

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re: ██████████)
██████████)
██████████)
██████████)
_____)

Decision on Petition
Pursuant to 37 C.F.R. § 11.2(d)

MEMORANDUM AND ORDER

██████████ (“Petitioner”) seeks review of the final decision of the Director of the Office of Enrollment and Discipline (“OED Director”) dated on March 14, 2013, denying Petitioner’s application for registration to practice in patent matters before the U.S. Patent and Trademark Office (“USPTO” or “Office”). In that final decision, the OED Director found that Petitioner did not meet his burden of establishing that he presently possesses the good moral character and reputation required to represent applicants before the Office. Petitioner filed a “Petition to the Director of the USPTO (Pursuant to 37 CFR 11.2(d))” on April 13, 2013 (“Petition”), seeking review of the OED Director’s decision. ██████████ For reasons set forth herein, the Petition is denied and the decision of the OED Director is affirmed.

I. BACKGROUND AND PROCEDURAL HISTORY

Petitioner’s Doctoral and Post-Doctoral Research

Petitioner enrolled as a doctoral student at ██████████ ██████████ in 2005 and he received his Ph.D. in May of 2009. ██████████ While enrolled at ██████████ in the summer of 2006, Petitioner received training regarding research conduct and ethics in accordance with National Institutes of Health (“NIH”) policies, which covered numerous topics including research misconduct, policies for

handling research misconduct, and responsible authorship and publication. [REDACTED]

In July 2009, Petitioner began post-doctoral work at [REDACTED]

On December 20 2010, Petitioner contacted his doctoral advisor, [REDACTED] and his post-doctoral advisor, [REDACTED] and admitted that he had engaged in research misconduct that involved “over-reporting sample sizes and fabricating data.” [REDACTED]

Subsequent to, and in spite of his December 20, 2010 misconduct admission, Petitioner continued to engage in research misconduct throughout 2011 while working as a post-doctoral fellow. [REDACTED] He failed to report this subsequent research misconduct to any authority. [REDACTED] Rather, personnel at [REDACTED] learned of Petitioner’s subsequent research misconduct in early 2012, when Petitioner’s post-doctoral advisor contacted Petitioner regarding data inconsistencies.¹ [REDACTED]

Meanwhile, Petitioner’s post-doctoral work terminated on December 31, 2011.

[REDACTED]. Petitioner is no longer affiliated with [REDACTED] [REDACTED].

Petitioner’s Application For Registration to the USPTO

On March 26, 2012, Petitioner submitted to the USPTO an application for registration to serve as a practitioner to prosecute patent applications before the Office. [REDACTED] The process for applying for registration as a patent practitioner resembles the process for applying to a state bar to become an attorney, since working as a patent practitioner has been held to constitute the practice of law. *See infra*, p. 8. In his application for registration, he answered

¹ Petitioner has specifically stated that: “On February 15, 2012, I was contacted by my post-doctoral advisor that he was investigating my research, and we began to communicate and investigate the details of my research misconduct. On May 4th, I was contacted by the director of Research Integrity and Education at [REDACTED], informing me that the university was conducting an official investigation, and I began communications with this office to provide assistance as they investigated my misconduct, which I admit doing.” [REDACTED]

“No” to questions 15 through 22 of the application relating to Petitioner’s character and fitness, including the following question: “Have you ever been disciplined, reprimanded, suspended, expelled or asked to resign or withdraw from any educational institution, or have you resigned or withdrawn from any such institution in time to avoid discipline, reprimand, suspension, expulsion or request to resign for conduct involving dishonesty, fraud, misrepresentation, or deceit?” [REDACTED]

Petitioner passed the patent registration examination on May 4, 2012 and his name was published on OED’s website on [REDACTED] and in the *Official Gazette for Patents* [REDACTED] [REDACTED] along with a public solicitation for information tending to affect the eligibility of Petitioner on moral, ethical, or other grounds. [REDACTED] In response to this publication, on June 22, 2012, OED received a letter from the Vice President of Research and Technology Management at [REDACTED] The letter stated, in part:

[REDACTED] is a former student and post-doctoral scholar from our institution who has recently provided information to [REDACTED] relating to the conduct of his research here. We have referred this information to the federal Office of Research Integrity, in accordance with federal regulations at 42 CFR 93.316. The matter is now being reviewed by the Director of the Division of Investigative Oversight, [REDACTED]
[REDACTED]

[REDACTED]

Based on the letter from [REDACTED] OED sent Petitioner a Request for Information dated July 6, 2012, specifically requesting that he provide information and details regarding the alleged research misconduct. OED also requested that Petitioner provide information regarding his current relationship with [REDACTED] the circumstances surrounding his departure from [REDACTED] and whether any investigation was performed proximate to the date of his departure from [REDACTED] OED received Petitioner’s reply on July 18, 2012, and the reply

included supporting documentation. [REDACTED] In his response, Petitioner admitted that he committed research misconduct at multiple periods during his tenure at [REDACTED] stating:²

On December 20th 2010, I contacted my PhD Advisor [REDACTED] and Post-Doctoral Advisor [REDACTED] and admitted that I had engaged in research misconduct, over-reporting sample sizes and fabricating data. At this time, I am not aware of any official action that was taken investigating my research. However, subsequent to this [December 20, 2010] conversation, I continued to engage in research misconduct throughout the 2011 year as a post-doctoral scholar/fellow.

[REDACTED] Petitioner's response also indicated that, while he reported his research misconduct committed prior to December 20, 2010, he failed to report his subsequent research misconduct through 2011. [REDACTED] Petitioner indicated that his post-doctoral work was terminated on December 31, 2011, due to a lack of funding. [REDACTED]

OED sent Petitioner a supplemental communication dated September 11, 2012, seeking additional information regarding Petitioner's admitted research misconduct including his motivations with respect to such misconduct, the consequences his misconduct may have had on [REDACTED] the scientific community and public, and the actions taken by [REDACTED] as a result of each instance of research misconduct. [REDACTED] OED received Petitioner's reply on September 24, 2012. [REDACTED] Therein, he identified and described multiple, different

² That Petitioner engaged in multiple instances of research fraud over an extended period of time while in the doctoral and post-doctoral programs at [REDACTED] is not in dispute. Petitioner has admitted the misconduct, and the admission further includes providing the following documentation with his July 18, 2012 response:

- 1) a statement, authored by Petitioner and dated May 25, 2012, outlining, in detail, "the specifics of manipulations and falsifications of data" during his doctoral and post-doctoral research at [REDACTED] ("Petitioner's May 2012 Statement");
- 2) a summary of Petitioner's misconduct during his doctoral research, prepared by Petitioner's Doctoral Advisor, [REDACTED] dated May 21, 2012 [REDACTED];
- 3) correspondence between Petitioner and [REDACTED] Office of Research Administration from May through July of 2012; and
- 4) correspondence between [REDACTED] and Petitioner dated February 15, 2012.

instances of research misconduct that he engaged in during his doctoral and post-doctoral programs with [REDACTED]. The now-admitted misconduct occurred over a period of March 2009 through his 2011 year as a post-doctoral fellow. [REDACTED]. Consistent with his earlier July 18, 2012 response, Petitioner reiterated that he reported some of the research misconduct to his doctoral and post-doctoral advisors on December 20, 2010. [REDACTED]. Despite this, and after being “warned not to engage in further research misconduct,” Petitioner admitted that he continued to commit research misconduct through 2011. [REDACTED]. This subsequent misconduct was never disclosed to any authority. [REDACTED]. Petitioner stated that he does not have a “very concrete or reasonable explanation” as to why he resumed research misconduct after his prior admission. [REDACTED]. However, he identified contributing factors, “all of which could have played a role in [his] decision” to commit further research misconduct including a desire for success, a desire to be accepted again (through obtaining “desired” results), a desire to accomplish (in the eyes of those around him) more than what is normally accomplished, and a desire to publish quickly. [REDACTED].

In his September 24, 2012 response, Petitioner acknowledged the severe consequences for [REDACTED] the scientific community, and the public as a result of his doctoral and post-doctoral research misconduct. [REDACTED]. This includes [REDACTED] having to expend assets and resources to litigate and process through the mandatory legal aspects of handling a research misconduct case, making corrections to his work, and hindering legitimate research and findings. [REDACTED]. Importantly, Petitioner’s post-doctoral work was also included in U.S. Provisional Patent Application Nos. [REDACTED] and PCT Application No. [REDACTED]. [REDACTED]. Petitioner stated that he believes material affected by his research misconduct was included in these applications. [REDACTED]. This belief was based on his involvement “in one

preliminary meeting regarding the filing of the patent applications, and provided data, information, and figures necessary, when requested.” [REDACTED]

Lastly, his September 24, 2012 response explained why he answered “No” to questions 15 through 22 on the character and fitness portion of his application for registration. [REDACTED] When addressing question 17, relating to whether Petitioner had been “disciplined, reprimanded, suspended, expelled or asked to resign or withdraw from any educational institution” or whether he had “resigned or withdrawn from any such institution in time to avoid discipline, reprimand, suspension, expulsion or request to resign for conduct involving dishonesty, fraud, misrepresentation, or deceit,” Petitioner stated that from the time of submitting his application on March 26, 2012, through the afternoon of May 4, 2012,³ he “had no official documentations to file to inform the OED of any official action or inquiry. To the best of my knowledge, no action on behalf of [REDACTED] when I filed and registered to take the exam, had been taken against me.” [REDACTED] Based on that, Petitioner “believed, at the time of filing of [his] request, that according to the specifics of what each question was asking, and the specifics of: the information [he] knew, the absence of any discipline, reprimand, suspension, etc., in regards to my admissions of research misconduct, my answering ‘no’ to each question was a truthful answer to what each question asked.” [REDACTED] He later acknowledged that “a statement from myself, indicating that I had engaged in research misconduct during my years of research at [REDACTED] could have, and perhaps should have been submitted on my behalf.” [REDACTED]

Based on the information before OED, Petitioner was sent a Show Cause Requirement dated November 26, 2012, requiring Petitioner to show cause why his request for registration

³ [REDACTED] first communicated with Petitioner regarding an investigation into his research misconduct on May 4, 2012. [REDACTED] Petitioner alleged that he was “taking the patent bar exam” at the time of that communication. [REDACTED] This justification does not explain or excuse Petitioner’s failure to update the responses to on his application for registration, as required by 37 C.F.R. § 11.7(c).

should not be denied. [REDACTED] On December 26, 2012, OED received from Petitioner an unexecuted copy of a Voluntary Settlement Agreement between the United States Department of Health and Human Services (HHS), through the U.S. Public Health Service (PHS), [REDACTED] and Petitioner. [REDACTED] Petitioner stated that he had signed the settlement agreement. [REDACTED] The Voluntary Settlement Agreement includes an admission by Petitioner of his research misconduct and a promise not to contest or appeal the findings of the Office of Research Integrity. [REDACTED]

OED thereafter received Petitioner's reply to the show cause order on December 27, 2012. [REDACTED] In that reply, Petitioner again admitted engaging in research misconduct and failing to disclose the misconduct to the USPTO, stating that he did not "at the time of registering, and subsequent to registering, offer forth every piece of information that might have borne on my eligibility for registration." [REDACTED] Nevertheless, he has maintained that "the nature of [his] good character has significantly grown and improved, and that [he] is in a state of good moral standing." [REDACTED] In support of that position, he identified various community and spiritual projects and associations that he has undertaken as part of his rehabilitative efforts. [REDACTED] These include enrolling in counseling and prayer groups, mentoring programs and teaching, and making charitable contributions. [REDACTED] He also provided letters of evaluation of his current moral standing by his pastor and one of his counselors. [REDACTED]

On March 14, 2013, the OED Director denied Petitioner's application for registration to practice before the Office in patent matters, concluding that "on the present record [Petitioner] has not sustained his burden of establishing to the satisfaction of the OED Director that he currently possesses good moral character and reputation for

registration to practice in patent matters before the USPTO.” [REDACTED] The instant Petition followed on April 12, 2013. [REDACTED]

II. LEGAL STANDARD

A patent practitioner, including a non-attorney practitioner, engages in the practice of law before the Office. *See Sperry v. State of Florida ex rel. Florida Bar*, 373 U.S. 379, 383, 83 S.Ct. 1322, 1325 (1963). “Congress has “delegated plenary authority over PTO practice . . . to the Office.” *Hsuan-Yeh Chang v. Kappos*, 890 F.Supp.2d 110, 116 (D.D.C. 2012). This includes the “broad authority to govern . . . the recognition and conduct of attorneys” who practice before the Office. *See id.* The USPTO has authority to promulgate regulations respecting the recognition of attorneys and agents before the Office pursuant to 35 U.S.C. § 2(b)(2)(D). *See also Hsuan-Yeh*, 890 F.Supp.2d at 117. Section 2(b)(2)(D) states that the Director may establish regulations which:

may govern the recognition and conduct of agents, attorneys, or other persons representing Petitioners or other parties before the Office, and may require them, before being recognized as representatives of Petitioners or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to Petitioner or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

Pursuant to this authority, the USPTO Director promulgated 37 C.F.R. § 11.7, which states that no individual will be registered to practice before the Office unless he or she has established to the satisfaction of the OED Director that he or she, *inter alia*, possesses good moral character and reputation. 37 C.F.R. § 11.7(a)(2)(i). To enable the OED Director to make this determination, the individual shall provide satisfactory proof of possession of good moral character and reputation. 37 C.F.R. § 11.7(b)(1)(iii). Every individual seeking recognition shall answer all questions in the application for registration and request(s) for comments issued by

OED; disclose all relevant facts, dates and information; and provide verified copies of documents relevant to his or her good moral character and reputation. 37 C.F.R. § 11.7(g). Individual applicants bear responsibility for updating all information and answers submitted in or with the application for registration based upon anything occurring between the date the application for registration is signed by the individual, and the date he or she is registered or recognized to practice before the Office in patent matters. 37 C.F.R. § 11.7(c). The update shall be filed within thirty days after the date of the occasion that necessitates the update. *Id.*

If the OED Director receives information from any source that reflects adversely on the good moral character or reputation of an individual seeking registration or recognition, the OED Director shall conduct an investigation into the good moral character and reputation of that individual. 37 C.F.R. § 11.7(g)(2)(i). The investigation will be conducted after the individual has passed the registration examination, or after the registration examination has been waived for the individual, as applicable. *Id.* Regardless, no individual shall be certified for registration or recognition by the OED Director until, to the satisfaction of the OED Director, the individual demonstrates his or her possession of good moral character and reputation. 37 C.F.R. § 11.7(g)(2)(i).

III. DISCUSSION

A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition may seek review of that decision upon Petition to the USPTO Director, accompanied by payment of the appropriate fee. *See* 37 C.F.R. § 11.2(d). Here, Petitioner requests reversal of the OED Director's decision to deny his application for registration to practice in patent matters before the Office. In support of his position that he currently possesses good moral character and reputation, Petitioner relies on "the prior supplied material" which he hopes demonstrates his

“candor, communication with the OED and USPTO, willingness to cooperate through the proceedings, and growth in reputation and standing.” [REDACTED]

The Petition, however, does not present any evidence to disturb the OED Director’s conclusion that Petitioner does not currently possess the requisite good moral character and reputation to practice patent matters before the Office. Rather, the record before the OED Director, including Petitioner’s admissions of committing research misconduct over an extended period of time while in his doctoral and post-doctoral programs with [REDACTED] and his admissions that he failed to timely and fully disclose his misconduct to both [REDACTED] and the USPTO, provides firm support for the OED Director’s decision. Thus, the OED Director’s decision is affirmed.

Petitioner Has Not Demonstrated That He Currently Possesses The Requisite Good Moral Character and Reputation for Registration to Practice in Patent Matters Before the Office.

Based on the authority vested in the Office and in the OED Director, Petitioner’s registration to practice patent matters before the Office was denied on March 14, 2013. The bases for that decision include that Petitioner willfully committed dishonest and deceitful conduct and engaged in behavior that amounts to lack of candor. While Petitioner has pointed to recent steps and efforts at rehabilitation, Petitioner has not provided facts or argument that would warrant disturbing the OED Director’s decision.

1. Petitioner Willfully Committed Dishonest and Deceitful Conduct In Recent Years Over an Extended Period of Time.

In making determinations regarding an applicant’s good moral character and reputation, the USPTO considers violations of its standards of conduct in making determinations as to whether to admit applicants to practice before it. Here, like many state bars, the USPTO Code

of Professional Responsibility prohibits registered practitioners from “[e]ngag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation.”⁴ See also, *Matter of Morgan*, 2008 WL 2329293, at *2 (V.I. 2008) (noting “it is professional misconduct when a lawyer perpetrates acts of dishonesty, fraud, deceit or misrepresentation,” court held repeated acts of misconduct precluded admission to bar); *Radtke v. Board of Bar Examiners*, 601 N.W.2d 642 (Wis. 1999) (court declined to certify character and fitness for admission to bar where applicant had been discharged from his position as university lecturer for unprofessional conduct consisting of plagiarism in a professional article and making a misleading statement on bar admission regarding his discharge).

Petitioner has admitted to engaging in research misconduct that rises to the level of dishonesty, fraud, deceit or misrepresentation. [REDACTED] Specifically, he has admitted to engaging in multiple instances of misconduct including “over-reporting sample sizes and fabricating data.” [REDACTED] Though he disclosed to his advisors research misconduct that had taken place up to December 20, 2010, Petitioner continued to engage in research misconduct throughout 2011 while working as a post-doctoral fellow at [REDACTED] He failed to report this subsequent research misconduct to any authority. [REDACTED] Rather, personnel at [REDACTED] learned of Petitioner’s subsequent research misconduct in early 2012, when Petitioner’s post-doctoral advisor contacted him regarding data inconsistencies and an investigation was begun. [REDACTED]

⁴ Petitioner applied for registration to practice patent matters before the Office on March 19, 2012, at which time the Patent and Trademark Office Code of Professional Responsibility was in effect. The Code included 37 C.F.R. § 10.23(b)(4), which prohibits registered practitioners from “[e]ngag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation.” New disciplinary rules became effective May 3, 2013 but were not applied here.

⁵ Though his post-doctoral fellowship was scheduled to end in July 2011, [REDACTED] and Petitioner entered into an agreement to continue Petitioner’s employment as a post-doctoral scholar on a month-to-month basis. [REDACTED]. In November 2011, Petitioner was advised that December 2011 would be his final month of employment with [REDACTED]

Petitioner's pattern of research misconduct and subsequent dishonesty occurred over a period of approximately two and one-half years. This is significant for many reasons, including that "[a] pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation." *Matter of Morgan*, 2008 WL 2329293, at *2. See also *In the Matter of Stern*, 943 A.2d 1247, 1257 (Md. 2007) (noting a "pattern of fiscal irresponsibility" as relevant to denying admission to Maryland Bar); *Florida Board of Bar Examiners re M.B.S.*, 955 So.2d 504, 509 (Fla. 2007) (noting the nature and quantity of applicant's behavior over 13-year period as significant in denying admission to bar). Petitioner's misconduct occurred despite having received training in research conduct and ethics in accordance with NIH policies. This training covered numerous topics, including research misconduct, policies for handling research misconduct, and responsible authorship and publication. [REDACTED] Furthermore, despite his initial disclosure of misconduct to his advisors in December 2010, and a warning not to continue the misconduct, Petitioner willfully continued to engage in research misconduct throughout 2011. [REDACTED] The repeated and willful nature of his actions is especially reflective of dishonest and deceitful conduct.

Petitioner has openly acknowledged the severe consequences that both his doctoral research misconduct, as well as his post-doctoral research misconduct, may have on [REDACTED] [REDACTED] the scientific community, and the public. [REDACTED] This includes [REDACTED] having to expend assets and resources to litigate and process the legal and required aspects of handling a research misconduct case, making corrections to his work, and hindering legitimate research and findings. [REDACTED] Of particular concern to the Office is the fact that Petitioner's post-doctoral work was also included in U.S. Provisional Patent Application Nos.

██████████ and PCT Application No. ██████████ Petitioner stated that he believes material affected by his research misconduct was included in these applications. ██████████ This belief was based on his involvement “in one preliminary meeting regarding the filing of the patent applications, and [that he] provided data, information, and figures necessary, when requested.” ██████████

In sum, Petitioner admitted to actions of recent, deliberate, and repeated research misconduct over a period of two and one-half years, and this misconduct harmed ██████████ the scientific community, and the public. His admitted misconduct constitutes repeated dishonest and deceitful conduct under the USPTO’s Code of Professional Responsibility that was in effect at the time, and it provides ample support for the OED Director’s conclusion that Petitioner does not currently possess the requisite good moral character and reputation to practice patent matters before the Office.

2. Petitioner Engaged in Repeated Acts of Lack of Candor When Failing to Disclose His Research Misconduct to ██████████ and USPTO.

It is the USPTO’s duty to ensure that those representing members of the public before the USPTO in patent cases do so with the highest degree of candor and good faith in order to protect the public. Not only is a lack of candor one of the categories of evidence used to show a lack of moral character for the purposes of registration to practice before the USPTO, *see* 37 CFR § 11.7(h), but candor may be considered the most important factor for such registration due to the unique nature of practicing before the USPTO. *See Moral_5*, Decision on Petition Under 37 CFR § 11.2(c) (2003), p. 15, available at http://e-foia.uspto.gov/Foia/RetrievePdf?system=OED&fNm=0132_MOR_2003-09-03 (“No moral character qualification for registration is more important than truthfulness and candor.”); *see also Kingsland v. Dorsey*, 338 U.S. 318, 319-320 (1949) (“By reason of the nature of an application for

patent, the relationship of attorneys to the Patent Office requires the highest degree of candor and good faith. In its relation to applicants, the Office . . . must rely upon their integrity and deal with them in a spirit of trust and confidence . . .”). Many state bar admissions processes similarly rely heavily on an applicant’s candor to determine moral character for admission purposes. *See In re Strzempek*, 962 A.2d 988, 993 (Md. 2008) (“[I]t is a given that good moral character includes truthfulness and candor...” (quoting *Application of Brown*, 895 A.2d 1050, 1055 (Md. 2006))); *see also In the Matter of Stern*, 943 A.2d 1247, 1258 (Md. 2007) (“it is a given that good moral character includes truthfulness and candor, and absolute candor is a requisite of admission to the [] Bar”); *Application of McLaughlin*, 675 A.2d 1101, 1109 (N.J. 1996).

The OED Director concluded that Petitioner’s “delayed reporting of his initial research misconduct to [REDACTED] and his complete failure to disclose his subsequent research misconduct until questioned about it demonstrates an egregious lack of candor,” and this conclusion formed a proper basis for denying his application to practice patent matters before the Office. [REDACTED] Similarly, the OED Director concluded that Petitioner’s failure to disclose any information relating to his research misconduct on his application for registration or to *sua sponte* update the information provided to OED until specifically questioned about it is further evidence of his lack of candor. [REDACTED] For the reasons set forth below, Petitioner has provided no reason to disturb this conclusion.

It is noted that Applicant disclosed his initial research misconduct to [REDACTED] in December of 2010. However, this admission came over 18 months after the grant of his doctorate degree and approximately 17 months into his post-doctoral career. [REDACTED] This delayed disclosure occurred despite the fact that Petitioner had received training regarding medical research ethics and through training was on further notice that his conduct was wrong.

██████████ In addition, the admission to his advisors did not result in a cessation of his misconduct. Rather, and despite having been warned not to engage in further misconduct after his initial disclosures to ██████████ in December 2010, he continued to engage in the misconduct without disclosing the further research misconduct to ██████████ or anyone else through 2011. ██████████ only learned of the subsequent misconduct in early 2012, when Petitioner's post-doctoral advisor contacted Petitioner regarding data inconsistencies and an investigation was begun. ██████████ These facts are admitted by Petitioner. Consequently, there is sufficient basis for the OED Director's finding that Petitioner's delayed disclosure of his initial research misconduct and the subsequent failure to disclose the latter research misconduct constitutes an egregious lack of candor by Petitioner.

Also rising to the level of lack of candor is Petitioner's failure to disclose any information relating to his research misconduct on his application for registration or to *sua sponte* update the information provided to OED. The Office's regulations, application materials, and accompanying guidance materials provide notice to Petitioner that he is responsible for providing all requested information, inclusive of updating his application as necessary, prior to registration. *See* 37 C.F.R. §§ 11.7(a)(1), (b)(1)(i)(A), and (c). *See also* ██████████ "You should, therefore, provide the Office of Enrollment and Discipline with all available information, however, unfavorable, even if its relevance is in doubt, with regard to the questions asked below.") Despite this, Petitioner failed to disclose any facts relating to his research misconduct to the USPTO, either on his application for registration or otherwise, until OED specifically questioned him about it. OED only learned of Applicant's research misconduct through ██████████ ██████████ response to an *Official Gazette* notice soliciting comment regarding Applicant.

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Though Petitioner first attempted to justify his negative responses to the fitness questions, especially question 17, he later admitted that “a statement from myself, indicating that I had engaged in research misconduct during my years of research at ██████████ could have, and perhaps should have been submitted on my behalf.” ██████████ This admission, combined with the other facts of record, provides sufficient support for the OED Director’s finding that Petitioner’s failure to disclose any information relating to his research misconduct on his application for registration, or to *sua sponte* update the information provided to OED until specifically questioned about it, is further evidence of his lack of candor.

3. No Other Factors Warrant Disturbing the OED Director’s Conclusion.

Despite his admissions, Petitioner has argued that “the nature of [his] good character has significantly grown and improved, and that [he] is in a state of good moral standing.” ██████████ In this regard, Petitioner requests that the Director “evaluate [his] responses, and cooperation, with the USPTO and OED since July 6, 2012, to determine [his] candidness, openness, and cooperation with the USPTO and OED, to determine [his] present and current moral standing.” ██████████ However, as set for the below, ignoring evidence of his recent misconduct prior to that date would not be a reasonable application of the Office’s regulations and authorities.

Although Petitioner focuses on his present moral character, past but still relatively recent misconduct is considered because it nevertheless gives insight into current character. *See Matter of Morgan*, 2008 WL 2329293, at *2. The fact remains that the record before the Director includes an admitted pattern of recent misconduct. 37 C.F.R. § 11.7 makes clear that the basis for a determination of good moral character and reputation includes the information in an application for registration and includes “all requested information and supporting documentation,” inclusive of “satisfactory proof of possession of good moral character and

reputation.” 37 C.F.R. §§ 11.7(b)(1)(i) and 11.7(b)(1)(iii). Information to be considered by the OED Director in making a moral character and reputation determination also includes information discovered in the course of an investigation pursuant to 37 C.F.R. § 11.7(g). Thus, the OED Director could not reasonably ignore – and properly did not ignore – the facts uncovered by the Office relating to Petitioner’s research misconduct and failure to disclose such misconduct. Importantly, some of these failures occurred during the process of seeking registration before the Office.

Finally, Petitioner offered various community and spiritual projects and associations that he has undertaken as part of his rehabilitative efforts. [REDACTED] These efforts, which Petitioner relies on as indicative of his current good moral character and reputation, include enrolling in counseling and prayer groups, mentoring programs and teaching, and making charitable contributions. [REDACTED] He also provided letters of evaluation of his current moral standing by his pastor and one of his counselors. [REDACTED] To be sure, evidence concerning an individual’s rehabilitation from acts of misconduct or moral turpitude may be taken into consideration by the OED Director when making a moral character and reputation determination. 37 C.F.R. § 11.7(i). However, as discussed further below, “the requirement of proof of rehabilitation is firm and fixed. This is not a mere pro forma requirement, but one requiring meaningful substance.” *Florida Board of Bar Examiners re M.B.S.*, 955 So.2d at 509.

While the information submitted by Petitioner here may provide an indication of ongoing efforts to rehabilitate character, at present, the short period of time that has elapsed since the date of the last misconduct and the intervening failure to disclose the misconduct to [REDACTED] and the USPTO counsels against a finding of the requisite current moral character and reputation for registration. *See e.g., In re Mustafa*, 631 A.2d 45, 47 (D.C. 1993). *See also Florida Board of*

Bar Examiners re M.B.S., 955 So.2d at 509 (noting that two years of rehabilitation as insufficient to overcome a pattern of misconduct); *In re Lindmark*, 747 A.2d 1148, 1152 (D.C. 2000); *In re Demos*, 579 A.2d 668, 672 (D.C. 1990). *See also* 37 C.F.R. 11.7(i) (among the factors to be considered in determining an applicant's rehabilitation is "[t]he length of time that has passed between the misconduct and the present. . ."). Without opining on the particular steps here, we note that disqualifying conduct that extends over a long period of time, as the facts indicate here, requires a longer period of rehabilitation to demonstrate the necessary moral character and reputation to practice in patent matters before the Office.

IV. CONCLUSION

The instant Petition for review of OED Director's decision dated March 14, 2013, is Denied. Petitioner has not shown that he currently possesses the requisite moral and good character qualifications within the meaning of 37 C.F.R. §11.7. The OED Director considered the administrative record and appropriately denied the Petitioner's application for registration to practice before the Office in patent matters and his decision is Affirmed.

ORDER

Upon consideration of the Petition to the USPTO Director for review under 37 C.F.R. § 11.2(d), it is ORDERED that said Petition is Denied. The OED Director's March 14, 2013 decision is Affirmed.

(signature page follows)

July 17, 2013

Date

James O. Payne

James O. Payne
Acting General Counsel
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
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