

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

In the Matter of:)	
)	
David E. Fox,)	
)	
Respondent)	Proceeding No. D2011-38
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FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24(d), the exclusion of David E. Fox (Respondent) from the practice of trademark and other non-patent law before the United States Patent and Trademark Office (USPTO or Office) is hereby ordered for violation of the ethical standard set out in 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(5)(i).¹

On September 6, 2011, a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (Notice and Order) was mailed by certified mail (receipt no. 70080500000128104624) to the Respondent at the last address known to the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (OED Director). The Notice and Order informed Respondent that the OED Director had filed a “Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24” (Complaint) requesting that the USPTO Director impose discipline upon Respondent identical to discipline imposed by the Court of Appeals of Maryland in *Attorney Grievance Commission of Maryland v. David E. Fox* (Misc. Docket AG No. 6) (Dec. 20, 2010). The Notice and Order provided Respondent an opportunity to file, within forty days, a response opposing, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1), the imposition of reciprocal discipline based on

¹ Respondent is not a registered patent practitioner and is not authorized to practice patent law before this Office.

the Order in *Attorney Grievance Commission of Maryland v. David E. Fox* (Case AG No. 6) (Dec. 20, 2010). On September 7, 2011, the United States Postal Service (USPS) left a notice of attempted delivery of a package at Respondent's address. There is no indication that Respondent retrieved the package from USPS and the package was ultimately returned to the USPTO on November 4, 2011.

Due to the inability to serve Respondent at his last known address, Respondent was served by publication, pursuant to 37 C.F.R. § 11.35(b), in the *Official Gazette* on November 22, 2011 and November 29, 2011. The service in the *Official Gazette* informed Respondent that the OED Director had initiated, on June 20, 2011, a proceeding to impose reciprocal discipline, based on the Order in *Attorney Grievance Commission of Maryland v. David E. Fox* (Case AG No. 6) (Dec. 20, 2010). The notice in the *Official Gazette* also informed Respondent that, on September 6, 2011, a Notice and Order had been issued and mailed to his last known address. The notice in the *Official Gazette* further provided directions on how Respondent could request a copy of the Notice and Order and the supporting documents that had been sent to him at his last known address. It has been more than forty days since the second notice was published in the *Official Gazette* (Nov. 29, 2011), yet Respondent has not requested a copy of the Notice and Order and the supporting documents or filed a response to the Notice and Order.

Analysis

In light of Respondent's failure to file a response, it is hereby determined that: (1) there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and (2) the exclusion of Respondent from practice before the USPTO is appropriate.

ACCORDINGLY, it is hereby **ORDERED** that:

- A. Respondent is excluded from the practice of trademark and other non-patent law before the USPTO effective the date of this Final Order;
- B. The OED Director is directed to publish the following Notice in the Official Gazette:

NOTICE OF EXCLUSION

This concerns David E. Fox of Washington, D.C., an attorney licensed by the state of Maryland and the District of Columbia who is not a registered practitioner and who is not authorized to practice patent law before the United States Patent and Trademark Office (“USPTO”). In a reciprocal disciplinary proceeding, the USPTO Director has ordered that Mr. Fox be excluded from the practice of trademark and non-patent law before the USPTO for violating 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(5)(i) by being disbarred on ethical grounds from the practice of law in the State of Maryland.

The Court of Appeals of Maryland issued an order, dated December 20, 2010, disbaring Mr. Fox for neglecting a client matter, making a misrepresentation to a client, settling a matter without consulting with the client, and failing to cooperate with the office of Bar Counsel. The Court of Appeals of Maryland disbarred Mr. Fox after he was found to have violated Maryland Lawyer’s Rules of Professional Conduct 1.1, 1.2(a), 1.3, 1.4(a) and (b), 1.16(d), 8.1(b) and 8.4(a) and (c).

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.24 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline’s Reading Room located at:
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- C. The OED Director is directed to give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is or formerly was admitted to practice, to courts where Respondent is known to be admitted, and to the public;
- D. Respondent is directed to comply with his duties under 37 C.F.R. § 11.58 as an excluded practitioner and, upon filing a petition for reinstatement under

37 C.F.R. § 11.60, submit proof of compliance with 37 C.F.R. §§

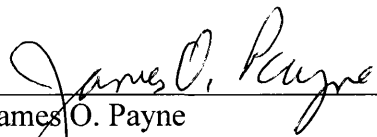
11.58(b)(3), (b)(5), and (b)(6) with the OED Director; and

E. Direct such other and further relief as the nature of this cause shall require.

Respectfully Submitted,

FEB 14 2012

Date


James O. Payne
Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

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