

UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of: )
Michael D. Gerhardt, ) Proceeding No. D2018-01
Respondent )

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

Pursuant to 37 C.F.R. § 11.24, Michael D. Gerhardt ("Respondent") is hereby excluded form practice before the USPTO in patent, trademark, and other non-patent matters for violation of 37 C.F.R. § 11.804(h).

Background

On March 20, 2017, the Supreme Court of Illinois, in In re: Michael David Gerhardt, M.R. 028479, disbarred Respondent from the practice of law in that jurisdiction on ethical grounds.

On November 29, 2017, a "Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Notice and Order") was mailed by certified mail (receipt nos. 70160910000045132795 and 70160910000045132801), notifying 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 and 11.34" ("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 Illinois, in In re: Michael David Gerhardt, M.R. 028479. The Notice and Order was sent to Respondent at the most recent address provided to the OED Director pursuant to 37 C.F.R. § 11.11(a). The Notice and Order provided Respondent an opportunity to file, within forty (40) days, a response opposing the imposition of reciprocal discipline identical

to that imposed by the Supreme Court of Illinois, in *In re: Michael David Gerhardt*, M.R. 028479, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1). The Notice and Order was not able to be delivered to Respondent. Consequently, the Notice and Order was published in the Official Gazette on February 6, 2018 and February 13, 2018. Respondent has not filed a response to the Notice and Order.

### Analysis

In light of Respondent's failure to file a response, it is hereby determined that there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and Respondent's exclusion is the appropriate discipline.

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

1. Respondent is hereby excluded from the practice of patent, trademark, and other non-patent law before the USPTO;
2. The OED Director publish a Notice in the *Official Gazette* that is materially consistent with the following:

### NOTICE OF EXCLUSION

This notice concerns Michael D. Gerhardt of Chicago, Illinois, who is a registered patent attorney (Registration Number 48,397). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Gerhardt ("Respondent") be excluded from practice before the USPTO in patent, trademark, and other non-patent matters for violating 37 C.F.R. § 11.804(h), predicated upon being disbarred from the practice of law by a duly constituted authority of a State.

The Supreme Court of Illinois in *In re: Michael David Gerhardt*, M.R.028479, ordered that Respondent be disbarred from the practice of law in that jurisdiction. In April 2008, Respondent reached a settlement for a client but failed to distribute the settlement funds to the client and a third party. As a result, Respondent was found to have violated Illinois Rules of Professional Conduct ("IRPC") 1.1 for failing to provide competent representation; 1.3 for failing to act with reasonable diligence and promptness; 1.4(a)(3) and (4) for failing to keep the client reasonably informed and to promptly comply with reasonable request for information;

and 1.15(d) for failing to promptly deliver the settlement funds.

In another matter, Respondent, in January 2015, agreed to represent a client in a civil action but failed to respond to discovery requests, prepare for trial, and appear at court hearings. Respondent also failed to advise the client of the status of the case, made false statements to the client regarding the same, and failed to return the unearned portion of the advance fee that the client had paid to Respondent. As a result, Respondent was found to have violated IRPC 1.1 for failing to provide competent representation; 1.3 for failing to act with reasonable diligence and promptness; 1.4(a)(3) and (4) for failing to keep the client reasonably informed and to promptly comply with reasonable request for information; 1.15(d) for failing to promptly deliver the unearned portion of the advance fee; and 1.16(d) for failing to refund the unearned portion of the advance fee. In addition, Respondent was found to have violated IRPC 8.4(c) for making the false statements regarding the status of the case.

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>.

and

3. 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;

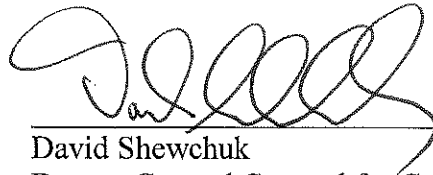
4. Respondent shall comply with the duties enumerated in 37 C.F.R. § 11.58;

5. The USPTO dissociate Respondent's name from any Customer Numbers and the public key infrastructure ("PKI") certificate associated with those Customer Numbers; and

6. Respondent shall not apply for a USPTO Customer Number, shall not obtain a USPTO Customer Number, nor shall he have his name added to a USPTO Customer Number, unless and until he is reinstated to practice before the USPTO.

4/12/18

Date



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

on delegation by  
Andrei Iancu  
Under Secretary Of Commerce For Intellectual Property And  
Director Of The United States Patent And Trademark Office

cc:

OED Director

Mr. Michael D. Gerhardt  
Gerhardt & Haskins, LLP  
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