UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of: Fred P. Lane Respondent.	Proceeding No. D2013-07 March 11, 2014

Appearances:
Ronald K. Jaicks, Esq.
Melinda DeAtley, Esq.
Elizabeth Ullmer Mendel, Esq.
Associate Solicitors
United States Patent and Trademark Office

Fred P. Lane
Pro se

Before: Alexander FERNÁNDEZ, Administrative Law Judge

INITIAL DECISION AND ORDER

On March 29, 2013, the Director of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "Office") filed a *Complaint* in this matter against Fred P. Lane ("Respondent"). The *Complaint* seeks the exclusion or suspension of Respondent for committing violations of the USPTO's Disciplinary Rules of Professional Conduct as set forth in 37 C.F.R. Part 10.

On May 8, 2013, Respondent filed an *Answer* to the OED Director's *Complaint*.[1] In his *Answer*, Respondent denied liability on all counts and raised a number of affirmative defenses.

The hearing in this matter was held on September 10-13, 2013, in Milwaukee, Wisconsin. The testimony of the following witnesses was received: Dr. Fernando Riveron, Fred P. Lane, and W. Craig Olafsson. The Court also accepted the deposition testimony of the following witnesses in lieu of their live testimony: W. Craig Olafsson, as records custodian for Daubert Law Firm, and Kristine Weirauch.

Following the Court's receipt of the transcript on September 27, 2013, the parties were ordered to file post-hearing briefs on or before October 28, 2013, and responses to the post-hearing briefs on or before November 12, 2013. After the timely receipt of the responses, the record was closed.

[1] Respondent's *Answer* was amended on June 18, 2013.

APPLICABLE LAW

The USPTO has the "exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it." Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001). The Director of the USPTO may suspend or exclude a person from practice before the Patent and Trademark Office if the person is "shown to be incompetent or disreputable, or guilty of gross misconduct," or if the person violates regulations established by the Office. 35 U.S.C. § 32.

Rules of Professional Conduct. The USPTO has duly promulgated regulations governing the conduct of persons authorized to practice before the Office. Pursuant to USPTO regulation 37 C.F.R. § 10.23, practitioners shall not:

> (a) ... engage in disreputable or gross misconduct.
> (b) ...
> (4) [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
> ...
> (6) [e]ngage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

37 C.F.R. § 10.23(a), (b)(4), and (b)(6). Practitioners are also prohibited from "enter[ing] into an agreement for, charg[ing], or collect[ing] an illegal or clearly excessive fee." 37 C.F.R. § 10.36(a).

Burden of Proof. The OED Director has the burden of proving the alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49. Thereafter, Respondent has the burden to prove any affirmative defense by clear and convincing evidence. Id.

The clear and convincing standard is applied "to protect particularly important interests ... where there is a clear liberty interest at stake." Thomas v. Nicholson, 423 F.3d 1279, 1283 (Fed. Cir. 2005). This is an intermediate standard "between a preponderance of the evidence and proof beyond a reasonable doubt." Addington v. Texas, 441 U.S. 418, 424-425 (1979). The standard requires evidence "of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001). "Evidence is clear if it is certain, unambiguous, and plain to the understanding, and it is convincing if it is reasonable and persuasive enough to cause the trier of facts to believe it." Foster v. Alliedsignal, Inc., 293 F.3d 1187, 1194 (10th Cir. 2002).

FINDINGS OF FACT

1. Respondent has been a registered patent agent since January 31, 2006.

2. Respondent's registration number is 58,188.

3. On April 4, 2007, Respondent and Dr. Fernando Riveron ("the Client"), a cardiothoracic surgeon specializing in adult valvular surgery, signed a confidentiality and nondisclosure agreement ("Lane NDA"), drafted by Lane Patents LLC, for a prosthetic valve clip.

4. On April 11, 2007, Respondent and the Client signed a confidentiality and nondisclosure agreement ("Client NDA") prepared by the Client's attorney.

5. The Client NDA included a reference to Respondent's participation in the "design, assembly, manufacture and intellectual property protection, including but not limited to a United States Patent, of a prosthetic valve clip . . . for [the Client]."

6. Neither the Lane NDA nor the Client NDA included specific terms for the payment of services.

7. After an April 2007 meeting, Respondent sent the Client a "Statement of Work" detailing the services to be provided by Lane Patents, and the estimated fees the Client would incur for said services. The Statement of Work also stated that Lane Patents would notify the Client "before undertaking any services that will substantially increase the amount of fees ... and will proceed only upon your instructions to do so."

8. The Statement of Work included a requirement for a $2,000 retainer and details concerning the final billing, but it was silent as to late fees and interest for unpaid services.

9. On or around June 12, 2007, Lane Patents began sending the Client invoices for its services. Each invoice included a due date and the words "Balance Due."

10. Each invoice also included the following language in fine print, "NOTE: A finance charge of 1 1/2% per month (18% per annum) will be added to your account if the entire balance is not paid within 30days from the original statement date. A charges [sic] of $75.00 will also be added to all returned checks."

11. Lane Patents includes this language on every invoice it sends.

12. The June 12, 2007, invoice was the first time the Client was informed that he would be charged a finance charge of 18% if invoices were not paid within 30 days.

13. The Client "chafed" at the 18% finance charge and thought it was "usury."

14. When the Client questioned Respondent about the 18% finance charge, Respondent told the Client not to be concerned because the note concerning the finance charge was standard language that Lane Patents puts on all its invoices.

15. Based on Respondent's assurances, the Client believed he would not be charged the finance charge.

16. The invoices sent by Lane Patents spanned a period from June 12, 2007, through March 15, 2009.

17. During the course of the practitioner-client relationship, Respondent prepared and filed with the Office three provisional patent applications, each seeking protection for a medical instrument. Two of the three provisional applications, Applications 60/988,296 (the '296 application) and 61/044,483 (the '483 application), were directed to a prosthetic valve clip and handle ("Non-Cutter System"). The Client, Respondent, and Donald Grover were named as joint inventors for both patents. Mr. Grover is a retired mechanical engineer, retained by Respondent's firm as an independent contractor, who assisted Respondent in the development of the prosthetic valve clip and handle.

18. On May 21, 2008, the Client and Respondent presented the Non-Cutter System to a hospital. The presentation did not garner the interest the Client had hoped for from the hospital. As a result, the Client indicated to Respondent he was reluctant to further invest in patent work or development.

19. In June 2008, Respondent and Mr. Grover continued to work on and develop the project, which eventually evolved into a design involving sutures to secure the prosthetic holder to the prosthetic and a cutting system ("Cutter System") adapted for use in a minimally invasive setting.

20. On July 3, 2008, Respondent sent the Client an e-mail stating that Respondent had found a solution that could make the invention more marketable and asked, "Should I plan to file the patent application on my own dime? Or what arrangement should we make?"

21. On July 15, 2008, Respondent sent the Client's attorney a draft "Invention Assignment Agreement." Per the terms of the draft Invention Assignment Agreement, Respondent and Mr. Grover would assign the rights to the Cutter System to the Client "for good and valuable consideration above the terms agreed to in the original contract." The proposed Invention Assignment agreement was not adopted or signed by the parties.

22. Respondent and the Client also discussed the possibility of forming a partnership to advance the project.

23. On November 4, 2008, the Client sent an e-mail to Respondent that stated, "Fred, I need itemized bills that include work done on this project only."

24. On November 6, 2008, Respondent gave an accounting of the value of the work done but not billed as of November 4, 2008. The accounting "[came] to a total of $40,730.40 for work done but not billed over the project(s) life cycle to date." Respondent also stated; "I hope that this helps you to understand where we are on the project to date, though it does not come as an itemized bill." The e-mail then closed with a request to "work through the big picture items."

25. The November 6, 2008, e-mail was not a demand for payment.

26. On December 2, 2008, Respondent filed a third provisional application, Application 61/119,130 (the '130 application). The '130 application involved the Cutter System and named only Respondent and Mr. Grover as co-inventors.

27. On or about December 20, 2008, Respondent and Mr. Grover met with the Client to further discuss forming a partnership, and to ensure the project could move forward.

28. While the Client, Mr. Grover, and Respondent did not formally enter into a partnership, the parties continued to work on and market the Cutter System.

29. On or about May 1, 2009, Mr. Grover and Respondent met with the Client. During this meeting, the Client informed Respondent of his belief that he was a co-inventor of the Cutter System along with Mr. Grover and Respondent. The Client also informed Respondent that he would not formalize a partnership unless his name was added to all the Cutter System applications.

30. On May 6, 2009, Respondent hired Kristine Weirauch to represent him because his relationship with the Client had begun to deteriorate.

31. In mid-May of 2009, Respondent and Mr. Grover met with the Client's attorney and were presented with an operating agreement ("Talarian Agreement") for a proposed joint venture among the parties. The operating agreement was never executed.

32. In discussing the possibility of forming a joint venture, the Client requested an accounting of the work performed by Lane Patents between November 2008 and July 2009.

33. On June 9, 2009, Respondent sent the Client an e-mail stating that the value of Respondent's additional services to date since the November 6, 2008, e-mail was $49,295.20.

34. The June 9, 2009, e-mail was not a demand for payment.

35. By July 1, 2009, Respondent believed the Client no longer wanted to enter into a partnership or joint venture with him.

36. As a result, Respondent drafted a proposal to "move forward" with the Cutter System that was to be presented to the Client. In the "move forward" proposal, Respondent stated to the Client, "[a]s it stands now, I have the rights to the cutter patent. To try to and secure rights through 'legal' avenues could be messy and expensive — with no guarantees. And I don't think your case is as strong as you might think it is."

37. The "move forward" proposal proposed that the parties hire an objective third party law firm as an arbitrator to determine inventorship of the Cutter System. The "move forward" proposal also outlined three scenarios that were dependent on the determination of the arbitrator. In scenarios one and two, where the Client was determined to be an inventor, the Client would be required to pay Lane Patents for "work done to date." In scenario three, where the Client was not determined to be a true inventor of the Cutter System, the Client "owes nothing to L[ane] P[atents] for work done to date."

38. On July 1, 2009, Mr. Grover, who maintained an amicable relationship with the Client, presented the "move forward" proposal to the Client.

39. On July 2, 2009, Respondent and Mr. Grover formed Heartland LG, LLC.

40. On or about July 9, 2009, the Client sent Respondent an e-mail that stated, in pertinent part, "[t]o be clear, I don't feel comfortable being part of a 'team' at this point with you."

41. On July 13, 2009, Respondent assigned the '130 application to Heartland LG LLC. The assignment listed Respondent and Mr. Grover as inventors.

42. The Client and Mr. Grover communicated throughout July 2009 regarding the Cutter System and the likelihood of forming a joint venture that would include Respondent.

43. On July 28, 2009, the Client sent Mr. Grover an e-mail indicating his disinterest in forming a joint venture with Respondent.

44. The July 28, 2009, e-mail was forwarded by Mr. Grover to Respondent the same day.

45. On September 30, 2009, an attorney hired to represent Respondent and Mr. Grover sent the Client's attorney a letter stating the Cutter System is "wholly owned by the inventors, Mr. Lane and Mr. Grover."

46. Between October 2009 and May 2010, a series of communications were sent between the Client's attorney and Respondent and Mr. Grover's attorney debating the issue of inventorship of the Cutter System.

47. Respondent did not think it was appropriate to send the Client a bill for services rendered to date, or to give him notice of the 18% interest charge while the inventorship issue was in the hands of their attorneys.

48. On or about June 4, 2010, the Client filed a complaint against Respondent with the USPTO Office of Enrollment and Discipline.

49. On September 15, 2011, the Office of Enrollment and Discipline filed a disciplinary complaint against Respondent in Proceeding Number D2011-64.

50. After the disciplinary proceeding was filed, the OED Director and Respondent entered into a proposed settlement agreement.

51. On February 8, 2012, the USPTO Director approved the proposed settlement agreement and entered a Final Order disciplining Respondent.

52. The February 8, 2012, Final Order publicly reprimanded Respondent and ordered that Respondent be placed on probation for two years.

53. The February 8, 2012, Final Order stated on page 7, paragraph 2(r): "Nothing in this Agreement shall have, or be construed as having, any effect on the issue of inventorship of the subject matter claimed in U.S. Non-Provisional Patent Application No. 12/628,762."

54. The February 8, 2012, Final Order required Respondent, within thirty days of execution of the Final Order, to assign the '130 application and Application [redacted] (the [redacted] application) to the Client or to whomever he designated "via an assignment document that is reasonable and [the Client] reasonably deems within the scope of the law...."[2]

55. The February 8, 2012, Final Order was silent on financial matters. It did not determine what had been paid for and what had not. It did not prohibit Respondent from seeking compensation for services rendered.

56. On February 14, 2012, Respondent sent to the Client assignments of the '130 and [redacted] applications from Heartland LG LLC to Talarian Technologies LLC, as designated by the Client.

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[2] The [redacted] application was a non-provisional application claiming priority to [redacted]. It was prepared and filed by Respondent with the USPTO [redacted], and assigned to Heartland LG on December 7, 2009. Respondent and Mr. Grover were the only inventors listed on the [redacted] application.

57. In November of 2011, Respondent hired Craig Olafsson, an attorney with Daubert Law Firm, to represent him in collecting payment for the services he rendered to the Client.

58. In his initial discussions with Respondent, Mr. Olafsson opined that Respondent had a "good case" for collecting on the unpaid services from the Client.

59. Respondent prepared an invoice, dated March 15, 2012 ("March 15 invoice"), in the amount of $176,861.60.

60. The March 15 invoice contained $47,826.80 in interest, which is the sum of two items appearing on the invoice: a November 6, 2008, entry of $24,003.04 for "Interest to date (03/15/2012);" and a June 9, 2009, entry of $23,823.76 for "Interest to date (03/15/2012)."

61. Respondent calculated the $24,003.04 interest charge was for 1,195 days and the $23,823.76 interest charge was for 980 days, using an 18% per annum interest rate.

62. After drafting the March 15 invoice, Respondent "ran it by" Mr. Olafsson, who approved it, but not before he "cautioned" Respondent because it was "unusual" to charge a late fee before sending an invoice.

63. On March 26, 2012, Respondent sent an invoice to the Client.

64. Prior to the March 15 invoice, Respondent had not sent the Client a bill for what Respondent claimed was unpaid services totaling $90,025.60.

65. On April 2, 2012, prior to communicating with Respondent, the Client filed a complaint by fax with the USPTO regarding the March 15 invoice.

66. On April 4, 2012, the Client mailed to Respondent a three-page letter via USPS objecting to the March 15 invoice. There was no mention in the letter that this letter and additional information had already been sent to the Office with the intent of initiating a grievance action.

67. On or about June 4, 2012, Respondent sent a letter to the Client regarding the March 15 invoice. Respondent did not know at the time he sent this letter that the Client had already sent a complaint to the Office prior to addressing the issue with Respondent.

DISCUSSION

The Court has considered all issues raised and all documentary and testimonial evidence in the record and presented at hearing. Those issues not discussed here are not addressed because the Court finds they lack materiality or importance to the decision.

The OED Director alleges Respondent is liable for four counts of violating the USPTO's Disciplinary Rules of Professional Conduct. The violations include: (1) charging an illegal or clearly excessive fee; (2) engaging in disreputable or gross misconduct; (3) engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and (4) engaging in any other conduct that adversely reflects on the practitioner's fitness to practice before the USPTO. The basis for these violations is the OED Director's allegation that Respondent charged the Client a baseless and exorbitant late fee for work that was performed but not billed.

I. Violation of 37 C.F.R. § 10.36

The OED Director claims Respondent violated 37 C.F.R. § 10.36 by charging interest at a rate of 18% for services that were never billed to the Client. The OED Director claims there is no basis for the fee, and because Respondent calculated interest at a rate more than three times the allowed prejudgment rate in Wisconsin, the interest was *per se* excessive and in violation of USPTO regulation.[3]

Section 10.36 was modeled after the American Bar Association's Model Code of Professional Responsibility, published in 1980. Both rules are titled "Fees for Legal Services" and prohibit the charging of an "illegal or clearly excessive fee." 37 C.F.R. § 10.36(a); ABA MCPR DR 2-106 (1980). The test for whether a fee is clearly excessive is if "a practitioner of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee." 37 C.F.R. § 10.36(b). In addition, courts have found that the prohibition against charging clearly excessive fees extends to cover finance charges and interest for unpaid services. See Iowa Supreme Court Attorney Disciplinary Bd. v. Powell, 726 N.W.2d 397 (Iowa 2007) (finding an attorney charged illegal finance charges resulting in excessive fees in violation of Iowa's attorney disciplinary rules)[4]; In re Conduct of Campbell, 202 P.3d 871, 880 (2009) (concluding an attorney violated the Oregon Code of Professional Responsibility's disciplinary rule prohibiting attorneys from charging excessive fees after the attorney conceded billing his client for late fees in excess of the legal rate of interest without obtaining the client's written agreement to pay those charges); The Florida Bar v. Fields, 482 So. 2d 1354, 1359 (Fla. 1986) (upholding a determination that an attorney violated the Florida Bar's Code of Professional Responsibility Disciplinary Rule concerning charging a clearly excessive fee for improperly calculating interest in excess of the statutory maximum).

Respondent admits he charged the Client $47,826.80 in interest for services he alleges were unpaid by the Client. However, Respondent claims the majority of the interest fee was calculated based on unpaid non-legal services rather than for services related to practice before the USPTO. Specifically, Respondent claims the unpaid services included marketing and development work on the Cutter System. Therefore, Respondent argues, 37 C.F.R. § 10.36 does not apply to the interest fee charged to the Client.

[3] In Wisconsin, the legal rate for prejudgment interest, unless otherwise agreed to, is five (5) percent. Wis. Stat. § 138.04 (2011-2012).

[4] The Iowa Code of Professional Responsibility for Lawyers is based on the ABA's Model Rules of Professional Conduct.

In response, the OED Director cites the USPTO's "broad authority" to discipline practitioners where misconduct occurs outside the course of a practitioner-client relationship. In support of his argument, the OED Director cites cases where USPTO practitioners have been disciplined for various forms of misconduct, including: violating a child custody order, conspiring to commit securities fraud, and use of a minor in filming sexually explicit conduct. As the USPTO has "broad authority" to regulate a practitioner's conduct, the OED Director argues, § 10.36 applies whenever a registered practitioner charges a client a "baseless and exorbitant late fee." In this case, the OED Director claims a practitioner-client relationship existed between Respondent and the Client, and "[r]egardless of whether the $90,025.60 on which Respondent calculated the $47,826.80 late fee was for non-legal services, the late fee reeks of dishonesty, retaliation, and disrepute." This interpretation, the OED Director argues, is entitled to "substantial deference," as it is reasonable and not plainly erroneous or inconsistent with the regulation.

Before giving deference to an agency's interpretation of its regulation, the Court must determine "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997); see also Exelon Generation Co., LLC v. Local 15, Intern. Broth. of Elec. Workers, ALF-CIO, 676 F.3d 566, 570 (7th Cir. 2012) (stating that the same rules of construction apply to administrative rules as to statutes). If the regulation is unambiguous, "its plain language controls." Ohio Valley Envtl. Coal. v. Aracoma Coal Co., 556 F.3d 177, 193 (4th Cir. 2009).

The OED Director's interpretation of § 10.36(a) is inconsistent with the plain language of the regulation. The regulation, by its very heading, applies to "Fees for Legal Services." This is starkly at odds with the OED Director's theory that § 10.36 applies to any allegedly excessive fee, whether for legal services or not. The regulation plainly prohibits practitioners from charging illegal or clearly excessive fees specifically for legal services. Even the subsections of the regulation, which cite factors for reasonableness, include the term "legal service." See 37 C.F.R. § 10.36(b)(1) and (3).

The question, then, is whether marketing and development work qualify as "legal services." Title 37, Parts 10 and 11 of the Code of Federal Regulations govern "solely the practice of patent, trademark, and other law before the [USPTO]." (emphasis added). Title 37 defines a legal service as "any legal service, which may lawfully be performed by a practitioner before the Office." 37 C.F.R. § 10.1(n). This definition is circular and unenlightening. The Court must therefore dig deeper. Section 11.5(b)(1) authorizes a registered practitioner to perform "those services which are reasonably necessary and incident to the preparation and prosecution of patent applications … ." 37 C.F.R. § 11.5(b)(1). Those services include:

> preparing necessary documents in contemplation of filing the documents with the Office, corresponding and communicating with the Office, and representing a client through documents or at interviews, hearings, and meetings, as well as

> communicating with and advising a client concerning matters pending or contemplated to be presented before the Office.

Id.

Based on this language, the marketing and development work that Respondent claims is the basis for calculating the interest would not qualify as a legal service under the USPTO regulations.

Assume, hypothetically that Respondent provided landscaping services in addition to the design, marketing, and patent services he performed for the Cutter System. Applying the OED Director's broad interpretation of the regulation could result in Respondent being disciplined for fees related to his landscaping services simply because the terms and fees for such services were included in the same document that contained the fees for the actual legal services provided. Although the Court agrees that the USPTO does have broad authority to discipline practitioners for misconduct, Section 10.36 expressly limits that authority — at least in the fee context — to legal services. The OED Director's argument to the contrary is inconsistent with the regulation's plain language. See Christensen v. Harris Cnty., 529 U.S. 576, 588 (2000) (finding a Department of Labor regulation to be unambiguous and holding, "[t]o defer to the agency's position would be to permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation"). Accordingly, the Court finds § 10.36 does not apply to the interest Respondent charged the Client for unpaid non-legal services included in the March 15 invoice.

However, Respondent acknowledges that at least $2,420.55 of the late fee was interest charged for unpaid legal services related to the filing of the patent applications. The OED Director claims that any late fee would be *per se* excessive because the Client had not yet been billed and the interest rate charged was more than three times the allowed rate in Wisconsin for prejudgment interest.

The Court does not agree that the late fee charged in this case is *per se* excessive. While an 18% interest rate is well over the prejudgment interest rate of 5% authorized under Wisconsin law, it is not *per se* excessive because the parties may agree in writing to an interest rate over 5%. Wis. Stat. § 138.04 (2011). Further, the fact that the late fee Respondent charged was equal to 53% of the unbilled services does not make the late fee *per se* excessive. Interest at any rate can reach a significant amount if allowed to accrue over time.

Nonetheless, the Court finds Respondent charged the Client at least $2,420.55 in excessive legal fees. Neither the November 6, 2008, e-mail nor the June 9, 2009, e-mail was a demand for payment. The Client was unaware that interest was accruing on the services accounted for in the November 6, 2008, and June 9, 2009, e-mail until the March 15 invoice was received. Considering the facts of this case, the interest Respondent charged the Client for legal fees was unreasonable, because Respondent had not yet billed the Client and the

Client was unaware that interest was accruing. Accordingly, the Court finds Respondent violated 37 C.F.R. § 10.36.

II. Violation of 37 C.F.R. § 10.23(a)

The OED Director claims that by charging the Client a $47,826.80 late fee, Respondent engaged in disreputable or gross misconduct in violation of 37 C.F.R. § 10.23(a). Specifically, the OED Director argues, "[i]t is plainly disreputable for Respondent to charge the client a baseless and exorbitant $47,826.80 late fee where the client was not late in doing anything. Moreover it is disreputable for Respondent to have demanded payment of the late fee under intimation of litigation, including a bogus claim for damage to his reputation."

In promulgating its regulations, the USPTO declined to define what constitutes "disreputable or gross misconduct." See 50 FR 5158-01 *5163 (acknowledging a comment suggesting that the terms be defined, and noting that they appear in the statute and "need no further definition in the rules"). Instead, the USPTO referred to Poole v. United States, CIV. A. 84-0300, 1984 WL 742 (D.D.C. June 29, 1984) for a discussion on the term "disreputable."[5] Id. In Poole, the district court noted "[w]ith respect to attorneys or other agents, disreputable conduct has generally included unprofessional conduct ... to include any conduct violative of the ordinary standard of professional obligation and honor." (quotations omitted) Poole, 1984 WL 742 *3. The disciplinary rules "state the minimum level of conduct below which no practitioner can fall without being subjected to disciplinary action." 37 C.F.R. § 10.20(b). Therefore, as long as Respondent's conduct, at a minimum, involves disreputable misconduct, it constitutes a violation of § 10.23(a).

On March 15, 2012, Respondent sent the Client a bill that included two line items of interest totaling $47,826.80. The interest was calculated based on two e-mails dated November 6, 2008; and June 9, 2000, which detailed charges for work performed by Lane Patents. However, as explained below, the two e-mails were not bills demanding payment.

In the November 6, 2008, e-mail, Respondent listed the work that had been done on the project and noted the total "for work done but not billed over the project(s) life cycle to date" was $40,730.40. Respondent then stated, "I hope that this helps you understand where we are on the project to date, though it does not come as an itemized bill." As Respondent acknowledged during the hearing, he did not view the e-mail as a bill because he still harbored some hope that the Client would agree to a partnership. The following

[5] In Poole, the district court upheld the U.S.Treasury Department's decision to disbar a certified public accountant from practicing before the Internal Revenue Service for willfully failing to file his tax returns. The district court also found the conduct to be disreputable. Poole v. United States, CIV. A. 84-0300, 1984 WL 742 (D.D.C. June 29, 1984).

exchange took place with Mr. Lane at the hearing:

> Q. ... But my question is simply did you expect him to pay the $40,730.40 within 30 days?
>
> A. I expected him to pay one way or the other, meaning either to pay the bill that we're doing work for hire or to move forward in this other relationship that he proposed.
>
> Q. What bill were you referring in your last response?
>
> A. Okay. You're right. So technically I said that this is not a bill and it was a request for information. But it refers to a billing that would have gone out immediately if [the Client] had said, "no, I don't want to form a partnership. I want to continue in the work for hire relationship that we started in." So, you know, hyper-technically I guess you could say that that's not a bill ... .[6]

Respondent also billed the Client $23,823.76 in interest on unbilled work as of the June 9, 2009, e-mail. Although the June 9th e-mail included itemized fees, the e-mail was not a demand for payment.

In a statement Respondent sent to the OED Director in connection with his prior disciplinary proceeding, Respondent stated that on June 9, 2009, he "responded to a request from the client for background information and to provide him the patent application numbers and the value of our fees for work done to date." Respondent also clarified in a footnote in that statement that the June 9, 2009, "is not a bill, only an accounting of costs for development of the 'cutter system' invention borne by Mr. Grover and me." A comparison of the June 9, 2009, e-mail and actual invoices sent by Lane Patents reveals that the e-mail did not include the word "Invoice" or the finance charge language that Respondent stated is included "at the bottom of *every* invoice." Indeed, the Client did not understand the e-mail to be a demand for payment but rather an accounting of the "sweat equity" Respondent and Mr. Grover had contributed to the "cutter system." Therefore, although Respondent initially tried to justify the interest by claiming he had billed the Client for the work as of the dates of the two e-mails, Respondent later acknowledged otherwise.

Disreputable conduct includes conduct that is unprofessional and violates the ordinary standard of professional obligation. Charging the Client interest as of the date of the November 6, 2008; and June 9, 2009, e-mails is disreputable because the e-mails were not demands for payment and so carried no expectation of being timely paid. Respondent knew that the Client was merely requesting an accounting of the services rendered in consideration of a joint venture. The e-mails were sent in that vein. Even Respondent

[6] In other words, Respondent testified that he did not bill the Client on November 6th, because Respondent thought there was still the possibility that a partnership would be formed.

acknowledged that he "completed a lot of engineering and development and a little bit of intellectual property work in regards to [the Client's] promise of a partnership." Moreover, Respondent did not send any actual bills or demands for payment until the March 15, 2012, invoice, nearly three years after the second e-mail. Even when Respondent believed his "move forward" proposal was not accepted by the Client, he did not demand payment. Respondent testified that while the inventorship issue was "in limbo" Respondent did not demand payment for the nearly $90,000 in unpaid services, nor did Respondent give the Client notice of the 18% interest he would be charging, because such actions were not "appropriate ... because nothing [was] resolved between us." [Tr. 364-365]. Therefore, Respondent first demanded payment for the services rendered on the cutter system in the March 15, 2012, invoice. Adding more than $47,000 in spurious interest charges to that invoice was unprofessional, dishonorable, and disreputable. Accordingly, the Court finds that Respondent's conduct violated § 10.23(a).

III. Violation of 37 C.F.R. § 10.23(b)(4)

The OED Director claims Respondent engaged in deceit, dishonesty, and/or misrepresentation by charging and demanding payment of the $47,826.80 interest fee. The OED Director also alleges Respondent misrepresented that the Client constructively accepted the late fee.

USPTO's regulations fail to define "deceit," "dishonesty," or "misrepresentation," so the Court has, in the past, looked to their common dictionary definitions as useful guidance. See In re Kelber, No. 2006-13 at 33 (USPTO Sept. 23, 2008). "Deceit" is defined as "dishonest behavior" or "behavior that is meant to fool or trick someone." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 14 Jan. 2014. http://www.merriam-webster.com/dictionary/deceit. Dishonest conduct is "characterized by lack of truth, honesty, or trustworthiness." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 14 Jan. 2014. http://www.merriam-webster.com/dictionary/dishonest; see also In re Shorter, 570 A.2d 760, 767-768 (D.C. 1990) (Dishonesty "encompasses conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness.").[7] A misrepresentation is "[t]he act of making a false or misleading assertion about something, usu[ally] with the intent to deceive," and includes "not just written or spoken words but also any other conduct that amounts to a false assertion." *Black's Law Dictionary* (9th ed. 2009). Therefore "[c]oncealment or even non-disclosure may have the effect of a misrepresentation." Id. (quoting Restatement (Second) of Contracts § 159 (1981)).

Respondent entered into a practitioner-client relationship with the Client. When entering into this relationship, the parties signed two confidentiality and nondisclosure agreements, one prepared by Respondent and one prepared by the Client's attorney. Neither agreement mentioned an 18% per annum late fee for unpaid bills. Also at the beginning of the relationship, Respondent sent the Client a "Statement of Work" wherein Respondent outlined the services Lane Patents would provide as well as certain details with

[7] The Shorter case considered whether an attorney's conduct constituted "dishonesty" under Disciplinary Rule 1-102(A)(4) of the ABA's Model Code of Professional Responsibility, which was adopted by the District Court of Columbia Court of Appeals. Though the USPTO declined to adopt the ABA Model Code, § 10.23(b)(4) is modeled after DR 1-102(A)(4). See 50 Fed. Reg. 5158-01 *5170 (Feb. 6, 1985) (Table 2).

regards to how the retainer would be applied to billing. This "Statement of Work" also failed to mention the 18% per annum late fee for unpaid bills.

The 18% late fee was first communicated to the Client as fine print on an invoice dated June 12, 2007. The late fee language was later included on "every invoice" sent by Lane Patents. When asked by the Court why Respondent suddenly decided to include the late fee language in its communications with the Client, Respondent offered the following testimony:

> Q. Well, what were you thinking? You had never mentioned it before that you were going to [charge an 18% finance charge] and suddenly you slapped a note at the bottom of the invoice.
>
> A. Because my understanding of Wisconsin state law is that they're fairly — but liberal with regards to these statements and that a notice at the bottom of invoices that are sent over a period of time that are known by the recipient and not objected to form a —not a unilateral, but a bilateral offer and agreement.
>
> Q. And this is the way you want to treat a Client?
>
> A. No. It's not the way that I wanted to [treat] the Client.
>
> Q. Then why did you do it?
>
> A. At the time — and, okay, chalk this up to — I had been in practice for about a year, and naïveté ...

Respondent testified that it was his standard business practice to include the finance charge language on every invoice Lane Patents sent to clients. Yet, Respondent acknowledged that he never charged the Client interest prior to the March 15, 2012, invoice even though the Client had been more than 30 days late paying some of his invoices. In fact, early in the relationship, when the Client asked Respondent about the finance charge language at the bottom of the invoices, Respondent told the Client not to be concerned because it was merely language that Lane Patents included on all of its invoices.

Respondent's conduct with regard to the 18% finance charge was dishonest. Although it was Lane Patent's standard business practice to include the finance charge language on its invoices, Respondent never informed the Client of the potential for a finance charge when the parties entered into the practitioner-client relationship. The Statement of Work communicated certain terms of payment but also failed to mention the finance charge. Instead, Respondent included it as fine print on the bottom of his invoices and told the Client "not to worry" when the Client raised the issue. While such conduct is unsavory, it is not quite dishonest. However, Respondent's conduct rose to the level of dishonesty when he charged the Client interest after leading the Client to believe the finance charge would not apply. Accordingly, the Court finds Respondent violated § 10.23(b)(4) by engaging in unfair, untrustworthy, and dishonest conduct.

IV. Violation of 37 C.F.R. § 10.23(b)(6)

The OED Director also claims that, under the totality of the circumstances, Respondent is unfit to practice before the USPTO. In support of his argument, the OED Director refers the Court back to the previously cited misconduct.

USPTO regulation states that a practitioner shall not "[e]ngage in *any other* conduct that adversely reflects on the practitioner's fitness to practice before the Office." (emphasis added) 37 C.F.R. § 10.23(b)(6). This subsection of the regulation is essentially a "catch all" provision regulating conduct that does not fall under the subsections immediately preceding it.[8] Therefore, by the language of the subsection, if the alleged conduct is found to violate any provision of § 10.23(b)(1) through (b)(5), it cannot also violate § 10.23(b)(6). In re Kelber, No. 2006-13 at 59 (USPTO Sept. 23, 2008); Moatz v. Colitz, 68 U.S.P.Q.2d 1079, 1102-03.

As noted above, the Court already found that Respondent's conduct violates § 10.23(b)(4) prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation. Accordingly, the same conduct cannot also constitute a violation of § 10.23(b)(6).

V. Violations Related to Retaliatory Nature of the March 15th Invoice

The OED Director alleges Respondent also violated 37 C.F.R. §§ 10.23(a), 10.23(b)(4), and/or 10.23(b)(6) by engaging in retaliatory billing. Specifically, the OED Director claims the imposition of the $47,826.80 late fee was retaliation for the Client reporting Respondent's misconduct to the USPTO.

Causation is a common element in retaliation claims. See University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517, 2519 (2013) (holding in Title VII discrimination cases that retaliation claims "must be proved according to traditional principles of but-for causation, and not the lessened test set forth by the Equal Employment Opportunity Commission manual."); Calero-Cerezo v. U.S. Dept. of Justice, 355 F.3d 6, 25 (1st Cir. 2004) ("To prove a claim of retaliation, a plaintiff must establish that ... there was a causal connection between the protected conduct and the adverse employment action."); Bowers v. Board of Regents of University System of Georgia, 509 Fed.Appx. 906, 911 (11th Cir. 2013) (A retaliation claim under Title IX requires a showing that a causal link exists between plaintiff's statutorily protected conduct and the materially

[8] 37 C.F.R. § 10.23(b) reads in its entirety:
(b) A practitioner shall not:
(1) Violate a Disciplinary Rule.
(2) Circumvent a Disciplinary Rule through actions of another.
(3) Engage in illegal conduct involving moral turpitude.
(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
(5) Engage in conduct that is prejudicial to the administration of justice.
(6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

adverse actions taken by defendants.); Hall v. Meadowood Limited Partnership, 7 Fed.Appx. 687, 690 (9th Cir. 2001) (A prima facie case of retaliation under the Fair Housing Act requires, in part, an adverse housing consequence that is causally linked to a protected activity).

Here the OED Director identifies a nexus between the Client's grievance and the late fee by listing the sequence of events that began with the Client filing the report of misconduct that resulted in Respondent's prior disciplinary proceeding. The OED Director points out that Respondent "agreed as part of the discipline for his unethical behavior, that he would transfer 100% ownership of the cutter system to the Client ... and within 30 days of the delivery of assignments, Respondent prepared a $176,861.60 invoice that included the $47,826.80 late fee." However, "mere sequence is not enough — that would be the classic logical fallacy of '*post hoc ergo prompter hoc*' (after the fact, therefore because of the fact)." Chen v. County of Orange, 96 Cal. App. 4th 926, 931 (2002).

As the OED Director notes, Respondent prepared the March 15th invoice after he assigned ownership of the cutter system to the Client. This fact is consistent with Respondent's claim that the March 15th invoice was not retaliatory, but rather the result of the resolution of the inventorship issue. Respondent testified that, "once the USPTO determined that the lock, stock, and barrel ownership of those two patent applications [...] would belong to the Client that it was appropriate for me to then receive compensation for the work that was done." Indeed, even when Respondent presented the Client with the "move forward" proposal, Respondent outlined two scenarios where he expected payment for services should the inventorship issue be resolved in the Client's favor. At the hearing, Respondent elicited the following testimony from Mr. Olafsson, who was Respondent's attorney at the time Respondent was preparing the March 15th invoice:

> Q. ... during the period of time that we ... went through [the process of attempting to collect money for services from the Client] did you ever see evidence that this was done out of retaliation or revenge on the part of Mr. Lane?
>
> A. No. I always thought it was about the money. I never thought that the two of you [Respondent and Complainant] were best friends, or would ever be friends. But my understanding was this was about the money. You performed services. You wanted the money. You wanted to be paid for it.

The Court is not persuaded that the timeline of events establishes a sufficient nexus between the Client's grievance and the alleged retaliatory billing. While the March 15th invoice occurred sequentially after the grievance was filed, the more important date was the Final Order requiring Respondent to assign the Cutter System to the Client. See Bailey v. Commerce Nat. Ins. Services, Inc., 267 Fed.Appx. 167, 170 (3rd Cir. 2008) (Finding the fact that the adverse action occurred four months after the plaintiff engaged in a protected activity was not sufficient to infer causation). The 30-day period after the assignments were made is far closer in temporal proximity to the March 15th invoice than the nearly two-year period since the initial grievance was filed with the OED Director. Further, it is equally reasonable to conclude that Respondent would have charged the Client interest on services rendered had the "move forward" proposal been accepted and a finding that the Client was an inventor was the result. As noted above, the "move forward" proposal required the Client to pay for services rendered on the Cutter System in the two scenarios where the Client was found to be an inventor. Accordingly, the Court finds the OED Director failed to prove, by clear and convincing evidence, that a nexus exists to demonstrate that Respondent's misconduct was retaliatory in nature.

VI. Respondent's Affirmative Defenses

Respondent raised a number of affirmative defenses in his *Answer* to the *Complaint*. At the core of his affirmative defenses was Respondent's belief that he had been denied due process. At the hearing, the only affirmative defense Respondent attempted to elicit evidence of was related to his belief that the OED Director acted with animus in investigating and prosecuting the Client's grievances against Respondent.

Respondent is required to prove affirmative defenses by clear and convincing evidence. 37 C.F.R. § 11.49. Respondent claims the OED Director "did not undertake a thorough investigation, in particular their acceptance of papers from the Client which were not submitted in good faith." At the hearing, Mr. Olafsson, who represented Respondent during the OED's investigation of the Client's second grievance, testified that every time Respondent answered a RFI, the Office would send a new RFI seemingly containing new allegations:

> A. ... it was really odd, you know, we answer one set of questions and an entirely unrelated new set pops up and then after that another new set pops up. I got, you know, kind of a cold feeling about this whole process, to be honest with you.

Despite his "cold feeling" about the investigation, Mr. Olafsson acknowledged that the Office never attempted to limit his ability to provide evidence and legal research in defense of Respondent, and never refused to accept any such evidence offered.

Respondent further claims that the OED Director attempted to manipulate and withhold material evidence at the hearing, ostensibly to conceal evidence of animus against Respondent. As support, Respondent identifies various points during the hearing where Counsel for the OED Director sought the admission or exclusion of certain exhibits. Respondent contends that this behavior was motivated by Counsel's desire to "cover up" the Office's malfeasance.

The Court can find no basis for Respondent's contention. It is entirely routine for legal counsel to seek the admission or exclusion of evidence at trial. Respondent asks the Court to join him in speculating about the Office's motivations. However, he has provided no evidence that would persuade the Court to read conspiracy into otherwise benign courtroom tactics. A review of the record — along with the Court's own recollection of the instances identified by Respondent — confirms that Counsel for the OED Director did nothing untoward or inappropriate. Respondent has therefore failed to show by clear and convincing evidence that the OED Director's investigation and prosecution was motivated by animus.

Sanctions

The OED Director requests that the Court sanction Respondent by entering an order that suspends Respondent from practice before the Office for a period of no less than six months and up to three years. Before sanctioning a practitioner, the Court must consider the following four factors:

> (1) Whether the practitioner has violated a duty owed to a Client, to the public, to the legal system, or to the profession;
> (2) Whether the practitioner acted intentionally, knowingly, or negligently;
> (3) The amount of the actual or potential injury caused by the practitioner's misconduct; and
> (4) the existence of any aggravating or mitigating factors.

37 C.F.R. § 11.54(b).

1. Respondent violated his duties to the Client and the legal profession.

From April 2007 through August 11, 2011, Respondent's relationship with the Client was a practitioner-client relationship. Respondent understood that such a relationship entailed fiduciary responsibilities on his part. Yet, Respondent acted dishonestly by charging the Client a $47,000 late fee after asserting, through his words and his actions, that the late fee would not apply.

Respondent also violated his duty to maintain the integrity and competence of the legal profession. This duty is a canon of the USPTO Code of Professional Responsibility. See 37 C.F.R. § 10.21; 37 C.F.R. § 10.20(a) (a canon is a statement "expressing in general terms the standards of practitioners in their relationships with the public, with the legal system, and with the legal profession."). By engaging in dishonest conduct during his practitioner-client relationship with the Client, Respondent damaged the integrity of all USPTO practitioners.

2. Respondent acted knowingly and intentionally.

Respondent acted knowingly because he was aware when he sent the March 15th invoice that he had not actually billed the Client for the services on which the late fee was calculated. His misconduct was also intentional because he charged the Client the late fee even after Mr. Olafsson testified that he "cautioned" Respondent and asked him if he was "sure" he wanted to include it. Respondent also testified that he "considered" the USPTO Disciplinary Rules and "didn't see [including the $47,000 in interest] as a violation."

Moreover, although Respondent's attorney had indicated it was possible the late fee would not be allowed by a collections court, Respondent made the decision to send it anyway.

3. Respondent's misconduct did not cause actual or potential injury.

A review of the record reveals that no actual injury has been caused by Respondent's misconduct. While the OED Director claims the Client potentially faced significant financial harm because of the late fee, the likelihood of that potential harm occurring is slim because the Client filed his grievance with the OED Director within a week of receiving the invoice.

Further, the OED Director's argument that the retaliatory nature of Respondent's billing "could have significantly adversely affected the USPTO grievance process by deterring or stopping clients from reporting alleged misconduct out of fear of financial reprisal" is without merit. First, the Court has determined that the March 15th invoice was not retaliation for the Client's first grievance. Second, the Client was clearly not deterred from reporting the misconduct in this case as he almost immediately reported it to the OED Director. Moreover, the OED Director's argument assumes that Respondent's misconduct in this case would have been sufficiently known to other clients to deter them from reporting misconduct. This proposition is unlikely given the confidential nature of these proceedings. Accordingly, the Court finds that Respondent's misconduct has not caused actual or potential injury.

4. Aggravating and mitigating factors exist in this case.

The Court often looks to the ABA's Standards for Imposing Lawyer Sanctions ("ABA Standards") when determining whether aggravating or mitigating factors exist. See In re Chae, Proceeding No. D2013-01, at 4 (USPTO Oct. 21, 2013). A review of the record reveals that both aggravating and mitigating factors exist in this case.

A prior disciplinary offense constitutes an aggravating factor under ABA Standards. During the first grievance process, it was concluded that Respondent's conduct violated the USPTO's disciplinary rules. In re Lane, Proceeding No. D2011-64 (USPTO Feb. 8, 2012). This conclusion was reached based on Respondent's acknowledgement that he violated 37 C.F.R. §§ 10.62(a) and 10.65.[9] Accordingly, the Court finds an aggravating factor exists, because Respondent was previously disciplined for violations of the USPTO disciplinary rules.

The Court must also consider whether mitigating factors exist. Respondent claims, as a mitigating factor, that he relied on the advice of Mr. Olafsson, his attorney, when he billed the Client for the $47,000 interest fee.

[9] Respondent incorrectly asserts, "the first grievance process did not result in a holding and should not be counted against me." [However, by the very language of the settlement agreement, which was effectuated by the USPTO Director's final decision, Respondent's stipulations may be used in future disciplinary proceedings as an aggravating factor. In re Lane, Proceeding No. D2011-64, at 7 ("Nothing in the Agreement or this Final Order shall prevent the Office from considering ... this Final Order ... in any future disciplinary proceeding concerning Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed."); see also 37 C.F.R. § 11.26 ("A settlement agreement shall be effective only upon entry of a final decision by the USPTO Director.").

To successfully assert an "advice of counsel" defense, Respondent must establish that he fully disclosed all pertinent facts to Mr. Olafsson, and that Respondent, in good faith, relied on Mr. Olafsson's advice. United States v. Butler, 211 F.3d 826, 833 (4th Cir. 2000). However, it is not enough that Respondent relied on Mr. Olafsson's advice in general. "A crucial element in the defense of acting upon the advice of counsel is that defendant secured the advice on the lawfulness of his possible future conduct." United States v. Polytarides, 584 F.2d 1350, 1352 (4th Cir. 1978) (citing 1 Devitt & Blackmar, Federal Jury Practice and Instructions, s 14.12 at 396 (3d ed. 1977).

Respondent sought Mr. Olafsson's representation in a collection matter. The advice Respondent solicited concerned his legal rights to collect money he thought was owed by the Client. On this fact, Mr. Olafsson testified to the following,

> Q. ... What did Mr. Lane do or tell or otherwise communicate to you that indicated he had questions or doubts about his legal rights to collect money?
>
> A. ... he indicated to me that [he] thought moneys were due and he was seeking my advice on ... whether it was collectible and how to go about that ... I think he was in question about what was due and what the circumstances or what the theory of the case might be or what our approach might be, how we could go about collecting this.

Mr. Olafsson further testified that before Respondent sent the March 15 invoice to the Client, Mr. Olafsson and Respondent discussed various legal theories that could support Respondent's collection efforts. Although Mr. Olafsson told Respondent that he had a "good case" to collect for unpaid services from the Client, he "cautioned" Respondent regarding the late fee, because it was somewhat unorthodox to be charging a late fee on services that were not yet billed. Still, Mr. Olafsson approved a draft of the March 15 invoice, which included the late fee, because Respondent wanted the late fee included in his claim should the matter result in litigation.

It is uncontested that Respondent relied on Mr. Olafsson's advice when drafting the March 15 invoice. However, the Court finds that the advice upon which Respondent relied was related to the collectability of Respondent's claim, and not whether attempts to collect the moneys would violate the USPTO disciplinary rules. In order for an advice of counsel defense to apply in this case, Mr. Olafsson would have to have indicated to Respondent that attempting to collect the $47,000 late fee would not have violated the USPTO disciplinary rules. Although Mr. Olafsson indicated that he had considered the USPTO disciplinary rules, the record of this case does not indicate Mr. Olafsson advised Respondent that his actions were in compliance with said rules. Accordingly, the Court finds this mitigating factor is not applicable in this case.

ORDER

Based on the foregoing findings and conclusions, the Court finds Respondent engaged in disreputable and dishonest conduct. His misconduct violated his fiduciary duty to the Client as well as his obligation to maintain the integrity of patent practitioners. Moreover, this was Respondent's second disciplinary offense, which occurred while Respondent was on probation. Accordingly, the Court finds that an eighteen (18) month suspension is warranted.

So **ORDERED**,

Alexander Fernández
Administrative Law Judge

Notice of Finality: Within thirty (30) days of this initial decision, either party may request an appeal to the USPTO Director. 37 C.F.R. § 11.55(a).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION AND ORDER,** issued by Alexander Fernández, Administrative Law Judge, in D2013-07, were sent to the following parties on this 11th, day of March, 2014, in the manner indicated:

Sandra A. Wu

Sandra Wu, Attorney Advisor

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