

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of:

Frank L. Laczko,

Respondent.

Proceeding No. D2013-08

February 4, 2014

INITIAL DECISION

On January 16, 2014, this Court issued an *Order Granting Partial Summary Judgment* (“Partial Summary Judgment Order”) in favor of the U.S. Patent and Trademark Office’s Office of Enrollment and Discipline (“OED”). The *Summary Judgment Order* found that there were no material issues of fact as to several of the charges that were proven by undisputed facts, concluding that Respondent had violated multiple USPTO Disciplinary Rules, as alleged in Counts 1-5 of the *Complaint*.

The Court denied summary judgment as to Counts 6 and 7 because material issues of fact remained unresolved and expressed misgivings about the validity of Count 10. The OED Director did not seek summary judgment on Counts 8 and 9. Accordingly, Counts 6-10 remained active and unresolved after the Partial Summary Judgment Order.

On January 17, 2014, Counsel for the OED Director filed a *Motion to Dismiss Certain Counts and for Entry of an Initial Decision* (“Motion”). The motion seeks dismissal of Counts 6-10, and entry of an initial decision based entirely on the Court’s findings as to Counts 1-5, and analysis of the four Sanctions factors based on those findings.¹

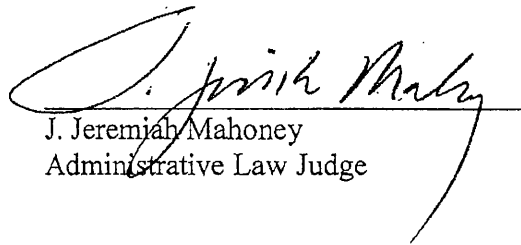
The Partial Summary Judgment Order, incorporated herein by reference, engaged in a lengthy discussion of Counts 1-5, concluding that they were proven by undisputed facts, and finding that exclusion was the proper remedy for the violations proven in Counts 1 through 5. Accordingly, the OED Director’s Motion is will be granted.

¹ Respondent was served with the Motion, but has not filed a response.

ORDER

Consistent with the foregoing, Counts 6 through 10 are **Dismissed**. Summary Judgment has been **Granted** as to Counts 1 through 5. Accordingly, Respondent Frank Laczko, PTO Registration No. 65,081, is **Excluded** from practice before the U.S. Patent and Trademark Office in patent, trademark, and any other non-patent matters.

So ORDERED.



J. Jeremiah Mahoney
Administrative Law Judge

Notice of Appeal Rights. The appeal procedure and format requirements are set forth in detail in 7 C.F.R. § 11.55. This *Initial Decision* may be appealed within 30 days of issuance to the USPTO Director by any party. Any cross-appeal must be filed by the later of: (1) fourteen days after the date of service of the appeal; or (2) thirty days after the date of this *Initial Decision*. Any appellee or cross-appellee brief must be filed within 30 days after the date of service of the appeal or cross-appeal. Any reply brief must be filed within fourteen days after the date of service of any appellee or cross-appellee brief.

Service of Appeal Documents. All briefs shall be filed with the USPTO Director at the following address:

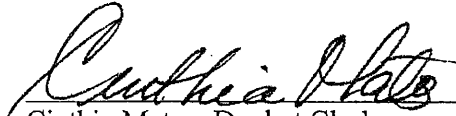
Director of the United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Copies of appeal documents. Copies of any appellee filings shall also be served on the opposing party(s), and on the HUD Office of Hearings and Appeals.

Finality of decision. In the absence of an appeal, this *Initial Decision* will become the final decision of the USPTO Director 30 days from the date of this *Initial Decision*. 37 C.F.R. §11.54.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION**, issued by J. Jeremiah Mahoney, Administrative Law Judge, in D2013-08, were sent to the following parties on this 5th day of February, 2014, in the manner indicated:


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**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

In the Matter of:

Frank L. Laczko

Respondent.

Proceeding No. D2013-08

January 16, 2014

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

The above-entitled matter is before this Court on a *Motion for Summary Judgment* ("Motion" or "SJ Motion"), filed on September 30, 2013, by the U.S. Patent and Trademark Office ("USPTO" or "Government"). Respondent Frank Laczko ("Respondent") did not file any response to the *Motion*, and indeed has not been heard from since filing his *Answer* on July 31, 2013.¹

The *Complaint* contains 10 Counts, of which the Government asks for summary judgment on all except Counts 8 and 9. Based upon such judgment, the Government asks the Court to exclude Respondent from practice before the USPTO.

For the reasons set forth below, the *Motion* is **GRANTED IN PART** and **DENIED IN PART**.

PROCEDURAL HISTORY

On April 25, 2013, the USPTO filed the initial *Complaint and Notice of Proceedings Under 35 U.S.C. § 32* ("Complaint"), pursuant to 37 C.F.R. §§ 11.32 and 11.34. In the *Complaint*, the Director of the Office of Enrollment and Discipline ("OED Director") sought the suspension or exclusion of Respondent from practicing before the USPTO due to various alleged violations of the agency's Disciplinary Rules. Respondent's *Answer* did not raise any affirmative defenses and did not challenge the allegations other than to deny each charge.

¹ Respondent communicated by e-mail with USPTO counsel on June 2, 2013, indicating that he had not received the *Complaint* in this matter. He received a copy by e-mail on June 3, 2013, and requested an extension of time to answer until July 31, 2013 because of ongoing medical issues. The unopposed request was granted by the Court, and Respondent filed his *Answer to Complaint* on July 31, 2013. On August 1, 2013, the Court issued a *Second Notice of Hearing and Order*, establishing a hearing date of November 5, 2013. On September 30, 2013, counsel for USPTO filed a *Motion for Summary Judgment*. Also on September 30, 2013, the Court issued a *Notice and Stay of Proceedings* in all pending matters due to the imminent shutdown of the federal government and concomitant furlough of most federal government employees. The federal government was shut down from October 1, 2013, until October 16, 2013. On October 22, 2013, the Court issued an *Order Vacating Second Notice of Hearing and Order*, and directed the parties to participate in a telephone conference. Respondent did not call in for the telephone conference, and has not replied to the *Motion for Summary Judgment*.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Matsushita Elec. Indus. Corp. v. Zenith Radio Corp., 475 U.S. 574 (1985); see also Fed. R. Civ. P. 56(c). If the record, taken as a whole, could not lead a reasonable trier of fact to find for the non-moving party, then there is no genuine issue for trial. Geoscan, Inc. of Texas v. Geotrace Technologies, Inc., 226 F.3d 387, 390 (5th Cir. 2000). Additionally, a fact is not “material” unless it will affect the outcome of the proceeding. Anderson, 477 U.S. 242, 248.

Summary judgment is a “drastic device” because, when exercised, it diminishes a party’s ability to present its case. Nationwide Life Ins. Co. v. Bankers Leasing Ass’n, Inc., 182 F.3d 157, 160 (2d Cir. 1999). “Accordingly, the moving party bears a heavy burden of demonstrating the absence of any material issues of fact.” Id.

In reviewing a motion for summary judgment, the reviewing court must find “all ambiguities and draw all reasonable inferences in favor of the party defending against the motion.” Id.; see also, Lujan v. Nat’l Wildlife Fed’n, 497 U.S. 871, 888 (1990) (“where the facts specifically averred by [the nonmoving] party contradict facts specifically averred by the movant, the motion must be denied”).

DISCUSSION

The OED Director contends that there are no genuine issues of material fact in the instant proceeding because any factual questions were litigated and resolved in a 2012 Texas state court decision. There, the Texas Institute of Science, Inc., (“TxIS”) sued Respondent to recover \$35,225.00 in fees paid in exchange for legal services. The suit also sought the return of patent files given to Respondent by TxIS. Respondent did not appear in court to contest the lawsuit. Accordingly, on July 2, 2012, the District Court for Collin County, Texas, issued a Default Judgment, finding that TxIS “is entitled to judgment against [Respondent]” and ordering him to return the files; pay TxIS \$35,225.00, plus interest; and cover TxIS’s attorney’s fees of \$7,875.00.

The Government argues that this state court ruling includes the implicit factual findings that Respondent did not perform the legal services for which he was paid. As a result, the doctrine of “offensive collateral estoppel” should now prohibit Respondent from claiming that such services were performed.

Under Texas law,² “a party seeking to assert the bar of collateral estoppel must establish that (1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action.” State Farm Fire and Cas. Co., v. Fullerton, 118 F.3d 374, 377 (5th Cir. 1997) (quoting Sysco Food Services, Inc., v. Trapnell, 890 S.W. 2d 796, 801 (Tex.1994)).

² The Court is obliged to follow Texas law pursuant to 28 U.S.C. § 1738, the federal Full Faith and Credit statute. Under the statute, federal courts must give the same preclusive effect to a state-court judgment as would the courts of the state rendering the judgment. McDonald v. City of W. Branch, Mich., 466 U.S. 284, 287 (1984); Angel v. Bullington, 330 U.S. 183, 191-93 (1947); Fullerton, 118 F.3d at 377.

Respondent entirely failed to participate in the Texas state court action, and so did not raise any challenge to the allegations brought therein, which are for the most part factually identical to the charges in the case at bar. This Court must therefore determine whether the Default Judgment constituted full and fair litigation of the underlying allegations.

A review of Texas caselaw provides strong evidence that a default judgment is full and fair litigation for collateral estoppel purposes. In 1985, the Texas Supreme Court held that collateral estoppel analysis does not focus on what could have been litigated, but what was actually litigated. Van Dyke v. Boswell, O'Toole, Davis & Pickering, 697 S.W. 2d 381, 384 (Tex.1985). Quoting the *Restatement (Second) of Judgments*, the court went on to explain that "actual litigation occurs when an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined." *Id.* A plaintiff's claims are submitted for determination when they are pled, whether the opposing party responds to them or not.

In one oft-cited example, Mendez v. Haynes Brinkley & Co., the plaintiffs obtained a default judgment against a fire insurance recording agent, Michael Zuniga, then later brought suit against the general insurance company, Haynes Brinkley, on an agency theory. Mendez v. Haynes Brinkley & Co., 705 S.W. 2d 242 (Tex.App-San Antonio 1986). The court in the latter suit granted summary judgment in favor of the defendants because the default opinion had concluded that Zuniga was not Haynes Brinkley's agent. As a result, Haynes Brinkley could not be found liable for Zuniga's actions.³

The Fifth Circuit reached a similar conclusion in Fullerton, *supra*, under very different circumstances. There, an insurance company sought to deny coverage when one of its policyholders shot and killed his wife and step-daughter. The insurance company argued that because the man had pled guilty to murder — a specific intent crime — the wife and step-daughter's heirs could not claim the killings to be unintentional, and thus covered by the insurance policy. In determining that a guilty plea in criminal court was a proper predicate for a collateral estoppel claim, the court looked to Texas' civil caselaw for guidance. It found that "Texas has not hesitated to give default civil judgments preclusive effect, in spite of the cursory nature of the adjudication leading to those charges." Fullerton, 118 F.3d at 381-82.

The Fullerton court specifically examined the Mendez decision, among others. After noting the obvious differences between a civil claim and a capital murder case, the court stated that "both the default judgment in Mendez and the conviction in this case were the results of one-sided litigation. In both, a court entered judgments that flowed from the failure of one side to assert any defense. This treatment of default judgments suggests that in Texas 'full and fair litigation' need not involve contested issues." *Id.* at 383 (internal quotations omitted).

The present proceeding falls within this same line of reasoning. Respondent was not denied the opportunity to contest the state court decision; he simply chose not to do so. Consequently, the court found in favor of TxIS, and specifically noted that the judgment was

³ Mendez is an example of "defensive collateral estoppel," wherein the defendant looks to the past to prevent an adverse party from raising a claim it has previously raised against another party. By comparison, offensive collateral estoppel prohibits a defendant from relitigating issues that the defendant previously litigated unsuccessfully against another plaintiff. The difference between defensive and offensive collateral estoppel is immaterial in this instance.

“intended in all respects as final and appealable.” Respondent never appealed that decision. Accordingly, the issue was fully litigated at that point, and Respondent would be foreclosed from arguing those material facts now.

The second prong of the collateral estoppel analysis examines whether the fact litigated in the prior action was essential to that determination. There is no question here that such was the case. Although the district court decision does not explicitly state that Respondent failed to perform the required legal work, there is no other rational way to read the default decision. The court found that TxIS was “entitled to judgment” against Respondent in the amount it had paid him.” The clear implication of this decision is that TxIS was Respondent’s client, Respondent did not do the contracted-for work and so had no right to the payments. “Issues decided implicitly in a prior judgment have collateral estoppel effect if they were essential to that judgment.” DeLeon v. Lloyd’s London, Certain Underwriters, 259 F.3d 344, 348 (5th Cir. 2001). The entire thrust of TxIS’s lawsuit was that Respondent had not performed the agreed-upon services. The court’s order granting judgment of \$35,225 is unassailable proof that the Court agreed with TxIS on this central issue. The second prong is therefore met.

Finally, the OED Director must show that the parties were cast as adversaries in the first action. It should go without saying that the prior suit was adversarial in nature; Respondent was ordered to pay damages to TxIS and to return the clients’ patent files. However, the OED Director was not a party to that suit. Regardless, it is well settled that only the party against whom the estoppel is being raised need be a party, or in privity with a party, in the prior action. See Mendez, 705 S.W.2d at 244; Benson v. Wanda Petroleum Co., 468 S.W.2d 361 (Tex.1971). Here, the OED Director seeks to estop Respondent, who was the defendant in the Texas state case.

Accordingly, the doctrine of collateral estoppel prohibits Respondent from challenging the fact that he was paid to accomplish certain tasks, which he did not do. He also cannot dispute that he was given patent files in support of those tasks.

However, even the application of the collateral estoppel rule does not finally resolve this matter, though it may prove dispositive as to several of the allegations. Respondent’s *Answer* denies many other allegations, and the facts underlying those allegations are not all answered in the Texas Default Judgment. For example, the *Complaint* states that

As of the date of the filing of this *Complaint*, Respondent has not complied with the July 2, 2012 Order of the District Court for Collin County, Texas, specifically [sic]: Respondent has not paid the judgment to TxIS, nor has he returned the patent files to TxIS.

Complaint, Factual Statement #78, p. 11.

Respondent specifically denied this statement in his *Answer*. The Texas decision is of no assistance here, as this allegation concerns events that occurred after the issuance of that decision. Whether Respondent did return the files and repay the money is a factual question, and it remains in dispute. Counts 1, 2, 3, 6, and 7 of the *Complaint* all relate, at least in part, to Respondent’s alleged failure to comply with the Texas judgment. Until sufficient evidence has been adduced and examined, it is inappropriate to render a final decision as to that specific allegation.

Additionally, the OED Director seeks summary judgment on Count 10, which alleges the violation of 37 C.F.R. § 10.23(b)(6). That regulation prohibits a practitioner from “engaging in any other conduct that adversely reflects on the practitioner’s fitness to practice before the Office.” The Government contends that the “acts and omissions described in the *Complaint*” are evidence of the violation of this Disciplinary Rule. They are not.

The prohibition stated in 37 C.F.R. § 10.23(b)(6) is a catch-all provision, intended to extend sanction authority to misconduct that is not already contained within the Rules. The structure of 37 C.F.R. § 10.23(b) makes this evident. Section 10.23(b)(1) states that a practitioner shall not “[V]iolate a Disciplinary Rule.” Sections (b)(2)-(5) offer examples of what behavior would constitute misconduct. Section (b)(6), however, is a classic “everything else” regulation. The OED Director has not alleged any “other conduct” not already encompassed in the other regulations and rules. Thus the Court has no basis to find a violation of 37 C.F.R. § 10.23(b)(6).

After limiting this review to the facts either admitted by Respondent or expressly or impliedly found in the Texas state court decision, summary judgment in favor of the OED Director is appropriate for most of the alleged counts. The Court therefore makes the following factual findings and conclusions of law:

UNDISPUTED MATERIAL FACTS

1. Respondent has been registered as a patent attorney with the USPTO since September 8, 2009, under Registration No. 65,081.
2. The Texas Institute of Science, Inc. (TxIS) is a Texas corporation with its principal place of business in Richardson, Texas.
3. TxIS works with academic institutions in foreign countries to assist inventors at those institutions in obtaining United States patents on their potentially commercially viable inventions.
4. TxIS determines whether a particular invention is worth the expense of pursuing U.S. patent protection through the USPTO, including whether to file provisional and non-provisional patent applications and the extent to which non-provisional patent applications will be prosecuted.
5. TxIS hired Respondent to evaluate the potential patentability of certain inventions developed by inventors in foreign countries and, upon further instruction in appropriate cases, to pursue patent protection on those inventions on behalf of the inventors.
6. TxIS was Respondent’s client.
7. The applicants named in the patent applications, i.e., the foreign inventors, were also Respondent’s clients.

8. TxIS hired Respondent to prepare patent applications for a "Fire Extinguisher Polymer Composite Material" invention, invented by Alexander Vilesov ("the Vilesov Application"); a "Catalytic Wet Air Oxidation Process for Waste Water" invention, invented by Esther Sulman ("the Sulman Application"); a "Hydrogen Storage Material" invention, invented by Jiri Cermak ("the Cermak Application"); and a "Using Plasma Technologies to Manufacture Sand" invention, invented by Kirill Levine ("the Levine Application") (collectively, "the Contested Applications").
9. TxIS obtained information from the foreign inventor-clients regarding their inventions ("the client files") and provided that information to Respondent for his use in preparing patent applications.
10. Respondent communicated directly with TxIS about the Contested Applications.
11. Respondent accepted direction from TxIS regarding the preparation and prosecution of the contested applications.
12. Respondent sent TxIS a \$10,002.50 invoice for the Vilesov Application, which included \$565.00 for "filing and miscellaneous fees for utility application."
13. Respondent sent TxIS a \$4,093.75 invoice for the Sulman Application.
14. Respondent sent TxIS a \$5,718.75 invoice for the Cermak Application.
15. Respondent sent TxIS a \$13,230.00 invoice for the Levine Application, which included a \$600.00 fee for filing a non-provisional patent application.
16. In an October 4, 2011, e-mail to TxIS, Respondent affirmatively stated that he had filed the Vilesov Application with the USPTO.
17. TxIS paid the invoices for all four Contested Applications.
18. Respondent did not actually file any of the Contested Applications, despite representing to TxIS via the invoices and the October 4, 2011, e-mail that he had.
19. On February 2, 2012, TxIS sent Respondent an e-mail message asking Respondent to provide documentation evidencing that Respondent had prepared and filed the Contested Applications with the USPTO.
20. Respondent refused to provide the requested documentation, asserting that the inventors — not TxIS — were his client and that their applications were confidential.
21. Prior to asserting that TxIS was not his client, Respondent had provided information about patent applications to TxIS.
22. TxIS demanded the return of the client files for all four Contested Applications.
23. Respondent refused to return the client files.

24. On July 2, 2012, the District Court for Collin County, Texas, entered a Default Judgment in favor of TxIS and ordered Respondent to pay TxIS \$35,225.00, plus attorney's fees of \$7,875.00; and to return the client files to TxIS.

CONCLUSIONS OF LAW

1. Regulation 37 C.F.R. § 10.23(a) states that a practitioner "shall not engage in disreputable or gross misconduct.
2. Respondent violated 37 C.F.R. § 10.23(a) by failing to perform the legal services he had been hired to perform, i.e., preparing and filing the Contested Applications.
3. Respondent violated 37 C.F.R. § 10.23(a) by representing to TxIS that he had prepared and filed the Contested Applications when in fact he had not done so.
4. Respondent violated 37 C.F.R. § 10.23(a) by sending invoices to TxIS, and accepting payment on those invoices, for legal services he had not performed.
5. Regulation 37 C.F.R. § 10.23(b)(4) states that a practitioner shall not "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."
6. Respondent violated 37 C.F.R. § 10.23(b)(4) by representing to TxIS via the invoices and the October 4, 2011, e-mail, that he had prepared and filed the Contested Applications when in fact he had not done so.
7. Respondent violated 37 C.F.R. § 10.23(b)(4) by sending invoices to TxIS, and accepting payment on those invoices, for legal services he had not performed.
8. Regulation 37 C.F.R. § 10.23(c)(3) states that conduct that constitutes a violation of 37 C.F.R. §§ 10.23(a) or 10.23(b) includes "[M]isappropriation of, or failure to properly or timely remit, funds received by a practitioner ... from a client to pay a fee which the client is required by law to pay to the Office.
9. Respondent violated 37 C.F.R. § 10.23(c)(3) by accepting payment for filing fees related to the Vilesov Application and the Levine Application when he did not actually file either application with the USPTO.
10. Regulation 37 C.F.R. § 10.77(c) states that a practitioner shall not "[N]eglect a legal matter entrusted to the practitioner."
11. Respondent violated 37 C.F.R. § 10.77(c) by failing to perform the legal services he had been hired to perform, i.e., preparing and filing the Contested Applications.
12. Regulation 37 C.F.R. § 10.84(a) states that a practitioner shall not intentionally "[F]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the Disciplinary Rules ... fail to carry out a contract of employment entered into with a client for professional services ... or prejudice or damage a client during the course of a professional relationship."

13. Respondent violated 37 C.F.R. § 10.84(a) by failing to perform the legal services he had been hired to perform, i.e., preparing and filing the Contested Applications.

14. Respondent violated 37 C.F.R. § 10.84(a) by sending invoices to TxIS, and accepting payment on those invoices, for legal services he had not provided.

SANCTIONS

The OED Director requests that the Court sanction Respondent by suspending or excluding him from practice before the USPTO in patent, trademark, or other non-patent cases or matters. The Court must consider four factors, if applicable, before issuing such a sanction. 37 C.F.R. § 11.54(b).

1. Did the practitioner violate a duty owed to a client, to the public, to the legal system, or to the profession?

Yes. Respondent was hired to perform specific legal services for TxIS. He filed invoices with TxIS affirmatively representing that those services had been performed, when in truth he had not prepared or filed the Contested Applications, and so had not fulfilled any of the duties he owed to TxIS. Simply put, Respondent lied to his client, for his own economic benefit. Moreover, when pressed to return the payments and client files, Respondent refused to do so and proffered a justification that was plainly at odds with his own past actions.⁴ Respondent's conduct casts a poor light not only on himself, but upon the patent bar as a whole. This factor warrants exclusion from practice before the USPTO.

2. Did the practitioner act intentionally, knowingly, or negligently?

Yes. Respondent was aware that he had not filed the Contested Applications, and so was equally aware that he had no right to the payments demanded in the invoices. Despite this, he accepted payment on those invoices and refused to return them, forcing TxIS to pursue a civil judgment against him. Respondent has never asserted that his actions were the product of mistake or negligence, nor has he made any other attempt to explain himself, either in this proceeding or in the previous state court action. The inescapable conclusion therefore is that his violations were knowing and material. This factor supports a significant sanction.

3. What amount of actual or potential injury was caused by the practitioner's misconduct?

TxIS paid Respondent \$35,225.00 for work that he did not do. TxIS also gave Respondent client files to enable him to accomplish the contracted-for legal services. There is currently no indication that the money or the files have been returned to TxIS, despite a valid court order compelling Respondent to do so.

⁴ Indeed, even if TxIS was not his client and the foreign inventors were, as Respondent claims, he would still be liable for violating multiple Disciplinary Rules, including failure to fully disclose a conflict of interest and communicating confidential client information to a third party without consent. See 37 C.F.R. §§ 10.57 and 10.66. The OED Director raised the potential violation of § 10.66 as Count 9 of the *Complaint* and reserved the right to raise the § 10.57 violation at a later time.

Additionally, by failing to file the Contested Patents, Respondent has potentially prevented TxIS and the foreign inventors from obtaining patents in the United States, and thereby derailed their opportunity to claim the profits that may have been derived from those patents. These are significant injuries that also warrant a maximum sanction.

4. Are there any aggravating or mitigating factors?

There are multiple aggravating factors present in this case. The undisputed facts prove that Respondent utterly failed his clients — whether TxIS or the foreign inventors — by neglecting to file the Contested Applications. He then compounded his misconduct by demanding compensation for the work he did not do, and refusing to disclose documents that would reveal his deception. Respondent could have plausibly argued that the failure to file the applications was unintentional, and that the refusal to return the client files was the result of a legitimate disagreement about the identity of his client. He can make no such argument; however, regarding the invoices. There is no acceptable justification for sending invoices for work he knew he had not performed.

Finally, Respondent's general lack of participation in both the instant case and the Texas case confirm his disinterest in accepting responsibility for his actions. Although it has been speculated that Respondent, who is in his early 80s, may be incapable of participating in this matter due to ill health, he has done nothing to confirm this with the Court. He has not contacted the Court or the USPTO since filing his *Answer*, nor has anyone contacted the Court on his behalf. Given his failure to contest the prior legal case, it appears more likely that Respondent is simply unwilling to defend against these allegations. This suggests a general contempt for the legal process. As such, Respondent has no place representing clients before the USPTO.

ORDER

On the basis of the undisputed facts, the *Motion for Summary Judgment* is **GRANTED** as to Counts 1, 2, 3, 4, and 5. Upon analysis of the four enumerated factors bearing upon imposition of sanctions, the Court concludes that Respondent's misconduct in those Counts warrants the penalty of exclusion.

The Counts remaining before the Court are Counts 8 and 9, which were not included in the Government's *Motion for Summary Judgment*; and Counts 6, 7, and 10, as to which the Court has **DENIED** summary judgment.

The Government may dismiss any or all of the remaining Counts or proceed to a decision on these Counts. By *Status Report* and/or *Motion to Dismiss*, the Government shall advise the Court of its election(s) on or before February 7, 2014.

SO ORDERED.


J. Jeremiah Mahoney
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER GRANTING PARTIAL SUMMARY JUDGEMENT**, issued by J. Jeremiah Mahoney, Administrative Law Judge, in D2013-08, were sent to the following parties on this 16th day of January, 2014, in the manner indicated:


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