

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

In the Matter of)	
)	
David Scher,)	Proceeding No. D2018-30
)	Proceeding No. D2018-40
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 David Scher (“Respondent”) on June 20, 2018.¹ Respondent submitted the four-page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27. Previously, the Director of the USPTO also received from the OED Director a Request for Notice, Order, Interim Suspension, and Referral for Further Proceedings Pursuant to 37 C.F.R. § 11.25 (“Request for Interim Suspension”) signed on May 9, 2018 (*In the Matter of David Scher*, Proceeding No. D2018-30). On May 14, 2018, a “Notice and Order Pursuant to 37 C.F.R. § 11.25” (“Notice and Order”), was sent by certified mail (receipt no. 70171450000024084861) notifying Respondent that the OED Director had filed the Request for Interim Suspension with a “Disciplinary Complaint Pursuant to 35 U.S.C. § 32 and 37 C.F.R. 11.25” requesting that the Director of the USPTO impose an interim suspension upon Respondent predicated on evidence that Respondent committed a serious crime. The Notice and Order provided Respondent an opportunity to file, within forty (40) days, a response

¹ The USPTO approved Mr. Scher to take the registration examination under the name “David Eric Scher.” On July 12, 2016, Mr. Scher submitted a request to update the USPTO records to reflect the name “David V. Scher.” Mr. Scher is listed as “David V. Scher” on the publically-available USPTO database of patent practitioners.

opposing the imposition of discipline. The Notice and Order was delivered to Respondent on May 16, 2018. Respondent did not file a response to the Notice and Order.

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. This Final Order resolves Respondent's pending disciplinary proceeding pursuant to 37 C.F.R. § 11.25 (Proceeding No. D2018-30) and pending disciplinary investigation (Proceeding No. D2018-40).

Jurisdiction

Respondent of Newton, Massachusetts is a registered patent agent (Registration Number 75,162). Respondent is subject to the USPTO Rules of Professional Conduct. 37 C.F.R. § 11.101 *et seq.*

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 June 20, 2018 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 and 11.25, the OED Director opened investigations of allegations that he violated the USPTO Rules of Professional Conduct, namely: Office of Enrollment and Discipline ("OED") File Nos. [REDACTED] and [REDACTED]. OED File No. [REDACTED] (Proceeding No. D2018-30) concerned, *inter alia*, the following allegations:
 - a. On March 13, 2014, a guilty disposition was entered for the crime of larceny from a building. *Commonwealth v. Scher*, Boston Municipal Court Case No.

1301CR993. The Appeals Court of Massachusetts affirmed the conviction; the Supreme Court of Massachusetts declined to review. *Commonwealth v. Scher*, 49 N.E. 3d 696 (2016); *Commonwealth v. Scher*, 56 N.E. 3d 827 (2016).

- b. On April 18, 2017, in Suffolk County Superior Court Case Nos. 1684CR178 and 1684CR328, Respondent pleaded guilty to the following: false statement under penalty of perjury, withholding evidence from a criminal proceeding, forgery of a document, and uttering a false writing. Respondent was sentenced to thirty months confinement and committed to the Suffolk House of Correction at South Bay for one year.
- c. All of the above-referenced violations constitute felonies: Larceny from a Building, M.G.L. ch. 266. § 20; False Statement under Penalty of Perjury, M.G.L. ch. 268 § 1A; Withholding Evidence from a Criminal Proceeding, M.G.L. ch. 268 § 13E(b); Forgery of a Document, M.G.L. ch. 267 § 1; and Uttering False Writing, M.G.L. ch. 267 § 5.

OED File No. [REDACTED] (Proceeding No. D2018-40) concerned, *inter alia*, the following allegations:

- a. Respondent applied for registration to practice before the USPTO. As part of his application he submitted moral character and information papers received by OED on March 13, 2014. The information submitted was not properly updated to reflect criminal convictions that took place on or after March 13, 2014.
- b. Respondent received a passing grade on the examination for registration to practice before the USPTO administered on May 20, 2016. On June 8, 2016, OED received the Data Sheet - Register of Patent Attorneys and Agents and registered Respondent as a patent agent on July 12, 2016.
- c. Notice to the OED Director regarding the 2017 criminal convictions in Suffolk County Superior Court Case Nos. 164CR178 and 1684CR328 as required under 37 C.F.R. § 11.25 was not delivered;

3. Respondent is aware that, based on the information obtained in OED File No. [REDACTED] (Proceeding No. D2018-30), the OED Director is of the opinion that the following provisions of the USPTO Rules of Professional Conduct were violated: 37 C.F.R. § 11.804(a) (practitioner shall not violate or attempt to violate the USPTO Rules of Professional Conduct); 37 C.F.R. § 11.804(b) (practitioner shall not commit a criminal act that reflects adversely on practitioner's honesty, trustworthiness, or fitness as a practitioner in other respects);

37 C.F.R. § 11.804(c) (practitioner shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 37 C.F.R. § 11.804(d) (practitioner shall not engage in conduct that is prejudicial to the administration of justice); and 37 C.F.R. § 11.804(i) (practitioner shall not engage in conduct that adversely reflects on the practitioner's fitness to practice before the Office);

4. Respondent is aware that, based on the information obtained in OED File No. [REDACTED] (Proceeding No. D2018-40), the OED Director is of the opinion that the following provisions of the USPTO Rules of Professional Conduct were violated: 37 C.F.R. § 11.801(a) (an applicant in connection with registration before the Office shall not knowingly make a false statement of material fact); 37 C.F.R. § 11.801(b) (an applicant in connection with registration before the Office shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter); 37 C.F.R. § 11.804(a) (practitioner shall not violate or attempt to violate the USPTO Rules of Professional Conduct); and 37 C.F.R. § 11.804(i) (practitioner shall not engage in other conduct that adversely reflects on the practitioner's fitness to practice before the Office);

5. Without admitting to violating any of the provisions of the USPTO 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 facts regarding him in OED File No. [REDACTED] and [REDACTED] are true; and

b. he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.801(a), 11.801(b), 11.804(a), 11.804(b), 11.804(c), 11.804(d) and 11.804(i);

6. He has 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 consequences of consenting to being excluded from practice before the Office in patent, trademark, and other non-patent matters; and

7. He 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:

1. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
2. 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;
3. 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>;
4. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns David Scher, a registered patent agent (Registration No. 75,162). The Director of the United States Patent and Trademark Office

("USPTO" or "Office") has accepted Mr. Scher's affidavit of resignation and ordered his exclusion on consent from practice before the Office in patent, trademark, and non-patent law.

The USPTO approved Mr. Scher to take the registration examination under the name "David Eric Scher." On July 12, 2016, Mr. Scher submitted a request to update the USPTO records to reflect the name "David V. Scher." Mr. Scher is listed as "David V. Scher" on the publically-available USPTO database of patent practitioners.

Mr. Scher voluntarily submitted his affidavit at a time when a disciplinary proceeding and investigation were pending against him. The pending disciplinary proceeding pursuant to 37 C.F.R. § 11.25 (Proceeding No. D2018-30) and the pending disciplinary investigation (Proceeding No. D2018-40) are resolved.

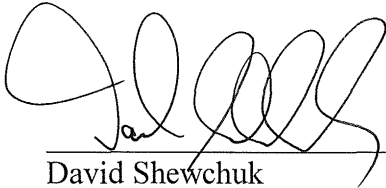
Mr. Scher was aware that there was a pending disciplinary proceeding pursuant to 37 C.F.R. § 11.25 involving allegations of misconduct. It was alleged that he violated 37 C.F.R. § 11.804(b) by being convicted of the following felonies: larceny from a building, false statement under penalty of perjury, withholding evidence from a criminal proceeding, forgery of a document, and uttering a false writing. Mr. Scher was also aware that there was a pending investigation involving allegations that he failed to report criminal convictions to the Office of Enrollment and Discipline ("OED").

While Mr. Scher did not admit to violating any of the provisions of the USPTO Rules of Professional Conduct as alleged in the proceeding and 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 facts set forth in the OED investigations against him are true, and (ii) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.801(a), 11.801(b), 11.804(a), 11.804(b), 11.804(c), 11.804(d) and 11.804(i).

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>.

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

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



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

18 July 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

cc:

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

Mr. Douglas Brooks, Esq.
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