

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR
OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the Matter of)	
)	
Brian R. Rayve,)	Proceeding No. D2011-19
)	
Respondent)	

FINAL ORDER

The Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Brian R. Rayve (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and USPTO Director for approval.

The Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below and the disciplinary complaint pending against Respondent, is hereby approved. This Final Order sets forth the parties’ stipulated facts, legal conclusions, and sanctions found in the Agreement.

Jurisdiction

1. Respondent is a registered patent attorney (Registration Number 39,810) and is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility, which are set forth in Part 10 of Title 37, Code of Federal Regulations.
2. The USPTO Director has jurisdiction over this matter under 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.26.

Stipulated Facts

Background

3. The USPTO registered Respondent as a patent attorney on September 16, 1995. Respondent’s registration number is 39,810.
4. By a final order dated October 8, 2008 (“Final Order”), the USPTO Director suspended Respondent from practicing patent, trademark, and other non-patent law before the USPTO for two (2) years.
5. As of the date of the Agreement, Respondent has not sought reinstatement,

see 37 C.F.R. § 11.60, and, thus, remains suspended from practice before the Office.

Facts Upon Which Disciplinary Rule Violations Are Based

6. While suspended from practice before the Office, Respondent engaged in the unauthorized practice of law before the Office by:

- a. discussing patent law and procedure with a prospective applicant and agreeing to have a patent application prepared on behalf of the prospective applicant on or about January 22, 2009;
- b. preparing and filing a utility patent application in the Office on May 8, 2009, on behalf of another person; and
- c. preparing and filing a utility patent application in the Office on September 29, 2009, on behalf of another person.

7. On at least five occasions prior to being suspended from practice before the Office, Respondent did not notify clients of correspondence he received on their behalf where (a) the correspondence could have had a significant effect on a matter pending before the Office and (b) a reasonable practitioner would believe under the circumstances that the clients should be notified.

8. On at least two occasions prior to being suspended from practice, Respondent's neglect of patent applications led to patent applications becoming abandoned without the clients' knowledge or consent.

9. A client paid Respondent \$300.00 to prepare and file a patent application on his behalf; however, Respondent never prepared or filed the application as promised, nor did Respondent return the \$300.00 he had received from the client. Respondent represents that he intends to refund the \$300.00 to the client, as required by the USPTO Code of Professional Responsibility, see, e.g., 37 C.F.R. § 10.40(a). Respondent acknowledges that the OED may require proof of his payment of \$300.00 restitution to the client if and when Respondent seeks reinstatement pursuant to 37 C.F.R. § 11.60.

Miscellaneous

10. Respondent represents that, notwithstanding the violations of the USPTO Code of Professional Responsibility specified in paragraph 12 of this Final Order, he has never lied or attempted to deceive or otherwise misled clients or other persons; and his actions before the Office, while suspended regarding the two utility patent applications, were intended only to complete the patent legal services that he agreed to perform for the involved clients before he was suspended.

11. Respondent acknowledges responsibility for his misconduct and represents that

he is sincerely remorseful for his violations of the USPTO Code of Professional Responsibility.

Legal Conclusions

12. Based on the foregoing stipulated facts, Respondent acknowledges that, based on the information contained in the Stipulated Facts, above, his conduct violated the following provisions of the USPTO Code of Professional Responsibility:

- a. 37 C.F.R. § 10.23(a) by engaging in the practice of patent law before the Office while suspended from the practice of patent law before the Office;
- b. 37 C.F.R. § 10.77(c) by allowing clients' patent applications to become abandoned without the clients' knowledge or consent; and
- c. 37 C.F.R. §§ 10.23(a) and 10.23(b) via 37 C.F.R. § 10.23(c)(8) by not notifying clients of correspondence from the Office that could have had a significant effect on a matter pending before the Office where (a) such correspondence was received by Respondent and (b) a reasonable practitioner would believe under the circumstances the client should be notified.

Agreed Upon Sanction

13. Respondent agrees, and it is ORDERED that:
- a. Respondent be, and hereby is, suspended from practicing patent, trademark, and other non-patent law before the USPTO for thirty-six (36) months commencing on the date this Final Order is signed;
 - b. Respondent shall comply with 37 C.F.R. § 11.58 in connection with the suspension imposed under subparagraph a., above;
 - c. To the extent Respondent has not already done so, Respondent shall comply with 37 C.F.R. § 11.58 in connection with the suspension imposed by the October 8, 2008 Final Order;
 - d. At any time after twelve (12) months from the date this Final Order is signed, Respondent may file a petition for reinstatement, pursuant to 37 C.F.R. § 11.60, requesting reinstatement effective prior to the expiration of the 36-month period of suspension set forth in subparagraph a., above;
 - e. Respondent shall serve a probationary period of forty-eight (48) months beginning on the date this Final Order is signed;
 - f. (1) If the OED Director is of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of this Final Order or

any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) (i) if Respondent has not yet been reinstated: issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order barring Respondent from filing a request for reinstatement during the 36-month suspension period set forth in subparagraph a., above;

or

(ii) if Respondent has been reinstated: issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for up to an additional twenty-four (24) months for the violations set forth in paragraph 12, above;

(B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11; and

(C) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

(2) In the event that, after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) deliver to the USPTO Director: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) argument and evidence supporting the OED Director's conclusion that Respondent, during Respondent's probationary period, failed to comply with any provision of this Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, and

(B) (i) if Respondent has not been reinstated: request that the USPTO Director enter an order barring Respondent from filing a request for reinstatement during the 36-month suspension period set forth in subparagraph a., above,

or

(ii) if Respondent has been reinstated: request that the USPTO Director enter an order immediately additionally suspending Respondent up to an additional twenty-four (24) months for the violations set forth in paragraph 12, above;

- g. If, pursuant to the preceding subparagraph, the USPTO Director enters an order barring Respondent from filing a request for reinstatement during the 36-month suspension period set forth in subparagraph a., or enters an order immediately suspending Respondent for up to an additional twenty-four (24) months for the violations set forth in paragraph 12, above: (i) the USPTO shall promptly dissociate Respondent's name from all USPTO Customer Numbers and Public Key Infrastructure ("PKI") certificates and (ii) Respondent may not apply for or obtain a USPTO Customer Number unless and until he is reinstated to practice before the USPTO;
- h. If, pursuant to subparagraph f., above, the USPTO Director enters an order barring Respondent from filing a request for reinstatement during the 36-month suspension period set forth in subparagraph a., or enters an order immediately additionally suspending Respondent for the violations set forth in paragraph 12, above, and Respondent seeks a review of the USPTO Director's action: any such review shall not operate to postpone or otherwise hold in abeyance the USPTO Director's order;
- i. The OED Director shall publish this Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at:
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;
- j. The OED Director shall publish in the *Official Gazette* a notice materially consistent with the following:

Notice of Suspension and Probation

This notice concerns Brian R. Rayve of Park City, Utah, a registered patent attorney (Registration No. 39,810). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Rayve for thirty-six months for violating 37 C.F.R. § 10.23(a); 37 C.F.R. § 10.77(c); and 37 C.F.R. § 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(8). Mr. Rayve is eligible to request reinstatement after serving twelve months of his 36-month suspension. Mr. Rayve has also been placed on probation for forty-eight months.

While suspended from practice before the Office, Mr. Rayve engaged in the unauthorized practice of law before the Office by (i) discussing patent law and procedure with a prospective applicant and agreeing to have a patent application prepared on

behalf of the prospective applicant and (ii) preparing and filing two utility patent applications for other persons. On at least five occasions prior to being suspended, Mr. Rayve did not notify clients of correspondence he received on their behalf where (a) the correspondence could have had a significant effect on a matter pending before the Office and (b) a reasonable practitioner would believe under the circumstances that the clients should be notified. Also, prior to being suspended, on at least two occasions Mr. Rayve's neglect of patent applications led to patent applications becoming abandoned without the clients' knowledge or consent.

Mr. Rayve represents that, notwithstanding his violations of the USPTO Code of Professional Responsibility, he has never lied or attempted to deceive or otherwise misled clients or other persons; and his actions before the Office, while suspended regarding the two utility patent applications, were intended only to complete the patent legal services that he agreed to perform for the involved clients before he was suspended. Mr. Rayve acknowledges responsibility for his misconduct and represents that he is sincerely remorseful.

This action is the result of a settlement agreement between Mr. Rayve and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.20, 11.26, and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- k. Nothing in the Agreement or this Final Order shall prevent the Office from seeking discipline against Respondent in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57 for the misconduct that caused the USPTO Director to enter an order barring Respondent from filing a request for reinstatement during the 36-month suspension period or immediately suspending Respondent pursuant to the provisions of subparagraph f., above;
- l. Nothing in the Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including this Final Order, (1) when addressing any further complaint or evidence of the same or similar misconduct of Respondent brought to the attention of the Office, and/or (2) in any future disciplinary proceeding concerning Respondent (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (ii) to rebut any statement or representation by or on Respondent's behalf; and
- m. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of the Agreement.

