

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

In the Matter of:

DAOYOU TIM LIU,  
  
Respondent.

Proceeding No. D2022-03

August 9, 2022

**INITIAL DECISION ON DEFAULT JUDGMENT**

This matter arises from a disciplinary complaint filed by the Director for the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “the Office”) against Daoyou Tim Liu (“Respondent”) pursuant to 35 U.S.C. § 32 as implemented by 37 C.F.R. Part 11.<sup>1</sup> The OED Director filed a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction* (“Default Motion”) seeking a default judgment and an order excluding Respondent from practice before the Office.

**PROCEDURAL HISTORY**

On January 12, 2022, the OED Director filed a *Complaint and Notice of Proceedings under 35 U.S.C. § 32* (“Complaint”) against Respondent pursuant to 37 C.F.R. §§ 11.32 and 11.34, alleging violations of the USPTO Rules of Professional Conduct (37 C.F.R. §§ 11.101 *et seq.*) (hereinafter, “the Rules”). The *Complaint* stated that Respondent was required to file a written Answer with the Court within 30 days.

Also, on January 12, 2022, in accordance with 37 C.F.R. § 11.35(a)(2), the OED Director mailed the *Complaint* via certified and regular mail to two addresses associated with Respondent. The OED Director sent the *Complaint* to the initial address on file for Respondent in Sugar Land, Texas. The OED Director also sent the *Complaint* via certified mail to a Houston, Texas address that Respondent provided to OED during the disciplinary investigation. On January 15, 2022, Respondent, or his agent, signed for the *Complaint* sent to the Houston, Texas address as indicated by the return receipt postcard received by OED on January 19, 2022.

The Court issued the *Notice of Docketing* that ordered Respondent to file his Answer on or before February 11, 2022. Respondent did not file his Answer by the deadline. Because Respondent did not file a timely Answer, on February 17, 2022, the OED Director emailed Respondent seeking permission to send him the *Complaint* electronically. On Sunday, February 27, 2022, Respondent contacted counsel for the OED Director (“counsel”) by email asking that the correspondence be sent to both his tim.d.liu@gmail.com and [REDACTED] email

---

<sup>1</sup> Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development have been appointed by the U.S. Commerce Secretary and are authorized to hear cases brought by the U.S. Patent and Trademark Office.

addresses. On Monday, February 28, 2022, counsel used these two email addresses to send Respondent a copy of the *Complaint* and the Court's *Notice of Docketing*.

On June 9, 2022, the OED Director filed the *Motion for Default Judgment and Imposition of Sanction* ("Default Motion"). Pursuant to 37 C.F.R. § 11.43, Respondent had 21 days to respond to the OED Director's motion. Respondent did not file a response. By *Order* dated July 1, 2022, the Court required Respondent to file his Answer and show cause as to why his Answer was not timely filed. As of the date of this decision, Respondent has not filed an Answer to the *Complaint*, responded to the *Default Motion*, sought an extension of time to do so, or otherwise appeared in this matter. The Court has received no communication from or on behalf of Respondent.

### APPLICABLE LEGAL PRINCIPLES

**USPTO Disciplinary Proceedings.** 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, 1364 (Fed. Cir. 2001). This authority flows from 35 U.S.C. § 2(b)(2)(D), which empowers the USPTO to establish regulations governing patent practitioners' conduct before the Office, and 35 U.S.C. § 32, which empowers the USPTO to discipline a practitioner who is "shown to be incompetent or disreputable, or guilty of gross misconduct," or who violates the USPTO's regulations. The practitioner must receive notice and an opportunity for a hearing before such disciplinary action is taken. See 35 U.S.C. § 32. Disciplinary hearings are conducted in accordance with the USPTO's procedural rules at 37 C.F.R. part 11, subpart C, and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by a hearing officer appointed by the USPTO. See 37 C.F.R. §§ 11.39(a), 11.44. The OED Director has the burden of proving any alleged violations by clear and convincing evidence. See 37 C.F.R. § 11.49.

The USPTO has its own disciplinary rules governing practice before the Office. In 1985, the USPTO issued regulations based on the ABA Model Code of Professional Responsibility to govern attorney conduct and practice. See Practice Before the Patent and Trademark Office, 50 Fed. Reg. 5158 (Feb. 6, 1985) (Final Rule) (codified at 37 C.F.R. §§ 10.20-10.112). These rules set forth the USPTO Code of Professional Responsibility and "clarif[ied] and modernize[d] the rules relating to admission to practice and the conduct of disciplinary cases." Id. In May 2013, the USPTO replaced the USPTO Code with the Rules. See Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. 20180 (April 3, 2013) (Final Rule) (codified at 37 C.F.R. §§ 11.101-11.901). By updating its regulations, the USPTO sought to "provid[e] attorneys with consistent professional conduct standards, and large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules."<sup>2</sup> Id. at 20180.

**U.S. Counsel Rule.** Effective August 3, 2019, the USPTO amended its rules of practice to require that trademark applicants not domiciled within the United States be represented by an

---

<sup>2</sup> Thus, the USPTO Code, the Comments and Annotations to the ABA Model Rules, and disciplinary decisions and opinions issued by state boards are useful to understanding the USPTO Rules. See Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. at 20180.

attorney who is an active member in good standing of the bar of the highest court of any of the 50 states of the U.S., the District of Columbia, or any Commonwealth or territory of the U.S. (also known as the “U.S. Counsel Rule”). See 37 C.F.R. § 2.11; Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants, 84 Fed. Reg. 31498 (July 2, 2019). The purposes of the U.S. Counsel Rule include to “instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.” See id. Of most concern, the U.S. Counsel Rule is intended to address, *inter alia*, the rampant filing of suspicious specimens of use and unauthorized practice of trademark law (UPL) occurring frequently with trademark applications filed by or on behalf of foreign applicants. See “New U.S. Counsel rule: USPTO’s initiatives to ensure accuracy and integrity of the Trademark Register” (July 30, 2019), <https://www.uspto.gov/about-us/news-updates/op-ed-new-us-counsel-rule-usptos-initiatives-ensure-accuracy-and-integrity>. Therefore, the U.S. Counsel Rule impacts the specimens filed as a § 1(a)<sup>3</sup> trademark application, indicating the mark is currently in use in commerce.

Where the application is a § 1(a) application, the specimen must be filed with the application and be acceptable. Specifically, to allege use, USPTO trademark applications must include a specimen showing the applied-for mark as actually used in commerce for each international class of goods and services identified in the application or amendment. 15 U.S.C. § 1051(a)(1); 37 C.F.R. §§ 2.34(a)(1)(iv), 2.56(a); TMEP §§ 904, 904.07(a). The USPTO Trademark examination procedures explain what constitutes an acceptable specimen and how a registration may be refused because a specimen is not acceptable. Trademark Act Sections 1 and 45, 15 U.S.C. §§ 1051, 1127; 37 C.F.R. §§ 2.34(a)(1)(iv), 2.56(a); TMEP §§ 904, 904.03(g), 904.07(a).

**Signature Requirements for Trademark Applications.** Trademark applications contain declarations that are signed under penalty of perjury with false statements being subject to punishment under 18 U.S.C. § 1001. Signatories to declarations in trademark applications make specific representations regarding the applicants’ use of the mark in commerce and/or their intent to use the mark in commerce. The USPTO relies on such declarations in the course of examining trademark applications and issuing registrations. USPTO trademark signature rules require that all signatures be personally entered by the named signatory. See 37 C.F.R. §§ 2.193(a) and (c), and 37 C.F.R. § 11.18(a). Typing the electronic signature of another person is not a valid signature under USPTO rules. Id.

The following published guidance from the USPTO identified the proscription against any person other than the named signatory entering the electronic signature in trademark documents filed with the USPTO:

All documents must be personally signed. 37 C.F.R. §§ 2.193(a)(1), (c)(1), 11.18(a). The person(s) identified as the

---

<sup>3</sup> A § 1(a) application represents that the signatory believes the applicant is the owner of the mark; the mark is used in commerce as of the date of the application, and; the specimen shows the mark as it is currently being used in commerce. 15 U.S.C. § 1051(a).

signatory must manually enter the elements of the electronic signature. Another person (e.g., paralegal, legal assistant, or secretary) may not sign the name of a qualified practitioner or other authorized signatory. See In re Dermahose Inc., 82 USPQ2d 1793 (TTAB 2007); In re Cowan, 18 USPQ2d 1407 (Comm’r Pats. 1990). Just as signing the name of another person on paper does not serve as the signature of the person whose name is written, typing the electronic signature of another person is not a valid signature by that person.

Trademark Manual of Examining Procedure § 611.01(c) (Oct. 2018). The signature rules were published and available to Respondent.

**Signature Types for USPTO Applications.** The Trademark Electronic Application System (“TEAS”) is the USPTO’s electronic trademark filing and prosecution system. Trademark documents are electronically prepared, signed, and filed with the USPTO via TEAS. Those electronic documents include trademark applications, attendant declarations, or related electronic filing documents.

There are three methods for electronically signing trademark application documents via TEAS. The “DIRECT” signature is the default signature procedure. The DIRECT signature procedure is used where the originator and signatory of the document signs the electronic signature directly onto the form online via TEAS, shortly before the form is filed.

The two other available signature procedures are “ESIGN-ON” and “H SIGN.” For the ESIGN-ON procedure, a trademark document preparer is able to have a third party sign their electronic signature to trademark documents that will be filed with the Office. For the “H SIGN” procedure, an electronic version (*e.g.*, a PDF version) of the original handwritten pen-and-ink signature is submitted to the USPTO via TEAS. Unlike the typical use of the DIRECT signature procedure, the ESIGN-ON and H SIGN procedures allow a named signatory who is not located where the filer is located to sign a filing in compliance with the USPTO trademark signature rules.

The USPTO relies on 37 C.F.R. § 11.18 certification in the course of examining trademark applications and issuing registrations. Section 11.18 provides that the signatory of a document filed with the USPTO certifies that:

[t]o the best of the party’s knowledge, information and belief, *formed after an inquiry reasonable under the circumstances* (i) the paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; (ii) the other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (iii) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary

support after a reasonable opportunity for further investigation or discovery; and (iv) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

37 C.F.R. § 11.18(b)(2) (emphasis added).

The USPTO's Trademark Image Capture and Retrieval System ("TICRS") is an internal USPTO database. TICRS captures and records data, including the date and time when a document is created on TEAS and when a document is submitted to the USPTO via TEAS. TICRS also captures and records the signature procedures<sup>4</sup> used for signed documents filed with the USPTO via TEAS and the Internet Protocol ("IP") address of the computer used by the document preparer to access the TEAS system. Typically, when the DIRECT signature procedure is used, the internet protocol address ("IP address") captured by TICRS reflects the approximate geographic location (*e.g.*, city, state or province, and country) of the computer from which the trademark document was signed and submitted to the USPTO.

Additionally, the Trademark Electronic Search System ("TESS"), is the search engine available to the public that allows one to search the USPTO's database of registered trademarks and prior pending applications. TESS was available to Respondent to determine all of the trademark applications wherein he was listed as the attorney of record and named signatory.

**Burden of Proof.** The OED Director must prove alleged disciplinary violations by "clear and convincing evidence." 37 C.F.R. § 11.49; *In re Johnson*, Proceeding No. D2014-12 at 2 (USPTO Dec. 31, 2014)<sup>5</sup>. This standard "protect[s] particularly important interests . . . where there is a clear liberty interest at stake." *Johnson*, at 3 (quoting *Thomas v. Nicholson*, 423 F.3d 1279, 1283 (Fed. Cir. 2005)) (internal quotation marks omitted). "Clear and convincing evidence" requires a level of proof that falls "between a preponderance of the evidence and proof beyond a reasonable doubt." *Id.* (quoting *Addington v. Texas*, 441 U.S. 418, 424-25 (1979)) (internal quotation marks omitted). The evidence must be of such weight so as to "produce[] in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." *Id.* (quoting *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001)) (internal quotation marks omitted). "Evidence is clear if it is certain, unambiguous, and plain to the understanding, and it is convincing if it is reasonable and persuasive enough to cause the trier of facts to believe it." *Id.* (quoting *Foster v. AlliedSignal, Inc.*, 293 F.3d 1187, 1194 (10th Cir. 2002)) (internal quotation marks omitted).

**Consequences for Failure to Answer the Complaint.** The USPTO's procedural rules set forth the requirement for answering the *Complaint* and the consequences for failing to do 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). Also, in the *Notice of Docketing*, this Court warned Respondent of the same.

---

<sup>4</sup> The XML data stored at the USPTO for trademark filings made using the "DIRECT" signature method will show "<esignature-type> DIRECT".

<sup>5</sup> Available at: <https://go.usa.gov/x7x93>.

## FINDINGS OF FACT

Because Respondent failed to answer the *Complaint*, he is deemed to have admitted the allegations in the *Complaint*, which are set forth below as the Court's findings of fact.

Respondent is an attorney licensed to practice law in the State of Texas, since May 6, 2011. Although Respondent lives in Houston, Texas, he is also licensed to practice law in the State of California, since September 1, 2009.

Respondent's office is located in Houston, Texas. However, many of the electronic trademark documents filed with the USPTO were filed with his purported DIRECT signature from various geographic locations within seconds or minutes of one another, such as Hong Kong, China, San Jose, California, or San Francisco, California. TESS contains approximately 1,600 trademark applications with Respondent named as attorney of record and these filings were primarily made on behalf of foreign-domiciled applicants.

In an August 19, 2021 Request for Information and Evidence ("RFI"), OED inquired whether Respondent had personally reviewed and signed 1,400 of those trademark application documents in which he was identified as the attorney of record. In an October 18, 2021 email, Respondent acknowledged to OED that he filed "very few" of the 1,400 trademark applications containing his purported signature listed in the August 19, 2021 RFI.

TICRS data confirms Respondent's admission that he did not personally file the majority of the trademark application documents filed with the USPTO purportedly containing his electronic signature. The TICRS data shows that many of the electronic trademark application documents containing Respondent's purported signature were filed with the USPTO within minutes or seconds of one another from various geographical locations, indicating that Respondent did not personally enter his own electronic signature in those documents. Accordingly, the majority of the 1,400 trademark application documents containing Respondent's DIRECT electronic signature were signed by someone other than Respondent.

Despite being impermissibly signed and filed by someone other than Respondent, where he was the attorney of record, Respondent knew or should have known that these trademark application documents were being signed and filed with the Office. One of Respondent's email addresses is tim.d.liu@gmail.com. Of note, Respondent received and responded to emails from OED with that email address during the course of his disciplinary investigation. Respondent's tim.d.liu@gmail.com email address was used as the reply email address in at least seven trademark applications<sup>6</sup> filed with the USPTO wherein Respondent was listed as attorney of record and his DIRECT signature was signed to the trademark filing, but the IP address indicated the application was filed from a geolocation other than Texas - where Respondent maintains his law practice. TEAS automatically sends a filing receipt to the listed reply email address after the filing of any trademark application document. Due to his receiving the filing receipt by email at tim.d.liu@gmail.com, Respondent was aware of the filing of these applications that he did not actually sign, but took no steps to withdraw them or rectify the improper signatures. Therefore,

---

<sup>6</sup> The trademark applications are trademark serial Nos. 90/012,493; 90/034,128; 90/045,640; 90/048,106; 90/048,115; 90/055,576; 90/141,229.

Respondent directed or, at a minimum, allowed his signature to be signed by another individual to trademark applications and other trademark application documents that were filed with the USPTO.

Those trademark applications and other application documents, wherein Respondent was the attorney of record and his email address, tim.d.liu@gmail.com, was listed as a reply email, also contained a reply email address of zxy\_ip@outlook.com. The reply email address zxy\_ip@outlook.com was also contained within trademark application filings associated with liu.trademarks@gmail.com, a Gmail account similar to Respondent’s primary email address (tim.d.liu@gmail.com). There are at least 15 trademark applications and associated application filings<sup>7</sup> containing these reply email addresses used together, liu.trademarks@gmail.com and zxy\_ip@outlook.com. Respondent is listed as the attorney of record for these 15 trademark application filings and they contain his purported signature. However, these trademark application filings are filed from geolocations other than Texas, namely Hong Kong and California, as reflected in the IP addresses. Therefore, the trademark application filings wherein Respondent is the attorney of record, contain his DIRECT signature, and contain a reply email address of liu.trademarks@gmail.com and zxy\_ip@outlook.com are trademark application filings where Respondent either allowed or directed his signature to be signed by another on trademark application documents filed with the USPTO.

The remaining trademark applications and application documents signed with Respondent’s purported DIRECT signature were also filed from various locations including Hong Kong, California, and Washington State, as indicated by the IP addresses. Accordingly, the majority of the 1,400 trademark application documents containing Respondent’s DIRECT electronic signature were signed by someone other than Respondent.

The following chart provides a sample of TICRS data from sets of trademark application documents filed close in time to one another from various geographical locations bearing Respondent’s purported DIRECT signature:

<b>Application No.</b>	<b>Filing Type</b>	<b>Date &amp; Time</b>	<b>IP Address</b>
90/449,947	Application	Jan. 6, 2021 02:24:22 ET	54.219.86.236 San Francisco, CA
90/450,084	Application	Jan. 6, 2021 07:02:10 ET	66.42.75.184 Seattle, WA

---

<sup>7</sup> The trademark applications are trademark serial Nos. 90/055,576; 90/055,617; 90/055,638; 90/055,684; 90/120,429; 90/120,651; 90/167,466; 90/190,886; 90/212,490; 90/219,175; 90/219,250; 90/239,259; 90/239,301; 90/239,308; 90/305,979.

Application No.	Filing Type	Date & Time	IP Address
90/453,815	Application	Jan. 7, 2021 20:30:26 ET	54.219.86.236 San Francisco, CA
90/454,012	Application	Jan. 7, 2021 22:15:49 ET	66.42.75.184 Seattle, WA

Application No.	Filing Type	Date & Time	IP Address
90/454,585	Application	Jan. 8, 2021 04:32:23 ET	54.219.86.236 San Francisco, CA
90/454,645	Application	Jan. 8, 2021 05:23:24 ET	66.42.75.184 Seattle, WA

Application No.	Filing Type	Date & Time	IP Address
90/460,299	Application	Jan. 12, 2021 04:29:25 ET	54.219.86.236 San Francisco, CA
90/460,345	Application	Jan. 12, 2021 05:11:05 ET	66.42.75.184 Seattle, WA

The January 6 – 8 and 12, 2021 filings in the chart above apparently would have required Respondent to travel back and forth between San Francisco and Seattle five times and submit the filings from these different locations, at least once within less than an hour of each other, a patently dubious and unlikely undertaking. Additionally, on December 31, 2020, ninety-six (96) trademark filings with Respondent listed as the signatory and attorney of record were filed over an 18-hour period. Each of the 96 filings was submitted to the USPTO under Respondent’s purported DIRECT signature. These 96 single-day filings were made from various geographic locations, including San Francisco and Seattle. Respondent could not have reasonably reviewed and signed all of the trademark application documents filed during this time period. Therefore, Respondent permitted others to electronically enter his signature to trademark application documents, listed in the four charts above, that were then filed with the USPTO in matters where he is the attorney of record in violation of the trademark signature rules.

Based on, *inter alia*, the rapid filing of the trademark application documents and the lack of Respondent’s own signature in the filings, Respondent did not undertake a reasonable and adequate inquiry to determine whether the specimens for a mark submitted with a § 1(a) trademark application were demonstrative of goods and/or services that were actually being used in commerce, in violation of the USPTO rules, in particular 37 C.F.R. § 11.18. The trademark examiners assigned to trademark applications in which Respondent was the attorney of record

issued Office actions questioning the authenticity of specimens and whether each was in fact currently being used in commerce consistent with the § 1(a) requirements for trademark applications. These trademark examiners assigned to trademark applications containing Respondent’s purported signature and in which Respondent was the attorney of record issued Office actions refusing trademark registrations based on faulty specimens. The following chart provides examples of Office actions identifying specimen problems:

<b>Trademark Application Number</b>	<b>Mark</b>	<b>Office Action date</b>	<b>Mark reason for refusal</b>
90/045,640	Pochaler	10/21/2020	Specimen refusal; does not show use in commerce; the screenshot from Amazon does not provide a means to purchase the goods. The website shows the goods are unavailable. Therefore, the website does not show the goods currently in use in commerce.
90/055,684	ZKMotion	11/04/2020	Specimen refusal; does not show use in commerce; mark on specimen does not match the stylized mark in drawing.
90/219,250	XQIQX	02/18/2021	Specimen refusal; does not show use in commerce; 3 specimens purchase fulfillments only, 1 specimen screenshot of web page only.
90/365,406	Ofoxouq	06/02/2021	Specimen refusal; specimen appears to consist of a mockup of a depiction of the mark on a webpage and does not show the applied-for mark as actually used in commerce; an attempt to look for the webpage and to review the goods on the website did not provide the webpage at issue; an internet search also did not reveal the use of the mark on the website at issue.
90/365,469	Pwoeigt	06/01/2021	Specimen refusal; specimen appears to consist of a mockup of a depiction of the mark on a webpage and does not show the applied-for mark as actually used in commerce.

<b>Trademark Application Number</b>	<b>Mark</b>	<b>Office Action date</b>	<b>Mark reason for refusal</b>
90/416,485	Nlfdbfsh	06/25/2021	Specimen refusal; a mockup of a depiction of the mark on the goods or their packaging and does not show the applied-for mark as actually used in commerce; the specimen shows a notebook but none of the applied-for services is notebooks or journals.
90/239,259	YD-KY-TG	02/18/2021	Specimen refusal; webpage specimen appears to describe insulated drinkware, not any of the identified goods; refused because the specimen appears to consist of a digitally created or altered image or a mockup of a depiction of the mark on the goods or their packaging and does not show the applied-for mark as actually used in commerce
90/429,541	Hasinct	07/04/2021	Specimen refusal; registration is refused because the specimen appears to consist of a digitally created or altered image or a mockup of a depiction of the mark on the goods or their packaging and does not show the applied-for mark as actually used in commerce.
90517178	ATAefr	6/05/2021	Specimen refusal; registration is refused because the specimen appears to consist of a digitally created or altered image or a mockup of a depiction of the mark on the goods or their packaging and does not show the applied-for mark as actually used in commerce.
90/519,316	GeoSweet	06/28/2021	Specimen refusal; registration is refused because the specimen appears to consist of a digitally created or altered image or a mockup of a depiction of the mark on the goods or their packaging and does not show the applied-for mark as actually used in commerce.

Therefore, Respondent violated the rules pertaining to trademark application specimens by not undertaking an adequate and reasonable inquiry as to whether the specimens were in fact

being used in commerce, but nonetheless authorizing the § 1(a) trademark applications containing impermissible specimens and allowing them to be filed in applications wherein he was the attorney of record and contained his purported signature. See Trademark Manual of Examining Procedure (“TMEP”) § 904.

In the August 19, 2021, Request for Information and Evidence Under 37 C.F.R. § 11.22 (“RFI”), sent to Respondent, OED explained to him that he had an ethical obligation to inform the USPTO of any false signatures on trademark application documents filed with the Office. Despite being informed by OED of his ethical obligation to inform the USPTO (Trademark Operations) of false signatures in trademark application documents, in which he is listed as attorney of record, Respondent failed to do so.

I. Respondent failed to respond to Lawfully Issued Requests for Information and Evidence (“RFI”) and failed to cooperate with an OED Investigation

Respondent failed to respond to OED’s lawfully issued RFI and failed to cooperate with OED’s investigation. As a result, these omissions amounted to additional rule violations. On August 19, 2021, OED mailed the first RFI to Respondent’s 37 C.F.R. § 11.11 address of record in Sugar Land, Texas via certified mail and regular first-class mail. The August 19, 2021 RFI was lawfully issued to Respondent and set a response deadline of September 19, 2021. On August 31, 2021, OED received the return certified mail receipt showing that Respondent, or his agent, received the RFI on August 25, 2021. Respondent did not respond to the RFI by the September 19, 2021 deadline.

Having not received a response from Respondent, OED spoke directly with Respondent via telephone on September 21, 2021. During the call, Respondent advised OED that he no longer lived at the Sugar Land, Texas address and provided OED with an address in Houston, Texas, where he received mail. OED asked Respondent to update his address with the Office consistent with the requirements of 37 C.F.R. § 11.11. Yet, despite being required by the rule to update his § 11.11 mailing address, and Respondent telling OED that he would update his address, as of the filing of the Complaint, Respondent had not updated his address with the Office.

On September 24, 2021, OED mailed Respondent a Lack of Response Notification letter (“Lack of Response letter”) and a copy of the RFI to Respondent’s Houston, Texas address and to his § 11.11 address of record in Sugar Land, Texas. Then on October 4, 2021, OED received a certified mail receipt signed by an agent at the address of record in Sugar Land, Texas, demonstrating the receipt of the Lack of Response letter on September 29, 2021. Also, on October 4, 2021, OED received a certified mail receipt signed by Respondent, the addressee, at the Houston, Texas address, demonstrating that he received the Lack of Response letter on September 30, 2021. The Lack of Response letter set a response due date of October 1, 2021.

Having not heard from Respondent by the October 1, 2021 due date, OED called Respondent on October 4, 2021. During the October 4, 2021 telephone call, Respondent informed OED that he had received the Lack of Response letter. Respondent also informed OED that he was attempting to gather some of the documents requested by OED from his office in

China and requested a fourteen (14) day extension of time to gather the documents. He represented that the additional time would allow him to provide a thorough response to the RFI. OED granted Respondent's request for an extension of time so that he could provide a thorough response to the RFI and, on October 6, 2021, Respondent and the OED Director signed a 14-day tolling agreement providing Respondent with an extension of time until October 15, 2021, in which to answer the RFI.

On October 18, 2021, Respondent emailed OED a three-sentence response stating that: (1) he had only filed "very few" of the trademark filings identified in the RFI; (2) unauthorized filings came out of China or were done by a former client; and (3) he would compile a list of unauthorized filings. Respondent, however, did not identify the trademark documents he had filed, nor did he identify what filings were unauthorized or the name of the former client.

That same day, OED called Respondent to discuss his email response. During the telephone call, OED again emphasized that a complete response to the RFI was needed. Respondent represented to OED that he would provide a list of the unauthorized trademark filings by "tomorrow," October 19, 2021. The OED also requested that Respondent participate in a telephone interview regarding his trademark filings and standard operating procedures. Respondent agreed to participate in the telephone interview and stated that he had open availability the first week of November (2021).

After the termination of the call, on October 18, 2021, OED immediately followed up with an email reminding Respondent that OED must receive a response to the RFI, and setting the agreed upon telephone interview for November 3, 2021. Respondent did not respond to OED's October 18, 2021 follow-up email. He did not participate in the November 3, 2021 telephone interview or attempt to reschedule it. In fact, after the October 18, 2021 telephone call, Respondent ceased all communication with OED.

Respondent knowingly failed to respond fully to OED's lawfully issued RFI, despite informing OED that he would respond and provide both a list of the trademark applications that he claimed he did not file and produce the requested documents, including those he claimed he was waiting to receive from his China office.

## **CONCLUSIONS OF LAW**

Based upon the foregoing findings of fact, the Court concludes that Respondent violated the following Rules, for the following reasons.

1. 37 C.F.R. § 11.103, which provides that a practitioner "shall act with reasonable diligence and promptness in representing a client." Respondent violated this rule by failing to take reasonable steps to ensure that Respondent's clients' trademark filings were signed in accordance with the USPTO trademark signature rules. In particular, Respondent did not personally enter the keystrokes comprising his electronic signature for trademark documents on which he was a named signatory, and instead: (1) directed another person to enter the keystrokes comprising his electronic signature thereon; (2) otherwise allowed or consented to another person doing so; and/or (3)

failed to take reasonable steps to ensure that Respondent's clients' trademark filings were signed in accordance with USPTO trademark signature rules;

Respondent further violated § 11.103 by not having an adequate review process or procedure for reviewing applications prior to them being signed and filed with the USPTO, and not making an inquiry to determine: (1) whether the application was properly to be filed as a § 1(a) trademark application (actual use in commerce) or a § 1(b) trademark application (intent to use); and/or (2) whether the specimen for a mark submitted with § 1(a) applications for goods and/or services was a true example of how the mark is used in commerce with such good(s) and/or service(s);

Respondent also violated § 11.103 by not taking reasonable steps to ensure that Respondent's clients' trademark filings were reviewed and filed in accordance with the U.S. Counsel Rule thus ensuring (1) increased compliance with U.S. trademark law and USPTO regulations, (2) improved accuracy of trademark submissions to the USPTO, and (3) that the integrity of the U.S. trademark register is safeguarded.

2. 37 C.F.R. § 11.303(a)(1), which provides that a practitioner "shall not knowingly make a false statement of fact or law to a court or fail to correct a false statement of material fact or law previously made to a court." Respondent violated this rule by allowing another individual(s) to sign his name on trademark documents filed with the USPTO where Respondent was the named signatory on the document and/or the attorney of record for the trademark applicant with knowledge that the USPTO would rely on such trademark documents in examining applications and issuing registrations.

Respondent further violated § 11.303(a)(1) when he failed to correct and inform the USPTO (Trademark Operations) about the faulty trademark application documents wherein he was listed as attorney of record, did not file those trademark application documents, and did not enter his own electronic signature.

3. 37 C.F.R. § 11.303(a)(3), which provides that a practitioner "shall not knowingly offer evidence that the practitioner knows to be false . . . if a practitioner has offered material evidence and the practitioner comes to know of its falsity, the practitioner shall take reasonable remedial measures, including, if necessary, disclosure to the court." Respondent violated this rule by allowing another individual(s) to sign his name on trademark documents, including declarations, filed with the USPTO where Respondent was the named signatory on the document and/or the attorney of record for the trademark applicant.

Respondent further violated § 11.303(a)(3) when he failed to take reasonable remedial measures, by not alerting the USPTO (Trademark Operations) about the faulty trademark application documents wherein he was listed as attorney of record, did not file those trademark application documents, and did not enter his own electronic signature.

4. 37 C.F.R. § 11.801(b), which provides that “a practitioner in connection with a disciplinary . . . matter, shall not . . . fail to cooperate with the Office of Enrollment and Discipline in an investigation of a matter before it.” Respondent violated this rule by evading meaningful communication with OED, failing to substantively respond to OED’s August 19, 2021 RFI, Lack of Response Notice, and numerous emails sent to the email address that Respondent had used to communicate with OED after being afforded ample time and opportunity to do so, and after representing that he would cooperate.
5. 37 C.F.R. § 11.804(c), which provides that “it is professional misconduct for a practitioner to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Respondent violated this rule by allowing individual(s) to sign his name on trademark documents and file those documents with the USPTO where Respondent was the named signatory on the document and the attorney of record for the trademark applicant.  
He further violated § 11.804(c) by not alerting the USPTO (Trademark Operations) about the faulty trademark application documents wherein he was listed as attorney of record, did not file those trademark applications, and did not enter his own electronic signature.
6. 37 C.F.R. § 11.804(d), which provides that “it is professional misconduct for a practitioner to engage in conduct that is prejudicial to the administration of justice.” Respondent violated this rule by allowing another individual(s) to sign his name on trademark documents and filed those documents with the USPTO where Respondent was the named signatory on the document and/or the attorney of record for the trademark applicant.

Respondent further violated § 11.804(d) by allowing § 1(a) trademark applications to be filed with the USPTO where he did not make an inquiry as to whether the specimen for a mark submitted for goods and/or services was a true example of how the mark is used in commerce with such good(s) and/or service(s).

Respondent also violated § 11.804(d) by failing to notify OED within 30 days of a change of mailing address as required by 37 C.F.R. § 11.11, and/or by failing to substantively respond to OED’s numerous communications regarding the August 19, 2021 RFI after being afforded ample time and opportunity to do so; and, by informing OED that he would respond to their communications, but did not do so.

Based upon Respondent’s admissions resulting from his failure to answer the *Complaint*, the Court finds Respondent has violated the USPTO disciplinary rules as alleged.

### SANCTIONS

The OED Director asked the Court to sanction Respondent by entering an order excluding him from practice before USPTO in patent, trademark, and other non-patent matters. The primary purpose of legal discipline is not to punish, but rather “to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are

unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.” In re Brufsky, Proceeding No. D2013-18 (USPTO June 23, 2014)<sup>8</sup> at 8 (citing Matter of Chastain, 532 S.E.2d 264, 267 (S.C. 2000)).

In determining an appropriate sanction, USPTO regulations require this Court to consider the following four factors: (1) whether the practitioner has violated a duty owed to a client, the public, the legal system, or the profession; (2) whether the practitioner acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the practitioner’s conduct; and (4) the existence of any aggravating or mitigating factors. See 37 C.F.R. § 11.54(b). See also In re Morishita, Proceeding No. D2017-25 (USPTO Sept. 28, 2018)<sup>9</sup>; In re Lau, Proceeding No. D2016-37 (USPTO May 1, 2017)<sup>10</sup>; and In re Schwedler, Proceeding No. D2015-38 (USPTO Mar. 21, 2016)<sup>11</sup>.

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

Respondent violated six provisions of the Rules impacting the duties he owed to his clients, the public, and the legal System. His first violation occurred when he failed to act with diligence in representing his clients. By directing or allowing others to sign his name to trademark application documents, including declarations, he knowingly made false statements to the USPTO. He also made false representations by allowing § 1(a) trademark applications to be filed with the USPTO where he did not make an inquiry as to whether the specimen for a mark submitted for goods and/or services was a true example of how the mark is used in commerce with such good(s) and/or service(s). He allowed misrepresentations, such as false signatures, to remain on the trademark register by not taking remedial measures by, for example, disclosing the false signatures to Trademark Operations. He engaged in conduct prejudicial to the administration of justice by making these misrepresentations to the Office and failing to cooperate with OED’s investigation. As a result, Respondent’s misconduct violated duties owed to his clients, the public, and the legal system.

Respondent failed to act with diligence when he did not take reasonable steps to ensure that his clients’ trademark filings were signed in accordance with the USPTO signature rules. False signatures on trademark application documents have caused important trademark rights to be lost. See In re Dermahose Inc., *supra*; In re Cowan, *supra*. A false signature on trademark documents, including declarations, not only violates the trademark signature rules, but also endangers the mark both before and after registration. As a result, Respondent has clearly violated the fiduciary practitioner-client relationship, which involves the most important ethical duty. See People v. Rhodes, 107 P.3d 1177, 1183 (Colo. 2005) (“[T]he most important duty [respondent] violated was that owed to his clients. The clients sought his counsel, trusted his

---

<sup>8</sup> Available at: <https://go.usa.gov/x7x9Y>.

<sup>9</sup> Available at: <https://go.usa.gov/x7x94>.

<sup>10</sup> Available at: <https://go.usa.gov/x7x92>.

<sup>11</sup> Available at: <https://go.usa.gov/x7x9T>.

judgment, and expected that he would handle their affairs[.] Respondent’s failure to act with integrity when dealing with client property was egregious.”).

Respondent further violated the duties he owed to his clients by not complying with the U.S. Counsel Rule as it pertains to both the USPTO signatures rules and to filing proper specimens for trademark filings made on behalf of his clients. In addition to the false signature, Respondent did not act with diligence when he failed to review or have a procedure for determining whether the specimen submitted with the client’s trademark application was a true example of the goods or services actually being used in commerce. Practitioners have been disciplined for failing to comply with the U.S. Counsel rule that includes diligently reviewing trademark specimens filed with the Office and proper signatures. See, e.g., In re Li, Proceeding No. D2021-16 (USPTO Oct. 7, 2021)<sup>12</sup> and In re Reddy, Proceeding No. D2021-13 (USPTO Sep. 9, 2021)<sup>13</sup>.

Respondent violated duties owed to the public when he failed to observe the USPTO’s laws and rules of practice. Congress bestowed the USPTO with plenary authority to govern the conduct of agents, attorneys, and other individuals that represent applicants before the Office. See 35 U.S.C. § 2(b)(2)(D). Pursuant to that authority, the USPTO established the USPTO Code of Professional Responsibility and the Rules, which became effective May 3, 2013. See 37 C.F.R. §§ 11.01 through 11.901. When Respondent violated six of the Rules, he violated duties he owed to the public, while also failing in the duties he owed to the legal profession and the USPTO.

He further violated his duty to the legal profession when he failed to cooperate with OED’s disciplinary investigation. Despite assuring OED that he would update his § 11.11 address, thoroughly respond to the RFI, provide the requested documents, and participate in phone interview, Respondent ignored those assurances and never did any of those things. Respondent undermined the public’s confidence in trademark practitioners by not conducting himself with integrity and professionalism. See In re Lau, supra (practitioner violated duties owed to patent bar and decreased confidence in patent practitioners); see also In re Muhammad, supra<sup>14</sup> (practitioner excluded upon default for, *inter alia*, not filing an Answer to the Complaint, and failing to cooperate with OED, including expressly informing OED twice in emails that he would file a response to the RFIs and not doing so).

## 2. Respondent Acted Knowingly.

Evaluation of a lawyer’s mental state, or *mens rea*, requires a determination as to whether, at the time of the misconduct, the lawyer acted intentionally, knowingly, or negligently. These three mental states address the degree of the lawyer’s culpability for disciplinary purposes. See Standards § 3.0; see also, e.g., In re Phillips, 244 P.3d 549, 555 (Ariz. 2010) (lawyer’s mental state at the time of a violation is important, as it affects the appropriate discipline imposed; “[i]ntentional or knowing conduct is sanctioned more severely than negligent conduct

---

<sup>12</sup> Available at: <https://go.usa.gov/xJXx9>.

<sup>13</sup> Available at: <https://go.usa.gov/xJXxy>.

<sup>14</sup> Available at: <https://go.usa.gov/xJcQu>.

because it threatens more harm”); People v. Varallo, 913 P.2d 1, \*7 (Colo. 1996) (lawyer’s mental state is decisive element in determining level of discipline). Intent is the most culpable mental state and is defined as when a practitioner “acts with conscious objective or purpose to accomplish a particular result.” STANDARDS at pg. xix. Knowing conduct occurs when a practitioner “acts with conscious awareness of the nature or attendant circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result.” Id. Respondent’s acts and omissions were knowing.

Respondent allowed others to sign his electronic signature to trademark application documents and to file those documents with the Office. Email addresses with variations of Respondent’s name are found in trademark application documents and those email addresses are listed as the email addresses receiving the filing receipt for that filed document where Respondent is listed as the attorney of record. Therefore, Respondent received the filing receipt for the trademark application documents that were signed with his DIRECT signature from various geographic locations, other than Houston, Texas.

Respondent communicated with counsel for the OED Director, via email, that his regular trademark filing email address is tim.d.liu@gmail.com. That email address was used as the correspondence email address and the filing receipt email address in trademark applications filed with the USPTO, wherein Respondent was the attorney of record. These applications contained his purported DIRECT signature, but the IP address indicated the application was signed and filed from a geolocation other than Texas.<sup>15</sup> Because Respondent’s email address was listed as the contact email for trademark applications and also as the email address for the filing receipts, Respondent knowingly allowed others to sign his signature to trademark documents filed with the Office.

Respondent also intentionally and knowingly failed to cooperate with OED’s investigation. Respondent received, at his Houston, Texas address, the Lack of Response letter containing the RFI. Respondent admitted to OED that he had received the correspondence. He also represented to OED that he would provide a thorough response to the RFI. He never did so. Respondent also agreed to participate in a phone interview with OED, but failed to attend.

Other practitioners have been excluded after they knowingly and intentionally attempted to frustrate OED’s investigation. See e.g., In re Ho, Proceeding No. D2009-04 (USPTO Jan. 30, 2009)<sup>16</sup> at 8 (initial decision on default excluding practitioner who, *inter alia*, “knowingly failed to provide information requested by OED and intentionally failed to cooperate with OED’s investigation.”); In re Glazer, Proceeding No. D2018-34 (USPTO Mar. 4, 2020)<sup>17</sup> at 5 (initial decision excluding practitioner whose acts were “intentional and knowing”). Respondent

---

<sup>15</sup> For example the trademark applications listed in the *Complaint* containing the email address tim.d.liu@gmail.com (confirmed by Respondent as his email address) were DIRECT signed from locations other than Houston, Texas: 90/012,493 – DIRECT sign from Hong Kong; 90/034,128 – DIRECT sign from Hong Kong; 90/045,640 – DIRECT sign from Hong Kong; 90/048,106 – DIRECT sign from Hong Kong; 90/048,115 – DIRECT sign from Hong Kong; 90/141,229 – DIRECT sign from San Mateo, California.

<sup>16</sup> Available at: <https://go.usa.gov/xsR42>.

<sup>17</sup> Available at: <https://go.usa.gov/xsR4W>.

similarly violated these Rules. His intentional attempts to avoid and circumvent the OED disciplinary investigation reflects serious misconduct in violation of the Rules.

### 3. The Potential Injuries are Significant

Respondent's conduct caused significant potential injury. See In re Fuess, Proceeding No. D2015-08 (USPTO July 21, 2017)<sup>18</sup> at 21 (“[t]he harm from the violation need not be actual, only potential”) (citing In re Claussen, 909 P.2d 862, 872 (Ore. 1996)). More than 1,400 trademark application documents containing fraudulent signatures were filed with the USPTO, and those clients' trademark applications or registered marks are in jeopardy of having their applications or registrations cancelled. See, e.g., In re Mar, supra, at 24 (“if a competitor seeks to use the trademark, the competitor can have the trademark cancelled based on the false signatures.”). Respondent's clients could potentially lose the trademark protection that they thought they had paid Respondent to obtain for them.

Similarly, because Respondent has failed to, *inter alia*, take reasonable remedial measures to disclose the impermissibly signed documents to the USPTO, the trademark registry has numerous applications and registrations that were signed in violation of U.S. federal law and USPTO regulations. Respondent's conduct thereby adversely impacts the integrity of the trademark registry on which the public relies when deciding whether to seek and on which the USPTO as a court relies when deciding whether to bestow important intellectual property rights. Having caused multiple clients, the public, and the USPTO significant potential injuries, Respondent should receive a significant sanction.

### 4. Aggravating and Mitigating Factors

The STANDARDS, published by the American Bar Association, set forth aggravating and mitigating factors for the Court to consider in determining an appropriate sanction. The OED Director asserts that, of the potential mitigating factors identified in the STANDARDS, the sole mitigating factor present here is the “absence of a prior disciplinary record.” See STANDARDS § 9.32. By contrast, the OED Director contends that the following aggravating factors warrant a more severe sanction in this case: a dishonest or selfish motive; a pattern of misconduct; multiple violations; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of OED; submission of false evidence, false statements, or other deceptive practices during the disciplinary proceeding; and substantial experience in the practice of law. Id. § 9.22.

#### a. Four Aggravating Factors are Present

Respondent had a selfish motive in that he sought to profit from a dishonest and improper practice of allowing others to electronically sign his name to trademark application documents that were then filed with the USPTO. See STANDARDS § 9.22(b). Respondent also displayed a dishonest and selfish motive when he sought to profit by allowing § 1(a) trademark applications to be filed with the USPTO where he did not make an inquiry as to whether the

---

<sup>18</sup> Available at: <https://go.usa.gov/x63dC>.

specimen for a mark submitted for goods and/or services was a true example of how the mark is used in commerce with such good(s) and/or service(s).

Respondent engaged in a pattern of misconduct with multiple offenses. See STANDARDS § 9.22(c)-(d). For example, there are at least 1,400 trademark application filings that contain faulty signatures. Respondent was directly connected to no less than seven of these trademarks, which used his primary email for return receipts. Additionally, Respondent displayed a pattern of misconduct with multiple offenses when he violated the rules by engaging in a repeated pattern of failing to ensure that proper specimens were filed in trademark applications wherein he was the attorney of record.

Another pattern of misconduct and multiple offenses occurred during OED's disciplinary investigation. Despite numerous requests from OED, Respondent repeatedly failed to respond in a substantive matter to OED's RFI and Lack of Response letter. See *In re Iussa*, *supra* (pattern of misconduct where practitioner repeatedly failed to exercise diligence and promptness, communicate with client, and respond to OED's requests for information and evidence). He also repeatedly assured OED that he would provide a complete response to the RFI and Lack of Response letter but failed to do so.

These patterns of misconduct along with multiple offenses demonstrate serious misconduct worthy of a heightened sanction. See *In re Stevenson*, Proceeding No. D2019-12 at 14 (USPTO December 13, 2019)<sup>19</sup> ("repeated instances of similar misconduct"); see also *In re Flindt*, Proceeding No. D2016-04 (Aug. 4, 2017)<sup>20</sup> (practitioner committed "multiple offenses" that violated six separate provisions of the Rules); *In re Fuess*, *supra* (practitioner abandoned multiple applications and violated multiple Rules). For these reasons, Respondent deserves a more significant sanction.

The fourth aggravating factor is "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency." See STANDARDS § 9.22(e); *In re Mar*, *supra* at 26 (practitioner demonstrated obstruction of disciplinary proceeding by, *inter alia*, "fail[ing] to participate in the disciplinary process once the *Complaint* was filed.").

During OED's investigation, Respondent spoke to OED's attorney investigator over the phone three times. Each time they discussed the need for Respondent to thoroughly respond to the August 19, 2021 RFI and the September 24, 2021 Lack of Response letter - that also contained a copy of the RFI. Respondent repeatedly told OED that he would provide a thorough response, even entering into a tolling agreement giving him an extension of time to provide the response. Yet, he never provided a complete response. He also agreed to a phone interview, yet did not attend. Thus, this misconduct amounts to "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules," that being § 11.801(b).

---

<sup>19</sup> Available at: <https://go.usa.gov/x6vjS>.

<sup>20</sup> Available at: <https://go.usa.gov/x63dK>.

Respondent's misconduct has also been ongoing because during this proceeding Respondent has ignored the *Complaint* and this Court's order to file an Answer. Thus, this serves as further aggravation; whereby, Respondent deserves a more severe sanction. See *In re Morishita, supra*; *In re Lau, supra*; *In re Schwedler, supra*; see also *In re Kantor*, 850 A.2d 473, 477 (N.J. 2004) ("An attorney who declines to appear before this Court to explain his unprofessional conduct [...] openly displays his unfitness to continue to practice law."); *People v. Barbieri*, 61 P.3d. 488, 495 (Colo. O.P.D.J. 2000) ("In disciplinary matters involving an attorney's conduct, compliance with unchallenged orders issued by the disciplinary body is not elective; it is mandatory. Failure to do so, almost invariably, will inure substantially enhanced discipline."); *Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Ramey*, 639 N.W.2d 243, 246 (Iowa 2002) (attorney's "failure to respond to this attorney disciplinary proceeding suggests an overall attitude of disrespect and disregard for this profession."). Respondent's bad faith obstruction of OED's disciplinary proceeding, ignoring the *Complaint*, and this Court's orders warrant a more severe sanction.

b. One mitigating factor

In terms of the mitigating factors, Respondent has no prior disciplinary record. However, in light of the facts of this matter and the five aggravating factors discussed above, Respondent's previously clear disciplinary record is insufficient to overcome the facts and aggravating factors.

### CONCLUSION

Because Respondent has failed to answer the *Complaint* or otherwise appear in this matter, Respondent is found to be in **DEFAULT** and to have admitted all the allegations in the Complaint. Based on the facts hereby admitted, the Court finds that Respondent has violated the USPTO Rules of Professional Conduct as discussed above. After analyzing the factors enumerated in 37 C.F.R. § 11.54(b), the Court concludes that Respondent's misconduct warrants the sanction of exclusion. Accordingly, Respondent shall be **EXCLUDED** from practice before the U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters.<sup>21</sup>

### So ORDERED,

ALEXANDER  
FERNANDEZ-  
PONS

Digitally signed by: ALEXANDER  
FERNANDEZ-PONS  
DN: CN = ALEXANDER FERNANDEZ-  
PONS email = ALEXANDER.FERNANDEZ-  
PONS@HUD.GOV C = AD O = OFFICE OF  
THE SECRETARY OU = OHA  
Date: 2022.08.09 12:35:14 -04'00'

Alexander Fernández-Pons  
United States Administrative Law Judge

**Notice of Required Actions by Respondent and Appeal Rights:** Respondent is directed to refer to 37 C.F.R. § 11.58 regarding his responsibilities in the case of suspension or exclusion. Within thirty (30) days of this initial decision, either party may file an appeal to the USPTO Director pursuant to 37 C.F.R. § 11.55

<sup>21</sup> An excluded practitioner is eligible to apply for reinstatement no earlier than five years from the effective date of the exclusion. See 37 C.F.R. § 11.60(b). Eligibility is predicated upon full compliance with 37 C.F.R. § 11.58.