

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

| | | |
|----------------------|---|-------------------------|
| In the Matter of: |) | |
| |) | |
| Sanjeev Kumar Dhand, |) | Proceeding No. D2016-17 |
| |) | |
| Respondent |) | |
| _____ |) | |

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, a one-year suspension, with the period of the suspension stayed, and a one-year probation of Sanjeev Kumar Dhand (“Respondent”) is hereby ordered for violation of 37 C.F.R. § 11.804(h).

Background

At all times relevant to these proceedings, Respondent has been registered to practice in patent matters before the USPTO. Respondent’s USPTO Registration Number is 51,182. Respondent is subject to the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101, *et seq.* The Director of the USPTO has jurisdiction over this proceeding pursuant to 35 U.S.C. § 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19 and 11.24.

On September 25, 2015, the Supreme Court of California issued an order in *In re Sanjeev Kumar Dhand*, Case No. S227488, suspending Respondent from the practice of law in California for one year, with the execution of the period of suspension stayed, with conditions of probation, and requiring Respondent to take and pass the Multistate Professional Responsibility Examination (“MPRE”) within one year after the effective date of the Order.

On September 29, 2016 a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (“Notice and Order”) mailed by certified mail (receipt no. 70160910000045133594)

notified Respondent that the Director of the Office of Enrollment and Discipline (“OED Director”) had filed a “Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24” (“Complaint”) requesting that the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) impose reciprocal discipline upon Respondent identical to the discipline imposed by the Supreme Court of California in *In Re Sanjeev Kumar Dhand*, Case No. S227488. The Notice and Order was delivered to Respondent, who filed a timely Response on November 7, 2016.

In his Response, Respondent stated that he “does not object to the imposition of reciprocal discipline in the form of a stayed one-year suspension.” Response at 1. However, Respondent provided proof of his successful completion of the one year probation period, as well as proof that he passed the MPRE examination. As a result, Respondent requested that those conditions not be included in the discipline imposed by the USPTO or, alternatively, that his prior successful completion of those conditions be credited towards and considered to fulfill any identical conditions imposed by the USPTO. Response at 1-2.

Legal Standard and Analysis

Pursuant to 37 C.F.R. § 11.24(d), and in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), the USPTO has codified standards for imposing reciprocal discipline based on a state's disciplinary adjudication. Under *Selling*, state discipline creates a federal-level presumption that imposition of reciprocal discipline is proper, unless an independent review of the record reveals: (1) a want of due process; (2) an infirmity of proof of the misconduct; or (3) that grave injustice would result from the imposition of reciprocal discipline. *Selling*, 243 U.S. at 51. Federal courts have generally “concluded that in reciprocal discipline cases, it is the respondent attorney's burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline.” *In re Kramer*, 282 F.3d 721, 724 (9th Cir.

2002); *see also In re Friedman*, 51 F.3d 20, 22 (2d Cir. 1995). “This standard is narrow, for ‘[a Federal court, or here the USPTO Director, is] not sitting as a court of review to discover error in the [hearing judge’s] or the [state] courts’ proceedings.’” *In re Zdravkovich*, 634 F.3d 574, 578 (D.C. Cir. 2011) (second and third alterations in original) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)).

The USPTO’s regulation governing reciprocal discipline, 37 C.F.R. § 11.24(d)(1), mirrors the standard set forth in *Selling*:

[T]he USPTO Director shall consider any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:

- (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;
- (iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in a grave injustice; or
- (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

To prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that there is a genuine issue of material fact as to one of these criteria by clear and convincing evidence. *See* 37 C.F.R. § 11.24(d)(1).

Here, Respondent “does not object to the imposition of reciprocal discipline in the form of a stayed one-year suspension.” Response at 1. Given that, it is hereby determined that there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and that Respondent’s one-year suspension, with the execution of the period of suspension stayed, and a one-year probation period effective the date of this Final Order, is appropriate.

Nunc Pro Tunc

In his Response, Respondent provided proof of his successful completion of the one-year state ordered probation period, as well as proof that he has passed the MPRE. *See* Response, Exhibits A, B. As a result, Respondent requested that those conditions not be included in the discipline imposed by the USPTO or, alternatively, that his prior successful completion of those conditions be credited towards and considered to fulfill any identical conditions imposed by the USPTO. Response at 1-2. Because Respondent has provided proof of his successful passing of the MPRE examination, that condition will not be a part of this reciprocal discipline Final Order. However, as discussed further below, the one-year probation is still appropriate.

Respondent's one-year state probation was a standalone requirement. *See* Sept. 25, 2015 Order of the Supreme Court of California, Case No. S227488. That order stated that Respondent is "placed on probation for one year" subject to conditions. *Id.* However, at the end of "the expiration of the period of probation" and in addition to fulfilling the other conditions, the stayed suspension is terminated. *Id.* But, the one-year probation was always part of the state level discipline separate and apart from the other terms of that discipline. In asking that his prior successful completion of his mandated probation be credited towards any discipline imposed by the USPTO, Respondent is essentially asking that the term of his one-year, state ordered probation run *nunc pro tunc*, that is, to have run contemporaneously with, his state level discipline.

The imposition of reciprocal discipline *nunc pro tunc* is discussed in 37 C.F.R. § 11.24(f), which states:

Upon request by the practitioner, reciprocal discipline may be imposed *nunc pro tunc* only if the practitioner promptly notified the OED Director of his or her censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification in another jurisdiction, and establishes by clear

and convincing evidence that the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58. The effective date of any public censure, public reprimand, probation, suspension, disbarment or disciplinary disqualification imposed *nunc pro tunc* shall be the date the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58.

To be eligible for the imposition of reciprocal discipline *nunc pro tunc*, Respondent must

1) have promptly notified the OED Director of the discipline imposed upon him by the Supreme Court of California and 2) establish by clear and convincing evidence that he voluntarily ceased all activities related to practice before the Office and complied with all provisions of 37 C.F.R. § 11.58. Respondent has not made a showing by any evidence, much less clear and convincing evidence, that he satisfied any of the *nunc pro tunc* eligibility requirements under § 11.24(f). Thus, the one-year probation imposed by the State of California does not qualify for *nunc pro tunc* treatment under § 11.24(f).

Order

ACCORDINGLY, it is hereby **ORDERED** that:

1. Respondent is suspended from practice before the Office in patent, trademark, and all non-patent matters for a period of one (1) year commencing on the date of the Final Order, with that period stayed;
2. Respondent is placed on probation for one (1) year commencing on the date of the Final Order;
3. The OED Director publish the following Notice in the Official Gazette:

Notice of Stayed Suspension and Probation

This notice concerns Sanjeev Kumar Dhand of San Diego, California, who is a registered patent attorney (Registration Number 51,128). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Dhand be suspended from practice before the Office in patent, trademark, and all non-patent matters for a period of one (1) year commencing on the date of the Final Order, with that period stayed, for violating 37 C.F.R. § 11.804(h). Respondent will be placed on probation for one


(1) year commencing on the date of the Final Order.

By Order dated September 25, 2015, in In re Sanjeev Kumar Dhand, Case No. S227488, the Supreme Court of California suspended Respondent from the practice of law in that jurisdiction for one year, with the execution of the period of suspension stayed, with conditions of probation, and requiring Respondent to take an pass the Multistate Professional Responsibility Examination within one year after the effective date of the Order. The USPTO Director imposed discipline identical to that imposed by the Supreme Court of California, pursuant to 37 C.F.R. § 11.24.

This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline's FOIA Reading Room, located at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

7. The OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public.

11/16/2016
Date



Sarah Harris
General Counsel
United States Patent and Trademark Office

on behalf of

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

cc:

Merri A. Baldwin
Counsel for Respondent

OED Director