BEFORE THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

HARRY I. MOATZ, Director, Office of Enrollment and Discipline, v. SOL SHEINBEIN, Respondent.	)	Proceeding No. D03-14

FINAL DECISION UNDER 37 C.F.R. § 10.156

Respondent Sol Sheinbein appeals the Order on Cross-Motions for Summary Judgment of Hon. William B. Moran, Administrative Law Judge (ALJ), finding that Respondent engaged in conduct which constituted a violation of 37 C.F.R. § 10.23, and the ALJ's Initial Decision (ID) recommending that Respondent be excluded from practice before the United States Patent and Trademark Office (USPTO).[1] The Director of the Office of Enrollment and Discipline (OED Director or Complainant) filed a reply to Respondent's appeal. Based on a careful review of the record, this final determination adopts the ALJ's factual findings and legal conclusions, except as noted below. Clear and convincing evidence supports the ALJ's conclusion that Respondent violated 37 C.F.R. § 10.23 by being disbarred from practice as an attorney by the State of Maryland and the District of Columbia on ethical grounds, in violation of USPTO Disciplinary

[1] Moatz v. Sheinbein, No. D03-14 (Admin. Law Judge Sept. 7, 2004) (order on cross-motions for summary judgment); Moatz v. Sheinbein, No. D03-14 (Admin. Law Judge Dec. 10, 2004) (initial decision).

Rule (DR) 10.23(c)(5)[2]. Further, the ALJ's sanction excluding Respondent from practice before the USPTO based on 37 C.F.R. § 10.154(b) is affirmed, but no judgment is made on the merits with respect to the ALJ's conclusion that Respondent's exclusion from practice before the USPTO was independently authorized based on reciprocal discipline.

Background

Respondent was admitted to the District of Columbia Bar on April 26, 1971, and was admitted to the Maryland Bar on June 24, 1971. ID at 4. On April 27, 1970, Respondent registered with the USPTO as an agent. ID at 4. Thereafter, on May 24, 1971, Respondent's registration status with the USPTO was changed from an agent to an attorney, and Respondent was issued attorney certificate number 25,457 on that date. Id.

In August 2001, the Attorney Grievance Commission of Maryland filed a petition with the Court of Appeals of Maryland seeking disciplinary action against Respondent for allegedly violating Rule 8.4 of the Maryland Rules of Professional Conduct (MRCP) by sending his son, Samuel Sheinbein, to Israel after Respondent had been told by his son that he had killed Alfred Enrique Tello, Jr., and after Respondent knew that his son was being investigated by homicide detectives in connection with Mr. Tello's murder. ID at 12; CEX 1 at 000004 n.5.[3] The Court of Appeals of Maryland (Maryland Court) referred the matter to Judge S. Michael Pincus of the Circuit Court for Montgomery County to conduct an evidentiary hearing and to make findings of fact and conclusions of law. An evidentiary hearing was conducted on March 20, 2002.

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[2] The USPTO Disciplinary Rules are part of the USPTO Code of Professional Responsibility, 37 C.F.R. ch. 10. See 37 C.F.R. § 10.20(b) (listing Disciplinary Rules).

[3] Complainant's prehearing exchange exhibits will be referred to as CEX _, followed by the appropriate number.

After the hearing, Judge Pincus made his factual findings, which are summarized below:[4] In September 1997, the police department in Montgomery County, Maryland investigated the murder of Mr. Tello in Respondent's Montgomery County, Maryland neighborhood and the participation of Respondent's son Samuel in the murder. Answer to Amended Complaint at 4; Amended Complaint at ¶ 3; CEX 1 at 000005-7. Police requested a search warrant for Respondent's premises in connection with Mr. Tello's murder. On September 19, 1997, police presented Respondent with a search warrant authorizing the search of Respondent's residence for evidence relating to the crime of first degree murder. Respondent read the contents of the warrant at the time of its execution and observed the five-hour-long search.

At the time of the execution of the search warrant and after items were seized pursuant to the warrant, a homicide detective indicated to Respondent the seriousness of the matter under investigation and requested that Respondent contact her if he heard from his son Samuel. On more than one occasion on September 19, 1997, Respondent assured the Detective he would contact her whenever he heard from his son and otherwise alert her of his son's whereabouts.

Respondent spoke to the detective on September 20, 1997, but failed to alert her that his son Robert had had a telephone conversation with Samuel and that Samuel was to call back later that day. Respondent spoke to Samuel on September 20, 1997, and told him that he should go to Israel. Before suggesting that his son leave the United States for Israel, Respondent was aware that his son admitted to killing Mr. Tello.

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[4]The Judge's findings of fact are set forth more fully in the opinion of the Maryland Court of Appeals in Attorney Grievance Commission of Maryland v. Sheinbein, 812 A.2d 981, 997 (Md. App. 2002), found at CEX 1.

Respondent obtained Samuel's passport prior to leaving Maryland and brought it to Samuel in New York. Respondent also purchased airplane tickets for Samuel to depart New York for Israel just before midnight on September 21, 1997. ID at 12-15; CEX 1 at 00005-11.

Judge Pincus found, by clear and convincing evidence, that Respondent violated MRPC 8.4(b) and (d). ID at 12; CEX 1 at 000005, 000011. MRCP Rule 8.4 provides, in relevant part, that it is professional misconduct for a lawyer to: "(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; ... (d) engage in conduct that is prejudicial to the administration of justice." CEX 1 at 000003.

Judge Pincus held that Respondent's actions satisfied the elements of the common law offense of obstructing or hindering a police officer, finding that Respondent was well aware of the duty that the Detective, a police officer, was in the process of performing, i.e., the investigation of the death of Mr. Tello, and that Respondent "knew of the Detective's desire to question his son, who [R]espondent knew to be responsible for the death of Mr. Tello." CEX 1 at 000012. Judge Pincus further found that Respondent also knew that his subsequent arrangements to help his son flee to Israel would frustrate the Detective's performance of her duties. Accordingly, Judge Pincus found that the facts satisfied the requisite elements of common law obstruction and concluded that Respondent violated MRPC 8.4(b). Id.

Judge Pincus determined that Respondent also violated MRPC 8.4(d) by engaging in conduct that is prejudicial to the administration of justice. Id. Judge Pincus determined that Respondent's actions were criminal in nature and impaired the public's confidence in the entire legal profession. The judge concluded that by sending his son to Israel in spite of the knowledge that his son was an "integral party to a criminal investigation[,]" Respondent acted "in direct

contravention to the oath he swore in open court when he was admitted to the Bar of the Court of Appeals on June 24, 1971." Id.

On May 22, 2002, Respondent filed exceptions with the Maryland Court to Judge Pincus' findings and conclusions. On December 16, 2002, the Maryland Court concluded that clear and convincing evidence supported Judge Pincus' findings of fact and conclusions of law. The Maryland Court found that clear and convincing evidence supported Judge Pincus' conclusion that Respondent committed the common law crime of obstructing or hindering a police officer and that such conduct necessarily violated MRCP 8.4(b). The Maryland Court found that "a lawyer's ensuring that a police investigation is thwarted by sending a main suspect known by him to be the killer in a murder case to a distant country necessarily reflects adversely on that lawyer's trustworthiness" in violation of MRCP Rule 8.4(b). Id. at 000024.

The Maryland Court further found, in agreement with the judge, that Respondent's conduct was prejudicial to the administration of justice in violation of MRCP Rule 8.4(d). The Maryland Court noted that Respondent, "who was familiar with the inner workings of the system and had sworn to uphold its laws, did everything in his power to ensure that his son circumvent that system and flee to another country, thus stalling an ongoing, legal police investigation and possible prosecution." Id. at 000029. The Maryland Court concluded that "Respondent's actions totally stymied the criminal justice system" and that "[t]here can be no question that the public confidence in the legal profession has been adversely affected by [R]espondent's conduct." Id. at 000030.

In determining the sanction for Respondent's conduct, the Maryland Court considered "our own court's precedent, case law from our sister states, Bar counsel's recommendations of disbarment and the unique and egregious factual scenario presented by [R]espondent's utter abandonment of proper professional conduct in the face of the circumstances of Mr. Tello's murder" and found that it could reach "only one conclusion: that [R]espondent is no longer fit to practice law." Id. at 000037. Accordingly, the Maryland Court disbarred Respondent. Id.

On February 6, 2003, following Respondent's disbarment from the state of Maryland, the Court of Appeals of the District of Columbia (D.C. Court) ordered Respondent suspended from the practice of law in the District of Columbia on an interim basis, pursuant to the reciprocal discipline provision of the Rules Governing the Bar of the District of Columbia. Amended Answer at 5; Amended Complaint at ¶ 13. In its February 6, 2003, order, the D.C. Court directed its Board on Professional Responsibility (Board) to determine whether identical, greater or lesser discipline should be imposed on Respondent in the District of Columbia. Id. Pursuant to the February 6, 2003, order, the Board conducted a review of the record of Respondent's disbarment proceedings before the Maryland Court. Respondent participated in the Board's proceeding by counsel. Id. On or about July 31, 2003, the Board issued its Report and Recommendation recommending that the D.C. Court disbar Respondent as identical reciprocal discipline for his misconduct in Maryland. Id. By order dated March 11, 2004, the D.C. Court disbarred Respondent from the Bar of the District of Columbia by consent. Id.

On March 4, 2004, the OED Director issued a complaint against Respondent pursuant to 37 C.F.R. § 10.134, charging him with violating DR 10.23(c)(5) (37 C.F.R. § 10.23(c)(5)) by being disbarred from the practice of law on ethical grounds by a duly constituted authority of the

State of Maryland. Complaint at ¶ 9. On March 31, 2004, the OED Director issued an Amended Complaint against Respondent, in which he charged Respondent with an additional violation of DR 10.23(c)(5) on the basis of his disbarment from the practice of law on ethical grounds by a duly constituted authority of the District of Columbia. Amended Complaint at ¶ 18.[5]

Both the Complainant and Respondent filed motions for summary judgment with the ALJ. On September 7, 2004, the ALJ issued an Order on Cross-Motions for Summary Judgment finding that the Complainant established by clear and convincing evidence that Respondent was disbarred from practice as an attorney on ethical grounds in both the State of Maryland and the District of Columbia. Order on Cross-Motions for Summary Judgment at 24. The ALJ concluded that 35 U.S.C. § 32 authorized the discipline of Respondent based on the violation of a DR, including DR 10.23(c)(5), and that the USPTO had consistently applied DR 10.23(c)(5) to discipline practitioners. Id. at 13-19. The ALJ found that 35 U.S.C. § 32 and 35 U.S.C. § 2(b)(2)(D) provide the USPTO broader authority "to regulate practitioner misconduct than merely addressing the underlying misconduct itself" and that the USPTO "has availed itself of this authority by addressing both convictions of criminal offenses, involving moral turpitude, dishonesty or breach of trust, and, as here, suspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State or the United States." Id. at 21. The ALJ further found that the Complainant brought the proceeding seeking Respondent's exclusion from practice well within five years of his disbarments in Maryland and the District of Columbia. Id. at 20, 21, 23. Therefore, the ALJ concluded that, assuming the five-year statute of

[5] Also on March 31, 2004, the OED Director filed an Unopposed Motion to Amend the Complaint and Notice of Proceedings under 35 U.S.C. § 32. The ALJ granted that motion by Order on Motion to Amend the Complaint dated May 25, 2004.

limitations provision in 28 U.S.C. § 2462 applied to this proceeding, the complaint was timely filed before the statute of limitations expired. Id. at 23-24. The ALJ concluded that, based on the decisions issued by the State of Maryland and the District of Columbia, the Complainant established that Respondent was disbarred from practice as an attorney on ethical grounds in those jurisdictions. Id. at 24. Accordingly, the ALJ determined that Complainant established that Respondent engaged in conduct which constituted a violation of 37 C.F.R. § 10.23(a) and (b). Id.

On September 27, 2004, Respondent filed a waiver and Unopposed Motion for a Briefing Schedule with the ALJ in which Respondent waived his right to a hearing, requested a briefing schedule, and requested that the penalty in this matter be determined by the joint set of stipulated documents and other filings of record. On September 30, 2004, the ALJ issued an Order Memorializing Agreed Briefing Schedule.

On December 10, 2004, the ALJ issued his Initial Decision in this matter, incorporating his September 7, 2004, Order on Cross-Motions for Summary Judgment. ID at 1 n.1. The ALJ decided to exclude Respondent from practice before the USPTO "based on two *independent* grounds[.]" Id. at 21 (emphasis in original). The first ground on which the ALJ relied was reciprocal discipline. The ALJ found no reason to depart from the earlier authority's sanction as he found no "'infirmity of proof' of misconduct in that earlier proceeding" and found that "no 'grave injustice' would result from imposing that other jurisdiction's disciplinary action[.]" Id. Relying on Selling v. Radford, 243 U.S. 46, 51 (1917) (Selling), the ALJ concluded that there was no showing of a lack of due process in the earlier disciplinary proceeding. Id. The ALJ further concluded that Respondent had admitted virtually all of the findings of fact in the

underlying Maryland Court proceeding and that the facts, including the one Respondent excepted to, had been proven by clear and convincing evidence. Id. Accordingly, the ALJ concluded that Respondent should be excluded from practice before the USPTO "based on the imposition of reciprocal discipline stemming from the Respondent's disbarment from the practice of law in the State of Maryland and the District of Columbia." Id.

The ALJ further found that, "independent[] of the reciprocal disbarment approach," disbarment was "the only appropriate sanction" based on his application of the criteria set forth at 37 C.F.R. § 10.154(b) to this proceeding. Id. at 23-24. The ALJ outlined his specific consideration of the factors listed in 37 C.F.R. § 10.154(b) and determined that Respondent should be excluded from practice before the USPTO. Id. at 24-25.

Respondent now appeals the ALJ's initial decision. Respondent asserts that, to be consistent with 35 U.S.C. § 2 and 37 CFR § 10.20(b), DR 10.23(c)(5) must be read to apply only to "conduct which results in" suspension and disbarment. Appeal at 5-6. Respondent notes that the conduct which resulted in his disbarments from the practice of law in the State of Maryland and the District of Columbia occurred on September 21, 1997. Id. at 12. Respondent argues that the five-year statute of limitations set forth in 28 U.S.C. § 2462 applies to these proceedings and that, because the OED Director's complaint charges him for conduct which occurred more than five years before the complaint issued, the instant complaint is barred by the statute of limitations. Id. at 7, 9, 12. Respondent further argues that DR 10.23(c)(5) discriminates against, and violates the due process rights of, attorneys by subjecting them to discipline for disbarment whereas agents would not be subject to such discipline. Id. at 10-11. Finally, Respondent requests a stay under 37 C.F.R. § 10.157(b) pending judicial review of this decision. Id. at 12.

Decision

Based on the record in these proceedings, the factual findings of the ALJ and the sanction imposed are adopted. The ALJ's legal conclusions are also affirmed, except as noted otherwise below.

The OED Director proved by clear and convincing evidence that Respondent violated 37 C.F.R. § 10.23 when he was disbarred from the practice of law by the State of Maryland and the District of Columbia on ethical grounds.[6] The ALJ found that Respondent violated 37 C.F.R. § 10.23(a) and (b), whereas the OED Director's Amended Complaint pled only a violation of DR 10.23(c)(5). In reaching his conclusion, the ALJ discussed DR 10.23(c)(5), and the parties addressed their arguments to DR 10.23(c)(5) at length. The plain wording of 37 C.F.R. § 10.23(c) demonstrates that the ALJ's finding sufficiently encompasses the violation pled by the OED Director. In this regard, 37 C.F.R. § 10.23(c) provides, in relevant part, that "[c]onduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to...(5) Suspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State...." Thus, by its terms, it is a violation of 37 C.F.R. § 10.23(a) and (b) to violate DR 10.23(c)(5). Therefore, as the Amended Complaint pled a violation of DR 10.23(c)(5) and as the ALJ's conclusion encompasses such a violation, this final determination holds that Respondent violated DR 10.23(c)(5), and the sanction imposed as a result.

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[6] Moreover, Respondent does not dispute that he was disbarred from the State of Maryland and the District of Columbia on ethical grounds. Amended Answer at ¶¶ 9, 18.

With respect to the USPTO's authority to implement DR 10.23(c)(5), the USPTO is authorized under 35 U.S.C. § 2(b)(2)(D) to establish rules which govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the USPTO. The ALJ correctly found that Respondent reads the statute and regulations too narrowly and selectively and that the use of the word "conduct" in the statute and regulations was not intended to limit the promulgation or application of the Disciplinary Rules solely to underlying misconduct. As relevant to this case, the policies supporting a rule incorporating reciprocal discipline, i.e. DR 10.23(c)(5), differ from the reasons for punishing the underlying conduct. A rule incorporating reciprocal discipline is designed not to prevent or sanction the underlying misconduct, but to prevent a practitioner disciplined by one state authority from practicing before another forum, including the USPTO. Certainly, suspension or disbarment by a state bar could constitute grounds, within the statute's contemplation and literal terms, for finding a practitioner "disreputable" within the meaning of 35 U.S.C. § 32. The statute and its implementing regulations are sufficiently broad to authorize such a rule. Therefore, even assuming, arguendo, that Respondent may challenge the promulgation of a USPTO regulation through the instant proceedings, Respondent's challenge is rejected.

With respect to the application of DR 10.23(c)(5), Respondent's argument that DR 10.23(c)(5) applies only to the underlying conduct which results in suspension or disbarment is rejected. As the ALJ found, pursuant to that broad statutory authorization, the USPTO has promulgated Disciplinary Rules which regulate more than just underlying misconduct of practitioners, including DR 10.23(c)(1) and (c)(5). Under DR 10.23(c)(1), "Conviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust" is deemed violative

conduct, whereas under DR 10.23(c)(5), "Suspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State or the United States..." is deemed violative conduct. The loss of repute that arises from disbarment or criminal conviction would not necessarily have occurred at the time of the commission of the underlying acts themselves, but, rather, arises from the time of a tribunal's findings of culpability. Thus, practitioners are clearly put on notice that certain criminal convictions or suspension or disbarment on ethical grounds violate the Disciplinary Rules, not just the underlying misconduct.

The ALJ correctly held that 35 U.S.C. § 32 authorized the discipline of Respondent based on the violation of a DR, including DR 10.23(c)(5), and that the USPTO has consistently applied DR 10.23(c)(5) to discipline practitioners. To interpret the rule, as Respondent does, as limited to "conduct which results in" suspension or disbarment reads the rule out of existence where, as here, a disbarment decision is rendered more than five years after the underlying misconduct occurred. The trigger for application of the rule is suspension or disbarment, not the underlying misconduct. Otherwise, as the ALJ noted, practitioners would potentially be burdened with defending underlying misconduct in state and USPTO disciplinary proceedings simultaneously. See Order on Cross-Motions for Summary Judgment at 16 n.21. The ALJ's adoption of the OED Director's interpretation of the rule is consistent with its plain wording and intent. See id. at 17, citing Eli Lilly and Co. v. Board of Regents of the University of Washington, 334 F.3d 1264, 1266 (Fed. Cir. 2003) (an agency's interpretation of its own regulations is entitled to substantial deference, and that interpretation will be accepted unless it is plainly erroneous or inconsistent with the regulation).

To require that the USPTO proceed against practitioners before a state bar completes its disciplinary proceedings would not be consonant with the evident intent of Congress to give the USPTO Director the power to assure that the public can trust patent practitioners. Indeed, requiring the USPTO to proceed before state bar proceedings are complete could work to the detriment of accused practitioners who would have to defend dual actions simultaneously. The USPTO may choose in cases to proceed simultaneously with state bars with respect to a practitioner's underlying misconduct, but the statute and rules allow it to wait and proceed on the basis of state findings that implicate the practitioner's reputation.

Moreover, as the trigger for applying DR 10.23(c)(5) is suspension or disbarment on ethical grounds, Respondent's argument that the instant proceeding is barred by the statute of limitations set forth in 28 U.S.C. § 2462 is misplaced. Accordingly, assuming that 28 U.S.C. § 2462 applies to these proceedings, the ALJ correctly held that the OED Director's Amended Complaint was filed well within five years of Respondent's disbarments and, thus, is timely.

With respect to Respondent's claim that DR 10.23(c)(5) discriminates against attorneys, as compared to agents, the ALJ's reasoning and rejection of Respondent's claim are again well-founded. By its terms, the rule applies to both agents and attorneys. Respondent offers no support for his claim that the instant complaint could not have been brought against him in this case had he been registered as an agent rather than an attorney. On the contrary, those who are registered by the USPTO as agents are not infrequently also attorneys. Two such situations can readily be posited. A young law student may apply to be registered as a patent agent (or have been registered as an agent, and then decide to go to law school). After graduating from law school and being admitted to her state bar, the former law student may fail to change her status at

the USPTO. Similarly, an attorney at the other end of a career may decide to wind down his active law practice, and move out of his home state, but decide, in semi-retirement, to prosecute some patent applications. Such an attorney might well allow his state bar membership to go inactive, while maintaining his status as an agent before the USPTO. In both cases, the former student or semi-retiree may become subject to state bar discipline. In such circumstances, the USPTO could impose reciprocal discipline on him or her in the status of agent.

In arguing that there is something discriminatory in an ethics rule that can only apply to those patent practitioners who are also members of a bar association, Respondent again ignores the terms of the statute. 35 U.S.C. § 32 authorizes the USPTO to promulgate rules to disbar practitioners who are "disreputable". Only an attorney admitted to a state bar can become disreputable by reason of discipline imposed by that bar. It is unreasonable to argue that the USPTO should ignore that reason for finding a practitioner disreputable just because not every practitioner is subject to that risk. To the extent that Respondent makes a constitutional argument, the statutory scheme certainly provides a rational basis for such differential treatment. See Giannini v. Real, 911 F.2d 354, 358 (9th Cir. 1990) (a rational basis test applied because there is no fundamental right to practice law and attorneys do not constitute a suspect class), citing Lupert v. Cal. St. Bar, 761 F.2d 1325, 1327-28 (9th Cir. 1985). See also Cordoba v. Massanari, 256 F.3d 1044, 1049 (10th Cir. 2001) (rational basis supported Social Security Act and regulations treating lawyer and non-lawyer representatives differently).

Nor do the USPTO's regulations impose discipline based on findings of another tribunal only on attorneys. As discussed previously, that jeopardy also attaches to certain criminal

convictions. So viewed, the rule on reciprocal discipline is but a specific application of a regulatory scheme that applies equally to all registered practitioners.

With respect to the appropriate sanction, Respondent has not alleged that he was denied due process in the proceedings that led to his disbarment, that there was a lack of proof of his guilt, or that the punishment imposed upon him was a grave injustice under Selling. Therefore, absent argument by Respondent that the Selling factors preclude application of reciprocal discipline in this case and based on the record, the ALJ correctly found that reciprocal discipline is appropriate here. Moreover, the ALJ properly considered the factors for determining a sanction contained in 37 C.F.R. § 10.154(b).[7] The ALJ's determination that, based on his assessment of those factors, Respondent should be excluded from practice before the USPTO are hereby adopted. However, inasmuch as the grounds set forth in the complaint adequately support disbarment, it is unnecessary to reach the ALJ's conclusion that, independently of the factors in 37 C.F.R. § 10.154(b), reciprocal discipline provides a basis for Respondent's exclusion from practice. Respondent's violation of DR 10.23(c)(5) warrants discipline, and the ALJ's proper assessment of the factors in 37 C.F.R. § 10.154(b) provides the basis for the sanction herein.

Finally, Respondent's request for a stay under 37 C.F.R. § 10.157(b) is rejected as premature.

[7] Respondent does not dispute the ALJ's application of the factors set forth in 37 C.F.R. § 10.154(b).

ORDER

Upon consideration of the entire record, and pursuant to 35 U.S.C. § 32, it is

ORDERED that one (1) month from the date this order is entered, SOL SHEINBEIN, whose USPTO Registration Number is 25,457, be excluded from practice before the USPTO under the conditions set forth in 37 C.F.R. § 10.158; and

ORDERED that this Final Decision in this proceeding be published.

RECONSIDERATION AND APPEAL RIGHTS

Any request for reconsideration of this decision must be filed within twenty (20) days from the date of entry of this decision. 37 C.F.R. § 10.156(c). Any request for reconsideration mailed to the USPTO must be addressed to:

James A. Toupin
General Counsel
Office of the General Counsel
U.S. Patent and Trademark Office
P.O. Box 1450
MDE-10C20
Alexandria, VA 22313-1450

A copy of the request must also be served on the attorneys for the Director of Enrollment and Discipline:

Linda Moncys Isaacson
W. Asa Hutchinson III
Associate Solicitors
United States Patent and Trademark Office
P.O. Box 15667
Arlington, Virginia 22215

Any request hand-delivered to the USPTO must be hand-delivered to the Office of the General Counsel, in which case the service copy for the attorney for the OED Director shall be hand-delivered to the Office of Enrollment and Discipline.

If a request for reconsideration is not filed, and Respondent desires further review, Respondent is notified that he may seek judicial review on the record in the U.S. District Court for the District of Columbia under 35 U.S.C. § 32 and Local Rule 213 of the U.S. District Court for the District of Columbia within thirty (30) days of the date of entry of this decision.

IT IS SO ORDERED.

ON BEHALF OF THE UNDERSECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

BY: JAMES A. TOUPIN
General Counsel
United States Patent and Trademark Office

May 5, 2005
Date

cc: Harry I. Moatz
Office of Enrollment and Discipline

Sol Sheinbein
c/o Anthony Castorina
2001 Jefferson Davis Highway, Suite 207
Arlington, VA 22202

Sol Sheinbein
c/o Anthony Castorina
310 Shadow Walk
Falls Church, VA 22046

Linda Moncys Isaacson
W. Asa Hutchinson III
Office of the Solicitor

CERTIFICATE OF SERVICE

I certify that the foregoing FINAL ORDER was sent first class mail this day to addresses listed below:

Sol Sheinbein
c/o Anthony Castorina
2001 Jefferson Davis Highway, Suite 207
Arlington, VA 22202

Dated: MAY 5 2005

Steven D. Vatterlund
U.S. Patent and Trademark Office
P.O. Box 16116
Arlington, VA 22215