

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

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|------------------|---|-------------------------|
| In the Matter of |) | |
| |) | |
| Jeffrey J. King, |) | |
| |) | Proceeding No. D2015-29 |
| Respondent |) | |
| _____ |) | |

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

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Jeffrey J. King (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and Director of the USPTO (“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 Kirkland, Washington, has been a registered patent attorney (Registration No. 38,515) and subject to the USPTO Code of Professional Responsibility¹ or the USPTO Rules of Professional Conduct.
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. § 11.19.

Joint Stipulated Facts

A. Background

3. At all times relevant hereto, Respondent has been registered as an attorney to practice before the Office and is subject to the provisions of the USPTO Code of Professional Responsibility or the USPTO Rules of Professional Conduct. Respondent’s registration number

¹ Both the USPTO Code of Professional Responsibility and the USPTO Rules of Professional Conduct are applicable to this proceeding. See 37 C.F.R. §§ 10.20-10.112 and 37 C.F.R. §§ 11.101-11.901. The Code applies to conduct prior to May 3, 2013, and the Rules apply to conduct on or after May 3, 2013.

is 38,515. Respondent has been registered as a patent attorney since October 25, 1994, and has been admitted to practice as an attorney in the State of Washington since May 24, 1994.

B. Dishonored Payments

4. Between the years 2010 and 2014, Respondent represented clients in patent cases before the Office, including the prosecution of patent applications and the maintenance of issued patents. During this period, in at least eleven (11) patent matters, Respondent made, or ordered to be made, various checks and electronic payments that were dishonored.

Client No. 1

5. Respondent represented Client No. 1 in seven (7) different patent applications.

6. In each of the seven patent applications, a payment was dishonored.

7. On August 22, 2011, Respondent made separate electronic payments, each of which was dishonored, for the basic filing fees of \$82.00 in five of the seven patent applications. Respondent acknowledges that payments were dishonored due to his lack of oversight on the account.

8. On September 22, 2011, Respondent electronically filed payment for an extension of time for \$245.00 in one of the seven patent applications. The payment was dishonored.

9. On May 2, 2014, Respondent filed a response to Notification Concerning Payment of Prescribed Fees with check no. 1908 for the amount of \$4,190.00, which was eventually dishonored, in the seventh application, a Patent Cooperation Treaty ("PCT") application.

Client No. 2

10. Respondent was hired by Client No. 2 for representation in a patent application.

11. On June 13, 2013, the Office issued a Notice to File Missing Parts for Client No. 2's patent application.

12. On January 15, 2014, Respondent filed a reply with a Request for Extension of Time, including check no. 1858 for \$1,500.00. At the time the check was presented, there were not sufficient funds in the account, and the check was returned. The check was dishonored by the bank and a Notice of Abandonment was issued on February 6, 2014.

Client No. 3

13. Respondent was hired by Client No. 3 for representation in a patent application.

14. On December 27, 2010, Respondent filed papers titled "AMENDMENT TO ADD INADVERTENTLY OMITTED MATERIAL" in the patent application of Client No. 3.

Included with the papers was check no. 1043 for the amount of \$500 to cover fees for independent claims in excess of 3 and fees for dependent claims in excess of 20. At the time the check was presented, there were not sufficient funds held in the account from which the check was drawn to cover the check, and the check was returned for non-sufficient funds.

15. On January 8, 2011, Respondent filed substitute payment, which was honored.

Client No. 4

16. Respondent was hired by Client No. 4 for representation in a PCT patent application.

17. On October 19, 2010, the Office mailed an Invitation to Pay Prescribed Fees Together with Late Payment Fee to Respondent.

18. On December 7, 2010, Respondent filed a response with check no. 2212 for the amount of \$425 in payment of \$185 in unpaid fees and \$240 in late payment fees. At the time the check was presented, there were not sufficient funds held in the account from which the check was drawn to cover the check, and the check was returned for non-sufficient funds.

19. On December 29, 2010, the Office received substitute payment, which was honored.

Client No. 5

20. Respondent was hired by Client No. 5. Respondent's responsibilities included taking care of the maintenance fees of an issued patent.

21. On August 10, 2011, Respondent made an electronic payment for \$555. Respondent intended to pay \$490 for the maintenance fee due at 3.5 years and \$65 for late payment. At the time of electronic presentment, there were not sufficient funds held in the account from which the payment was drawn to cover the payment. The entire payment was dishonored.

22. On September 16, 2011, the Office received substitute payment, which was honored.

Representations Regarding Dishonored Payments

23. Respondent acknowledges that the dishonored payments occurred due to serious lapses in Respondent's accounting and bookkeeping.

24. Respondent acknowledges that the total amount of dishonored payments was \$7,825.

25. Respondent takes full responsibility for the lapses in accounting and the resulting dishonored payments.

26. Respondent represents that he has paid the \$50 fee for processing each payment refused or charged back by a financial institution, as required by 37 C.F.R. § 1.21(m), for each one of the eleven (11) dishonored payments discussed above.

C. Additional Considerations and Mitigating Factors

27. Respondent has no prior disciplinary history before the Office during the nearly twenty-one (21) years he has been registered as a patent practitioner.

Joint Legal Conclusions

28. Respondent acknowledges that, based on the information contained in the Joint Stipulated Facts above, his conduct violated the following provisions of the USPTO Code of Professional Responsibility:

- a. 37 C.F.R. § 10.23(b)(4), which proscribes engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and 37 C.F.R. § 10.23(b)(6), which proscribes engaging in conduct that adversely reflects on the practitioner's fitness to practice, by authorizing payments to the Office drawn on accounts containing insufficient funds thus resulting in the payments being dishonored; and
- b. 37 C.F.R. § 10.77(c), which proscribes neglect of an entrusted legal matter, by failing to timely pay fees to the Office for which the clients had instructed or had otherwise relied upon Respondent to pay.

29. Respondent acknowledges that, based on the information contained in the Joint Stipulated Facts above, his conduct also violated the following provision of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 11.103, which requires reasonable diligence and promptness in representing a client, by failing to timely pay fees to the Office for which the clients had instructed or had otherwise relied upon Respondent to pay; and
- b. 37 C.F.R. § 11.804(c), which proscribes engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and 37 C.F.R. § 11.804(i), which proscribes engaging in conduct that adversely reflects on the practitioner's fitness to practice, by authorizing payments to the Office drawn on accounts containing insufficient funds thus resulting in the payments being dishonored.

Sanction

In light of the OED Director's and Respondent's entering into the Agreement, the OED Director's recommendation, and the discussed mitigating factors, it is hereby determined that there is no genuine issue of material fact and that discipline of Respondent is appropriate.

ACCORDINGLY, Respondent has agreed, and it is **ORDERED** that:

- a. Respondent shall be, and hereby is, publicly reprimanded;

- b. Respondent shall serve a 36-month probationary period commencing on the date this Final Order is signed by the USPTO Director;
- c. (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 provision of the USPTO Rules of Professional Conduct, the OED Director shall:
 - A. issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent be immediately suspended for up to thirty-six (36) months for the violations set forth in paragraphs 28 and 29, 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 that, after the fifteen-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 provision of the USPTO Rules of Professional Conduct, the OED Director shall:
 - A. deliver to the USPTO Director or his designate: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) evidence and argument causing the OED Director to be of the opinion that Respondent failed to comply with the Final Order or any provision of the USPTO Rules of Professional Conduct during the probationary period, and
 - B. request that the USPTO Director immediately suspend Respondent for up to thirty-six (36) months for the violations set forth in paragraphs 28 and 29, above;
- d. The OED Director electronically publish the Final Order at the OED'S electronic FOIA Reading Room, which is publicly accessible through the Office's website at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
- e. The OED Director to publish a notice materially consistent with the following Notice of Reprimand and Probation in the *Official Gazette*:

Notice of Public Reprimand and Probation

This notice concerns Jeffrey J. King of Kirkland, Washington, a registered patent attorney (Registration No. 38,515). The United States Patent and Trademark Office (“USPTO”) has publicly reprimanded Mr. King and placed him on probation for thirty six (36) months for violating both 37 C.F.R. § 10.23(b)(4) (proscribing engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), 37 C.F.R. § 10.23(b)(6) (proscribing engaging in conduct that adversely reflects on the practitioner’s fitness to practice), and 37 C.F.R. § 10.77(c) (proscribing neglect of an entrusted legal matter) of the USPTO Code of Professional Responsibility and also 37 C.F.R. § 11.103 (requiring reasonable diligence and promptness in representing a client), 37 C.F.R. § 11.804(c) (proscribing engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and 37 C.F.R. § 11.804(i) (proscribing engaging in conduct that adversely reflects on the practitioner’s fitness to practice) of the USPTO Rules of Professional Conduct. Mr. King is permitted to practice before the USPTO in patent, trademark, and other non-patent matters while on probation unless he is subsequently suspended or excluded by a Final Order of the USPTO Director.

Between 2010 and 2014, Mr. King submitted eleven dishonored electronic and check payments to the USPTO on behalf of five different clients. At the time of presentment of each payment, there were not sufficient funds held in the account from which the payment was drawn to cover the payment. The total amount of dishonored payments was \$7,825.

Factors reflected in the agreed upon resolution of this disciplinary matter include that Mr. King has no prior disciplinary history before the Office during the nearly 21 years he has been registered as a patent practitioner.

This action is the result of a settlement agreement between Mr. King and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room accessible at:
<http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

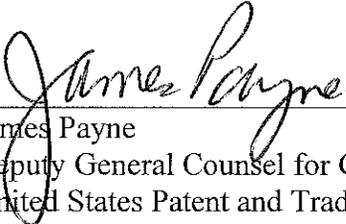
- f. If Respondent is suspended pursuant to the provisions of subparagraph c, above:
 - A. the USPTO shall promptly dissociate Respondent’s name from all USPTO customer numbers and public key infrastructure (PKI) certificates,
 - B. Respondent shall not use any USPTO customer number or PKI certificate unless and until he is reinstated to practice before the USPTO, and

C. Respondent may not obtain a USPTO customer number or a PKI certificate unless and until he is reinstated to practice before the USPTO;

- g. In the event that the USPTO Director suspends Respondent pursuant to subparagraph c, above, any review or appeal of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;
- h. 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; (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
- i. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this Agreement and any Final Order.

MAY 26 2015

Date


James Payne
Deputy General Counsel for General Law
United States Patent and Trademark Office

On behalf of

Michelle K. Lee
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
United States Patent and Trademark Office

Mr. Jeffrey J. King
5000 Carillon Point, Suite 400
Kirkland, WA 98033