

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

In the Matter of:	)	
	)	
Thomas J. Druan,	)	Proceeding No. D2018-33
	)	
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 Thomas J. Druan (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary 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 conclusion, and sanctions.

**Jurisdiction**

1. At all times relevant to this Complaint, Respondent, of Boston, Massachusetts, has been an attorney registered to practice before the USPTO and is subject to the USPTO Rules of Professional Conduct, which are set forth at 37 C.F.R. §§ 11.101 *et seq.*

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 Commonwealth of Massachusetts on December 9, 2008.

4. Respondent was registered by the USPTO as a patent attorney on March 9, 2009 (Registration Number 64,021).

5. On August 5, 2014, Client # 1 retained Respondent to prepare and file a provisional application.

6. On September 28, 2014, Respondent met with Client # 1 to discuss how her invention worked prior to preparing the provisional application.

7. On October 6, 2014, and October 12, 2014, Client # 1's partner, sent Respondent an email asking whether the provisional application had been filed yet.

8. At no point between October 6, 2014, and April 11, 2015, did Respondent file the provisional application, or let Client #1 know the status of the provisional application.

9. On April 12 2015, Respondent finally filed a provisional patent application on Client # 1's behalf.

10. On August 12, 2015, Respondent agreed to represent Client # 2 with respect to filing a nonprovisional patent application.

11. On August 20, 2015, Respondent filed a nonprovisional patent application on Client # 2's behalf.

12. On September 8, 2015, the USPTO mailed Respondent a Notice to File Corrected Application Papers ("Notice of Correction") in Client # 2's application.

13. The Notice of Correction informed Respondent that a reply must be submitted within two months "to avoid abandonment."

14. Respondent did not inform Client # 2 of the Notice of Correction.
15. On March 1, 2016, Client # 2 emailed Respondent requesting the status of his application.
16. Respondent did not inform Client # 2 of the Notice of Correction.
17. On April 30, 2016, Client # 2 again emailed Respondent asking for the status of his application.
18. On May 10, 2016, the USPTO mailed a Notice of Abandonment to Respondent for “failure to timely or properly reply to the [Notice of Correction].”
19. On July 7, 2016, August 29, 2016, and May 15, 2017, Client # 2 asked Respondent for the status of his application, but Respondent did not respond to the request or inform Client # 2 about the Notice of Abandonment.

#### **Joint Legal Conclusions**

20. Respondent acknowledges that, based on the information contained in the Stipulated Facts, above, Respondent’s acts and omissions violated the following provisions of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 11.103 (requiring practitioners to act with reasonable diligence and promptness) by, *inter alia*, not timely preparing and filing a provisional application for Client # 1; and not timely responding to the Notice of Correction in Client #2’s application; and
- b. 37 C.F.R. § 11.104(a)(3) (requiring practitioners to keep a client reasonably informed about the status of a matter) by, *inter alia*, not responding to Client # 1’s inquiries regarding the status of the provisional application; and not responding to Client # 2’s requests for the status of the ’841 application; and, failing to inform Client # 2 about the Notice of Correction or the Notice of Abandonment.

## ADDITIONAL CONSIDERATIONS

21. While Respondent was representing Client # 1 and Client # 2, Respondent claims that he was battling severe depression. To help him through his personal issue, Respondent asserts that he sought treatment for this issue, and that the treatment was, and continues to be as of this date, successful in addressing the issue.

22. Respondent also asserts that he is now with a law firm, as opposed to being a solo practitioner, and that the law firm provides technical solutions and support personnel that have greatly improved his client docketing and client communications.

### Agreed Upon Sanction

1. Respondent agrees and it is hereby ORDERED that:
  - a. Respondent is publicly reprimanded;
  - b. Respondent shall serve an eighteen (18) month probationary period commencing on the date the Final Order is signed;
  - c. Every six (6) months during the probationary period, starting on the date the Final Order is signed, Respondent shall provide the OED Director with a letter from the following persons:
    - i. his mental health professional confirming that there is no mental health reason precluding Respondent from performing his patent-related employment duties; and
    - ii. a registered patent attorney confirming that Respondent is performing his patent-related employment duties;
  - d. During the probationary period, Respondent shall inform the OED Director whenever he changes his employer;
  - e. (1) If the OED Director is of the good faith opinion that Respondent during Respondent's probationary period, failed to comply with any provision of the Agreement, this Final Order, or any provision 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 enter an order immediately suspending Respondent for up to thirty (30) days for the violations set forth in the Legal Conclusions;
- (B) send the Order to Show Cause to Respondent at the last address of record Respondent provided to OED; and
- (C) grant Respondent thirty days to respond to the Order to Show Cause; and

(2) In the event that after the thirty (30) 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 Respondent's probationary period, failed to comply with any provision of the Agreement, this Final Order, or any provision of the USPTO Rules of professional Conduct, the OED Director shall:

- (A) deliver to the USPTO Director: (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, during Respondent's probationary period, failed to comply with any provision of the Agreement, Final Order, or any provision of the USPTO Rules of Professional Conduct; and
- (B) request that the USPTO Director enter an order immediately suspending Respondent for up to thirty days for the violations set forth in the Legal Conclusions;

- f. In the event the USPTO Director suspends Respondent pursuant to subparagraph (e)(2)(B), 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;
- g. Nothing in this Agreement or the 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; and (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;

- h. 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>; and
- i. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

**Notice of Public Reprimand and Probation**

This notice concerns Thomas J. Druan, a registered patent attorney (Registration Number 64,021), who practices before the Office in patent matters. The United States Patent and Trademark Office ("USPTO" or "Office") has publicly reprimanded Mr. Druan and placed him on probation for eighteen months for violating provisions of the USPTO Rules of Professional Conduct. During his probation, Mr. Druan must provide letters to the OED Director every six months establishing that he is not precluded from performing patent related services and that he is properly performing his patent related duties as required. During the probationary period, Mr. Druan must also inform the OED Director whenever he changes his employer.

Mr. Druan failed to timely communicate with two of his clients and allowed a client's application to go abandoned without his client's consent. Mr. Druan's actions violated the following USPTO Rules of Professional Conduct: 37 C.F.R. § 11.103 requiring practitioners to act with reasonable diligence and promptness; and § 11.104(a)(3) requiring a practitioner to keep the client reasonably informed about the status of the matter.

This action is the result of a settlement agreement between Mr. Druan 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. In reaching the proposed settlement, the OED Director favorably considered the fact that Mr. Druan has stated that he was suffering from extreme personal issues at the time that he was representing these clients. Disciplinary decisions involving practitioners are posted for public reading at the OED Reading Room, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

**(Signature page follows)**



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

8/22/18

Date

on delegation by

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

cc:

OED Director, USPTO

Thomas J. Druan  
*Respondent*