

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

In the Matter of:

ROBERT RYAN MORISHITA,

Respondent.

Proceeding No. D2017-25

September 28, 2018

INITIAL DECISION ON DEFAULT JUDGMENT

On February 26, 2018, the Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) filed a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction* (“Default Motion”) in the above-captioned manner.¹

PROCEDURAL HISTORY

On November 1, 2017, the OED Director filed a *Complaint and Notice of Proceedings under 35 U.S.C. § 32* (“Complaint”) against Robert Ryan Morishita (“Respondent”) pursuant to 37 C.F.R. §§ 11.32 and 11.34. The *Complaint* was filed for violations of the USPTO Code of Professional Responsibility (37 C.F.R. §§ 10.20 *et seq.*) and the USPTO Rules of Professional Conduct (37 C.F.R. §§ 11.101 *et seq.*).² The essence of the *Complaint* is that, having agreed to represent two Clients before the Office in obtaining a patent, Respondent neglected and repeatedly made false representations regarding their patent application, fabricated documents, and refused to return unearned fees to them.

The same day the *Complaint* was filed, the OED Director sent a four copies of the *Complaint* via U.S. certified mail to Respondent. The first was sent to Respondent’s official address on record with the OED, namely: 8960 West Tropicana, Suite 300, Las Vegas, Nevada 89147.³ A second copy was sent to the address at which the OED Director reasonably believed Respondent receives mail, namely: 1475 North Main Street, #D203, Layton, Utah 84041. The third copy was sent to another address at which the OED Director reasonably believed Respondent receives mail, namely: 9901 Trailwood Drive, #2063, Las Vegas, Nevada 89134. A fourth and final copy was sent to a third address at which the OED Director reasonably believed

¹ Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases brought by the U.S. Patent and Trademark Office.

² On May 3, 2013, the USPTO Rules of Professional Conduct (37 C.F.R. Part 11, subpart D) replaced the Code of Professional Responsibility. However, Respondent’s alleged misconduct occurred both prior to and after May 3, 2013. As such, both the USPTO Code of Professional Responsibility and the USPTO Rules of Professional Conduct are applicable in this case.

³ 37 CFR § 11.11(a) requires a registered practitioner such as Respondent to provide written notice to the OED Director of any change in his or her postal address within 30 days of the date of the change.

Respondent receives mail, namely: 4955 S. Durango Drive, #153. Las Vegas, Nevada 89113. All four copies of the *Complaint* were returned to the USPTO by the United States Postal Service with the notation "Return to Sender."

Having been unable to serve Respondent *via* mail, the OED Director served notice on Respondent *via* publication, pursuant to 37 C.F.R. § 11.35(b). Notices to File an Answer to the Complaint were published in the Official Gazette for two consecutive weeks, on January 2, 2018 and January 9, 2018. Pursuant to 37 C.F.R. § 11.35(b), Respondent's answer was due by February 8, 2018. However, Respondent failed to file an answer to the *Complaint* by that date.

On February 9, 2018, counsel for the OED Director sent a letter, *via* first-class postage-prepaid mail to all addresses that the *Complaint* was mailed to, notifying Respondent that he intended to file a *Motion for Default Judgment and Imposition of Disciplinary Sanctions* against Respondent and inviting Respondent to contact counsel on or before February 15, 2018, prior to the motion being filed, pursuant to 37 C.F.R. § 11.43. Respondent did not timely respond to this letter.

As of the date of this *Initial Decision*, Respondent has not answered the *Complaint*, sought an extension of time to do so, or otherwise appeared in this matter.

APPLICABLE LAW

The USPTO has the "exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it." Kroll v. Finnerty, 242 F.3d 1359 (Fed. Cir. 2001). The Director of the USPTO may suspend or exclude a person from practice before the USPTO if the person is "shown to be incompetent or disreputable, or guilty of gross misconduct," or if the person violates regulations established by the Office. 35 U.S.C. § 32. The OED Director has the burden of proving the alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49. Respondent must prove any affirmative defense by clear and convincing evidence. Id.

CONSEQUENCES OF FAILURE TO ANSWER COMPLAINT

Section 11.36 of Title 37 of the Code of Federal Regulation sets forth the requirement for answering the *Complaint* and the consequences for not doing so. "Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment." 37 C.F.R. § 11.36(e). As a result of Respondent's failure to answer the *Complaint*, Respondent is deemed to have admitted the allegations in the *Complaint*, which are set forth below as the Court's findings of fact.

FINDINGS OF FACT

Respondent was registered by the USPTO as a patent agent on April 28, 1998 and as a patent attorney on December 22, 1998 (Registration Number 42,907). Respondent was admitted to the practice of law in the State of Nevada on October 14, 1998 and is currently administratively suspended in that jurisdiction as of October 30, 2017. Respondent was admitted to the practice of law in the State of Utah on September 24, 1999 and is currently administratively suspended in that jurisdiction as of October 30, 2017.

I. Respondent's Representation of the Clients in Provisional and Non-provisional Patent Applications

In August 2009, Viktor Pamukchiev and Ralitsa Pamukchiev requested and Respondent agreed to represent the Pamukchievs (hereinafter the "Clients") in the prosecution of a patent for their invention. Shortly thereafter, the Clients paid \$1,250.00 to Respondent's law firm in advance for the patent legal services. Respondent then filed U.S. Provisional Patent Application No. 61/273,716 ("the '716 application") titled, "Method and Device for Conducting a Roulette Game," and paid \$110.00 as a filing fee to the USPTO. The Clients then paid an additional \$1,250.00 to Respondent's law firm for patent legal services.

One year later, Respondent filed U.S. Patent Application No. 12/851,419 ("the '419 application") titled, "Method and Device for Conducting a Roulette Game" and paid \$462.00 in filing fees to the USPTO on behalf of the Clients. Concurrently, Respondent filed a Nonpublication Request in the '419 application. Respondent did not obtain the Clients' consent and failed to explain implications of the Nonpublication Request to the Clients, *inter alia*, the Clients' inability to monitor their application *via* the USPTO Public Patent Application Information Retrieval ("Public PAIR") system. Respondent completed this filing, including a statement certifying that the invention is and will not be the subject of an application in another country and is submitted after a reasonable inquiry under the circumstances, despite not communicating with the Clients about the Nonpublication Request.

II. Abandonment of the '419 Application

On March 29, 2012, a non-final Office action in the '419 application was sent to Respondent (hereinafter the "Office action") and a reply was due three months from the mailing date. Respondent did not inform the Clients about the Office action and did not file a reply, so the application went abandoned three months later. After the Office confirmed *via* phone call with Respondent that no reply to the Office action was filed, the Office mailed a Notice of Abandonment in the '419 application to Respondent. Respondent did not inform the Clients about the Notice of Abandonment nor did Respondent advise the Clients about their options regarding the application.

The Clients did not learn about the abandonment of the '419 application until November 2016, over four years later, when the Clients independently contracted the USPTO and were informed that the '419 application went abandoned in October 2012.

III. The Forged "Office Action" Respondent Provided to His Clients and the Fake "Response"

Respondent forwarded a forged version of the Office action (hereinafter the "forged Office action") to the Clients at the end of January 2013. The forged Office action was identical to the Office action except that some dates, namely the date on the cover page, were altered to indicate a mailing date of November 29, 2012. Respondent advised the Clients regarding changes required to be made to the '419 application without informing them that the true deadline for a response had passed. The main issue that Respondent alleged that the Examiner

found with the '419 application were similarities between the Clients' polygonal dice with a wheel and a random number generator patented by another inventor that the Office attached to the Office action.

To draft a response to the forged Office action upon the Clients' request, Respondent met with the Clients to discuss the ongoing patent strategy for the '419 application including how to handle a rejection of their claims. When the Clients later reminded Respondent to answer the forged Office action, Respondent at first ignored the Clients, then gave assurances that Respondent would electronically file a response in time. Despite this, Respondent did not file any papers on behalf of the Clients at that time.

When the Clients requested an update on the '419 application because they had not heard any news for approximately one year, Respondent replied that he would contact the Examiner. However, Respondent made no communication with the Office at that time. One month later, Respondent lied by telling the Clients that the Examiner would review the matter in two months. After that period passed, Respondent again falsely claimed to have communicated with the Examiner and led the Clients to believe that the Office would send a new action in response.

IV. Alleged Second "Office Action" and Alleged "Response"

The Clients again requested status updates on the '419 application three times from July to September 2014, only to be met with excuses from Respondent to solicit additional time. First, Respondent informed the Clients that he received a new Office action (hereinafter "second Office action") containing positive news, however this claim was false because no Office actions were issued in the abandoned '419 application in or around 2014. Next, Respondent falsely claimed to be returning a voicemail from the Examiner clarifying the nonexistent second Office action. In the third instance, after the Clients highlighted the importance of such an update to their business at an upcoming gaming expo, Respondent simply claimed to be working to obtain an answer.

When the Clients requested another status update on the '419 application, Respondent explained that the Examiner rejected all of the Clients' claims because he found the term "polygonal selector" to be ambiguous. Respondent elaborated that he would contact the Examiner to see if by changing the wording to "multi-sided die" the application would be acceptable and indicated that this would likely correct the '419 application and allow it to go through. Respondent continued to discuss the concerns regarding the "polygonal selector" with the Clients and they requested that Respondent file a response using the updated term that Respondent believed would best suit the Examiner. In or around October 2014, Respondent provided the Clients a copy of the "Respond [*sic*] to Second Office Action," however, Respondent did not file the "Respond [*sic*] to Second Office Action" with the Office.

V. Respondent's Continued Misrepresentations about the Status of the '419 Application

Approximately ten months later, Respondent continued to misrepresent the '419 application to the Clients, first by falsely informing the Clients that he contacted the Examiner to inquire about the Office's lack of any response to the "Respond [*sic*] to Second Office Action" that was never in fact filed as part of the abandoned '419 application. A month later, in

anticipation of another upcoming gaming expo, the Clients requested another status update as well as the Examiner's contact information so that they may contact the Examiner directly. Respondent replied that the Examiner was continuing to work on the Clients' application, knowing that his statement was false because the '419 application went abandoned over three years prior. The Clients reiterated their request for both an update and for the Examiner's contact information and the Respondent again provided false information. Respondent claimed that the Examiner relayed that the application was complete and that the Clients would receive "something" within two weeks. Receiving nothing from Respondent after a month, the Clients again requested a status update and Respondent failed to follow up with a substantive response.

VI. Alleged "Notice of Allowance"

Upon yet another request for a status update by the Clients, Respondent claimed to have received a Notice of Allowance and that the Office would grant the Clients' patent after receiving a \$480.00 issue fee on January 21, 2016. Respondent required an additional \$270.00, bringing the total necessary to \$750.00, to complete the paperwork. Respondent's claim that a Notice of Allowance was issued in this matter was again false as no Notice of Allowance was issued on this matter as it has been abandoned for over three and a half years. After the Clients paid \$750.00 to Respondent, Respondent provided a fee transmittal record indicating that the \$480.00 issue fee was remitted to the Office, however Respondent failed to remit any money to the USPTO and that the fee transmittal record was not filed with the USPTO.

Respondent led the Clients to believe that he prepared paperwork for filing with the Office that required their signature. Respondent e-mailed the Clients three signature pages which they returned and believed finalized their patent application. When the Clients returned these signed pages, Respondent led them to believe that they would receive the issued patent within three months and that Respondent would follow up when he received it. When the Clients requested status updates on this process, Respondent continued to delay and conceal the true status of the application. In response to the Clients' first request, Respondent simply stated that there was no new information. Upon the second request, Respondent claimed that he would check the status of the application with the Office while reassuring the Clients that such a delay is not unusual.

After another request for a status update, Respondent made more false allegations about his communications with the Office. Respondent alleged that the draftsmen of the publications branch of the USPTO requested new drawings of the Clients' design in black and white with no gray despite Respondent not communicating with the Office regarding the '419 application in or around that time. On August 24, 2016, in their fourth request for a status update after the alleged Notice of Allowance, the Clients informed Respondent, for the first time, that they did not wish to file for an international patent. Yet when filing the Nonpublication Request over six years prior, Respondent certified that he had communicated with his Clients about their intention and declared that there was no intention of filing for an international patent. Despite this, Respondent reassured the Clients that their patent would arrive soon.

VII. Termination of Representation and Refusal to Refund Fees

In November 2016, the Clients contacted the USPTO directly and learned that their '419 application was abandoned in 2012. At that time, the Clients e-mailed Respondent to request a copy of the alleged second Office action and the subsequent response Respondent claimed to have filed with the Office. Although he told the Clients that he would provide them with copies, Respondent did not provide the Clients with the documents or their file.

On December 2, 2016, the Clients filed a Revocation of Power of Attorney with the USPTO to revoke Respondent's power of attorney in the '419 application. Despite this, almost two months later Respondent e-mailed the Clients informing them that he was ill with pneumonia and would update himself on the status of the patent and relay that information to the Clients.

The Clients then filed a *pro se* Petition to Revive for which they paid a \$850.00 fee to the USPTO. In the Petition to Revive, the Clients wrote, *inter alia*, that Respondent lied to them for five years about working on their patent application, including lying about orders issued by the Office and fees paid to the Office and that they were shocked to learn that their patent was abandoned in 2012.

When the Clients visited Respondent's former office in Las Vegas, Nevada in April 2017, they found it empty. A neighboring tenant informed the Clients that the office had been empty since August 2016 and that others had come by looking for Respondent. As of October 30, 2017, Respondent had not returned the Clients' files, any unearned fees, or any of the fees or expenses that the Clients paid to Respondent.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes, for the following reasons, Respondent violated the USPTO Code of Professional Responsibility as alleged for misconduct occurring prior to May 3, 2013, and he violated the USPTO Rules of Professional Conduct as alleged for misconduct occurring on and after May 3, 2013.

I. Respondent's Violations under the USPTO Code of Professional Responsibility

- a. 37 C.F.R. § 10.23(a) proscribes engaging in disreputable or gross misconduct. Respondent, *inter alia*, forged USPTO documents and provided them to his Clients as though they were actual USPTO documents, including the forged November 2012 Office action. Respondent provided and misleading information to the Clients about the true status of their application, including concealing the abandonment of the '419 application. Respondent is therefore in violation of 37 C.F.R. § 10.23(a) of the USPTO Code of Professional Responsibility.
- b. 37 C.F.R. § 10.23(b)(4) proscribes engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent, *inter alia*, forged USPTO documents and provided them to his Clients as though they were actual USPTO documents, including the forged November 2012 Office action. Respondent provided and misleading information

to the Clients about the true status of their application, including concealing the abandonment of the '419 application. Respondent is therefore in violation of 37 C.F.R. § 10.23(b)(4) of the USPTO Code of Professional Responsibility.

- c. 37 C.F.R. § 10.77(c) proscribes neglecting a legal matter entrusted to the practitioner. Respondent failed to prosecute the Clients' '419 application; failed to notify the Clients of the March 29, 2012 non-final Office action; allowed the '419 application to become abandoned without the Clients' knowledge or consent; failed to notify the Clients that the '419 application had become abandoned on June 30, 2012; and failed to notify the Clients of the October 10, 2012 Notice of Abandonment. Respondent is therefore in violation of 37 C.F.R. § 10.77(c) of the USPTO Code of Professional Responsibility.
- d. 37 C.F.R. § 10.84(a)(3) proscribed intentionally prejudicing or damaging a Client during the course of a professional relationship. Respondent intentionally allowed the '419 application to become abandoned without the Clients' knowledge or consent by intentionally not filing a response to the March 29, 2012 non-final Office action, thereby requiring the Clients to file a petition to revive, *pro se* and at their own expense. Respondent also, *inter alia*, forged USPTO documents and provided them to his Clients as though they were actual USPTO documents, including the forged November 2012 Office action. Respondent provided and misleading information to the Clients about the true status of their application, including concealing the abandonment of the '419 application. Respondent is therefore in violation of 37 C.F.R. § 10.84(a)(3) of the USPTO Code of Professional Responsibility.

II. Respondent's Violations under the USPTO Rules of Professional Conduct

- a. 37 C.F.R. § 11.103 proscribes failing to act with reasonable diligence and promptness. Respondent allowed the '419 application to remain abandoned without the Clients' knowledge or consent. Respondent continued to not inform the Clients of the March 29, 2012 non-final Office action and/or respond to said Office action. Respondent continued not to notify the Clients that the '419 application was abandoned on June 30, 2012 and continued to not take action to revive the application. Respondent continued to not notify the Clients of the October 10, 2012 Notice of Abandonment and continued to not act to revive the application. Respondent is therefore in violation of 37 C.F.R. § 11.103 of the USPTO Rules of Professional Conduct.
- b. 37 C.F.R. § 11.104(a)(3) proscribes failing to keep a Client reasonably informed about the status of their matter. Respondent continued not to inform or advise his Clients of the March 29, 2012 non-final Office action or the October 10, 2012 Notice of Abandonment. Respondent is therefore in violation of 37 C.F.R. § 11.104(a)(3) of the USPTO Rules of Professional Conduct.
- c. 37 C.F.R. § 11.104(b) proscribes failing to explain a matter to the extent reasonably necessary to permit the Clients to make informed decisions regarding their representation. By continuing to not inform or advise the Clients of the March 29, 2012 non-final Office action or the October 10, 2012 Notice of Abandonment, Respondent violated 37 C.F.R. § 11.104(b) of the USPTO Rules of Professional Conduct.

- d. 37 C.F.R. § 11.804(c) proscribes engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent fabricated USPTO documents and provided them to the Clients. Respondent falsely reported non-existent conversations with USPTO employees to the Clients. Respondent collected funds from Clients for a Notice of Allowance, as well as fees, in an application Respondent knew to be abandoned and in which no patent was issued and failed to return those funds. Respondent provided false information to the Clients about the status of their patent application and misled the Clients as to the true status of their application. Respondent is therefore in violation of 37 C.F.R. § 11.804(c) of the USPTO Rules of Professional Conduct.
- e. 37 C.F.R. § 11.804(i) proscribes engaging in other conduct that adversely reflects on the practitioner's fitness to practice before the Office. By Respondent intentionally engaging in the acts and omissions set forth in the Findings of Fact, to the extent that those acts and omissions do not violate another provision of the USPTO, Respondent is in violation of 37 C.F.R. § 11.804(i) of the USPTO Rules of Professional Conduct.
- f. 37 C.F.R. § 11.115(d) proscribes failing to promptly deliver to the Clients any funds that the Clients are entitled to receive. Respondent failed to return the \$750 for an issue fee and attorney's fees paid by his Clients when the agreed-upon work was neither required nor completed. Respondent is therefore in violation of 37 C.F.R. § 11.115(d) of the USPTO Rules of Professional Conduct.
- g. 37 C.F.R. § 11.116(d) proscribes, upon termination of the practitioner-Client relationship, failing to refund any advance payment of fee or expenses that had not been earned or incurred. Respondent failed to refund any portion of the \$750 for an issue fee and attorney's fees paid by the Clients when the fees had not been earned or incurred. Respondent is therefore in violation of 37 C.F.R. § 11.116(d) of the USPTO Rules of Professional Conduct.
- h. 37 C.F.R. § 11.804(c) proscribes engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent collected funds from his Clients to obtain a patent that had not been allowed, as well as fees for doing so, in an application that was abandoned, and failed to return those funds. Respondent misled the Clients as to the true status of their application. Respondent is therefore in violation of 37 C.F.R. § 11.804(c) of the USPTO Rules of Professional Conduct.

SANCTIONS

Having found Respondent violated the USPTO Code of Professional Responsibility, and the USPTO Rules of professional conduct, the Court must determine an appropriate sanction. 37 C.F.R. § 11.54(b). Before sanctioning a practitioner, the Court must consider the following four factors:

- (1) whether the practitioner has violated a duty owed to the Client, to the public, to the legal system or to the profession;
- (2) whether the practitioner acted intentionally, knowingly, or negligently;

- (3) the amount of actual or potential injury caused by the practitioner's misconduct; and
- (4) the existence of any mitigating factors.

1. Respondent violated his duties to his Clients, the public, and the legal profession.

Respondent agreed to perform legal work and accepted money from the Clients to provide legal services but failed to do so. Respondent violated the fiduciary practitioner-Client relationships by taking his Clients' money, misrepresenting to the Clients the status of their application, neglecting the application, failing to communicate about the status of their patent application and utterly abandoning these Clients. Respondent violated the fiduciary practitioner-Client relationship by attempting to cover up his neglect, forging or fabricating USPTO documents, and lying to his Clients repeatedly about alleged conversations with USPTO employees. Respondent further violated this fiduciary relationship when he failed to explain the status of their patent application so that the Clients could make decisions about it and the representation itself.

Respondent violated duties he owed to the public by engaging in misconduct that decreased the public's confidence in the integrity and professionalism of the legal profession. Respondent's misconduct including, *inter alia*, forging or fabricating documents, stealing his Clients' funds and lying to his Clients, violated his duty to the public and to the legal profession. By failing to participate in these proceedings and failing to file an answer to the *Complaint*, Respondent imperiled the orderly functioning of the disciplinary process and flouted this Court's authority. Therefore, having repeatedly failed to adhere to his duties owed to his Clients, the public, and the legal profession, Respondent should receive a significant sanction.

2. Respondent acted knowingly and intentionally.

Respondent's acts and omissions were knowing and intentional. Respondent knowingly accepted the representation of the Clients, charged fees and was paid by the Clients to prepare and file their patent application, yet he neglected the application, failed to properly prosecute it and allowed the application to go abandoned. Respondent intentionally chose not to do the work he was hired to do. After a patent application had been abandoned, Respondent knowingly misrepresented the status of the application to the Client.

Respondent failed to communicate honestly with his Clients regarding critical information about the status and progress of their patent application. To conceal his misconduct, Respondent failed to advise the Clients about the status of their application, forged a document, and lied about conversations with the Office to the Clients. Respondent stole Client funds when he continued to charge fees for work never completed he failed to return those fees to the Clients.

Respondent purposefully ignored all communication from this Court and OED Counsel. Much of this correspondence could have had a significant effect on the patent application and is that which a reasonable practitioner would believe was, under the circumstances, correspondence about which the Client should have been notified. Therefore, Respondent's conscious disregard for his Clients and the OED appear to be knowledgeable and intentional acts that warrant severe sanctions.

3. Respondent's misconduct caused actual and potential injury.

Respondent's conduct caused actual injury to the Clients. The Clients prepaid the attorney's fees and filing fees totaling \$2,500.00 to Respondent to prosecute their patent application, yet he allowed the '419 application to go abandoned. The Clients paid an additional \$750 when Respondent lied and told the Clients that a Notice of Allowance was issued by the Office. Because Respondent failed to properly prosecute the Clients' patent application, the application went abandoned and the Clients had to revive the application *pro se* and pay an additional \$850 to the Office.

The Clients additionally may lose valuable intellectual property rights in the form of a shortened patent life as a result of the abandonment and revival of the application. The Clients also have been delayed from marketing and selling their product as a consequence of Respondent's abandonment and concealing that abandonment. Therefore, having caused the Clients actual and potential injury, Respondent should receive a significant sanction.

4. Aggravating and mitigating factors exist in this case.

The American Bar Association has promulgated a list of aggravating and mitigating factors for use in assessing attorney disciplinary sanctions. See American Bar Association Standards for Imposing Lawyer Sanctions (2005) (hereinafter, "Standards"). The standards have been referenced when determining the appropriate sanction to be imposed in a USPTO disciplinary proceeding. See, e.g., In re Lane, D2011-64 (USPTO February 8, 2012).

Standard § 9.22 identifies eleven aggravating factors, which, if they exist, warrant more severe sanctions. Seven are present in this case. Respondent acted with a dishonest or selfish motive when he engaged in a pattern of deceit and deception to string along the Clients while continuing to extract funds from them, while knowing that the '419 application was abandoned. Respondent's lies under oath further establish a dishonest and selfish motive. Respondent falsely certified that he communicated with the Clients about their intent to file a patent in another country when filing the Nonpublication Request. Respondent used the Nonpublication Request to block the Clients from monitoring their application *via* Public PAIR. Respondent's dishonest and selfish behavior is a weighty factor in aggravation.

Respondent's actions in the Clients' abandoned patent application constitute a pattern of misconduct over six years. Respondent consistently deceived the Clients by failing to explain and update them on the status of their application; neglecting the '419 application allowing it to go abandoned; forging and fabricating documents; repeatedly lying to the Clients about conversations with USPTO employees; stealing money from the Clients; and ignoring all communications from this Court and OED counsel. Given that the Court has found that Respondent has violated twelve rules through his misconduct throughout the Clients' patent application, Respondent has clearly committed multiple offenses in the context of a single disciplinary proceeding. Accordingly, the Court finds the aggravating factors of multiple violations and a pattern of misconduct exist.

As a registered practitioner for approximately twenty years, Respondent has substantial experience in the practice of law. Respondent's substantial experience in the practice of law constitutes an aggravating factor in the imposition of sanctions because Respondent should have known better than to engage in gross misconduct.

Respondent has failed to return any of the misappropriated funds to the Clients. Respondent has not attempted to turn over the Clients' file or to return the \$750.00 collected under the false pretense of issuing the patent after claiming to have received a Notice of Allowance. Respondent failed to repay the \$2,500.00 initially paid by the Clients to prosecute their patent after neglecting the application and allowing it to go abandoned, leaving the Clients without a pending patent application. Such misconduct demonstrates at least an indifference to make restitution. These aggravating factors support the imposition of a more severe sanction.

The OED Director argued that Respondent engaged in bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency by completely failing to participate in the disciplinary process, an aggravating factor. The OED Director alleges that Respondent intentionally failed to comply with rules or orders of the disciplinary agency because he did not file an answer to the *Complaint* or seek permission to file a late answer. However, the OED Director has not demonstrated, by clear and convincing evidence, that Respondent engaged in the bad faith obstruction of the disciplinary proceeding because there is no evidence that demonstrates that Respondent is aware of these current proceedings. Accordingly, the Court is not persuaded by the OED Directors argument regarding this aggravating factor.

The OED Director also claimed that Respondent has refused to acknowledge the wrongful nature of his conduct or show any remorse for his conduct in this manner by failing to participate in this disciplinary proceeding. However, the OED Director has not demonstrated this by clear and convincing evidence. Like the OED Director's assertion that Respondent engaged in bad faith obstruction of the disciplinary proceeding, the OED Director's claim here must be rejected because there is no indication that Respondent has received actual notice in this proceeding, thus it would be premature to determine that he refused to acknowledge the wrongful nature of his conduct or to show remorse.

Absence of a prior disciplinary record may establish a mitigating factor. In the approximately twenty years Respondent has been a registered practitioner, he has not been publicly disciplined. Respondent has, however, previously received a warning letter from the OED on June 28, 2010 after submitting five checks to the USPTO, totaling \$2,605.00, that were dishonored for insufficient funds. The Court does not find this sole mitigating factor to warrant less severe sanctions given the facts of this case.

Under the circumstances of this case, the requested sanction of exclusion is fair and appropriate because Respondent violated duties owed to his Clients, the public, and the legal profession; acted knowingly and intentionally causing significant injury to his Clients. In this matter, Respondent neglected the '419 application, allowing it to go abandoned, and failed to communicate the true status of the '419 application to his Clients. Respondent recurrently lied to the Clients when he forged or fabricated documents, claimed to have conversations with USPTO employees, and stole filing fees meant to be remitted to the USPTO. Respondent further ignored the requests of the USPTO and orders of this Court. Finally, Respondent has failed to participate in this disciplinary proceeding and the sole present mitigating factor is unpersuasive.

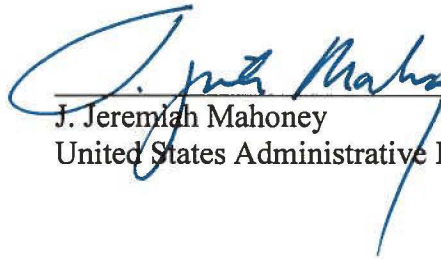
CONCLUSION

Because Respondent has failed to answer the *Complaint* or otherwise appear in this matter, Respondent is found in **DEFAULT**. Based on the facts thereby admitted, the Court finds Respondent has violated the USPTO Code of Professional Responsibility and the USPTO Rules of Professional Conduct, as alleged.

The foregoing facts establish that Respondent is no longer willing or able to capably represent Clients. Hence, his exclusion from practice before the Office in patent, trademark, and other non-patent matters is an appropriate and reasonable disciplinary sanction. Based upon the foregoing analysis of all four enumerated sanction factors, the Court concludes that Respondent's misconduct warrants the sanction of exclusion.

Accordingly, Respondent shall be **EXCLUDED** from practice before U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters.⁴

So **ORDERED**,



J. Jeremiah Mahoney
United States Administrative Law Judge

Notice of Required Actions by Respondent: Respondent is directed to 37 C.F.R. § 11.58 regarding responsibilities in cases of suspension or exclusion.

Notice of Appeal Rights: Within thirty (30) days of this initial decision, either party may file an appeal to the USPTO Director. 37 C.F.R. § 11.55(a).

⁴ An excluded practitioner is eligible to apply for reinstatement no earlier than at least five years from the effective date of the exclusion. *See* 37 C.F.R. § 11.60(b). If Respondent petitions for reinstatement, his reinstatement—if granted—may be conditioned, *inter alia*, upon restitution to the Clients in this matter.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION ON DEFAULT JUDGMENT**, issued by J. Jeremiah Mahoney, Administrative Law Judge, in D2017-25, were sent to the following parties on this 28th day of September 2018, in the manner indicated:


Cinthia Matos, Docket Clerk

VIA FIRST-CLASS MAIL

Robert R. Morishita
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