UNITED STATES DEPARTMENT OF COMMERCE
OFFICE OF ADMINISTRATIVE LAW JUDGE

KAREN L. BOVARD	)	
Director, Office of	)	
Enrollment and Discipline	)	
	)	
	)	**Proceeding D99-03**
	)	
LARRY L. ULAND,	)	
Respondent.	)	

INITIAL DECISION ON DEFAULT

PRELIMINARY STATEMENT

This disciplinary proceeding was initiated under 35 U.S.C. §§ 31 and 32 and the regulations promulgated thereunder at 37 C.F.R. §§ Part 10, against Larry L. Uland (Respondent), an attorney registered to practice before the Patent and Trademark Office (PTO) (Registration No. 36705). The Complaint and Notice of Proceedings (Complaint), issued by Karen L. Bovard, Director, Office of Enrollment and Discipline (OED), was dated June 18, 1999 and served on Respondent.[1] The Complaint charges Respondent with violating disciplinary rules and conducting himself in a manner unworthy of a registered patent attorney. For these violations, the Complaint requests an entry of an Order excluding Respondent from practice before the Patent and Trademark Office (PTO) or suspending Respondent for a period of five years. The Respondent was notified in the Complaint that, pursuant to the regulations, he was required to file an Answer to the Complaint within thirty (30) days from the date of the notice, that is, on or before July 18, 1999, and that a default decision may be entered if an answer is not timely filed.

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[1] Rule 10.135 provides that service of the Complaint on a registered practitioner may be made by either: (1) "handing a copy of the complaint *personally to the respondent;*" (2) by "mailing a copy of the complaint by "Express Mail or first class mail" *to the address for which separate notice was last received by the Director,*" or (3) by any other mutually agreeable method. 37 C.F.R. § 10.135. The record indicates that on June 18, 1999 the Complaint was sent by first class certified mail, return receipt requested to Respondent at his *"address of record"* at Uland & Associates, Inc., P.O. Box 166, Argyle, Texas 76226 and also to him at

The PTO Rules require the Director to maintain a register of attorneys entitled to practice before the Office and further require registered practitioners to notify the Director of any change of address *by separate notice.* 37 C.F.R §§ 10.5 and 10.11. The Director states in its Motion for Default that the address of record is "the address for which separate notice was last received by the Director." Copies of a signed return receipt for the Complaint, indicating delivery on June 28, 1999, from both the address of record and the alternative address are included in the record. Thus, I find that Respondent was properly served.

To date, Respondent has failed to file an Answer or otherwise respond to the Complaint. The regulations provide that "[f]ailure to timely file an answer will constitute an admission of the allegations in the complaint." 37 C.F.R. § 10.136(d). The regulations provide further that "[a] complaint...shall...[s]tate that a decision by default may be entered against the respondent if an answer is not timely filed." 37 C.F.R. § 10.134(a)(4).

The Director served a Motion for Default on July 28, 1999. Therein, pursuant to 37 C.F.R. § 10.143, the Associate Solicitor for the Attorney for the Director of Enrollment and Discipline states that he attempted to contact Respondent by telephone twice on July 27, 1999, to resolve the issue of Respondent's failure to file an Answer. Counsel states further that only Respondent's answering machine was reached, that he left a message requesting a return call, and that as of noon on July 28, 1999, Respondent had not returned the call. It is noted that the regulations provide at 37 C.F.R. § 10.143 that "[t]he administrative law judge will determine on a case-by-case basis the time period for a response to a motion..." However, in the context of a motion for default, where the respondent has not answered the complaint or otherwise appeared in the proceeding, it is not necessary to allow time for a response to a motion for default. The regulations provide at 37 C.F.R. § 10.136(d) that failure to file timely an answer "*will* constitute and admission of the allegations in the complaint" (emphasis added), and do not provide a requirement for a motion for default or a response thereto. *See,* Federal Rule of Civil Procedure 55(b)(1) (allowing entry of judgment on default upon request of plaintiff, for failure of defendant to appear).

For his failure to file a timely Answer, Respondent is hereby found in default, and is deemed to have admitted all of the allegations in the Complaint.

CHARGES

The Complaint charges Respondent in two counts. Specifically, Count 1 alleges that by mishandling a patent application, Respondent engaged in professional misconduct in violation of 37 C.F.R.§§ 10.23(a), 10.23(b)(6), 10.77(a), 10.77(c), 10.84(a)(2), 10.84(a)(3), 10.112(c)(3), and 10.112(c)(4). Count 2 alleges that by mishandling a patent application, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(a), 10.23(b)(6), 10.77(a), 10.77(c), 10.84(a)(2), 10.84(a)(3), and 10.112(c)(4).

The disciplinary provisions at issue here relate to the definitions of professional misconduct, competence, representation, and preservation of client property as contained in 37 C.F.R. §§ Part 10. Specifically, Provision (a) of 37 C.F.R. §§ 10.23 provides that, "a practitioner shall not engage in disreputable or gross misconduct;" provision (b)(6) establishes that, "a practitioner shall not engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office. Provision (a) of 37 C.F.R. §§ 10.77 states that, "a practitioner shall not handle a legal matter which the practitioner knows or should know that the

practitioner is not competent to handle, without associating with the practitioner another practitioner who is competent to handle it;" provision (c) continues by stating that, "a practitioner shall not neglect a legal matter entrusted to the practitioner." Provisions (a)(2) and (a)(3), respectively, of 37 C.F.R. §§ 10.84 provide that, "a practitioner shall not intentionally: (2) fail to carry out a contract of employment entered into with a client for professional services...," or, "(3) prejudice or damage a client during the course of a professional relationship..." Finally, provisions (c)(3) and (c)(4), respectively, of 37 C.F.R. §§ 10.112 state that, "a practitioner shall: (3) maintain complete records of all funds, securities... and render appropriate accounts to the client...," and that the practitioner must, "(4) [p]romptly pay or deliver to the client as requested by a client the funds...which the client is entitled to receive."

FINDINGS

COUNT 1
Mishandling patent application

1. Respondent represented before the PTO in U.S. patent application (the application).

2. On , the application was filed.

3. In a notice dated the PTO notified Respondent that claims 1 through 21, all of the claims in the application, were rejected. However, the notice indicated that claims 15 through 19 and claim 21 would be allowable if rewritten to overcome certain formal problems and to include all limitations of the base claim and any intervening claims.

4. In a letter dated March 29, 1994, Respondent notified of the PTO's position. Respondent enclosed a copy of the office action and a brief explanation of two options for responding, the fees for the two options, and the due-date of the response, Respondent further informed that the period to respond could be extended by three additional months by paying extension fees.

5. On May 4, 1994, sent check # for $500, to Respondent, made out to Uland & Associates, and selected the recommended response to rewrite the claims to obtain a patent with narrow claims.

6. On May 9, 1994, the check # was negotiated and deposited to the account of "Uland & Assoc. Inc. Acct #3315017214."

7. On July 28, 1994, Respondent sent a letter in which Respondent stated that because business relations had deteriorated between Uland & Associates and , whom

Uland & Associates had hired to handle administrative matters, "your project was delayed by this unresolved conflict." Respondent offered assurances to that affairs would be addressed.

8. On August 3, 1994, wrote to Respondent, reminding Respondent that had sent a fee of $500 for a response to the office action of and that the three-month deadline and two subsequent month-extensions had passed without a response.

9. In his letter of August 3, 1994, requested a response to the office action or a refund of his $500.

10. Respondent did not file a responsive amendment in application.

11. Respondent never repaid any portion of the $500.

12. On revoked the power of attorney given to Uland and appointed another registered practitioner to prosecute the application.

13. By mishandling the application, Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(a), 10.23(b)(6), 10.77(a), 10.77(c), 10.84(a)(2), 10.84(a)(3), 10.112(c)(3), and 10.112(c)(4).

COUNT 2

Mishandling patent application

1. In January 1993, Respondent was retained by to prepare and file a utility patent application.

2. paid $2,500 to have his patent application prepared and filed.

3. Respondent had arranged with Synergy to handle all administrative tasks, including collecting funds and maintaining records of the same. Respondent did not maintain complete records of funds paid by his inventor/client, , and collected by for his legal services.

4. For about fifteen months Respondent did not provide with a patent application. On information and belief, Respondent responded to numerous inquiries by about the progress of the patent application by informing that the application would be in hands in a week or two.

5. On or about March 23, 1994, Respondent sent a declaration for a patent application, a declaration claiming small entity status, and an information disclosure statement. Respondent did not send a patent application to for review and signature.

6. As of July 1994, about 18 months after being retained, Respondent had not provided a patent application ready for review and signature.

7. In a letter dated July 28, 1994, Respondent wrote to that his "project was delayed" by an unresolved conflict between Respondent and Respondent expressed uncertainty if funds had paid for patent work were ever placed in Respondent's firm's bank account, and requested to provide copies of documents showing that had paid for "your patent effort."

8. As of, on or about August 12, 1994, Respondent had not prepared and filed a patent application for .

9. eventually retained another practitioner to file his application.

10. Respondent never returned any of the $2,500 to .

11. By failing to prepare and file the application for , Respondent engaged in professional misconduct in violation of 37 C.F.R. §§ 10.23(a), 10.23(b)(6), 10.77(a), 10.77(c), 10.84(a)(2), 10.84(a)(3), and 10.112(c)(4).

CONCLUSION

(a) Respondent's conduct set forth above and in the Complaint with regard to Count 1 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(a), 10.23(b)(6), 10.77(a), 10.77(c), 10.84(a)(2), 10.84(a)(3), 10.112(c)(3), and 10.112(c)(4).

(b) Respondent's conduct set forth above and in the Complaint with regard to Count 2 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(a), 10.23(b)(6), 10.77(a), 10.77(c), 10.84(a)(2), 10.84(a)(3), and 10.112(c)(4).

(c) An indeterminate suspension is appropriate because there has not been a record developed respecting all of the circumstances surrounding the professional misconduct. The Respondent's default has prevented such an inquiry. The Respondent may show cause in the future as to why he failed to respond and may provide some explanation for the misconduct set forth and found herein. Until he does so, his name should be removed from the rolls.

ORDER

After careful and deliberate consideration of the above facts and conclusions as well as the factors identified in 37 C.F.R. § 10.154(b),

IT IS HEREBY ORDERED, that Respondent, **LARRY L. ULAND**, Uland & Associates, Inc., P.O. Box 166, Argyle, Texas 76226 and/or , PTO Registration No. 36705, **be suspended for an indeterminate period from practice as an attorney before the Patent and Trademark Office.**

The Respondent's attention is directed to 37 C.F.R. § 10.158 regarding responsibilities in the case of suspension or exclusion, and 37 C.F.R. § 10.160 concerning petition for reinstatement.

The facts and circumstances of this proceeding shall be fully published in the Patent and Trademark Office's official publication.

DATE: August 3, 1999

Susan L. Biro
Chief Administrative Law Judge[2]

Pursuant to 36 C.F.R. § 10.155, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 10.154, must be filed in duplicate with the Director, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, P.O. Box 16116, Arlington, Va. 22215, within 30 days of the date of this Decision. Such appeal must include exception to the Administrative Law Judge's Decision. Failure to file such an appeal in accordance with § 10.155, above, will be deemed to be both an acceptance by the Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

[2] This decision is issued by the Chief Administrative Law Judge of the United States Environmental Protection Agency. The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning March 22, 1999.