

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

In the Matter of)	
)	
Darcell Walker,)	
)	Proceeding No. D2018-04
Respondent)	
_____)	

FINAL ORDER

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Darcell Walker (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) for approval.

The Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties’ stipulated facts, legal conclusions, and sanctions.

Jurisdiction

1. At all times relevant hereto, Respondent of Houston, Texas, has been a registered patent attorney (Registration Number 34,945) who is subject to the USPTO Code of Professional Responsibility, which is set forth at 37 C.F.R. § 10.20 *et seq.*, and the USPTO Rules of Professional Conduct, which are set forth at 37 C.F.R. §§ 11.101 through 11.901.¹

2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. § 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19, 11.20, and 11.26.

Stipulated Facts

3. Respondent was licensed as an attorney by the State Bar of Texas on November 10, 1988 (Bar Card Number 20717450).

¹ Effective May 3, 2013, the USPTO Rules of Professional Conduct apply to persons who practice before the Office. *See* 37 C.F.R. §§ 11.101 through 11.901. The USPTO Code of Professional Responsibility governs conduct occurring prior to May 3, 2013. The allegations of misconduct alleged in the disciplinary Complaint and which are the subject of this Final Order occurred both prior to and after May 3, 2013. Therefore, both the USPTO Code of Professional Responsibility and USPTO Rules of Professional Conduct apply.

4. Respondent was registered by the USPTO as a patent attorney on April 15, 1991 (Registration Number 34,945).

5. Respondent was administratively suspended from the active rolls of the State Bar of Texas from September 1, 2011 to September 18, 2011, for non-payment of the Texas attorney occupation tax.

6. Respondent was administratively suspended from the active rolls of the State Bar of Texas from February 16, 2016 to January 19, 2017, for failure to make student loan payments.

7. On May 31, 2017, Respondent was administratively suspended from the active rolls of the State Bar of Texas for failure to comply with continuing legal education requirements.

8. As of the time of the filing of the disciplinary Complaint ("Complaint"), Respondent remained administratively suspended and ineligible to practice law in Texas.

9. Due to his administrative suspensions from the State Bar of Texas, Respondent was not authorized to represent persons before the USPTO in trademark matters for the following periods: September 1, 2011 to September 18, 2011; February 16, 2016 to January 19, 2017; and May 31, 2017 to the date of the filing of the Complaint.²

10. Respondent prepared and filed a provisional patent application on behalf of his client, Mr. [REDACTED], on March 15, 2013. Mr. [REDACTED] paid him \$1,525.00 in advance for attorneys' fees and expenses in connection with that application. Respondent did not put the prepaid fees and expenses into a client trust account.

11. On January 8, 2014, Respondent prepared and filed a non-provisional patent application on behalf of Mr. [REDACTED]. Mr. [REDACTED] paid him \$2,350.00 in advance for attorneys' fees and expenses in connection with that application. Respondent did not put the prepaid fees and expenses into a client trust account. Respondent did not pay the USPTO filing fee when he filed Mr. [REDACTED] non-provisional application.

12. On January 23, 2014, the USPTO mailed Respondent a Notice to File Missing Parts due to nonpayment of filing fees. Respondent did not advise Mr. [REDACTED] of the Notice, did not file a response to the Notice, and did not pay the fees owed. As a result, the application went abandoned on March 25, 2014. The USPTO sent a Notice of Abandonment to Respondent, but he did not advise his client of the Notice or that the application had gone abandoned.

13. On December 3, 2015, Respondent filed a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(a), in which he admitted that he did not handle the application in an appropriate manner. However, Respondent did not pay the petition fee. Respondent also did not notify Mr. [REDACTED] of the filing of this Petition. The Petition for Revival was dismissed for failure to pay the petition fee.

² Respondent was eligible to practice law in Texas from January 20, 2017 to May 30, 2017.

14. On December 16, 2015, Respondent filed another patent application for Mr. [REDACTED] which he claimed was a continuation-in-part of the earlier patent application he had filed for Mr. [REDACTED] but was now abandoned. Again, Respondent did not pay the required filing fees. He did not respond to an Office Action requiring payment of the filing fees, or pay the filing fees. The application went abandoned. Respondent did not notify Mr. [REDACTED] of any of these facts.

15. When Mr. [REDACTED] learned in 2016 that his application had gone abandoned he confronted Respondent. Respondent said he was trying to fix the problem and gather the funds to pay the fees, but he never did so. Ultimately, Respondent agreed to refund Mr. [REDACTED] money, but paid him only \$600.00. Respondent has not reimbursed Mr. [REDACTED] for the rest of the money Mr. [REDACTED] paid him.

16. On August 14, 2012, Respondent prepared and filed a non-provisional patent application on behalf of Messrs. [REDACTED] and [REDACTED]. Messrs. [REDACTED] and [REDACTED] paid him \$4,600.00 in advance for attorneys' fees and expenses in connection with the application. Respondent did not put the prepaid fees and expenses into a client trust account. Respondent did not pay the USPTO filing fee when he filed the non-provisional application.

17. On August 30, 2012, the USPTO mailed Respondent a Notice to File Missing Parts due to nonpayment of the basic filing fee. Respondent did not advise Messrs. [REDACTED] and [REDACTED] of the Notice, did not file a response to the Notice, and did not pay the fees owed. As a result, the application went abandoned on November 1, 2012. The USPTO sent a Notice of Abandonment to Respondent, but he did not advise his clients of the Notice or that the application had gone abandoned.

18. When Messrs. [REDACTED] and [REDACTED] learned that their application had gone abandoned, they contacted Respondent. Respondent assured them that he would file a petition to revive the abandoned application.

19. On April 30, 2015, Respondent filed a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(a), in which he admitted that he did not handle the application in an appropriate manner. However, Respondent did not pay the petition fee. Respondent also did not notify Messrs. [REDACTED] and [REDACTED] of the filing of this Petition. The Petition for Revival was dismissed for failure to pay the petition fee.

20. In March 2016, Respondent informed Messrs. [REDACTED] and [REDACTED] that he had filed the Petition for Revival. Respondent told them that he filed the petition without the fees but would be submitting the fees within the month. Respondent never submitted any government filing fees to the USPTO or took any further action on the Petition for Revival.

21. On July 17, 2014, Respondent prepared and filed a non-provisional patent application on behalf of Messrs. [REDACTED] and [REDACTED]. Messrs. [REDACTED] and [REDACTED] paid Respondent in advance for the USPTO filing fee required to file the application. Respondent did not put the funds into a client trust account. Respondent did not pay the USPTO filing fee when he filed the non-provisional application.

22. On July 29, 2014, the USPTO mailed Respondent a Notice to File Missing Parts due to nonpayment of filing fees. Respondent did not advise Messrs. [REDACTED] and [REDACTED] of the Notice, did not file a response to the Notice, and did not pay the fees owed. As a result, the application went abandoned on September 30, 2014. The USPTO sent a Notice of Abandonment to Respondent, but he did not advise his client of the Notice or that the application had gone abandoned. Respondent took no further steps in the application.

23. Respondent prepared and filed a provisional patent application on behalf of his client, Ms. [REDACTED], on January 17, 2012. Respondent prepared and filed a second provisional patent application on May 18, 2012.

24. Ms. [REDACTED] paid Respondent \$475.00 in advance for the USPTO filing fees in connection with the second provisional application. Ms. [REDACTED] also paid Respondent \$3,365.00 in advance for preparing and filing a non-provisional utility patent application and a design patent application. Respondent did not put the prepaid funds into a client trust account.

25. Respondent prepared and filed a design patent application on behalf of Ms. [REDACTED] on January 17, 2013. Respondent did not pay the USPTO filing fee when he filed the design application.

26. On January 29, 2013, the USPTO mailed Respondent a Notice to File Missing Parts due to nonpayment of filing fees with respect to the design patent application. Respondent did not advise Ms. [REDACTED] of the Notice, did not file a response to the Notice, and did not pay the fees owed. As a result, the design application went abandoned on March 30, 2012. The USPTO sent a Notice of Abandonment to Respondent, but he did not advise his client of the Notice or that the design application had gone abandoned. In fact, after he received the Notice of Abandonment, Respondent lied to his client repeatedly and told her that the design application was still pending.

27. After Ms. [REDACTED] had contacted him several times without receiving a response, Respondent finally told her that he needed to file a petition to revive the design application.

28. On January 18, 2016, Respondent filed a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(a), in which he admitted that he did not handle the design application in an appropriate manner. However, Respondent did not pay the petition fee, and as a result the Petition to Revive was dismissed.

29. Respondent prepared and filed a utility application on behalf of Ms. [REDACTED] on April 30, 2013. Respondent did not pay the USPTO filing fee when he filed the utility application.

30. On June 7, 2013, the USPTO mailed Respondent a Notice to File Missing Parts due to nonpayment of filing fees with the utility application. Respondent did not advise Ms. [REDACTED] of the Notice, did not file a response to the Notice, and did not pay the fees owed. As

a result, the utility application went abandoned on August 8, 2013. Despite this abandonment, Respondent lied to his client in December 2013 and advised her that the application was "in processing." The USPTO sent a Notice of Abandonment to Respondent on February 24, 2014, but he did not advise his client of the Notice or that the utility application had gone abandoned. In fact, after he received the Notice of Abandonment, Respondent lied to his client repeatedly and told her that the application was still pending.

31. On January 20, 2016, Respondent filed a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(a), in which he admitted that he did not handle the utility application in an appropriate manner. However, Respondent did not pay the petition fee and as a result the Petition to Revive was dismissed.

32. After her first design application was filed, Ms. [REDACTED] changed the design of her invention. Respondent advised her that she needed to file a new design application. On March 27, 2014, Ms. [REDACTED] paid Respondent \$790.00 for attorneys' fees and expenses in connection with that application. Respondent did not put the prepaid fees and expenses into a client trust account.

33. Respondent prepared and filed a second design patent application on behalf of Ms. [REDACTED] on May 6, 2014 and paid \$190.00 in filing fees.

34. On November 18, 2015, the Office mailed a Non-Final Rejection ("Office Action") to Respondent in connection with the second design application. A response to the Office Action was due on or before February 18, 2016. Respondent did not file a timely response. On May 18, 2016, Respondent filed a late response to the Office Action along with a Petition for Extension of Time to respond, but did not pay the fee associated with the Petition. As a result, the Office sent a final rejection on July 8, 2016. Respondent did not advise Ms. [REDACTED] of the final rejection, nor did he respond to it.

35. On December 17, 2013, Ms. [REDACTED] paid Respondent \$1,425.00 via Paypal for preparing and filing a provisional patent application for a different invention. Respondent filed a provisional application on January 14, 2014, and the application expired on January 18, 2015. Respondent did not tell Ms. [REDACTED] that the provisional application had expired.

36. Even though the provisional application referred to in the preceding paragraph had expired on January 18, 2015, Respondent told his client after that date that he was going to file a formal utility application with respect to the invention. He did not inform his client that the invention was no longer entitled to the benefit of the provisional application priority date.

37. Ms. [REDACTED] paid Respondent \$1,100.00 to prepare and file the utility patent application. Respondent did not put the money into a client trust account.

38. Respondent prepared and filed the non-provisional utility application on behalf of Ms. [REDACTED] on January 31, 2015. Respondent did not pay the USPTO filing fee when he filed the application.

39. On February 20, 2015, the USPTO mailed Respondent a Notice to File Missing Parts due to nonpayment of filing fees. Respondent did not advise Ms. [REDACTED] of the Notice, did not file a response to the Notice, and did not pay the fees owed. As a result, the utility application went abandoned on April 21, 2015. Despite this abandonment, Respondent lied to his client in August 2015 and advised her that he was looking into the status of the application. The USPTO sent a Notice of Abandonment to Respondent on October 21, 2015, but he did not advise his client of the Notice or that the utility application had gone abandoned.

40. On January 18, 2016, Respondent filed a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(a), in which he admitted that he did not handle the utility application in an appropriate manner. However, Respondent did not pay the petition fee and as a result the Petition to Revive was dismissed.

41. On many occasions over a period of several months, Ms. [REDACTED] contacted Respondent about the status of her various applications, but Respondent failed to respond to her reasonable requests for information.

42. Thereafter Ms. [REDACTED] fired Respondent and hired new counsel. On November 29, 2016, Ms. [REDACTED] new counsel substituted as counsel in all her design and utility applications.

43. In total, Ms. [REDACTED] paid Respondent approximately \$8,580.00. None of these payments were deposited in a client trust account.

44. Respondent contacted Ms. [REDACTED] new counsel and told him that "he would be able to pay the fees owed by April 31, 2017." Respondent also represented to OED that he was going to reimburse her. However, to date, Respondent has not returned any funds to Ms. [REDACTED]

45. Respondent is licensed to practice law only in the state of Texas. He was administratively suspended from the active rolls of the State Bar of Texas from February 16, 2016 to January 20, 2017.

46. While he was suspended from the practice of law in Texas, Respondent improperly represented applicants in three trademark matters before the Office.

Miscellaneous Factors

47. The OED Director considered that Respondent has no prior disciplinary history before the Office.

Joint Legal Conclusions

48. Respondent acknowledges, based on the information contained in the Joint Stipulated Facts above, that his conduct, prior to May 3, 2013, violated the following provisions of the USPTO Code of Professional Responsibility:

- a. 37 C.F.R. § 10.23(a) (engaging in disreputable or gross misconduct) by failing to pay government filing fees in multiple applications, even though he had received the funds for those fees in advance from his clients;
- b. 37 C.F.R. § 10.23(b)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) by failing to pay government filing fees in multiple applications, even though he had received the funds for those fees in advance from his clients;
- c. 37 C.F.R. § 10.23(a) and (b) via (c)(8) (failing to inform a client of significant correspondence from the Office) by failing to advise multiple clients of Notices to File Missing Parts which could have a significant effect on a matter pending before the Office, which were received by Respondent on behalf of his clients, and said Notices were correspondence that a reasonable practitioner would believe under the circumstances the client or former client should be notified;
- d. 37 C.F.R. § 10.77 (neglect) by failing to remit filing fees to the Office after receiving those fees from his clients in advance, failing to inform clients of important communications from the Office, and failing to respond to important communications from the Office; and
- e. 37 C.F.R. § 10.112 (failure to deposit funds paid by a client into an identifiable bank account, which does not include funds deposited by the practitioner) by failing to have a client trust account and to deposit attorneys' fees paid in advance into such an account, and depositing client funds into an account which also contained funds deposited by him.

49. Respondent acknowledges, based on the information contained in the Joint Stipulated Facts above, that his conduct, on or after May 3, 2013, violated the following provisions of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 11.101 (failing to provide competent representation to a client by, *inter alia*, not using methods and procedures meeting the standards of competent practitioners) by failing to pay government filing fees when submitting patent applications to the Office even though his clients had paid those fees to him in advance; by not responding to communications from the Office and allowing several

applications to go abandoned as a result; by failing to timely file Petitions for Revival; by not advising clients of Notices of Abandonment or that he was filing Petitions for Revival; and failing to pay filing fees when submitting Petitions for Revival, resulting in the Petitions being denied;

- b. 37 C.F.R. § 11.103 (failing to act with reasonable diligence and promptness in representing a client) by failing to pay government filing fees when submitting patent applications to the Office even though his clients had paid those fees to him in advance; by not responding to communications from the Office and allowing several applications to go abandoned as a result; by failing to timely file Petitions for Revival; by not advising clients of Notices of Abandonment or that he was filing Petitions for Revival; and failing to pay filing fees when submitting Petitions for Revival, resulting in the Petitions being denied;
- c. 37 C.F.R. § 11.104(a)(2) (failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished) by not informing clients about important Office communications, such as Notices to File Missing Parts and Notices of Abandonment, the options for responding to those communications, and the consequences of failing to respond; and failing to consult with clients prior to filing Petitions for Revival;
- d. 37 C.F.R. § 11.104(a)(3) (failing to keep the client reasonably informed about the status of the matter) by failing to inform his clients of correspondence with the Office such as Notices to File Missing Parts, Notices of Abandonment, a Final Rejection, Petitions to Revive, and Dismissals of Petitions to Revive;
- e. 37 C.F.R. § 11.104(a)(4) (failing to respond to a client's reasonable requests for information) by failing to respond on numerous occasions to requests for information from Ms. [REDACTED];
- f. 37 C.F.R. § 11.115(a) (failing to hold the property of clients in his possession in connection with a representation separate from his own property and/or to keep complete records of such funds) by failing to maintain a client trust account or keep records of funds received from his clients, despite receiving client funds in advance for legal services and expenses, and failing to keep his funds separate;
- g. 37 C.F.R. § 11.115(c) (failing to deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn only as the fees are earned or expenses incurred) by failing

to deposit prepaid legal fees and government filing fees paid by multiple clients into a client trust account;

- h. 37 C.F.R. § 11.115(d) (failing to promptly deliver to a client any funds that the client is entitled to receive) by failing to refund to his clients filing fees paid by them in advance that were not remitted to the Office;
- i. 37 C.F.R. § 11.116(d) (failing to refund any advance fee or expense that has not been earned or incurred by the attorney upon termination of the representation) by failing to refund to his clients Mr. [REDACTED] and Ms. [REDACTED] government filing fees paid by them in advance that were not remitted to the Office;
- j. 37 C.F.R. § 11.505 (engaging in the unauthorized practice of law) by practicing trademark law before the Office while he was not an active member in good standing of the bar of any State; and
- k. 37 C.F.R. § 11.804(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) by failing to pay government filing fees to the USPTO despite having received funds for payment of those fees from his clients in advance; failing to reimburse his client, Mr. [REDACTED] \$5,400.00 for the work he did not perform, as he had agreed to do; and lying to his client Ms. [REDACTED] about the status of her matters.

Agreed Upon Sanction

50. Respondent freely and voluntarily agrees and it is hereby ORDERED that:
- a. Respondent be suspended from practice before the Office in patent, trademark, and other non-patent matters for four years commencing on the date this Final Order is signed;
 - b. Before seeking reinstatement to practice before the Office, Respondent shall (1) take the Multi-State Professional Responsibility Examination ("MPRE"); (2) attain a score of 85 or better; and (3) provide a declaration to the OED Director with accompanying corroborating document(s) verifying his compliance with this subparagraph;
 - c. Before being reinstated to practice before the Office, Respondent shall submit to the OED Director proof that he has established a client trust account;
 - d. Before being reinstated to practice before the Office, Respondent shall submit to the OED Director satisfactory proof that he has reimbursed

in full all clients named in the disciplinary Complaint, namely, Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED]

- e. Respondent shall comply with 37 C.F.R. §§ 11.58 and 11.60;
- f. Respondent is granted limited recognition to practice before the Office beginning on the date this Final Order is signed, and expiring thirty (30) days after the date this Final Order is signed, with such limited recognition being granted for the sole purpose of facilitating Respondent's compliance with 37 C.F.R. § 11.58(b).³
- g. Respondent shall remain suspended from practice before the Office in patent, trademark, and other non-patent matters until the OED Director grants Respondent's petition for reinstatement pursuant to 37 C.F.R. § 11.60;
- h. Respondent shall serve a two year probationary period commencing on the date of his reinstatement to practice before the Office;
- i. During the two year probationary period, Respondent shall, at his own expense, (i) submit to the OED Director every six months copies of the records required to be kept under 37 C.F.R. § 11.115(f), and (ii) certify that his client trust account is in full compliance with the USPTO Rules of Professional Conduct;
- j. (1) In the event the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Agreement, this Final Order, or any disciplinary rule of the USPTO Rules of Professional Conduct, the OED Director shall:
 - (A) issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent be immediately suspended for up to one year for the violations set forth in the Joint Legal Conclusions, above;
 - (B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director; and

³ This provision for limited recognition to practice before the Office was not included in the Proposed Settlement Agreement submitted to the USPTO Director. However, in an e-mail dated March 23, 2018, the OED Director communicated that Respondent requested that he be given a period of time to set his affairs in order before the commencement of his suspension. The OED Director did not object to the request. *See* Exhibit A. Because Respondent's request is uncontested, this provision is included in this Final Order.

(C) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

(2) In the event that after the 15 day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Agreement, the Final Order, or any disciplinary rule of the USPTO Rules of Professional Conduct, the OED Director shall:

(A) deliver to the USPTO Director or his designee: (i) the Order to Show Cause; (ii) Respondent's response to the Order to Show Cause, if any; and (iii) argument and evidence causing the OED Director to be of the opinion that Respondent failed to comply with any provision of the Agreement, the Final Order, or any disciplinary rule of the USPTO Rules of Professional Conduct during the probationary period, and

(B) request that the USPTO Director immediately suspend Respondent for up to one year for the violations set forth in the Joint Legal Conclusions, above;

- k. In the event the USPTO Director suspends Respondent pursuant to subparagraph j, above, and Respondent seeks a review of the suspension, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;
- l. The OED Director shall electronically publish the Final Order at OED's electronic FOIA Reading Room, which is publicly accessible at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
- m. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Suspension and Probation

This notice regards Darcell Walker of Houston, Texas, a registered patent attorney (Registration Number 34,945). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Walker for four years from practice before the Office in patent, trademark, and non-patent matters. Mr. Walker shall serve a probation period of two years commencing on the date of reinstatement to practice before the USPTO. Before seeking reinstatement, Respondent

is required to take the Multi-State Professional Responsibility Examination (“MPRE”) and attain a score of 85 or better; establish a client trust account; and reimburse several clients for attorneys’ fees and expenses paid to him for work that was not finished and fees that were not forwarded to the Office. During his probation, Mr. Walker also must submit to the OED Director every six months copies of the records required to be kept under 37 C.F.R. § 11.115(f) and certify that his client trust account is in full compliance with the USPTO Rules of Professional Conduct.

Mr. Walker filed multiple patent applications but did not pay filing fees to the USPTO, even though his clients had paid those fees to him in advance. When he received communications from the Office, Mr. Walker ignored them. As a result, the applications went abandoned. Mr. Walker did not tell his clients about the communications from the Office, that their applications had gone abandoned, or discuss with them how to respond to these communications, and then he lied to his clients about the status of their applications. In some cases, he filed Petitions to Revive, without the clients’ knowledge or consent, but failed to pay the filing fees with the Petitions and, as a result, those Petitions to Revive were also dismissed. When his clients learned of the fate of their applications and contacted him, Mr. Walker agreed to refund their money, but did not do so. Additionally, Mr. Walker did not put his clients’ prepaid fees and expenses into a trust account and did not keep the financial records required by the ethics rules. Furthermore, Mr. Walker was suspended for over a year by the Texas State Bar yet continued to practice trademark law before the Office during that period, which constituted the unauthorized practice of law.

As a result of this misconduct, Mr. Walker, prior to May 3, 2013, violated the following provisions of the USPTO Code of Professional Responsibility: 37 C.F.R. §§ 10.23(a) (engaging in disreputable or gross misconduct); 10.23(b)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); 10.23(a) and (b) via (c)(8) (failing to inform a client of significant correspondence from the Office); 10.77 (neglect); and 10.112 (failing to deposit funds paid by a client into an identifiable bank account, which does not include funds deposited by the practitioner).

Mr. Walker, on or after May 3, 2013, violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.101 (failing to provide competent representation to a client by, *inter alia*, not using methods and procedures meeting the standards of competent practitioners); 11.103 (failing to act with reasonable diligence and promptness in representing a client); 11.104(a)(2) (failing to

reasonably consult with the client about the means by which the client's objectives are to be accomplished); 11.104(a)(3) (failing to keep the client reasonably informed about the status of the matter); 11.104(a)(4) (failing to respond to a client's reasonable requests for information); 11.115(a) (failing to hold the property of clients in his possession in connection with a representation separate from his own property and/or to keep complete records of such funds); 11.115(c) (failing to deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn only as the fees are earned or expenses incurred); 11.115(d) (failing to promptly deliver to a client any funds that the client is entitled to receive); 11.116(d) (failing to refund any advance fee or expense that has not been earned or incurred by the attorney upon termination of the representation); 11.505 (engaging in the unauthorized practice of law); and 11.804(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

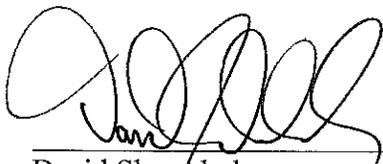
This action is the result of a settlement agreement between Mr. Walker and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.20, and 11.26.

Disciplinary decisions involving practitioners are posted for public reading at the OED Reading Room, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;

- n. Nothing in the Agreement or in this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order: (1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office; (2) in any future disciplinary proceeding against Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed, and/or (ii) to rebut any statement or representation by or on Respondent's behalf, and/or (3) in connection with any request for reconsideration submitted by Respondent pursuant to 37 C.F.R. § 11.60;
- o. Respondent waives all rights to seek reconsideration of the Final Order under 37 C.F.R. § 11.56, waives the right to have the Final Order reviewed under 37 C.F.R. § 11.57, and waives the right otherwise to appeal or challenge the Final Order in any manner; and⁴

⁴ This provision was not included in the Proposed Settlement Agreement submitted to the USPTO Director. However, on March 22, 2018, during a conference call attended by both parties, Respondent verbally agreed to the inclusion of this provision in this Final Order. *See* Exhibit B.

p. Respondent shall pay the costs of this disciplinary proceeding pursuant to 37 C.F.R. § 11.60.



David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

23 Mar 2018

Date

on delegated authority by

Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office