTED] contacted Respondent on June 14, 2011, and Respondent accepted the referral.

#### Fees Were Not Earned Upon Receipt

15. A classic retainer is a sum of money paid by a client to secure an attorney's availability over a given period of time. In a true retainer situation, if the attorney's services are eventually needed, those services would be paid for separately, and no part of the retainer would be applied to pay for such services. Thus, if it is contemplated that the attorney will bill against the advance payment for actual services performed, then the advance is not a true retainer because the payment is not made solely to secure the

availability of the attorney. Instead, such payments are more properly characterized as either a security deposit or an advance payment of fees for services.

16. On September 13, 2011, [REDACTED] mailed a prototype of the improvement to Respondent, and, soon thereafter, Respondent informed [REDACTED] that it would cost \$7,200 to prepare, file, and prosecute a patent application for the improvement.

17. On October 3, 2011, [REDACTED] paid \$3,000 to Respondent to begin the preparation, filing, and prosecution of the patent application.

18. On November 3, 2011, [REDACTED] paid an additional \$2,000 to Respondent to begin the preparation, filing, and prosecution of the patent application.

19. In November 2011, Respondent remitted \$3,000 to [REDACTED] for [REDACTED] to prepare, file and prosecute [REDACTED] patent application.

20. The \$5,000 paid by [REDACTED] to Respondent was a flat fee paid in advance for the preparation, filing, and prosecution of a patent application to be conducted by a registered patent practitioner.

21. The \$5,000 paid by [REDACTED] to Respondent was not a retainer; it was not non-refundable; and it was not earned upon Respondent's receipt thereof.

#### Impermissible Fee Sharing

22. [REDACTED] was not an associate or a partner in Respondent's law office; [REDACTED] was an independent contractor in relation to Respondent's law practice.

23. Respondent did not fully disclose to [REDACTED] that the \$5,000 for preparing, filing, and prosecuting his patent application would be divided between Respondent and [REDACTED]

24. [REDACTED] did not consent to the employment of [REDACTED] after a full disclosure that the \$5,000 for preparing, filing, and prosecuting his patent application would be divided between Respondent and [REDACTED]

25. [REDACTED] was aware that [REDACTED] would be prosecuting the patent application.

26. Respondent initially divided the \$5,000 with [REDACTED] such that [REDACTED] received \$3,000 and Respondent kept the \$2,000 balance.

27. Respondent ultimately divided the \$5,000 with [REDACTED] such that [REDACTED] received \$800 and Respondent kept the remaining \$4,200.

28. The division of the \$5,000 was not made in proportion to the services performed and responsibility assumed by each.

29. Respondent asserted that the \$5,000 fee was predicated on the total time spent by both attorneys billed at the *quantum meruit* rate of \$1,000 per hour.

30. The total \$5,000 fee clearly exceeded the reasonable compensation for all legal services rendered to [REDACTED]

#### Failure to Return Unearned Fees Promptly

31. Before [REDACTED] prepared, filed, and prosecuted [REDACTED] patent application, [REDACTED] became dissatisfied with Respondent, terminated the attorney-client relationship with Respondent, and demanded return of the \$5,000.

32. [REDACTED] performed some patent law work on the application and calculated that he had earned only \$800 of the \$3,000 in attorney fees remitted by Respondent to him for working on [REDACTED] patent application.

33. [REDACTED] returned \$2,200 of the \$3,000 to Respondent.

34. Respondent did not promptly return the \$2,200 to [REDACTED]

35. Nor did Respondent promptly return to [REDACTED] the other \$2,000 of the \$5,000 that [REDACTED] paid in advance to Respondent for the preparation, filing, and prosecution of the patent application.

#### Respondent Charged a Clearly Excessive Fee to [REDACTED]

36. On September 13, 2011, when Respondent informed [REDACTED] that it would cost \$7,200 to prepare, file, and prosecute the patent application, Respondent failed to communicate —verbally or in writing— that Respondent's role would be that of a "relationship attorney" for which he would charge Respondent at the rate of \$1,000 per hour if [REDACTED] terminated the agreement.

37. Respondent subsequently charged [REDACTED] \$4,200 at the rate \$1,000 per hour as a "relationship attorney" in connection with the preparation, filing, and prosecution of [REDACTED] patent application.

38. Under the circumstances of this case, a practitioner of ordinary prudence would be left with a definite and firm conviction that the \$4,200 fee exceeds a reasonable fee.

39. Under the circumstances of this case, a practitioner of ordinary prudence would be left with a definite and firm conviction that the rate of \$1,000 per hour exceeds a reasonable rate.

Civil Litigation

40. On October 17, 2012, [REDACTED] filed a breach of contract action against Respondent in the Small Claims and Conciliation Branch of the Civil Division of the Superior Court of the District of Columbia, namely: [REDACTED]  
[REDACTED]

41. In [REDACTED] seeks to recover \$5,000 from Respondent based on the following Statement of Claim:

Defendant failed to perform terms of contract for legal services entered into on June 14, 2011 in the District of Columbia for legal services relating to the prosecution of a patent for Five Thousand Dollars.

42. As of the date Respondent signed the Agreement, [REDACTED]  
[REDACTED] is pending.

**Legal Conclusions**

43. Respondent acknowledges that, based on the information contained in the stipulated facts, his conduct violated:

- a. 37 C.F.R. § 10.40(a) (proscribing failure to promptly refund any part of a fee paid in advance that has not been earned) by failing to refund promptly to [REDACTED] the \$4,200 in unearned fees;
- b. 37 C.F.R. § 10.112(a) (proscribing failure to promptly pay or deliver to the client as requested by a client the funds or other properties in the possession of the practitioner which the client is entitled to receive) by failing to pay promptly to [REDACTED] the \$4,200 in unearned fees;
- c. 37 C.F.R. § 10.36(a) (proscribing entering into an agreement for, charge, or collect an illegal or clearly excessive fee) by charging [REDACTED] \$4,200 at the rate of \$1,000 per hour for services as a relationship attorney in connection with the preparation, filing, and prosecution of his patent application; and
- d. 37 C.F.R. § 10.37(a) (proscribing dividing a fee for legal services with another practitioner who is not a partner in or associate of the practitioner's law firm or law office unless (i) the client consents to employment of the other practitioner after a full disclosure that a division of fees will be made, (ii) the division is made in proportion to the services performed and responsibility assumed by each, and (iii) the total fee of the practitioners does not clearly exceed reasonable compensation for all legal services rendered to the client).

### Mitigating Factors

44. In his 32-year career as an attorney, Respondent has no prior disciplinary history before the Office or the other two jurisdictions where he is licensed to practice law.

45. Respondent now fully understands why his conduct violated the Disciplinary Rules of USPTO Code of Professional Responsibility set forth herein.

### Sanction

46. Respondent agrees, and it is ORDERED that:
- a. Respondent be, and is hereby, publicly reprimanded;
  - b. Respondent shall return \$4,200 in unearned fees to [REDACTED] within sixty (60) days of the date of this Final Order;
  - c. Any monies paid by Respondent to [REDACTED] pursuant to a judgment entered against Respondent in [REDACTED] shall be considered returned to [REDACTED] under subparagraph b. above if paid within sixty (60) days of the date of this Final Order;
  - d. Respondent's obligation to return \$4,200 in unearned fees to [REDACTED] as set forth in subparagraph b. above shall include monies paid by Respondent to [REDACTED] pursuant to a settlement of [REDACTED] if paid within sixty (60) days of the date of this Final Order;
  - e. Respondent's obligation to return \$4,200 in unearned fees to [REDACTED] as set forth in subparagraph b. above shall not be altered if there is a judgment, settlement or dismissal of [REDACTED], including a judgment or settlement in an amount less than \$4,200;
  - f. Respondent, within seventy-five (75) days of the date of this Final Order, shall provide the OED Director with an affidavit and corroborating document(s) (e.g., a copy of the payment letter mailed to [REDACTED]) demonstrating his compliance with the payment obligation set forth herein;
  - g. Respondent shall be deemed in violation of the terms of this Final Order if any check issued in payment of monies required by this Final Order is returned for insufficient funds;
  - h. Respondent shall be deemed in violation of the terms of the Agreement and this Final Order if the payment of monies required by this Final Order is made after the due date for any reason;

- i. (1) in the event that the OED Director is of the opinion that Respondent did not comply with any provision of the Agreement or this Final Order, expressly including the payment obligation set forth herein, the OED Director shall:

- (A) issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent immediately be suspended for up to six (6) months for the violations set forth in paragraph 43 above;

- (B) send the Order to Show Cause to Respondent at the most current address of record for Respondent maintained by The State Bar of California;

- (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 did not comply with any provision of the Agreement or this Final Order, expressly including the payment obligation set forth herein, 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 supporting the OED Director's conclusion that Respondent did not comply with any provision of the Agreement or this Final Order, expressly including the payment obligation set forth herein, and

- (B) request that the USPTO Director immediately suspend Respondent for up to six (6) months for the violations set forth in paragraph 43 above;

- j. In the event that the USPTO Director suspends Respondent pursuant to the preceding subparagraph, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;
- k. The OED Director shall comply with 37 C.F.R. § 11.59;
- l. The OED Director shall publish this Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room that is publicly accessible at:

<http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;

- m. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

#### **Notice of Reprimand**

This notice concerns Steven Bruce Lehat of Newport Beach, California. Mr. Lehat is not a registered patent practitioner and is not authorized to practice before the United States Patent and Trademark Office (“USPTO” or “Office”) in patent matters. Mr. Lehat is authorized to practice before the Office in trademark matters and does so.

The USPTO Director has publicly reprimanded Mr. Lehat and directed that he refund unearned fees to a client because Mr. Lehat violated 37 C.F.R. §§ 10.40(a) (proscribing failure to promptly refund any part of a fee paid in advance that has not been earned); 10.112(a) (proscribing failure to promptly pay or deliver to the client as requested by a client the funds or other properties in the possession of the practitioner which the client is entitled to receive); 10.36(a) (proscribing entering into an agreement for, charge, or collect an illegal or clearly excessive fee); and 10.37(a) (proscribing dividing a fee for legal services with another practitioner who is not a partner in or associate of the practitioner’s law firm or law office unless (i) the client consents to employment of the other practitioner after a full disclosure that a division of fees will be made, (ii) the division is made in proportion to the services performed and responsibility assumed by each, and (iii) the total fee of the practitioners does not clearly exceed reasonable compensation for all legal services rendered to the client).

The aforementioned violations of Disciplinary Rules of the USPTO Code of Professional Responsibility are based on Mr. Lehat not promptly refunding \$4,200 in unearned legal fees to a patent applicant who had paid \$5,000 to Respondent for the preparation, filing, and prosecuting of a patent application where only \$800 of patent work had been completed by the registered patent attorney with whom Mr. Lehat had contracted to perform the patent work. Mr. Lehat claimed entitlement to the \$4,200 because he served as a “relationship attorney” and, in that capacity, he charged the patent applicant at the rate of \$1,000 per hour when the applicant terminated the attorney-client relationship.

In agreeing to the above-described sanction, the OED Director.



took into account that Mr. Lehat has no prior disciplinary history before the Office during the 32 years he has been licensed to practice law and that Mr. Lehat now appears to understand fully why his conduct violated the Disciplinary Rules of USPTO Code of Professional Responsibility set forth above.

This action is the result of a settlement agreement between the OED Director and Mr. Lehat 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 involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, which is accessible at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

- n. The OED Director shall redact the names [REDACTED] and the references to U.S. Patent No. [REDACTED] from the published Final Order;
- 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 concerning Respondent brought to the attention of the Office, and/or (2) in any future disciplinary proceeding against 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 the Agreement.

2/21/13  
Date

*Maia L. Le...* for James O. Payne  
JAMES O. PAYNE  
Deputy General Counsel for General Law  
United States Patent and Trademark Office

on behalf of

Teresa Stanek Rea  
Acting Under Secretary of Commerce for Intellectual Property  
and Acting Director of the United States Patent and Trademark  
Office

cc:

Director of the Office of Enrollment and Discipline  
United States Patent and Trademark Office

Mr. Steven Bruce Lehat  
895 Dove St 3rd FL  
Newport Beach, CA 92660

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In agreeing to the above-described sanction, the OED Director took into account that Mr. Lehat has no prior disciplinary history before the Office during the 32 years he has been licensed to practice law and that Mr. Lehat now appears to understand fully why his conduct violated the Disciplinary Rules of USPTO Code of Professional Responsibility set forth above.

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*Merina L. La...* for James O. Payne

JAMES O. PAYNE  
Deputy General Counsel for General Law  
United States Patent and Trademark Office

on behalf of

Teresa Stanek Rea  
Acting Under Secretary of Commerce for Intellectual Property and  
Acting Director of the United States Patent and Trademark Office