

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

In the Matter of:

Andrew Y. Schroeder,

Respondent.

Proceeding No. D2014-08

May 18, 2015

INITIAL DECISION ON DEFAULT JUDGMENT

Currently before the Court is a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction* (“Default Motion”), filed on November 25, 2014, by the Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”).

This Court is authorized to conduct this proceeding and to issue this *Initial Decision* pursuant to 37 C.F.R. §§ 11.19, 11.39.¹

PROCEDURAL HISTORY

On April 9, 2014, the OED Director filed a *Disciplinary Complaint* under 35 U.S.C. § 32 (“Complaint”) against Andrew Y. Schroeder (“Respondent”). The *Complaint* seeks the exclusion or suspension of Respondent for committing violations of the USPTO Code of Professional Responsibility as set forth in 37 C.F.R. Part 10.² Specifically, Respondent is alleged to have: (1) engaged in disreputable or gross misconduct in violation of 37 C.F.R. § 11.23(a); (2) engaged in conduct that is prejudicial to the administration of justice in violation of 37 C.F.R. § 11.23(b)(5); (3) signed a paper filed in the Office in violation of 37 C.F.R. § 11.18 thereby violating 37 C.F.R. § 10.23(a) and (b) via 10.23(c)(15); (4) engaged in undignified or discourteous conduct before the Office in violation of 37 C.F.R. § 10.89(c)(5); and (5) engaged in other conduct that adversely reflects on the practitioner’s fitness to practice before the Office in violation of 37 C.F.R. § 10.23(b)(6).

Copies of the *Complaint* were sent via U.S. first-class certified mail, return receipt requested, to the address Respondent provided to the OED pursuant to 37 C.F.R. § 11.11. On

¹ Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases for the U.S. Patent and Trademark Office.

² Effective May 3, 2013, the USPTO Rules of Professional Conduct (37 C.F.R. Part 11, subpart D) replaced the Code of Professional Responsibility. However Respondent’s alleged misconduct occurred prior to May 3, 2013. As such, the Code of Professional Responsibility is applicable in this case.

May 27, 2014, the U.S. Postal Service returned the *Complaint* to the OED Director with the notation “Unclaimed.”³

After failing to obtain service of the *Complaint* pursuant to 37 C.F.R. § 11.35(a)(2)(i), the OED Director served Respondent by *Notice via Publication* pursuant to 37 C.F.R. § 11.35(b). As required, the OED Director caused an appropriate notice to be published in the Official Gazette for two consecutive weeks. Specifically, publication occurred on June 24, 2014, and July 1, 2014. When served in this manner, a respondent must file an answer within thirty days of the second publication date. See 37 C.F.R. § 11.35(b). Therefore, Respondent’s answer was due no later than July 31, 2014. Respondent did not file an answer by the deadline, and to date has not filed any response to the *Complaint*.

On November 25, 2014, the OED Director moved for entry of default judgment against Respondent. By *Order to Show Cause*, issued December 5, 2014, the Court ordered Respondent to show cause as to why the *Default Motion* should not be granted. Respondent has not responded to the *Order to Show Cause*.

After careful consideration of the admitted allegations and the applicable law, the *Default Motion* is **GRANTED**.

DEFAULT

Section 11.36 of Title 37 of the Code of Federal Regulations states that “[f]ailure to timely file an answer will constitute an admission of the allegations in the complaint and may result in default judgment.” 37 C.F.R. § 11.36(e). Respondent in this matter has failed to timely submit an answer after being properly served with the *Complaint*. Accordingly, Respondent is deemed to have admitted each of the factual allegations recounted below.

FINDINGS OF FACT

1. Respondent was registered as a patent agent on January 28, 2003. Respondent’s registration number is 53,565.
2. On June 1, 2004, Respondent was admitted to the State Bar of California, Bar No. 231087, and is a member in good standing.
3. Respondent was registered as a patent attorney with the Office on April 18, 2008.

Patent Application No. [REDACTED]

4. On May 12, 2011, Respondent filed Utility Patent Application No. [REDACTED] (“the [REDACTED] application”) on behalf of his client, [REDACTED]

³ Previously, the OED Director had successfully corresponded with Respondent at this address during the course of the OED investigation.

5. The [REDACTED] application was assigned to Art Unit 3752.⁴
6. On August 29, 2012, the Office issued a non-final Office Action in the [REDACTED] application, which required a response within three months of the mailing date.
7. On November 15, 2012, the [REDACTED] application was published.⁵
8. On December 29, 2012, Respondent filed Amended Claims/Remarks in the [REDACTED] application in response to the August non-final Office Action.
9. On January 24, 2013, the Office issued a final Office Action in the [REDACTED] application, rejecting all pending claims and setting a response time of three months.
10. On April 24, 2013, Respondent filed a document captioned "Amendment after Final" in the [REDACTED] application. The document consists of two pages of "Remarks." No amendments or amended claims were filed.
11. The remarks state in their entirety:

Are you drunk? No, seriously . . . are you drinking scotch and whiskey with a side of crack cocaine while you "examine" patent applications? (Heavy emphasis on the quotes). Do you just mail merge rejection letters from your home? Is that what taxpayers are getting in exchange for your services? Have you even read the patent application? I'm curious. Because you either haven't read the patent application or you are . . . (I don't want to say the "R" word) "Special."

Numerous examples abound in terms of this particular Examiner not following the law. Clearly, the combination of references would render the final product to be inoperable for its intended use. However, for this Special Needs Examiner, logic just doesn't cut it. It is manifestly clear that this Examiner has a huge financial incentive to reject patent applications so he gets a nice Christmas bonus at the end of the year. When in doubt, reject right?

Since when did the USPTO become a post World War II jobs program? What's the point in hiring 2,000 additional examiners when 2,000 rubber stamps would suffice just fine?

⁴ Patent applications are assigned to various art units based on the nature of the invention involved in the application. Art Unit 3752 is part of Tech Center 3700, which is the group responsible for inventions in the field of "Mechanical Engineering, Manufacturing and Medical devices/Processes."

⁵ Patent applications are normally published eighteen months after they are filed. Prior to publication, all documents in a patent application are only available to the applicant or his or her attorney, via the private Patent Application Information Retrieval ("PAIR") system. After publication, all documents filed in the application, including the application itself, are available to any member of the public on public PAIR.

So, tell me something Corky⁶ . . . what would it take for a patent application to be approved? Do we have to write patent applications in crayon? Does a patent application have to come with some sort of pop-up book? Do you have to be a family member or some big law firm who incentivizes you with some other special deal? What does it take Corky?

Perhaps you might want to take your job seriously and actually give a sh.t! What's the point in having to deal with you Special Olympics rejects when we should go straight to Appeals? While you idiots sit around in bathtubs farting and picking your noses, you should know that there are people out here who actually give a sh.t about their careers, their work, and their dreams.

Your job is not a joke, but you are turning it into a regular three ring circus. If you can't motivate yourself to take your job seriously, then you need to quit and let someone else take over that actually wants to do the job right.

12. On April 26, 2013, the intellectual property blog "PatentlyO" posted an article quoting the document filed by Respondent.
13. On May 1, 2013, the American Bar Association Journal also published an online article regarding the remarks.
14. On May 13, 2013, the Office sent a letter to Respondent regarding the [REDACTED] application, indicating that his reply has been stricken from the record as an inappropriate paper, pursuant to 37 C.F.R. § 11.18(c)(1).
15. On August 29, 2013, the Office issued a Notice of Abandonment in the [REDACTED] application.
16. As of the date of filing the *Complaint*, the [REDACTED] application remained abandoned.

Utility Patent Application No. [REDACTED]

17. On June 18, 2011, Respondent filed Utility Patent Application No. [REDACTED] ("the [REDACTED] application") on behalf of his client, [REDACTED].
18. The [REDACTED] application was assigned to Art Unit 3656, part of Tech Center 3600 "Agriculture Construction Transportation eCommerce National Security."

⁶ The OED Director has stipulated that the name of the patent examiner who signed the final Office Action is [REDACTED], not "Corky." The OED Director proffers that "Corky" is sometimes used as a pejorative slang term for someone who is mentally retarded or has Down syndrome. Indeed, the Court notes that Corky was the name of a character on the television series "Life Goes On," which aired from 1989 until 1993. The character, and the actor who portrayed him, had Down Syndrome.

19. On August 21, 2012, the Office issued a non-final Office Action in the [REDACTED] application, which required a response within three months of the mailing date.
20. On November 21, 2012, Respondent filed Amended Claims/Remarks in the [REDACTED] application in response to the August non-final Office Action.
21. On December 20, 2012, the [REDACTED] application was published.
22. On January 24, 2013, the Office issued a final Office Action in the [REDACTED] application, rejecting all pending claims and setting a response time of three months. The patent examiner who signed the final Office Action was [REDACTED].
23. On April 24, 2013, Respondent filed a document captioned "Amendment after Final" in the [REDACTED] application. The document consists of two pages of "Remarks." No amendments or amended claims were filed.
24. The remarks state in their entirety:

Apparently, the current Examiner to which this application has been assigned, does not speak the native language here in the United States of America. Perhaps in Farsi, really ancient Latin, or even the post-Nimoy Vulcan dialect, the word "stud" just so happens to be synonymous with the term "ridge". But here in this country, the same country to which [sic] Examiner receives his stipend, the word "stud", and the word "ridge" have two separate and distinct meanings.

One might even go so far to say that perhaps athletes who participate in the Special Olympics might initially make the same mistake after a wild night of cocaine and strippers in Las Vegas. However, even after all that debauchery, and after the lingering side effects of their hangovers subside, a Special Olympics athlete of ordinary skill with MPEP would surely be able to locate the correct dictionary and discover that in fact the term "stud", and the term "ridge" are not synonymous after all. Moreover, every single English-speaking person (even those in a coma) would be able to divine that there is no "machine" to which the protuberance is affixed. Furthermore, even the most intellectually challenged special needs person would see that the ridges actually form **BELOW THE FIRST EDGE** and thus would not even be consonant with the Examiner's "special" analysis.

That is what I have to deal with!

One of the fascinating things the current examiner has done is to use the TheFreeDictionary.com instead of Merriam Webster's Dictionary. Well, you should know that there is another free dictionary online called www.USPTOexaminerswhoaremorons.com. In it, sure enough, a picture and name of the current examiner was found. Not surprisingly, enumerated synonyms include the following:

"Down's Syndrome, idiot, lazy, incompetent, blind, stupid, worthless."

(emphasis in original).

25. On May 1, 2013, the American Bar Association Journal published an online article regarding the remarks.
26. On May 13, 2013, the Office sent a letter to Respondent regarding the [REDACTED] application, indicating that his reply had been stricken from the record as an inappropriate paper pursuant to 37 C.F.R. § 11.18(c)(1).
27. On October 4, 2013, the Office issued a Notice of Abandonment in the [REDACTED] application.
28. As of the date the *Complaint* was filed, the [REDACTED] application remained abandoned.

ANALYSIS

The Romantic poet John Keats wrote, "I think we may class the lawyer in the natural history of monsters." Keats, no doubt, must have had a run-in with a lawyer or two before dashing off that one-liner to his brother and sister-in-law in a long, delightfully meandering 1819 letter. Along similar lines, Charles Dickens, in *The Old Curiosity Shop*, wrote, "[i]t is a pleasant world we live in, sir, a very pleasant world. There are bad people in it ... but if there were no bad people, there would be no good lawyers." As humorous as the Keats and Dickens quotations are, they underscore a serious perception problem that is widely known throughout the legal profession.⁷ Lawyers are not generally regarded as "good" people. Indeed, other than perhaps politicians, no other profession is the butt of as many vicious jokes. The punchlines themselves have become cliché: "a dead one"; "as many as you can afford"; "one is a blood-sucking parasite, the other is an insect"; "professional courtesy." Still, with the plethora of jokes, quotations, and anecdotal histories around us, lawyers continue to find ways in which to contribute to the brutish mystique. We find one such way at bar.

⁷ Indeed, one would have to be an ostrich to ignore the legal profession's public relations problem. Of course, ostriches do not really bury their heads in the sand; they merely build nests in the ground and check on them a few times a day. But, behavioral accuracy notwithstanding, the ostrich metaphor applies nonetheless.

1. **Respondent Engaged in Disreputable and Gross Misconduct**

“With 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.” In re Lane, Proceeding No. D2013-07 (quoting Poole v. United States, CIV. A. 84-0300, 1984 WL 742 (D.D.C. June 29, 1984)).

Nothing should be done or left undone by an attorney which tends to bring the profession into disrepute or to lessen in any degree the confidence of the public in the profession. It is a vital necessity to the well-being of society and the administration of justice that attorneys, who are officers of the court and a part of our judicial system, should exhibit the most scrupulous care in conducting themselves and their business in such a manner as will secure and maintain the respect and confidence of the public in an attorney and the profession generally.

Norris v. Alexander, 142 S.E.2d 214, 217 (S.C. 1965).

Our license to practice law is granted upon the implied understanding that lawyers shall at all times demean themselves in a proper manner and shall refrain from such practices as would bring disrepute upon themselves, their profession, and the judicial system . . . Lawyers are professional persons seven days a week; in the minds of the public their professional status places them in a position of trust at all times, and much is to be expected of them.

Carter v. Abilheira, 452 A.2d 1140, 1141 (R.I. 1982).

The USPTO regulation in this regard is quite succinct. Section 10.23(a) states, “A practitioner shall not engage in disreputable or gross misconduct. 37 C.F.R. 10.23(a) (2013).

At bar, Respondent made ample use of a deep repertoire of colorful profanity to hurl insults at two examiners with whom he disagreed. Both examiners had rejected applications denying Respondent’s clients’ access to protections afforded by patents. Now, logically, it is the lawyer’s job to advocate on behalf of his clients and disagree with those who take positions that are disadvantageous to said clients. However, “logic is the beginning of all wisdom, not the end.”⁸ The *manner* in which Respondent chose to advocate for his clients ran afoul of Respondent’s ethical considerations. Indeed, Respondent’s rebukes could hardly be classified as client advocacy.

As enumerated *supra*, Respondent leveled the examiners with *ad hominem* attacks that accused one or both of them of being drunk, using cocaine, being mentally disabled, taking

⁸ Spock, *Star Trek VI: The Undiscovered Country* (1991), albeit not in a “post-Nimoy dialect.”

bribes, etc.⁹ The second letter is also laced with anti-ethnic overtones. It is tautological that professional conduct does not include using *ad hominem* attacks against the person you are trying to convince to take your position. At its core, the *ad hominem* attack does nothing more than attempt to undermine an opponent's position by devaluing the opponent rather than his/her argument. It is a logical fallacy; so commonly regarded as one that no citation is needed for the proposition. At best, it is posturing; at worst, bullying.

Apparently, a review of the ordinary standard of professional obligation is required under these circumstances. The ordinary standard of professional obligation would simply have required Respondent to argue his clients' positions, underscore where he disagreed with the examiners, and state at least a plausible rationale as to why his clients should prevail. Instead, Respondent took a different approach; one that was not commensurate with his ethical obligations—or potentially his clients' best interests.

2. Respondent Engaged in Undignified and Discourteous Conduct Before the Office

“While the line between zealous advocacy and engaging in discourteous conduct may be a fine one, it is a line which nevertheless must be observed if courts are to continue to adjudicate disputes in an atmosphere of trust and cooperation.” Com. v. Cherry, 354 A.2d 894, 895 (Pa. 1976). “[T]hese rules [requiring courtesy and civility] are designed to prohibit only undignified, discourteous, and disrespectful conduct or remarks. The rules are a call to discretion and civility, not to silence or censorship, and they do not even purport to prohibit criticism.” Grievance Adm'r v. Fieger, 719 N.W.2d 123, 135 (Mich. 2006).

USPTO's applicable regulation is set forth at Section 10.89(c)(5):

In appearing in a professional capacity before a tribunal, a practitioner shall not:

Engage in undignified or discourteous conduct before the Office (see § 1.3 of the subchapter).

37 C.F.R. 10.89(c)(5) (2013).

The Court is reminded of the Persian proverb, “courteous men learn courtesy from the discourteous,” and notes with interest that “discourteous” is not defined anywhere within the USPTO rules. For that matter, neither is the word “undignified.” Perhaps these are glaring omissions on the part of USPTO's regulation writers, but that is rather unlikely. More likely than not, the regulators rightly believed that such common words did not need to be defined. Regardless of the reason for the omissions, the Court turns to the terms' common dictionary definitions for guidance. See In re Lane, Proceeding No. D2013-07 (looking to *Merriam-*

⁹ The Court is left to conclude that the attacks were *ad hominem* and not of a more serious nature as there is no indication in the record that Respondent contacted the Department of Commerce's Office of the Inspector General or the examiners' supervisors to voice his concerns.

Webster.com for the definition of “deceit,” “dishonesty,” or “misrepresentation”).¹⁰ A review of the dictionary provides the meanings of discourteous and undignified:

Discourteous

a: rude or impolite : not showing good manners

Undignified

a: Not serious or formal. Not dignified

Merriam-Webster.com (May 18, 2015).

A lengthy analysis of Respondents’ communications in question to determine whether they were discourteous and/or undignified would waste judicial resources. Although society may be coming precariously close to the point where such communications are acceptable in some circles, they are not yet appropriate conduct in the legal environment. Modern technology has spawned a generation predisposed to instant gratification and instant expression. In doing so, it has also created a new menace. Today, the most dangerous four-letter word in the English language may very well be “send.” The ability to file documents electronically to USPTO does not absolve patent practitioners of their responsibility to consider their words carefully before they press that final button. Official submissions are just that: official. They not only represent the work product of the practitioner submitting them, very often they represent the livelihood of the practitioner’s clients. At the very least, the entire process should be handled in a dignified, courteous manner.

3. Respondent Engaged in Conduct that is Prejudicial to the Administration of Justice

Practitioners are prohibited from engaging in conduct that is prejudicial to the administration of justice. 37 C.F.R. § 10.23(b)(5). Generally, an attorney engages in such conduct “when his or her conduct impacts negatively the public’s perception or efficacy of the courts or legal profession.” Attorney Grievance Comm’n v. Rand, 981 A.2d 1234, 1242 (Md. 2009). “An attorney’s speech may be sanctioned if it is highly likely to obstruct or prejudice the administration of justice.” Bd. of Prof’l Responsibility of Supreme Court of Tennessee v. Slavin, 145 S.W.3d 538, 550 (Tenn. 2004); see also State ex rel. Counsel for Discipline of Nebraska Supreme Court v. Beach, 722 N.W.2d 30, 35 (Neb. 2006) (An attorney’s conduct that includes progressively abusive language, demeanor, and threats, violates disciplinary rules that prohibit engaging in conduct prejudicial to the administration of justice and engaging in conduct that adversely reflects on one’s fitness to practice law.).

For the reasons stated in Nos. 1 and 2, *supra*, the Court finds that Respondent’s language was abusive, harassing, and likely to negatively impact the public’s perception and efficacy of the USPTO. Respondent therefore engaged in conduct that is prejudicial to the administration of justice.

¹⁰ This analysis is undertaken not because the Court believes that the regulation is unclear, but because there is little to no guidance in the case-law on these issues—not that the Court believes it necessary. However, noting the Persian proverb, *supra*, perhaps such future incidents can be avoided with some additional elucidation.

4. Respondent Presented Filings with the Sole Purpose of Harassment

The USPTO Code of Professional Responsibility states that it is misconduct under 37 C.F.R. § 10.23(a) and (b) to sign a paper filed in the Office in violation of the provisions of 37 C.F.R. § 11.18. Section 11.18 states, in pertinent part, that by presenting a paper to the Office, the practitioner is certifying that to the best of the practitioner's knowledge, information, and belief, the paper is not being presented for any improper purpose, such as harassment. The regulation adds that violations of that rule are subject to sanctions that may include referral to the OED for appropriate action. 37 C.F.R. § 11.18(b)(2)(i) and (c).

As noted above, both the Amendment after Final in the [REDACTED] application and the Amendment after Final in the [REDACTED] application consisted entirely of verbal abuse aimed at the respective examiners. Neither document contained any actual amendments to their applications. Thus, the Court finds Respondent filed the documents for the sole purpose of insulting and harassing the patent examiners.¹¹

SANCTION

The OED Director requests that the Court sanction Respondent by suspending him from practice before the USPTO in patent, trademark, and other non-patent matters for a period of thirty days. 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 Clients, the Legal System and the Legal Profession

Respondent violated his duty to the clients on whose behalf the [REDACTED] and [REDACTED] applications were filed by engaging in offensive and disrespectful behavior. His conduct was not

¹¹ In the *Complaint*, USPTO charged Respondent with "other conduct" pursuant to 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. 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 Lane*, No. D2013-07, at 16 (USPTO Mar. 11, 2014); *In re Kelber*, No. 2006-13 at 59 (USPTO Sept. 23, 2008). The OED Director has not specifically cited any other conduct that does not already fall under a prior subsection of 37 C.F.R. § 10.23(b). While Respondent's misconduct surely reflects, negatively, on his fitness to practice before the Office, the Court finds the OED Director has not met his burden to prove a violation of this sub-paragraph of the regulation.

only outrageous and mean-spirited, it was actively harmful to his clients' interests. See Matter of Goude, 374 S.E.2d 496, 497 (S.C. 1988) ("When a lawyer fails to conduct himself appropriately, he brings into question the integrity of the judicial system, and, as well, disserves his client.").

It is unclear what Respondent intended to achieve with his *ad hominem* attacks. Certainly, he could not have expected his verbal assaults to improve his clients' odds of securing reconsideration for their patent applications. It is beyond naïve to believe a barrage of personal insults would convince the examiners of the error of their ways, especially absent any submission of additional, well-founded, cogent arguments. Indeed, even assuming the existence of such arguments, it is hardly a wise tactical decision to insult the very persons you are trying to persuade. Without Respondent's testimony on his motivation, the Court is left to speculate; and, assuming the best motives: a momentary lapse, a bad day, an inadvertent "click," there was no retraction. Simply put, his clients' interests were not served.

Next, Respondent violated his duty owed to the legal system (i.e. the Office). As part of his application to practice before the USPTO, Respondent signed an "Oath or Affirmation" in which he swore or affirmed that, if admitted to the patent bar, he would "maintain the respect due to the United States Patent and Trademark Office and the officials thereof." He also swore or affirmed that he would "abstain from all offensive personality. ..." He violated this duty by making unfounded allegations that the patent examiners are incompetent, under the influence of drugs and alcohol while examining patents, and that the examiners have an incentive to reject applications, etc. Such accusations undermine the public's confidence in the Office and its examiners. See Grievance Adm'r v. Fieger, 719 N.W.2d 123, 132 (Mich. 2006) (stating that disciplinary rules requiring courtesy and civility "are designed to maintain public respect for a rule of law that is dependent on such public respect," and noting that in order to preserve the integrity of the legal process, it is of "utmost importance that people have confidence in the process.").

Last, Respondent violated a duty owed to the legal profession. As noted *supra*, Respondent acted like a stereotypical schoolyard bully. By doing so, he casts a poor light on attorneys and the entire legal profession. See Sandra Day O'Connor, *Professionalism*, 76 Wash. U. L.Q. 5, 8 (1998) ("More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public's perception of lawyers."). Accordingly, the Court finds a severe sanction is warranted.

2. Respondent Acted Knowingly and Intentionally

Both of Respondent's submissions occurred on the same day and both read as spoken diatribes rather than thoughtfully composed prose. However, based on the record before the Court, in the absence of any appearance by Respondent, the Court concludes that he acted intentionally.

Respondent's remarks were made in relation to two separate patent applications and towards two different examiners on the same day. The level of attention and insult given to the two examiners demonstrates that Respondent has held these opinions for a considered period of time. Moreover, the remarks were filed three months after the final Office Actions for both the

■ and ■ application on the very last day to submit an amendment. This suggests that Respondent's remarks were not hasty reactions to the examiners' determinations, but rather two deliberate responses, each totaling two pages, that were made after reflection.¹² If Respondent did press "send" without intending to do so, he would have had to have made this mistake twice, and in two separate filings. Moreover, an inadvertent filing would likely be followed with an immediate, humble apology. None has been offered here. Accordingly, the Court finds a severe sanction is warranted.

3. Respondent's Misconduct Caused Potential Injury

There is no evidence Respondent's misconduct caused actual injury to clients. Although the ■ and the ■ applications were abandoned, there is no evidence that Respondent's misconduct is the reason the applicants did not continue prosecuting the applications. However, Respondent's misconduct potentially harmed the reputation of the individual patent examiners and the Office, because Respondent's remarks were filed after the applications had become public, and the remarks were publicly disseminated online.

Moreover, as noted by the OED Director, Respondent's rants have been disseminated in online forums. Accordingly, the Court finds this factor warrants a moderate sanction.

4. Are There Any Aggravating or Mitigating Factors?

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, 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.

Respondent committed multiple offenses, albeit on the same day. Respondent's misconduct was not a one-time lapse in judgment. Rather, Respondent filed two separate documents with the USPTO that were meant to harass and offend the patent examiners. Moreover, Respondent has neither accepted responsibility for his misconduct nor shown remorse for his reprehensible remarks. These aggravating factors demonstrate that Respondent does not recognize the seriousness of his misconduct. See AMERICAN BAR ASSOCIATION STANDARDS FOR IMPOSING LAWYER SANCTIONS (2005); see also State ex rel. Nebraska State Bar Ass'n v. Michaelis, 316 N.W.2d 46, 56 (Neb. 1982) (ordering the disbarment of an attorney who "exhibited no remorse, change in attitude, or desire to cease his scurrilous attacks upon the bar and bench of [Nebraska].")

The OED Director suggests two mitigating factors exist in this case. First, the OED Director stipulates that Respondent has been admitted to the patent bar for ten years and has no prior disciplinary record. In addition, the OED Director acknowledges that there is nothing to suggest Respondent's misconduct was motivated by any dishonest or selfish desire. Based upon a review of the record, the Court agrees that these two mitigating factors exist in this case.

¹² The Court notes that a knee-jerk reaction would not warrant a less severe sanction. Engaging in such egregious behavior out of instinct or impulse is as distressing as engaging in such behavior after contemplation.

CONCLUSION

The Court finds that on two separate occasions, Respondent submitted filings to the USPTO that contained remarks that were solely intended to harass and insult the USPTO's patent examiners. Not only were such remarks offensive to the patent examiners, but they were also disrespectful towards persons with mental disabilities. Respondent's misconduct was, therefore, disreputable, undignified, and discourteous. Such misconduct undermines the public's confidence in the Office and its examiners, and is a disservice to his clients and the legal profession. Accordingly, the Court finds Respondent violated the USPTO disciplinary rules set forth at 37 C.F.R. §§ 10.23(a), 10.23(b)(5), 10.23(a) and (b) via 10.23(c)(15), and 10.89(c)5).

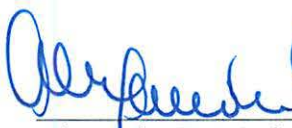
Respondent's intentional misconduct violated his duty to his clients, the legal profession, and the Office. Given the widespread coverage of Respondent's rants, his misconduct has potentially damaged the reputation of the patent examiners and the public's perception of the legal profession. His actions demand a severe sanction.

After considering the factors set forth at 37 C.F.R. § 11.54(b), the Court finds a six month suspension is warranted. See In re Bruce A. Tassan, Proceeding No. D03-10 (USPTO Sept. 8, 2003) (six-month stayed suspension for a practitioner who left voicemail messages for Trademark Trial and Appeal Board judges wherein Respondent cursed and referred to the judges as "imbecile," "worthless," and "idiots."); In re Dinhofer, 690 N.Y.S.2d 245, 246 (N.Y. App. Div. 1999) (three-month reciprocal suspension for an attorney who made derogatory, undignified, and inexcusable comments to a judge during status conference."); Kentucky Bar Ass'n v. Waller, 929 S.W.2d 181, 183 (Ky. 1996) (six-month suspension for an attorney who filed "scandalous and bizarre" pleadings including one wherein the attorney asserted that the judge was a liar, a racist, and that the judge was incompetent).

ORDER

It is hereby **ORDERED** that Respondent Andrew Y. Schroeder, USPTO Registration No. 53,565 is suspended from practice before the U.S. Patent and Trademark Office for a period of six months. Respondent is directed to 37 C.F.R. § 11.58 regarding his responsibilities in cases of suspension or exclusion, and 37 C.F.R. § 11.60 concerning petitions for reinstatement.

So **ORDERED**,



Alexander Fernández
Administrative Law Judge

Notice of Appeal Rights: Within thirty (30) days of this initial decision, either party may file 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 ON DEFAULT JUDGMENT**, issued by Alexander Fernández, Administrative Law Judge, in D2014-08, were sent to the following parties on this 18th day of May, 2015, in the manner indicated:


Deon Long, Staff Assistant

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