

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE
DEPARTMENT OF COMMERCE

In the Matter of)
)
ALAN G. GREENBERG) Proceeding No. D00-05
)
Respondent)

INITIAL DECISION ON DEFAULT

PRELIMINARY STATEMENT

This disciplinary proceeding was initiated under 35 U.S.C. § 32 and the regulations promulgated thereunder, 37 C.F.R. Part 10, by issuance of a Complaint, dated August 9, 2000, against Alan G. Greenberg (Respondent), an attorney registered to practice before the United States Patent and Trademark Office (PTO), Registration No. 22,989.

The Complaint was issued by Harry I. Moatz, Director of the PTO's Office of Enrollment and Discipline (Director). The Complaint charges Respondent with three counts of violating Patent and Trademark Office Disciplinary Rules. Specifically, Count I of the Complaint alleges that Respondent was indefinitely suspended from practice as an attorney by the Supreme Court of Minnesota for violating its ethical rules of conduct, in violation of 37 C.F.R. § 10.23(c)(5). Count II alleges that on or about January 22, 1996, the United States Supreme Court issued an order disbarring Respondent from practice before that Court based on Respondent's disbarment in Minnesota in violation of 37 C.F.R. § 10.23(c)(5). Count III alleges that Respondent did not reply to the Request for Comments forwarded to Respondent concerning the disbarment in the Supreme Court of Minnesota and in the United States Supreme Court, thus violating Rules 10.23(b)(1); 10.23(b)(6); 10.23(c)(16); 10.24(a); and 10.131(b). The Complaint requests suspension of the Respondent from practice before the USPTO for not less than 5 years, or excluding Respondent from practice before the USPTO.

MOTION FOR DEFAULT

Pursuant to 37 C.F.R. § 10.134(a)(4), the Director of the Office of Enrollment and Discipline of the United States Patent and Trademark Office (Director) filed a motion for default judgment against Respondent, Alan G. Greenberg, on the grounds that he failed to file an answer to the Complaint and Notice of Proceedings (Complaint) which initiated this action. For the reasons explained below, the Director's motion shall be granted.

On August 9, 2000, a copy of the Complaint was sent certified mail, return receipt requested, to Respondent at the following two addresses last received by the Director: (Exhibit A to Motion.)

2351 Sherwood Hills Rd.
Minnetonka, MN 55305

12100 Marion Ln.
Minnetonka, MN 55305

The Director received notice on August 30, 2000, and September 22, 2000, that the Complaint was not served. (Exhibit B to Motion.) A second attempt was made to serve Respondent on October 4, 2000. (Exhibit C to Motion.) On October 26, and December 8, 2000, the Director received notice that the second attempt of service was also not served. (Exhibit D to Motion.)

After these two unsuccessful attempts to serve the Respondent, in accordance with 37 C.F.R. §§ 10.135(a) and (b), the Director attempted service via publication in the Official Gazette for four consecutive weeks. See 37 C.F.R. §§ 10.135(a) and (b). The first attempt was published on January 30, 2001, and the last was on February 20, 2001. (Exhibits E-H.) According to 37 C.F.R. §§ 10.135(a) and (b), Respondent had 30 days from the last date of publication (March 22, 2001) to file his answer. See 37 C.F.R. §§ 10.135(a) and (b).

As of April 9, 2001, the Director was not served with an answer, and believes that Respondent has not filed an answer with this tribunal. Based on Respondent's failure to file a timely answer, every allegation in the Complaint shall be deemed as

admitted. See 37 C.F.R. § 10.136(d), ("Failure to timely file an answer will constitute an admission of the allegations in the complaint."). Therefore, the relief requested in the Complaint, i.e., that Respondent be excluded from practice before the United States Patent and Trademark Office, See 37 C.F.R. § 10.134(a)(4), ("a decision by default may be entered against the respondent if an answer is not timely filed"), shall be granted as set forth below.

COUNT 1

On or about August 14, 1995, the Supreme Court of Minnesota issued an Order disbaring the Respondent on ethical grounds. Respondent's conduct violated Rule 10.23(c)(5) of the Disciplinary Rules of Professional Conduct as outlined in Section 10 of 37 C.F.R. in that Respondent was disbarred from practice as an attorney on ethical grounds by a duly constituted authority of the State of Minnesota.

COUNT 2

On or about January 22, 1996, an Order was issued by the United States Supreme Court disbaring Respondent from practice before that Court based on Respondent's disbarment in Minnesota. Respondent's conduct violated Rule 10.23(c)(5) of the Disciplinary Rules of Professional Conduct as outlined in Section 10 of 37 C.F.R. in that Respondent was disbarred from practice as an attorney on ethical grounds by a duly constituted authority of the United States.

COUNT 3

On or about November 16, 1998, and about May 24, 2000, Director forwarded by certified mail, return receipt requested, to Respondent at 2351 Sherwood Hills Rd., Minnetonka, MN, a Request for Comments relating to his disbarment in Minnesota, and the U.S. Supreme Court. On or about February 1, 2000, Director forwarded by certified mail, return receipt requested, to Respondent a second Request for Comments at the same address. On or about May 24, 2000, Director forwarded by certified mail, return receipt requested, a copy of the Request for Comments to Respondent at 12100 Marion Ln., Minnetonka, MN. This address was

confirmed by a telephone conversation between Respondent and an Office of Enrollment and Discipline staff representative.

Respondent did not reply to the Request for Comments concerning the disbarment in the Minnesota and the U.S. Supreme Court. Respondent's conduct violated the following Disciplinary Rules of Professional Conduct as outlined in Section 10 of 37 C.F.R.:

- Rule 10.23(b)(1), in that Respondent violated a Disciplinary Rule;
- Rule 10.23(b)(6), in that Respondent engaged in conduct that adversely reflects on his fitness to practice before the USPTO;
- Rule 10.23(c)(16), in that Respondent willfully refused to reveal or report knowledge or evidence to the Director contrary to §§ 10.24 or 10.131(b);
- Rule 10.24(a), in that Respondent failed to report to the Director unprivileged knowledge of a violation of a Disciplinary Rule; and
- Rule 10.131(b), in that Respondent failed to cooperate with the Director in connection with any disciplinary proceeding instituted under § 10.132(b).

ORDER

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

IT IS HEREBY ORDERED that Respondent, Alan G. Greenberg, residing at either: 2351 Sherwood Hills Road, Minnetonka, Minnesota 55305 or 12100 Marion Lane, Minnetonka, Minnesota 55305, PTO Registration No. 22,989, **be excluded 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.



Charles E. Bullock
Administrative Law Judge¹

Dated: August 21, 2001
Washington, D.C.

Pursuant to 37 C.F.R. § 10.155, any appeal by the Respondent from this Initial Decision, 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, Washington, D.C. 22215, within 30 days of the date of this Decision. Such appeal must include exceptions 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.

¹ This decision is issued by an 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.