

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

In the Matter of:)
)
Wesley B. Ames,)
)
Respondent) Proceeding No. D2011-25
)
)
_____)

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27, the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Wesley B. Ames (“Respondent”) on January 11, 2012. Respondent submitted the affidavit to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation is approved. As a result, Respondent is excluded on consent from practice before the Office effective on the date of this Final Order.

Jurisdiction

Respondent is a registered patent practitioner (Registration No. 40,893).¹ Respondent is subject to the USPTO Code of Professional Responsibility and Disciplinary Rules. *See* 37 C.F.R. § 11.19(a). Accordingly, pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent’s

¹ Respondent was initially registered as a patent agent on August 4, 1997. His status was changed to patent attorney on August 8, 2000. Respondent’s affidavit states that he is a patent agent, but it appears that Respondent may be an attorney licensed and in good standing the State of California. Accordingly, this Final Order refers to Respondent as a registered patent practitioner.

Affidavit of Resignation and to exclude Respondent on consent from the practice of patent, trademark, and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in his January 11, 2012 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.
2. He is aware that there is a disciplinary complaint currently pending against him and that the complaint is comprised of allegations of misconduct in connection with his representation of two clients before the USPTO.
3. He is aware that the OED Director is of the opinion that:
 - a. He violated 37 C.F.R. § 10.77(c) by (i) allowing a client's application to become abandoned without her knowledge or consent, by not keeping the client reasonably informed as to the status of her application or informing her of critical Office correspondence, and by not responding to her attempts to communicate with him; and (ii) by allowing a corporate client's patent applications to become abandoned without its knowledge or consent, by not keeping it reasonably informed as to the status of its applications or informing it of critical Office correspondence, and by not responding to its attempts to communicate with him;
 - b. He violated 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(8) by failing to inform a client or former client or failing to timely notify the Office of an inability to notify a client or former client of correspondence received from the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of the client or former client, and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified;
 - c. He violated 37 C.F.R. § 10.23(a) via 37 C.F.R. § 10.23(c)(3) by not refunding fees to Hypersolar, Inc. in connection with the applications he was hired to prepare and file on its behalf;
 - d. He violated 37 C.F.R. § 10.84(a)(1) by (i) allowing a client's application to become abandoned without her consent or knowledge by (a) failing to respond to the Notice of Missing Parts or inform the client of her need to respond, (b) failing to respond to the Notice of Abandonment or inform the client of the need to respond, and (c) failing to seek to revive the Application once it had been

abandoned; (ii) by (a) not paying the Office the \$110 statutory basic filing fee for an application that he had received from a corporate client and (b) allowing the corporate client's application to become abandoned without the consent or knowledge of the client, by failing to respond to the Notice of Missing Parts for the application or notifying the client of the need to respond, by failing to respond to the Notice of Abandonment or inform the corporate client of the need to respond, and by failing to seek to revive the application once it had become abandoned; and (iii) by (a) not paying the Office the \$4,467 in prescribed filing fees for a patent application that he had received from a corporate client and (b) allowing the application to become withdrawn by failing to respond to the Notification Concerning Payment of Prescribed Fees or inform the corporate client of the need to respond, by failing to respond to the Invitation to Pay Prescribed Fees Together with Late Payment Fee or inform the corporate client of the need to respond, by failing to respond to the Notification that International Patent Application Considered Withdrawn or inform the corporate client of the need to respond, and by failing to seek to revive the corporate client's application;

- e. He violated 37 C.F.R. § 10.84(a)(2) by abandoning a person as his client as evidenced by his omissions that caused her application to become and remain abandoned and by abandoning a corporation as his client as evidenced by his acts and omissions that caused its applications to become and remain abandoned; and
- f. He violated 37 C.F.R. § 10.89(c)(6) by intentionally and habitually violating Disciplinary Rules.

4. Without admitting to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility as alleged in the complaint currently pending against him, he acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in the disciplinary complaint pending against him are true and (ii) he could not have successfully defended himself against such allegations.

5. He has fully read and understands 37 C.F.R. §§ 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of requesting and consenting to exclusion from practice before the USPTO.

6. He consents to being excluded from practice before the USPTO.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Hence, it is ORDERED that:

- a. Respondent's Affidavit of Resignation is approved;
- b. Respondent is excluded on consent from the practice of patent, trademark, and other non-patent law before the Office beginning on the date this Final Order is signed;
- c. The OED Director shall publish this Final Order at the Office of Enrollment and Discipline's Reading Room found at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;
- d. The OED Director shall publish the following notice in the *Official Gazette*:

Notice of Exclusion on Consent

This notice concerns Wesley B. Ames, registered patent practitioner (Registration No. 40,893). Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Ames' affidavit of resignation, prepared pursuant to 37 C.F.R. § 11.27(b), and ordered his exclusion on consent from the practice of patent, trademark, and non-patent law before Office.


Mr. Ames voluntarily submitted his affidavit at a time when a disciplinary complaint was pending against him. He acknowledged that the Deputy General Counsel for Enrollment and Discipline and Director of the USPTO's Office of Enrollment and Discipline ("OED Director") was of the opinion that his conduct violated 37 C.F.R. §§ 10.23(a) via 10.23(c)(3), 10.23(b)(6) via 10.23(c)(8), 10.77(c), 10.84(a)(1), 10.84(a)(2), and 10.89(c)(6) in connection with his representation of two clients before the Office. While Mr. Ames did not admit to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility as alleged in the pending disciplinary complaint, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in the disciplinary complaint against him

are true and (ii) he could not have successfully defended himself against such allegations.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 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>.

- e. Respondent shall comply fully with 37 C.F.R. § 11.58;
- f. The OED Director, in accordance with 37 C.F.R. § 11.59, shall give notice of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the State where the practitioner is admitted to practice, to courts where the practitioner is known to be admitted, and the public;
- g. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement;
- h. The OED Director and Respondent shall bear their own costs incurred to date and in carrying out the terms of this agreement; and
- i. The OED Director shall move to dismiss the pending disciplinary complaint within fourteen days of the date of this Final Order.

FEB 14 2012
Date



JAMES O. PAYNE
Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

David M. Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

cc:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Wesley B. Ames
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