

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

In the Matter of

AMY SOMMER ANDERSON,

Respondent.

Proceeding No. D2019-03

July 1, 2019

INITIAL DECISION AND ORDER GRANTING DEFAULT JUDGMENT

This matter arises from a disciplinary complaint filed by the Director for the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “the Office”) against Amy Sommer Anderson (“Respondent”) pursuant to 35 U.S.C. § 32 as implemented by 37 C.F.R. Part 11.¹ The OED Director has filed a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction and a Memorandum in Support* (“Default Motion”) seeking a default judgment and an order excluding Respondent from practice before the Office.

PROCEDURAL HISTORY

On December 20, 2018, the OED Director filed a *Complaint and Notice of Proceedings Under 35 U.S.C. § 32* (“Complaint”) against Respondent pursuant to 37 C.F.R. §§ 11.32 and 11.34, alleging violations of the USPTO Rules of Professional Conduct (37 C.F.R. §§ 11.101 *et seq.*). The *Complaint* describes four instances in which Respondent, after agreeing to represent clients in matters before the Office, neglected those matters, causing six applications to go abandoned and committing twenty violations of the USPTO Rules of Professional Conduct. The same day the *Complaint* was filed, the OED Director attempted to serve it upon Respondent pursuant to 37 C.F.R. § 11.35(a)(2)(i) by sending her three copies of the *Complaint* via U.S. certified mail, with return receipt requested, as detailed below.

The first copy of the *Complaint* was mailed to Respondent’s official address of record with the OED Director, namely: Aroplex Law, 156 2nd Street, San Francisco, California 94105 (“the § 11.11 address”).² The United States Postal Service records show that the *Complaint* mailed to the § 11.11 address was delivered on December 26, 2018. Accordingly, Respondent was properly served with a copy of the *Complaint* pursuant to 37 C.F.R. § 11.35(a)(2). The second copy of the *Complaint* was mailed to an address at which the OED Director reasonably believed the Respondent received mail, namely: Aroplex Law, Unit 109, 909 Marina Village Parkway, Alameda, California 94501-1048 (“the Alameda, California address”). The Alameda, California address was also the address of record that the Respondent had provided to The State

¹ Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases brought by the U.S. Patent and Trademark Office.

² 37 C.F.R. § 11.11(a) requires a registered practitioner such as Respondent to notify the OED Director of the postal address for the practitioner’s office and to provide written notice of any address change within 30 days of the change.

Bar of California. The U.S. Postal Service returned the *Complaint* sent to Respondent's Alameda, California address to the USPTO, marked "Unable to Forward," "Moved," "Return to Sender," and "Not Deliverable As Addressed." The third copy of the *Complaint* was mailed to an address at which the OED Director reasonably believed the Respondent received mail, namely: Aroplex Law, Unit 18934, 3630 High Street, Oakland California, 94619-6020 ("the Oakland, California address"). The Certified Mail Receipt for the *Complaint* mailed to Respondent at the Oakland, California address was returned to the USPTO indicating the date of delivery as December 21, 2018. Although no answer has been filed, the Court draws the permissible inference that the *Complaint* was received by Respondent.

On December 21, 2018, this Court issued a *Notice of Hearing and Order*, requiring Respondent to file her answer on or before January 22, 2019. The *Notice of Hearing and Order* also set other pre-hearing deadlines. On December 26, 2019, this Court issued a *Notice and Stay of Proceedings*, notifying the parties that the instant matter was stayed. At that time, this Court was closed due to a lack of appropriations and resultant partial federal government shutdown that lasted from December 22, 2018 until January 25, 2019. On February 4, 2019, after this Court reopened, it issued a *Second Notice of Hearing and Order* that set the deadline for Respondent to file an *Answer to the Complaint* as February 21, 2019. The *Second Notice of Hearing and Order* also set other pre-hearing deadlines.

On February 22, 2019, counsel for the OED Director sent a letter pursuant to 37 C.F.R. § 11.43 to Respondent at her three known addresses notifying Respondent that the OED Director intended to file a motion for default judgment and for imposition of sanctions. The letter invited Respondent to contact counsel on or before March 6, 2019, to discuss resolving the default motion voluntarily. Respondent did not respond to this letter.

On April 26, 2019, the OED Director filed the *Default Motion*. Pursuant to the *Second Notice of Hearing and Order* issued on February 4, 2019, any party opposing a motion must file his or her opposition within ten days after the motion is docketed, meaning that a response to the *Default Motion* was due on May 6, 2019. However, Respondent did not respond to the *Default Motion* by that date.

As of the date of this decision, Respondent has not filed an answer, responded to the *Default Motion* or sought an extension of time to do so, nor otherwise appeared in this matter. In short, the Court has received no communication from or on behalf of Respondent.

APPLICABLE LAW

1. USPTO Disciplinary Proceedings

The USPTO has the "exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it." Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001). This authority flows from 35 U.S.C. § 2(b)(2)(D), which empowers the USPTO to establish regulations governing patent practitioners' conduct before the Office, and 35 U.S.C. § 32, which empowers the USPTO to discipline a practitioner who is "shown to be incompetent or disreputable, or guilty of gross misconduct," or who violates the USPTO's regulations. The practitioner must receive notice and an opportunity for a hearing before such disciplinary action is taken. 35 U.S.C. § 32.

Disciplinary hearings are conducted in accordance with the USPTO's procedural rules at 37 C.F.R. part 11, subpart C, and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by a hearing officer appointed by the USPTO. *See* 37 C.F.R. §§ 11.39(a), 11.44. The OED Director has the burden of proving any alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49.

In 1985, the USPTO issued regulations based on the ABA Model Code of Professional Responsibility to govern attorney conduct and practice. *See* Practice Before the Patent and Trademark Office, 50 Fed. Reg. 5158 (Feb. 6, 1985) (Final Rule) (codified at 37 C.F.R. §§ 10.20-10.112). These rules set forth the USPTO Code and “clarif[ied] and modernize[d] the rules relating to admission to practice and the conduct of disciplinary cases.” *Id.* In May 2013, the USPTO replaced the USPTO Code with the USPTO Rules, which are fashioned on the ABA's Model Rules of Professional Conduct. *See* Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. 20180 (April 3, 2013) (Final Rule) (codified at 37 C.F.R. §§ 11.101-11.901). By updating its regulations, the USPTO sought to “provid[e] attorneys with consistent professional conduct standards, and large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules.”³ *Id.* at 20180.

2. Consequences for Failure to Answer Complaint

The USPTO's procedural rules set forth the requirement for answering the *Complaint* and the consequences for failing to do so: “Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment.” 37 C.F.R. § 11.36(e).

3. Burden of Proof

The OED Director must prove alleged disciplinary violations by “clear and convincing evidence.” 37 C.F.R. § 11.49; *In re Johnson*, Proceeding No. D2014-12 (USPTO Dec. 31, 2014) at 2. Likewise, it is Respondent's burden to prove any affirmative defense by clear and convincing evidence. 37 C.F.R. § 11.49. This standard “protect[s] particularly important interests . . . where there is a clear liberty interest at stake.” *Johnson*, at 3 (quoting *Thomas v. Nicholson*, 423 F.3d 1279, 1283 (Fed. Cir. 2005)) (internal quotation marks omitted). “Clear and convincing evidence” requires a level of proof that falls “between a preponderance of the evidence and proof beyond a reasonable doubt.” *Id.* (quoting *Addington v. Texas*, 441 U.S. 418, 424-25 (1979)) (internal quotation marks omitted). The evidence must be of such weight so as to “produce[] in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.” *Id.* (quoting *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001)) (internal quotation marks omitted). “Evidence is clear if it is certain, unambiguous, and plain to the understanding, and it is convincing if it is reasonable and persuasive enough to cause the trier of facts to believe it.” *Id.* (quoting *Foster v. AlliedSignal, Inc.*, 293 F.3d 1187, 1194 (10th Cir. 2002)) (internal quotation marks omitted).

³ Thus, the USPTO Code, the Comments and Annotations to the ABA Model Rules, and disciplinary decisions and opinions issued by state bars are useful to understanding the USPTO Rules. *See* Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. at 20180.

FINDINGS OF FACT

At all times relevant to the *Complaint*, Respondent has been registered to practice before USPTO. Respondent was registered to practice before the USPTO as a patent agent on November 3, 2009 (Registration No. 65,419). Respondent was admitted to practice law in California on June 1, 2012—Bar Number 282634—and is currently an active member in good standing. Respondent was registered as a patent attorney on June 22, 2012. Respondent is the principal of Aroplex Law and the only patent practitioner associated with USPTO Customer Number 109999.

1. Respondent's Misconduct in the Isom Representation

On January 22, 2016, Respondent filed U.S. Patent Application Number 15/004,765 (“the ’765 application”) naming Robyn Tai Isom as the sole inventor and applicant. The ’765 application included a power of attorney appointing Respondent, the only practitioner associated with Customer Number 109999.

In or around the beginning of February 2016, Ms. Isom, contacted Respondent asking, “How long is the examination process? It has been almost 8 weeks now.” On February 2, 2016, Respondent sent Ms. Isom an email stating: “Everything was filed and the application number is on the receipt I sent you. If there’s any problem, I’ll let you know, otherwise we just wait out the examination process.” Between February 2016 and March 2017, Ms. Isom contacted Respondent numerous times asking about the status of the ’765 application, but Respondent never responded.

On July 28, 2016, a non-final Office action issued in the ’765 application rejecting the one pending claim. The Office action set a three-month shortened statutory period for reply but indicated that extensions of time might be available pursuant to 37 C.F.R. § 1.136(a). The Office action was mailed to Respondent’s Aroplex Law business address, where Respondent had designated in the ’765 application she would receive mail.

Respondent did not notify Ms. Isom of the July 28, 2016 non-final Office action, nor did she inform or advise Ms. Isom about options for responding to it. Respondent did not notify Ms. Isom that Respondent did not respond to the July 28, 2016 Office action, and she did not explain to Ms. Isom about potential adverse consequences to Ms. Isom’s intellectual property rights if no response was filed.

On March 3, 2017, Ms. Isom emailed Respondent, explaining that she was near Respondent’s office and stating, in pertinent part: “Are you in the office today? . . . I’d love to meet you in person and see if we’ve had any movement at all on my patent?” Respondent did not respond to Ms. Isom’s email.

On March 29, 2017, the USPTO issued a Notice of Abandonment in the ’765 application. The Notice stated that the application was abandoned because of the applicant’s “failure to timely file a proper reply to the Office letter mailed on 28 July 2016.” The Notice was mailed to Respondent’s Aroplex Law business address.

Respondent did not notify Ms. Isom of the March 29, 2017 Notice of Abandonment. Respondent did not inform or advise Ms. Isom about options for responding to the March 29, 2017 Notice of Abandonment or about potential adverse consequences to Ms. Isom's intellectual property rights if no response was filed.

On February 27, 2018, Ms. Isom contacted the USPTO about the status of the '765 application. The USPTO informed Ms. Isom of the July 28, 2016 Office action and that the '765 application had become abandoned. On February 27, 2018, in an email, Ms. Isom, forwarded Respondent the original email sent Respondent on March 3, 2017, stating, in pertinent part; "This is an e-mail I sent to you March[] 2017, right before my patent was abandoned. Your level of ineptitude is appalling." On February 27, 2018, Ms. Isom revoked Respondent's power of attorney in the '765 application.

2. Respondent's Misconduct in the Consaul Representations

U.S. Patent Application Number [REDACTED]

On [REDACTED], Respondent filed U.S. Patent Application Number [REDACTED] ("the [REDACTED] application") naming Robert M. Consaul as the sole inventor. The [REDACTED] application included a power of attorney appointing Respondent, the only practitioner associated with Customer Number 109999. The [REDACTED] application included an Application Data Sheet ("ADS") identifying as the title of the invention, "[REDACTED]".

Mr. Consaul wished to claim Micro Entity Status for the [REDACTED] application. In order to do so, the inventor may indicate on the ADS that Small Entity Status has been claimed and submit a Certification of Micro Entity Status. The certification form must identify the application to which it pertains. For new application filings before an application number has been assigned, providing the first named inventor and the title of the invention at the top of the certification form is sufficient to identify the application. MPEP 509.04 (Under the heading "II. Bases for Establishing Micro Entity Status").

The [REDACTED] application's ADS claimed Small Entity Status. However, the [REDACTED] application's Certification of Micro Entity Status identified a different title of the invention than the one named in the ADS and on the first page of the Specification, calling the invention: "[REDACTED]". Because of the incorrect name for the invention on the Certification of Micro Entity Status, the [REDACTED] application did not qualify for Micro Entity Status. Filing fees for a Micro Entity are generally lower than filing fees for a Small Entity. Respondent submitted filing fees that were appropriate for a Micro Entity. However, the fees submitted by Respondent were insufficient because the error on the Certification prevented the [REDACTED] application from qualifying for Micro Entity Status.

On [REDACTED] a Notice to File Corrected Application Papers was issued in the [REDACTED] application setting a two-month time period for making corrections but indicating that extensions of time might be obtained pursuant to 37 C.F.R. § 1.136(a). The [REDACTED] Notice indicated that the fees submitted with the [REDACTED] application were insufficient explaining, in pertinent part:

This application, which was filed with an indication of micro entity status, fails to meet the requirements for establishing the micro entity status because:

- The certification of micro entity status does not properly identify the application to which it relates. For micro entity certifications filed before an application number is assigned, the application must be identified with both the first named inventor AND the correct title of invention. All application identifying information on the micro entity certification must be consistent with the application in which it is filed.

If micro entity status is established in reply to this [N]otice by filing an acceptable Certification of Micro Entity Status, the fees itemized in . . . this Notice will be reduced to reflect the 75% micro entity discount, and any previous payment amount may be applied to the discounted fees.

The [REDACTED] Notice also indicated that a surcharge pursuant to 37 C.F.R. § 1.16(f) was required for the late submission of the basic filing fee, search fee, or examination fee. The [REDACTED] Notice was mailed to Respondent's Aroplex Law business address. On [REDACTED], Respondent submitted, *inter alia*, a proper Certification of Micro Entity Status in the [REDACTED] application that correctly identified the application to which it was directed. However, Respondent did not include the \$35.00 surcharge required pursuant to 37 C.F.R. § 1.16(f) as indicated in the [REDACTED] Notice.

On [REDACTED], a Notice of Incomplete Reply was issued in the [REDACTED] application indicating that the surcharge set forth in 37 C.F.R. § 1.16(f) must be filed within the time period set forth in the [REDACTED] Notice in order to avoid abandonment. On [REDACTED], Respondent submitted to the Office the \$35.00 surcharge for a micro entity pursuant to 37 C.F.R. § 1.16(f) for the [REDACTED] application which was due on or before [REDACTED]. However, Respondent did not include the requisite fee for an extension of time pursuant to 37 C.F.R. § 1.136(a) which would have made the late filing permissible.

On [REDACTED], a Notice of Incomplete Reply was issued in the [REDACTED] application. The [REDACTED] Notice indicated that Respondent's submission of [REDACTED], was late and that an extension fee was required. On [REDACTED], Respondent filed a response in the [REDACTED] application indicating that she had paid the \$35.00 surcharge pursuant to 37 C.F.R. § 1.16(f) on [REDACTED]. Respondent argued that she did not owe an extension fee because her response "was well within the response period." Respondent had submitted the \$35.00 surcharge pursuant to 37 C.F.R. § 1.16(f) on [REDACTED], not [REDACTED].

On [REDACTED], a Notice of Abandonment was issued in the [REDACTED] application, explaining that the [REDACTED] "application was abandoned for failure to timely or properly reply to the [Notice to File Corrected Application Papers] . . . mailed on [REDACTED]." The [REDACTED] Notice further explained that the "reply received on [REDACTED] was untimely." The [REDACTED] Notice was mailed to Respondent's Aroplex Law business address.

Respondent did not notify Mr. Consaul of the Office communications issued in the ' application, nor did she inform or advise Mr. Consaul of the options for responding to the Notice. Respondent did not inform Mr. Consaul about the potential adverse consequences to Mr. Consaul's intellectual property rights if no response to the Notice was filed. Respondent did not inform Mr. Consaul that the ' application had become abandoned.

U.S. Patent Application Number 14/549,533

On November 20, 2014, Respondent filed U.S. Patent Application Number 14/549,533 ("the '533 application") naming Mr. Consaul as the sole inventor. The '533 application included a power of attorney appointing Respondent, the only practitioner associated with Customer Number 109999.

On June 26, 2015, an Election/Restriction Requirement was issued in the '533 application setting a two-month shortened statutory period for reply but indicating that extensions of time might be available pursuant to 37 C.F.R. § 1.136(a). The June 26, 2015 Requirement was mailed to Respondent's Aroplex Law business address, but Respondent did not respond.

On January 8, 2016, a Notice of Abandonment was issued in the '533 application stating that the applicant had failed "to timely file a proper reply to the Office letter mailed on 26 June 2015." The Notice was mailed to Respondent's Aroplex Law business address. Respondent did not notify Mr. Consaul of the Office communications issued in the '533 application. Respondent did not inform or advise Mr. Consaul of the options for responding to the January 8, 2016 Notice. Respondent did not inform Mr. Consaul about the potential adverse consequences to Mr. Consaul's intellectual property rights if no response to the January 8, 2016 Notice was filed. When the '533 application became abandoned, Respondent did not inform Mr. Consaul.

U.S. Patent Application Number 14/585,178

On December 29, 2014, Respondent filed U.S. Patent Application Number 14/585,178 ("the '178 application") naming Mr. Consaul as the sole inventor. The '178 application included a power of attorney appointing Respondent, the only practitioner associated with Customer Number 109999.

On November 1, 2016, an Election/Restriction Requirement was issued in the '178 application setting a two-month shortened statutory period for reply but indicating that extensions of time might be available pursuant to 37 C.F.R. § 1.136(a). The November 1, 2016 Requirement was mailed to Respondent's Aroplex Law business address, where she had designated in the '178 application she would receive mail. The November 1, 2016 Requirement explained that the examiner had difficulty communicating with Respondent, stating, in pertinent part:

A telephone call was made to [Respondent] on September 23, 2016 to request an oral election to the . . . restriction requirement, but did not result in an election being made. During the telephone call [Respondent] had indicated that the Inventor would be contacted to

see if an election would be made. The examiner had attempted to contact [Respondent] on October 06, 2016 at 2:15 Pacific Time and again on October 25, 2016 at 2:50 Pacific Time to see if the Inventor had made any decision on the election of species requirement. On both dates the examiner had called two phone numbers and with respect to one phone number, (415-529-5148), received a message stating that there was no one available to take the call, (with the examiner having left a message on October 06, 2016), and with respect to a second phone number, (415-602-8960), received a message stating "the person you are trying to reach is not accepting phone calls at this time."

Respondent did not file a response to the Election/Restriction Requirement.

On May 17, 2017, a Notice of Abandonment was issued in the '178 application stating that that applicant failed "to timely file a proper reply to the Office letter mailed on 01 November 2016." The May 17, 2017 Notice was mailed to Respondent's Aroplex Law business address.

Respondent did not notify Mr. Consaul of the Office communications issued in the '178 application. Respondent did not inform or advise Mr. Consaul of options for responding to the May 17, 2017 *Notice* or about the potential adverse consequences to Mr. Consaul's intellectual property rights if no response to the May 17, 2017 *Notice* was filed. Once again, Respondent did not inform Mr. Consaul that the '178 application had become abandoned.

3. Respondent's Misconduct in the [REDACTED] Representation

On [REDACTED], Respondent filed U.S. Patent Application Number [REDACTED] ("the [REDACTED] application") naming [REDACTED] as the sole inventor. The [REDACTED] application included a power of attorney appointing Respondent, the only practitioner associated with Customer Number 109999. None of the required fees were submitted to the USPTO with the [REDACTED] application.

On [REDACTED], the USPTO issued a Notice to File Missing Parts in the [REDACTED] application indicating that the basic filing fee, the search fee, the examination fee, and the late fee pursuant to 37 C.F.R. § 1.16(f) were required to be paid within two months from the date of the Notice in order to avoid abandonment. The [REDACTED] Notice indicated that extensions of time might be obtained pursuant to 37 C.F.R. § 1.136(a). The [REDACTED] *Notice* was mailed to Respondent's Aroplex Law business address, where Respondent had designated in the [REDACTED] application she would receive mail.

Respondent did not apprise Ms. [REDACTED] of the [REDACTED] Notice, and Respondent did not inform or advise Ms. [REDACTED] about the options for responding to the [REDACTED] Notice. Respondent did not inform Ms. [REDACTED] about the potential adverse consequences to Ms. [REDACTED] intellectual property rights if no response to the [REDACTED] *Notice* was filed. Respondent did not inform Ms. [REDACTED] that she did not file a response to the [REDACTED] Notice.

On [REDACTED], a Notice of Abandonment was issued in the [REDACTED] application and mailed to Respondent's Aroplex Law business address. The [REDACTED] Notice stated that the [REDACTED] "application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts . . . mailed on [REDACTED]."

Respondent did not notify Ms. [REDACTED] of the [REDACTED] Notice. Respondent did not inform or advise Ms. [REDACTED] about options for responding to the [REDACTED] Notice; further, Respondent did not inform Ms. [REDACTED] about the potential adverse consequences to Ms. [REDACTED] intellectual property rights if no response was filed. Respondent did not respond to Ms. [REDACTED] attempts to contact her about the status of the [REDACTED] application or inform Ms. [REDACTED] that the [REDACTED] application had become abandoned.

4. Respondent's Misconduct in the [REDACTED] Representation

On [REDACTED], Respondent filed U.S. Patent Application Number [REDACTED] ("the [REDACTED] application") naming [REDACTED] as the sole inventor. The [REDACTED] application included a power of attorney appointing Respondent, the only practitioner associated with Customer Number 109999.

On [REDACTED], an Ex parte Quayle action, noting that the application was in condition for allowance except for formal matters, was issued by the USPTO in the [REDACTED] application. The [REDACTED] Ex parte Quayle action set a two-month shortened statutory time period for reply but indicated that extensions of time might be available pursuant to 37 C.F.R. § 1.136(a). The Ex parte Quayle action requesting new drawings was mailed to Respondent's Aroplex Law business address, where Respondent designated in the [REDACTED] application she would receive mail.

Respondent did not inform Mr. [REDACTED] of the [REDACTED] Ex parte Quayle action. Respondent did not inform or advise Mr. [REDACTED] about options for responding to the [REDACTED] Ex parte Quayle action, namely submitting new drawings. Respondent did not inform Mr. [REDACTED] about the potential adverse consequences to Mr. [REDACTED] intellectual property rights if no response to the [REDACTED] Ex parte Quayle action was filed. Respondent did not inform Mr. [REDACTED] that Respondent did not file a response to the [REDACTED] Ex parte Quayle action.

On [REDACTED], a Notice of Abandonment was issued in the [REDACTED] application, stating that the [REDACTED] application was abandoned in view of the applicant's "failure to timely file a proper reply to the Office letter mailed on [REDACTED]." The [REDACTED] Notice was mailed to Respondent's Aroplex Law business address.

Respondent did not notify Mr. [REDACTED] of the [REDACTED] Notice. Respondent did not inform and advise Mr. [REDACTED] about the potential adverse consequences to Mr. [REDACTED] intellectual property rights if no response to the [REDACTED] Notice was filed. The [REDACTED] application became abandoned, and Respondent did not inform Mr. [REDACTED] of its standing. For approximately a year after October 2016, Mr. [REDACTED] unsuccessfully attempted to contact Respondent about the status of the [REDACTED] application. October 2016 was the last time Mr. [REDACTED] heard from Respondent.

5. Respondent's Noncompliance with the OED Director's Investigation

On May 2, 2018, the OED Director mailed, by certified mail, a Request for Information and Evidence Under 37 C.F.R. § 11.22(f) ("RFI") to Respondent at her address of record with OED, the § 11.11 address. The May 2, 2018 RFI requested information regarding Respondent's representation of Robyn Tai Isom, Robert M. Consaul, [REDACTED], and [REDACTED]. The May 2, 2018 RFI requested that Respondent respond within thirty (30) days or on or before June 1, 2018. The Certified Mail Receipt for the May 2, 2018 RFI was returned to the USPTO by the United States Postal Service, indicating that someone at the § 11.11 address had signed the Certified Mail Receipt on Respondent's behalf. Respondent did not respond to the May 2, 2018 RFI on or before June 1, 2018, nor did she request an extension of time to respond.

On June 25, 2018, the OED Director mailed a Lack of Response letter to Respondent, noting that Respondent had failed to respond to the May 2, 2018 RFI. The June 25, 2018 Lack of Response letter set forth the consequences of a failure to respond to the May 2, 2018 RFI, provided Respondent another copy of the RFI, and gave Respondent until no later than July 9, 2018 to respond. The June 25, 2018 Lack of Response letter was sent via certified mail to Respondent's § 11.11 address and to the Alameda, California address at which the OED Director reasonably believed that Respondent received mail. Respondent listed the Alameda, California address as her address of record with the California State Bar.

The Certified Mail Receipt for the June 25, 2018 Lack of Response letter mailed to Respondent's Alameda, California address was returned to the USPTO by the United States Postal Service, indicating that someone at the Alameda, California address signed the Certified Mail Receipt on Respondent's behalf. The Certified Mail Receipt for the June 25, 2018 Lack of Response letter mailed to Respondent's § 11.11 address was returned to the USPTO by the United States Postal Service, indicating that the Lack of Response letter had been forwarded, by the United States Postal Service, to the Alameda, California address. The Certified Mail Receipt also indicated that someone at the Alameda, California⁴ address, who was authorized to sign on behalf of Respondent, signed the Certified Mail Receipt on Respondent's behalf.

Respondent did not request an extension of time to respond to the June 25, 2018 Lack of Response letter or the May 2, 2018 RFI, nor did she respond on or before July 9, 2018. As of the date of the filing of the Complaint, OED had not received any response to the June 25, 2018 Lack of Response letter or the May 2, 2018 RFI, nor did Respondent otherwise communicate with OED. Respondent was provided ample notice and opportunity to respond to the May 2, 2018 RFI and the June 25, 2018 Lack of Response letter.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes that Respondent violated the USPTO Rules of Professional Conduct as alleged, for the following reasons.

⁴ Between the June 25, 2018 Lack of Response letter and the time of filing the Complaint in the instant matter, Respondent had submitted another change of address to the California Bar, indicating to the California Bar that her new address of record was in Oakland, California ("the Oakland, California address"). The Oakland, California address is the third address where the Complaint was served on the Respondent.

Count I: Respondent's misconduct relating to the Isom representation

a. 37 C.F.R. § 11.103 provides that a practitioner "shall act with reasonable diligence and promptness in representing a client." Respondent violated this provision as charged in Count I when she failed to respond to the July 28, 2016 Office action in the Isom representation and allowed Ms. Isom's application to go abandoned.

b. 37 C.F.R. § 11.104(a)(3) provides that a practitioner shall "keep the client reasonably informed about the status of the client's matter." Respondent violated this provision as charged in Count I when she: (1) failed to notify Ms. Isom of the July 28, 2016 Office action; (2) failed to notify Ms. Isom that she did not respond to the July 28, 2016 Office action and failed to explain to Ms. Isom the consequences of not responding to the July 28, 2016 Office action; (3) failed to notify Ms. Isom of the March 29, 2017 Notice of Abandonment; and (4) failed to inform or advise Ms. Isom about options for responding to the March 29, 2017 Notice of Abandonment or the potential adverse consequences to Ms. Isom's intellectual property rights if no response to the March 29, 2017 Notice of Abandonment was filed.

c. 37 C.F.R. § 11.104(a)(4) provides that a practitioner shall "promptly comply with reasonable requests for information from the client." Respondent violated this provision as charged in Count I when she failed to respond to Ms. Isom's requests for information about Ms. Isom's application.

d. 37 C.F.R. § 11.104(b) provides that a "practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Respondent violated this provision as charged in Count I when she: (1) failed to notify Ms. Isom that the July 28, 2016 Office action had been issued; (2) failed to notify Ms. Isom that she had not responded to the July 28, 2016 Office action and failed to explain to Ms. Isom the consequences of not responding to the July 28, 2016 Office action; (3) failed to notify Ms. Isom of the March 29, 2017 Notice of Abandonment; and (4) failed to inform or advise Ms. Isom about options for responding to the March 29, 2017 Notice of Abandonment or the potential adverse consequences to Ms. Isom's intellectual property rights if no response to the March 29, 2017 Notice of Abandonment was filed.

Count II: Respondent's misconduct relating to the Consaul representation

a. 37 C.F.R. § 11.101 provides that a practitioner "shall provide competent representation to a client." Respondent violated this provision as charged in Count II when she: (1) filed U.S. Patent Application Number [REDACTED] ("the [REDACTED] application") on [REDACTED] with a Certification of Micro Entity Status naming a title of the invention that was inconsistent with the title of the invention indicated on the ADS, thus failing to effectuate a corresponding reduction in fees; (2) filed a Certification of Micro Entity Status in the [REDACTED] application on [REDACTED], without including the requisite surcharge; (3) paid a surcharge in the [REDACTED] application on [REDACTED], without including the requisite fee for an extension of time; (4) filed a reply in the [REDACTED] application incorrectly indicating that she did not owe an extension fee because she had filed the document on [REDACTED]; (5) failed to timely or properly reply to the Notice to File Corrected Application Papers issued in the [REDACTED] application on [REDACTED], thereby causing the application to become abandoned; (6) failed to reply to the Election/Restriction Requirement issued in U.S. Patent Application Number 14/549,533 ("the

'533 application") on June 26, 2015, thereby causing the application to become abandoned; (7) failed to respond to the examiner's telephone call regarding an Election/Restriction Requirement in U.S. Patent Application Number 14/585,178 ("the '178 application"); and (8) failed to reply to the written Election/Restriction Requirement issued in the '178 application on November 1, 2016, thereby causing the application to become abandoned.

b. 37 C.F.R. § 11.103 provides that a practitioner "shall act with reasonable diligence and promptness in representing a client." Respondent violated this provision as charged in Count II when she: (1) filed the ' application on with a Certification of Micro Entity Status naming a title of the invention that was inconsistent with the title of the invention indicated on the Application Data Sheet, thus failing to effectuate a corresponding reduction in fees; (2) filed a Certification of Micro Entity Status in the application on without including the requisite surcharge; (3) paid a surcharge in the application on , without including the requisite fee for an extension of time; (4) filed a reply in the ' incorrectly indicating that she did not owe an extension fee because she had filed the document on ; (5) failed to timely or properly reply to the Notice to File Corrected Application Papers issued in the ' application on , thereby causing the application to become abandoned; (6) failed to reply to the Election/Restriction Requirement issued in the '533 application on June 26, 2015, thereby causing the application to become abandoned; (7) failed to respond to the examiner's telephone call regarding an Election/Restriction Requirement in the '178 application; and (8) failed to reply to the written Election/Restriction Requirement issued in the '178 application on November 1, 2016, thereby causing the application to become abandoned.

c. 37 C.F.R. § 11.104(a)(3) provides that a practitioner shall "keep the client reasonably informed about the status of the client's matter." Respondent violated this provision as charged in Count II when she:

- 1) failed to notify Mr. Consaul of the Office communications that had been issued in the ' application; failed to inform or advise Mr. Consaul about options for responding to the communications or the potential adverse consequences to Mr. Consaul's intellectual property rights if no responses were filed; failing to inform Mr. Consaul that she had not responded to the Office communications; failed to notify Mr. Consaul that a Notice of Abandonment had been issued in the ' application on ; and failed to inform and advise Mr. Consaul about options for responding to the Notice of Abandonment or the potential adverse consequences to Mr. Consaul's intellectual property rights if no response was filed;
- 2) failed to notify Mr. Consaul of the Election/Restriction Requirement that had been issued in the '533 application on June 26, 2015; failed to inform or advise Mr. Consaul about options for responding to the Election/Restriction Requirement or the potential adverse consequences to Mr. Consaul's intellectual property rights if no response was filed; failed to inform Mr. Consaul that she had not responded to the Election/Restriction Requirement; failed to inform Mr. Consaul that a Notice of Abandonment had been issued in the '533 application on

January 8, 2016; and failed to inform or advise Mr. Consaul about options for responding to the Notice of Abandonment or the potential adverse consequences to Mr. Consaul's intellectual property rights if no response was filed; and

- 3) failed to notify Mr. Consaul of the Election/Restriction Requirement that had been issued in the '178 application on November 1, 2016, failed to inform or advise Mr. Consaul about options for responding to the Election/Restriction Requirement or the potential adverse consequences to Mr. Consaul's intellectual property rights if no response was filed; failed to inform Mr. Consaul that she had not responded to the Election/Restriction Requirement; failed to inform Mr. Consaul that a Notice of Abandonment had been issued in the '178 application on May 17, 2017; and failed to inform and advise Mr. Consaul about options for responding to the Notice of Abandonment or the potential adverse consequences to Mr. Consaul's intellectual property rights if no response was filed.

d. 37 C.F.R. § 11.104(b) provides that a "practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Respondent violated this provision as charged in Count II when she: (1) failed to notify Mr. Consaul of the Office communications that had been issued in the ' application, and the Notice of Abandonment of the ' application; (2) failed to notify Mr. Consaul of the June 26, 2015 Election/Restriction Requirement issued in the '533 application, and the January 8, 2016 Notice of Abandonment of the '533 application; (3) failed to notify Mr. Consaul of the November 1, 2016 Election/Restriction Requirement that was issued in the '178 application, and the May 17, 2017 Notice of Abandonment of the '178 application; (4) failed to notify Mr. Consaul that Respondent had not responded to the Election/Restriction Requirement and failed explain to Mr. Consaul the potential adverse consequences of not doing so; and (5) failed to inform or advise Mr. Consaul about options for responding to the abandonments or potential adverse consequences to Mr. Consaul's intellectual property rights if no responses were filed.

e. 37 C.F.R. § 11.804(c) provides that it is professional misconduct for a practitioner to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent violated this provision as charged in Count II when she filed a reply in the ' application asserting that no extension fee was due because she filed the document on , when in fact she had actually paid the surcharge 30 days later, on .

f. 37 C.F.R. § 11.804(d) provides that it is professional misconduct for a practitioner to "engage in conduct that is prejudicial to the administration of justice." Respondent violated this provision as charged in Count II when she filed a reply in the ' application asserting that no extension fee was due because she filed the document on , when in fact she had actually paid the surcharge on .

Count III: Respondent's misconduct relating to the [REDACTED] representation

a. 37 C.F.R. § 11.103 provides that a practitioner "shall act with reasonable diligence and promptness in representing a client." Respondent violated this provision as charged in Count III when she failed to respond to the [REDACTED] Notice to File Missing Parts issued in Ms. [REDACTED] application, thereby causing Ms. [REDACTED] application to become abandoned.

b. 37 C.F.R. § 11.104(a)(3) provides that a practitioner shall "keep the client reasonably informed about the status of the client's matter." Respondent violated this provision as charged in Count III when she: (1) failed to notify Ms. [REDACTED] of the [REDACTED] Notice to File Missing Parts and the [REDACTED] Notice of Abandonment issued in Ms. [REDACTED] application; (2) failed to notify Ms. [REDACTED] that Respondent did not file a reply to the [REDACTED] Notice to File Missing Parts; and (3) failed to inform and advise Ms. [REDACTED] about options for responding to the Notice of Abandonment or the potential adverse consequences to Ms. [REDACTED] intellectual property rights if no response was filed.

c. 37 C.F.R. § 11.104(a)(4) provides that a practitioner shall "promptly comply with reasonable requests for information from the client." Respondent violated this provision as charged in Count III when she failed to respond to Ms. [REDACTED] repeated requests for a status update about her application.

d. 37 C.F.R. § 11.104(b) provides that a "practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Respondent violated this provision as charged in Count III when she: (1) failed to notify Ms. [REDACTED] of the [REDACTED] Notice to File Missing Parts and the [REDACTED] Notice of Abandonment; (2) failed to notify Ms. [REDACTED] that Respondent did not file a response to the Notice to File Missing Parts; and (3) failed to inform and advise Ms. [REDACTED] about options for responding to the Notice of Abandonment or the potential adverse consequences to Ms. [REDACTED] intellectual property rights if no response was filed.

Count IV: Respondent's misconduct relating to the [REDACTED] representation

a. 37 C.F.R. § 11.103 provides that a practitioner "shall act with reasonable diligence and promptness in representing a client." Respondent violated this provision as charged in Count IV when she failed to respond to the [REDACTED] Ex parte Quayle action issued in Mr. [REDACTED] application, thereby causing Mr. [REDACTED] application to go abandoned.

b. 37 C.F.R. § 11.104(a)(3) provides that a practitioner shall "keep the client reasonably informed about the status of the client's matter." Respondent violated this provision as charged in Count IV when she: (1) failed to notify Mr. [REDACTED] of the [REDACTED] Ex parte Quayle action and the [REDACTED] Notice of Abandonment issued in Mr. [REDACTED] application; (2) failed to notify Mr. [REDACTED] that she did not file a reply to the [REDACTED] Ex parte Quayle action; and (3) failed to inform or advise Mr. [REDACTED] about options for responding to the Notice of Abandonment or the potential adverse consequences to Mr. [REDACTED] intellectual property rights if no response was filed.

c. 37 C.F.R. § 11.104(a)(4) provides that a practitioner shall "promptly comply with reasonable request for information from the client." Respondent violated this provision as

charged in Count IV when she failed to respond to Mr. [REDACTED] request for information about his application.

d. 37 C.F.R. § 11.104(b) provides that a “practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Respondent violated this provision as charged in Count IV when she: (1) failed to notify Mr. [REDACTED] of the [REDACTED] Ex parte Quayle action and the [REDACTED] Notice of Abandonment that issued in Mr. [REDACTED] application; (2) failed to notify Mr. [REDACTED] that she did not file a reply to the [REDACTED] Ex parte Quayle action; and (3) failed to inform and advise Mr. [REDACTED] about options for responding to the Notice of Abandonment or the potential adverse consequences to [REDACTED] intellectual property rights if no response was filed.

Count V: Respondent’s failure to cooperate in OED investigation

a. 37 C.F.R. § 11.801(b) proscribes, among other things, failing to cooperate with an OED investigation and knowingly failing to respond to a lawful demand or request for information from a disciplinary authority. Respondent violated this provision as charged in Count V by failing to respond to OED’s May 2, 2018 RFI and the June 25, 2018 Lack of Response letter, despite being provided ample notice, time, and opportunity to do so.

b. 37 C.F.R. § 11.804(d) provides that it is professional misconduct for a practitioner to engage in conduct that is prejudicial to the administration of justice. When a practitioner is the subject of an OED disciplinary investigation, her failure to cooperate in the investigation undermines the integrity of the disciplinary system and weakens public trust in the bar’s ability to police itself. Respondent’s failure to cooperate with the OED investigation amounted to conduct prejudicial to the administration of justice, in violation of § 11.804(d).

SANCTIONS

The OED Director asked the Court to sanction Respondent by entering an order excluding her from practice before USPTO. The primary purpose of legal discipline is not to punish, but rather “is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.” *In re Brufsky*, Proceeding No. D2013-18 (USPTO June 23, 2014) at 8 (citing *Matter of Chastain*, 532 S.E.2d 264, 267 (S.C. 2000)).

In determining an appropriate sanction, USPTO regulations require this Court consider the following four factors: (1) whether the practitioner has violated a duty owed to a client, the public, the legal system, or the profession; (2) whether the practitioner acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the practitioner’s conduct; and (4) the existence of any aggravating or mitigating factors. See 37 C.F.R. § 11.54(b). See also *In re Morishita*, Proceeding No. D2017-25 (USPTO Sept. 28, 2018); *In re Lau*, Proceeding No. D2016-37 (USPTO May 1, 2017); and *In re Schwedler*, Proceeding No. D2015-38 (USPTO Mar. 21, 2016).

1. Respondent violated a duty owed to her clients and the legal profession.

The practitioner-client relationship is a fiduciary relationship in which the practitioner owes the client a duty to represent his or her interests diligently and in good faith. See *In re Bender*, Proceeding No. D2000-01 (USPTO Sept. 30, 2003) at 20 (“Respondent owed a fiduciary duty individually to each of his clients. . . .”); *Carter v. ALK Holdings, Inc.*, 605 F.3d 1319, 1325 (Fed. Cir. 2010) (referencing patent practitioner’s expected fiduciary duties to clients). See also *Pet. of Bd. of Law Examiners*, 210 N.W. 710, 711 (Wis. 1926) (“An attorney occupies a fiduciary relationship towards his client. It is one of implicit confidence and of trust. . . . There is no field of human activity which requires fuller realization with respect to fiduciary relationship than that which exists between the lawyer and his client.”).

In the instant matter, Respondent breached the fiduciary duty she owed her clients when she failed to properly complete their applications and failed to prosecute the applications by either not responding to communications from the USPTO or responding to the communications incorrectly, knowing that such action would ultimately lead to the applications’ abandonment. Despite requests for information from her clients, Respondent intentionally failed to communicate with her clients about the status of their patent applications. Respondent likewise intentionally failed to explain the status of the patent applications to her clients so they could make informed decisions about the patent application and the representation itself. Respondent also failed to cooperate with the USPTO.

Aside from violating her fiduciary duty to her clients, Respondent also violated the specific duties imposed by USPTO’s regulations. Each attorney licensed to practice before USPTO must sign an oath or affirmation that he will observe the laws and rules governing USPTO practice. Respondent violated this oath when she failed to adhere to the USPTO Rules of Professional Conduct and failed to cooperate in the disciplinary investigation, thereby violating the duty she owed both to her clients and to the legal profession (specifically, the patent bar) to act in a professional manner in accordance with the patent bar’s rules and with the oath she had signed.

Respondent also violated duties she owed to the legal system and the legal profession by not communicating honestly with the USPTO and failing to participate in these disciplinary proceedings. “[A] lawyer’s failure to cooperate in disciplinary investigations weakens the public’s perception of the legal profession’s ability to self-regulate,” and “harms the legal profession by undermining the integrity of the attorney disciplinary system.” *In re Disciplinary Action against Brost*, 850 N.W.2d 699, 705 (Minn. 2014). When Respondent failed to file an *Answer to the Complaint*, she flouted this Tribunal’s authority and imperiled the orderly functioning of the disciplinary process. See *In re Lau*, *supra*.

2. Respondent acted intentionally and knowingly.

Respondent’s misconduct with respect to the clients named in the *Complaint* was knowing and intentional. Respondent knowingly accepted the representation of her clients. She failed to properly complete their applications and failed to prosecute the applications by either not responding to communications from the USPTO or responding to the communications incorrectly, knowing that such action would ultimately lead to the applications to go abandoned if not properly addressed. Despite requests for information from her clients, Respondent

intentionally failed to communicate with her clients about the status of their patent applications. Respondent intentionally failed to explain the status of the patent applications to her clients so they could make informed decisions about the patent application and the representation itself. Respondent also failed to cooperate with the USPTO, despite receiving the May 2, 2018 RFI and the June 25, 2018 Lack of Response letter. Furthermore, Respondent intentionally and purposefully ignored all communications from this Tribunal and OED. There can be no dispute that Respondent acted knowingly and intentionally.

Neglect of a client matter is a serious ethical violation. See Comm. on Prof'l Ethics and Conduct of Iowa State Bar Ass'n v. Freed, 341 N.W.2d 757, 759 (Iowa 1983) ("We view respondent's retreat from the obligation he assumed as a serious matter, to be equated with the conduct of a surgeon who, without transferring responsibility, drops his scalpel and abandons his patient in the course of an operation."); In re Jaynes, 278 N.W.2d 429, 434 (N.D. 1979) ("Neglecting a client's case after accepting it is a very serious violation of the Code of Professional Responsibility."); In re Gardner, 39 A.D.2d 84, 85, (N.Y. 1972) ("[N]eglect of a client's interests is a most serious dereliction."). Respondent's abandonment of her clients' applications is a grave violation of the USPTO ethics rules. The USPTO considers "[a]bandonment of a case or client after being paid for legal services [to be] a significant ethical violation for which attorneys have been disbarred." See In re Michael Shippey, Proceeding No. D2011-07 (USPTO Oct. 14, 2011) at 12. Consequently, the USPTO has excluded practitioners for abandoning clients. The USPTO has suspended and excluded practitioners who neglected their clients' applications. See, e.g., In re Campbell, Proceeding No. D2014-11 (USPTO Apr. 29, 2014); In re Michael Shippey, *supra*, and In re Hormann, Proceeding No. D2008-04 (USPTO July 8, 2009).

Further, a lawyer's duty to communicate honestly with a client is fundamental. "[B]ecause respondent also deliberately concealed his neglect to protect his personal interests, thereby sacrificing his clients' welfare to preserve his own[, w]e view his actions as the equivalent of misappropriating funds from these clients, an offense that, absent sufficiently mitigating circumstances, requires our most severe sanction." Cincinnati Bar Assn. v. Deaton, 806 N.E.2d 503, 509 (Ohio 2004) (citations omitted).

The USPTO has suspended and excluded practitioners who acted knowingly, intentionally, or negligently by, *inter alia*, failing to advise a client of important office communications in violation of the ethics rules. See, e.g., In re Myers, Proceeding No. D2015-33 (USPTO Dec. 31, 2015) (practitioner excluded for, *inter alia*, allowing multiple patent applications to become abandoned without client consent, failing to notify the client of important Office communications, and failing to withdraw as attorney of record); In re Schaefer, Proceeding No. D2007-01 (USPTO Apr. 30, 2007) (similar misconduct; suspension); Moatz v. Rosenberg, Proceeding No. D2006-07 (USPTO Mar. 7, 2007) (practitioner excluded for, *inter alia*, neglecting legal matters entrusted to him, failing to notify a client of important Office communications, and effectively withdrawing from employment in a proceeding before the USPTO without permission from the Office and without having taken reasonable steps to avoid prejudice to the client).

3. Respondent's conduct caused actual injury to her clients.

Respondent caused injury to her four clients through her lack of communication about the status of their applications and her failure to advise the clients so they could make informed decisions about the applications. Respondent's failure caused actual injury because her actions resulted in all of the applications going abandoned. Perhaps most egregious is the neglect of Mr. [REDACTED] application after the USPTO had indicated that the [REDACTED] application was in condition for allowance except for the submission of new drawings. Should any of the abandoned applications be revived, the clients may lose valuable intellectual property rights in the form of a shortened patent life. They would also have delays in marketing and selling of their products as a consequence of Respondent's neglect and the resultant abandonments. Having caused the clients actual injury, Respondent should receive a significant sanction.

4. Aggravating and mitigating factors exist in this case.

The American Bar Association, STANDARDS FOR IMPOSING LAWYER SANCTIONS (2015), ("STANDARDS" or "STANDARD") set forth aggravating and mitigating factors for the Tribunal to consider in determining an appropriate sanction. Citing § 9.22 of the American Bar Association's Standards for Imposing Lawyer Sanctions (2005), the OED Director contended that the following aggravating factors warrant a more severe sanction in this case: a dishonest or selfish motive; a pattern of misconduct; multiple violations; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of OED; and substantial experience in the practice of law. This Court agrees.

The first aggravating factor is a "dishonest or selfish motive." See STANDARDS § 9.22(b). Respondent acted with a dishonest and selfish motive when she refused to communicate with her clients about the status of their applications, thereby attempting to cover up her neglect of their applications and the abandonment of their applications.

The second aggravating factor is "a pattern of misconduct." See STANDARDS § 9.22(c). Respondent engaged in a pattern of misconduct in her representation of four clients in six different applications. Respondent filed the applications but then did not respond to communications from the Office leading to the abandonment of the six applications. Furthermore, Respondent refused to communicate with her clients about their applications.

The third aggravating factor is the commission of "multiple offenses." See STANDARDS § 9.22(d). Respondent committed multiple offenses when she engaged in the same misconduct with respect to her four clients in six different applications. Respondent's misconduct led to over twenty violations of the USPTO Rules of Professional Conduct.

The fourth aggravating factor is "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency." See STANDARDS § 9.22(e). Respondent's complete failure to participate in the discipline process, both during the OED investigation and during the instant proceeding after receiving the May 2, 2018 RFI and the *Complaint*, shows a bad faith obstruction of the disciplinary proceeding.

The fifth aggravating factor is whether the Respondent has "substantial experience in the practice of law." See STANDARDS § 9.22(i). Respondent has over nine years of experience

practicing before the USPTO and should know better than to engage in the misconduct demonstrated in this case.

The Court finds all of the foregoing to be aggravating factors. These factors, along with the injury Respondent caused to her clients, the knowing and intentional nature of her conduct, and the fact that she violated duties owed to her clients and her profession, warrant the severe sanction of exclusion.

STANDARD § 9.32 identifies mitigating factors which, if they exist, are considerations or facts that may justify a reduction in the degree of discipline to be imposed. See STANDARDS § 9.31. The only mitigating factor here is the “absence of a prior disciplinary record.” See STANDARDS § 9.32(a). The Court finds that mitigating factor to be of little weight, given Respondent’s misconduct as described above.

CONCLUSION

Because Respondent has failed to answer the *Complaint* or otherwise appear in this matter, Respondent is found to be in **DEFAULT**. Based on the facts hereby admitted, this Court finds that Respondent has violated the USPTO Rules of Professional Conduct as alleged. The OED Director requests that the Court sanction Respondent by excluding her from practice before the USPTO in patent, trademark, or other non-patent cases or matters. After analyzing the factors enumerated in 37 C.F.R. § 11.54(b), this Court concludes that Respondent’s misconduct warrants the sanction of exclusion.

Accordingly, Respondent shall be **EXCLUDED** from practice before the U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters.⁵

So **ORDERED**,



Alexander Fernández
United States Administrative Law Judge

Notice of Required Actions by Respondent: Respondent is directed to refer to 37 C.F.R. § 11.58 regarding his responsibilities in the case of suspension or exclusion.

Notice of Appeal Rights: Within thirty (30) days of this initial decision, either party may file an appeal to the USPTO Director pursuant to 37 C.F.R. § 11.55.

⁵ *An excluded practitioner* is eligible to apply for reinstatement no earlier than five years from the effective date of the exclusion. *See* 37 C.F.R. § 11.60(b). Eligibility is predicated upon full compliance with 37 C.F.R. § 11.58.