

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

In the Matter of)	
)	
Edward Etkin,)	Proceeding No. D2016-05
)	
Respondent)	
_____)	

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Edward Etkin (“Respondent”) on December 27, 2015.

Respondent submitted the seven-page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office in patent, trademark, and other non-patent matters commencing on the date of this Final Order.

Jurisdiction

Respondent of Brooklyn, New York, is a registered patent attorney (Registration Number 37,824), but has been administratively suspended for failure to respond to the practitioner survey since March 18, 2015. Respondent agrees that he is subject to the USPTO Code of Professional Responsibility, 37 C.F.R. § 10.20 *et seq.*, and the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*¹

¹ The USPTO Code of Professional Responsibility applies to practitioner misconduct that occurred prior to May 3, 2013, while the USPTO Rules of Professional Conduct,

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent's Affidavit of Resignation and to exclude Respondent on consent from the practice of patent, trademark, and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in his December 27, 2015 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.
2. He is aware that, pursuant to 37 C.F.R. § 11.22, the OED Director opened an investigation of allegations that he violated the USPTO Code of Professional Responsibility and/or Rules of Professional Conduct, namely: OED File Nos. [REDACTED] and [REDACTED]. The investigation obtained information, *inter alia*, about:
 - a. Respondent was the attorney of record in patent and trademark applications filed with the USPTO.
 - b. He is currently an active member of the New York State Bar, where he is assigned Registration Number 2907855.
 - c. [REDACTED] matter - U.S. Patent Application No. [REDACTED]
 - i. Respondent signed and filed patent application No. [REDACTED] ("the [REDACTED] application") on behalf of his client, [REDACTED], on January 4, 2010.
 - ii. On February 3, 2012, the USPTO issued an Office Action relating to the [REDACTED] application. Respondent received the Office Action, but he did not communicate to his client that the Office Action had been issued, nor did he file any response to the Office Action.
 - iii. The USPTO issued a Notice of Abandonment in the [REDACTED] application on August 30, 2012. Respondent received the Notice of Abandonment. Respondent neither communicated to his client that the Notice was received, nor did he make any filing in response to the Notice.

37 C.F.R. § 11.101 *et seq.*, apply to a practitioner's misconduct occurring after May 2, 2013.

- iv. Beginning in January, 2014, Respondent made multiple misleading statements to his client regarding the status of the [REDACTED] application. Within his statements to his client, Respondent stated or implied that the [REDACTED] application was still pending.
 - v. In the beginning of January 2014, Respondent advised his client that the best course of action was to file a Track 1 application as a Continuation-In-Part ("CIP") application of the [REDACTED] application.
 - vi. Respondent also told his client that he would then allow the [REDACTED] application to go abandoned. Respondent did not inform his client that the [REDACTED] application had been abandoned since 2012.
 - vii. Respondent accepted \$2,650 from his client in January 2014, intended to be used as the filing fee for the Track 1 application.
 - viii. Respondent did not file the Track 1 application.
 - ix. Beginning in January 2014, Respondent made misleading statements to his client to the effect that the Track 1 application had been filed. Respondent also fabricated documents, which appeared to have originated from the USPTO, relating to the status of the application, and gave those documents to his client.
 - x. Respondent's client discovered on September 3, 2014, that the [REDACTED] application had become abandoned in August 2012.
- d. [REDACTED] matter - U.S. Patent Application No. [REDACTED]
- i. Respondent filed patent application No. [REDACTED] ("the [REDACTED] application") on behalf of his client, [REDACTED], on May 23, 2011.
 - ii. On August 14, 2013, the USPTO issued an Office Action. Respondent received that Office Action, but did not communicate to his client that he had received it, and did not file any documents with the USPTO responsive to the Office Action.
 - iii. On April 9, 2014, the USPTO issued a Notice of Abandonment. Respondent received the Notice, but did not communicate to his client that he had received the Notice of Abandonment, nor did he take any action to revive the [REDACTED] application.
- e. [REDACTED] matter - U.S. Patent Application No. [REDACTED]

- i. In Spring 2007, Respondent took over prosecution of patent application No. [REDACTED] (“the [REDACTED] application”) on behalf of a client, [REDACTED]. The previous practitioner had allowed the [REDACTED] application to go abandoned in 2006.
- ii. In the Spring of 2007, Respondent advised his client that the USPTO could allow a petition to revive if the petition was submitted before five years had elapsed, and that such petitions were virtually always granted if the petition was submitted within two years.
- iii. Respondent understood that his client, after considering the information he provided, elected to postpone any petition to revive until a later date.
- iv. In January 2008, Respondent’s client again contacted Respondent, and discussed filing a petition to revive. Again, after considering the information Respondent had provided him, the client chose to defer the petition to revive until a later date.
- v. On September 27, 2010, a substitute power of attorney was submitted to the USPTO in the [REDACTED] application, and Respondent became the attorney of record in that matter.
- vi. On August 16, 2011, more than four years after the date of abandonment, Respondent filed a petition for revival on behalf of his client. Within that petition, Respondent certified that “[t]he entire delay in filing the required reply from the due date from the reply until the filing of a grantable petition pursuant to 37 CFR 1.127(b) was unintentional.”
- vii. At the time Respondent submitted the petition, he knew that the delay was not, in fact, unintentional, and that Respondent’s client had made the decision to delay based on Respondent’s representation to him that petitions to revive could be filed within five years of the date of abandonment.
- viii. The petition to revive was granted based on Respondent’s false certification that the delay was unintentional.
- ix. On August 23, 2012, the USPTO issued an Office Action in the [REDACTED] application. Respondent received the Office Action, but did not notify the client that it had been issued, nor did Respondent file any document in response.
- x. On April 29, 2013, the USPTO issued a Notice of Abandonment in respect to the [REDACTED] application. Respondent received the Notice of Abandonment. However, Respondent neither notified his client that a Notice had issued, nor did Respondent file any document in response.

- xi. In January 2014, Respondent communicated misleading information to his client, in that he advised his client that the [REDACTED] application was “still in play” when he was aware that it had gone abandoned in April, 2013.
- f. [REDACTED] matter - U.S. Trademark Application No. [REDACTED]
- i. On August 27, 2010, Respondent filed trademark application No. [REDACTED] (“the [REDACTED] application”) on behalf of [REDACTED].
 - ii. On April 24, 2012, the Office emailed a Notice of Allowance in the [REDACTED] application. Through that Notice, Respondent was notified that a Statement of Use or an extension of time must be filed within six months or the [REDACTED] application would become abandoned.
 - iii. Respondent did not inform [REDACTED] that he had received the Notice of Allowance, and did not file any documents responsive to the Notice of Allowance.
 - iv. On November 26, 2012, the Office issued a Notice of Abandonment in respect to the [REDACTED] application.
 - v. Respondent did not inform [REDACTED] that he had received the Notice of Abandonment, nor did he take any action to revive the [REDACTED] application.
 - vi. On June 2, 2014, after learning of the abandonment of the [REDACTED] application, [REDACTED] filed a revocation of Respondent’s power of attorney.
- g. Unauthorized Practice of Law
- i. On March 18, 2015, Respondent became administratively suspended by the USPTO for failure to respond to the Mandatory Survey, a Notice of Noncompliance, and a Rule to Show Cause.
 - ii. After becoming administratively suspended, Respondent actively engaged in practice before the Office while not authorized to do so, including filing at least two new non-provisional patent applications, and failing to withdraw from at least four pending patent applications.
 - iii. Respondent did not receive notice of the March 18, 2015, suspension until he received a copy of the USPTO’s September 11, 2015, letter addressed to Respondent’s attorney, Richard E. Grayson. Respondent ceased practice promptly after receiving the September 11, 2015, letter.

3. He is aware that the OED Director for the USPTO is of the opinion based on these investigations that he violated the following provisions of the USPTO Code of Professional Responsibility, in relation to conduct occurring prior to May 3, 2013:
37 C.F.R. § 10.23(a) and (b) via 10.23 (c)(8) (failing to inform a client of important correspondence received from the Office); 37 C.F.R. § 10.23(a) and (b) via 10.23 (c)(15) (signing a paper filed in the Office in violation of the provisions of § 11.18); 37 C.F.R. § 10.23(b)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 37 C.F.R. § 10.23(b)(5) (engaging in conduct prejudicial to the administration of justice); 37 C.F.R. § 10.23(c)(2)(i) (knowingly giving false or misleading information to a client in connection with business before the Office); 37 C.F.R. § 10.23(c)(2)(ii) (knowingly giving false or misleading information to the Office or any employee within the Office); 37 C.F.R. § 10.77(c) (neglecting a legal matter entrusted to a practitioner); 37 C.F.R. §§ 10.84(a)(1) (failing to seek the lawful objectives of a client); 37 C.F.R. § 10.84(a)(2) (failing to carry out a contract of employment entered into with a client for professional services); and 37 C.F.R. § 10.84(a)(3) (prejudicing or damaging a client during the course of a professional relationship).
4. He is aware that the OED Director for the USPTO is of the opinion that, based on the information obtained in these investigations, he violated the following provisions of the USPTO Rules of Professional Conduct in relation to conduct on or after May 3, 2013:
37 C.F.R. § 11.101 (failing to represent a client with a reasonable degree of competence);
37 C.F.R. § 11.104(a)(2) and (3) (failing to reasonably communicate with a client);

37 C.F.R. § 11.505 (practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction); and 37 C.F.R. § 11.804(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

5. Without admitting to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility and/or Rules of Professional Conduct investigated by the OED Director in OED File Nos. [REDACTED] and [REDACTED], Respondent acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60 to practice before the USPTO in patent, trademark, and/or other non-patent matters, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that (a) the allegations regarding him in OED File Nos. [REDACTED] and [REDACTED] are true and (b) he could not have successfully defended myself against such allegations.
6. Respondent has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of consenting to exclusion from practice before the USPTO in patent, trademark, and other non-patent matters.
7. Respondent consents to being excluded from practice before the USPTO in patent, trademark, and other non-patent matters.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Accordingly, it is hereby ORDERED that:

8. Respondent's Affidavit of Resignation shall be, and hereby is, approved;

9. Respondent shall be, and hereby is, excluded on consent from practice before the Office in patent, trademark, and other non-patent matters commencing on the date of this Final Order;
10. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>; however, the published version of the Final Order shall redact (1) the OED File numbers referenced in paragraph 2 and 5, above; (2) the names of clients and application numbers referenced in paragraphs 2.c., 2.d., 2.e., and 2.f., above; and (3) the names of clients and application numbers referenced in the Notice of Exclusion on Consent;
11. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following, with the information referenced in the above paragraph redacted:

Notice of Exclusion on Consent

This notice concerns Edward Etkin, a patent attorney who was formerly registered before the United States Patent and Trademark Office (Registration No. 37,824), but who has been administratively suspended pursuant to 37 C.F.R. § 11.11(b) since March 18, 2015, for failure to respond to the survey. The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Etkin's affidavit of resignation and ordered his exclusion on consent from practice before the Office in patent, trademark, and non-patent law.

Mr. Etkin voluntarily submitted his affidavit after investigations regarding his conduct had been conducted, and after probable cause had been found to proceed with the filing of a complaint, but before the complaint had been filed. The investigations concerned allegations in three patent matters and a trademark matter related to three clients, and the practice of law following Mr. Etkin's administrative suspension.

The investigation in relation to client [REDACTED] concerned allegations that Mr. Etkin had allowed U.S. Patent Application No. [REDACTED] ("the [REDACTED] application") to become abandoned after failing to submit a response to an Office

Action, without the client's knowledge or consent. It was alleged that Mr. Etkin made misleading statements to [REDACTED], to the effect that the [REDACTED] application was still pending. It was further alleged [REDACTED] advised Mr. Etkin to allow the [REDACTED] application to become abandoned, when Mr. Etkin knew that the [REDACTED] application had become abandoned months prior. Further, it was alleged that Mr. Etkin received funds from [REDACTED] for filing a Track 1 application, and that Mr. Etkin made misleading statements and submitted fabricated documents to [REDACTED], to the effect that the Track 1 application was proceeding, when no such application was ever filed.

The investigation in relation to client [REDACTED] concerned allegations that he had allowed U.S. Patent Application No. [REDACTED] ("the [REDACTED] application") to become abandoned after failing to submit a response to an Office Action, without the client's knowledge or consent. It was further alleged that Mr. Etkin did not communicate to [REDACTED] that the abandonment had occurred, and did not take any steps to revive the [REDACTED] application.

The investigations in relation to client [REDACTED] concerned U.S. Patent application No. [REDACTED] ("the [REDACTED] application") and U.S. Trademark application No. [REDACTED] ("the [REDACTED] application"). With regard to the [REDACTED] application, it was alleged that Mr. Etkin took over prosecution of the [REDACTED] application after the matter had become abandoned. Mr. Etkin represented, in the petition to revive, that the "entire delay in filing the required reply. . . was unintentional." However, it was alleged that at least some of the four-year delay between abandonment and the petition for revival was due to the client's election to delay filing, pursuant to advice provided by Mr. Etkin. It was further alleged that after the [REDACTED] application had been revived, Mr. Etkin failed to notify [REDACTED] of an Office Action, or to take any action in response to that Office Action. It was further alleged that a Notice of Abandonment issued, and Mr. Etkin failed to notify [REDACTED] or respond, and that Mr. Etkin advised [REDACTED] that the [REDACTED] application was "still in play" after the Notice of Abandonment had issued. With regard to U.S. Trademark Application [REDACTED] ("the [REDACTED] application"), it was alleged that Mr. Etkin failed to respond to or notify [REDACTED] of a Notice of Allowance. It was further alleged that a Notice of Abandonment was issued in the [REDACTED] application, and that Mr. Etkin failed to take action or notify [REDACTED].

Mr. Etkin acknowledged that the Director of the USPTO's Office of Enrollment and Discipline ("OED Director") was of the opinion that his conduct prior to May 3, 2013, violated these provisions of the USPTO Code of Professional Responsibility: 37 C.F.R. §§ 10.23(a) and (b) via 10.23(c)(8)(failing to inform a client of important correspondence received from the office); 10.23(a) and (b) via 10.23(c)(15)(signing a paper filed in the Office in violation of the provisions of § 11.18); 10.23(b)(4)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 10.23(b)(5)(engaging in conduct prejudicial to the administration of justice); 10.23(c)(2)(i) (knowingly giving false or misleading

information to a client in connection with business before the office); 10.23(c)(2)(ii)(knowingly giving false or misleading information to the Office or any employee within the Office); 10.77(c)(neglecting a legal matter entrusted to a practitioner); 10.84(a)(1)(failing to seek the lawful objectives of a client) and 10.84(a)(2)(failing to carry out a contract of employment entered into with a client for professional services); and 10.84(a)(3)(prejudicing or damaging a client during the course of a professional relationship).

Mr. Etkin also acknowledged that the OED Director was of the opinion that his conduct on and after May 3, 2013, violated these provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.101 (failing to represent a client with a reasonable degree of competence); 11.104(a)(2) and (3)(failing to reasonably communicate with a client); 11.505 (practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction); and 11.804(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

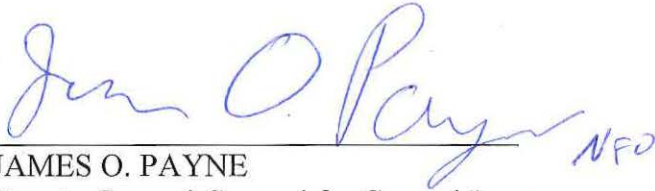
Mr. Etkin represented, in mitigation, that he has not been the subject of any previous disciplinary complaint. In addition, Mr. Etkin represented that he has submitted full restitution of legal fees to [REDACTED], and has tendered checks for partial restitution of legal fees to [REDACTED], though [REDACTED] has not cashed those checks. Mr. Etkin represented that he has experienced significant and ongoing health problems that have affected his ability to practice law in a reasonably diligent manner. Mr. Etkin also represented that those health problems resulted at least in part from the extreme damage to his home and law office, including his client files, records, and office computer systems, by Hurricane Irene in 2011 and again by Hurricane Sandy in 2012.

While Mr. Etkin did not admit to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility as alleged in the pending investigation, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in the OED investigation against him are true and (ii) he could not have successfully defended himself against such allegations.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

12. Respondent shall comply fully with 37 C.F.R. § 11.58; and

13. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement.

Handwritten signature of James O. Payne in blue ink. The signature is cursive and includes the initials "NFO" at the end.

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

JAN - 8 2016

Date

on behalf of

Michelle K. Lee
Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the United States Patent and Trademark Office

cc:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

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Mr. Etkin voluntarily submitted his affidavit after investigations regarding his conduct had been conducted, and after probable cause had been found to proceed with the filing of a complaint, but before the complaint had been filed. The investigations concerned allegations in three patent matters and a trademark matter related to three clients, and the practice of law following Mr. Etkin’s administrative suspension.

The investigation in relation to client ██████████ concerned allegations that Mr. Etkin had allowed U.S. Patent Application No. ██████████ (“the ██████████ application”) to become abandoned after failing to submit a response to an Office Action, without the client’s knowledge or consent. It was alleged that Mr. Etkin made misleading statements to ██████████, to the effect that the ██████████ application was still pending. It was further alleged ██████████ advised Mr. Etkin to allow the ██████████ application to become abandoned, when Mr. Etkin knew that the ██████████ application had become abandoned months prior. Further, it was alleged that Mr. Etkin received funds from ██████████ for filing a Track 1 application, and that Mr. Etkin made misleading statements and submitted fabricated documents to ██████████ ██████████, to the effect that the Track 1 application was proceeding, when no such application was ever filed.

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that after the [REDACTED] application had been revived, Mr. Etkin failed to notify [REDACTED] of an Office Action, or to take any action in response to that Office Action. It was further alleged that a Notice of Abandonment issued, and Mr. Etkin failed to notify [REDACTED] or respond, and that Mr. Etkin advised [REDACTED] that the [REDACTED] application was "still in play" after the Notice of Abandonment had issued. With regard to U.S. Trademark Application [REDACTED] ("the [REDACTED] application"), it was alleged that Mr. Etkin failed to respond to or notify [REDACTED] of a Notice of Allowance. It was further alleged that a Notice of Abandonment was issued in the [REDACTED] application, and that Mr. Etkin failed to take action or notify [REDACTED].

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