

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

In the Matter of:)	
)	
Ruth Eure,)	Proceeding No. D2021-05
)	
Respondent.)	
)	

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Ruth Eure (“Respondent”) on April 14, 2021. Respondent submitted the eight-page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office in patent, trademark, and other non-patent matters commencing on the date of this Final Order.

Jurisdiction

Respondent of Boulder, Colorado is a registered patent agent (Registration Number 35,131). Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent’s Affidavit of Resignation and to exclude Respondent on consent from the practice of patent, trademark, and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in her April 14, 2021 Affidavit of Resignation that:

1. Her consent is freely and voluntarily rendered, and she is not being subjected to coercion or duress.

2. She is aware that, pursuant to 37 C.F.R. § 11.22, the OED Director opened an investigation of allegations that she violated the USPTO Rules of Professional Conduct, namely:

OED File No. [REDACTED] The investigation revealed the following information:

Thrasher matter – U.S. Patent Application No. 15/855,736

a. In or about the summer of 2012, Betty Thrasher visited the office of The Invents Company, LLC (“Invents”) located in Buena Park, California. Ms. Thrasher presented an Invents representative with a prototype of her colored-coded cover for drinking vessels invention. The representative quoted Ms. Thrasher a price of \$8,950 to assist her in “introducing [her] new product to market.” Ms. Thrasher asserts that she “didn’t have that kind of money” so she left and told the representative that she “would get back to him.”

b. On September 20, 2013, an Invents representative sent Ms. Thrasher a letter regarding her “Insta Lids” invention. The letter states, in pertinent part:

We have been reviewing all of the products that have been submitted to us over the past several years, and we have identified a small group of those products that appear to have the greatest commercial potential. We are happy to inform you that yours is one of those inventions that have been selected and we are proud to partner with you in order to commercialize your invention.

Because we have purchased large blocks of television airtime for the 2016 calendar year at significant volume discounts, we are able to share these savings with you and reduce your share of the partnership investment to only \$6950 ...

- c. On August 18, 2014, Ms. Thrasher signed an agreement to pay Invents \$795 for services including a “Legal Protection Report.” Attached to the agreement is a “California Cover Sheet,” which states that, *inter alia*, Invents is “not qualified or permitted to advise you whether protection of your idea or invention is available under the patent ... laws of the United States ... Such advice may only be rendered by a licensed, registered patent attorney who is retained on your behalf.” Also attached to the agreement is a “California Addendum,” which states, in pertinent part: “A portion of any fees collected ... shall be paid to a patent attorney retained on your behalf.”
- d. On December 9, 2015, Ms. Thrasher entered into a “New Product Marketing Agreement” with Invents. The marketing agreement states, in pertinent part:

[Ms. Thrasher] agrees to remit a one-time investment fee of \$6950 in advance to [Invents].

* * * * *

4. Client agrees that he/she will promptly participate in the acquisition of “patent pending” status for the concept through the filing of a provisional patent application, so that [Ms. Thrasher] and [Invents] may safely disclose the invention/concept to third parties such as potential licensees and manufacturers. [Invents] hereby agrees to incur all governmental costs associated with obtaining provisional patent pending status and to pay said costs on [Ms. Thrasher’s] behalf, as well as all costs associated with the preparation of any technical drawings which may be necessary.

- e. On December 28, 2015, Invents sent Ms. Thrasher a letter regarding a “Customized Marketing Matrix Itinerary.” The letter states, in pertinent part:

Once the final product (Custom Television Commercial) is complete your patent attorney/agent will obtain patent-pending status for the invention so that we may then disclose to the public all of the various promotional materials that we have prepared. In other words, at that point it is “off to the races” – airing the television commercial,

launching of your Personalized Product Web Page, posting of your Virtual Model at the Invents Company web site, distributing your Invention Brochure ... to potentially interested manufacturers, and sending your Media Press Releases to various media outlets. Since the culmination of all of this occurs roughly one year into the process, our strategy is to wait until that point to have your patent attorney/agent obtain patent pending status. Since the clock starts “ticking” on the life of your patent from the date it is filed, we prefer to avoid starting that clock until it is absolutely necessary ... We also prefer to wait as long as possible so that that if any significant modifications are made to the invention concept during the Customized Marketing Matrix process, they can be incorporated into your patent application by your patent attorney/agent.

* * * * *

Once all of the various promotional items (Virtual Model, Invention Brochure, Personalized Product Web Page, Custom Television Commercial) have been completed and approved by you, and you are confident that there will not be any changes to the overall invention concept, your patent attorney/agent will commence preparation of your patent application.

- f. On November 9, 2016, Respondent sent Ms. Thrasher a letter stating that her patent matter had been referred to Respondent by Invents for preparation and filing of a provisional patent application. The letter also states that Invents agreed to pay Respondent \$300 to draft and file the application. A draft of a provisional patent application for Ms. Thrasher’s drinking container lid invention was attached to the letter.
- g. On December 27, 2016, Respondent filed U.S. Provisional Patent Application No. 62/439,262 (“the ‘262 application”) naming Ms. Thrasher as the sole inventor.
- h. On December 27, 2016, Respondent sent Ms. Thrasher a letter notifying her of the filing of the ‘262 application and offering to prepare a non-provisional patent application for “a flat fee of \$2550.” Respondent explained that after filing the non-provisional patent application, an Office action would be issued, to which she would

respond. Respondent also explained that her initial fee would not cover this stage of the prosecution and that she would charge \$100 per hour for her time after the non-provisional application is filed.

- i. On October 5, 2017, Respondent sent Ms. Thrasher a letter stating that the total fee for filing a non-provisional application is \$2,600 and that she must remit the entire fee before Respondent would proceed with drafting the non-provisional patent application.
- j. On December 16, 2017, Respondent sent Ms. Thrasher a letter enclosing a draft non-provisional patent application. The letter states, in part:

Enclosed is a copy of a proposed regular utility application, claiming priority from your provisional application filed on December 27, 2016. Please review the application, and if it meets with your approval, please sign the attached [declaration and power of attorney] and return them to me.
- k. On December 27, 2017, Respondent filed U.S. Patent Application No. 15/855,736 (“the ‘736 application”) for a “Drinking Container Lid Device” naming Ms. Thrasher as the sole inventor. The filing included a power of attorney to Respondent.
- l. On December 28, 2017, Respondent sent Ms. Thrasher a letter notifying her of the filing of the ‘736 application.
- m. On May 28, 2019, the USPTO issued a non-final Office action rejecting or withdrawing from consideration all of the pending claims in the ‘736 application. The main prior art reference cited in the claim rejections pursuant to 35 U.S.C. §§ 102 and 103 is Turner et al. (U.S. Pub. 2016/0051069 A1) which has an effective filing date of 24 March 2013. The Office action was mailed to Respondent.
- n. Respondent did not notify Ms. Thrasher of the non-final Office action.

- o. Respondent did not reply to the non-final Office action.
- p. On January 13, 2020, the USPTO issued a Notice of Abandonment in the '736 application indicating that no reply had been received to the Office letter mailed on 28 May 2019. The Notice of Abandonment was mailed to Respondent.
- q. Respondent did not notify Ms. Thrasher of the Notice of Abandonment.
- r. On September 30, 2020, Ms. Thrasher sent Respondent an email stating, in pertinent part:

I have been trying to reach you for two weeks ... You have not responded to my calls or text. This is my last ditch effort to get you to correct this problem of letting my patent be abandoned.... I expect you to restore my patent. Bring it completely out of ... abandonment status ... Then for you to complete every step with [USPTO] until my patent is completed. THIS IS WHAT I PAID YOU IN FULL TO DO.

- s. The '736 application remains in a state of abandonment as of the date of this Final Order.

3. Respondent is aware that the OED Director is of the opinion that, based on the information contained in OED File No. [REDACTED] she violated the following provisions of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 11.101 (requiring a practitioner to provide competent representation to a client) by deferring to Invent's' advice to Ms. Thrasher to delay the filing of her patent application and thereby failing to counsel Ms. Thrasher of the possible loss of rights that may result from delaying the filing of her patent application;
- b. 37 C.F.R. § 11.103 (requiring a practitioner to act with reasonable diligence and promptness in representing a client) by failing to notify Ms. Thrasher of, or reply to, either the non-final Office action or the Notice of Abandonment issued in the '736 application;

- c. 37 C.F.R. § 11.104(a)(1) (requiring a practitioner to promptly inform a client of any decision or circumstance with respect to which the client's informed consent is required by the USPTO Rules of Professional Conduct) by failing to 1) obtain Ms. Thrasher's informed consent to Respondent's representation of her intellectual property interests in view of the risks and inherent conflict of interest created by Respondent's business relationship with Invents and by Respondent's acceptance of compensation from Invents to represent Ms. Thrasher or 2) notify Ms. Thrasher of either the non-final Office action or the Notice of Abandonment issued in the '736 application or the consequences of failing to respond to such Office correspondence;
- d. 37 C.F.R. § 11.104(a)(2) (requiring a practitioner to reasonably consult with the client about the means by which the client's objectives are to be accomplished) by 1) deferring to Invents' advice to Ms. Thrasher to file a provisional patent application and thereby failing to counsel Ms. Thrasher about what type of intellectual property protection, if any, would be best suited to achieve Ms. Thrasher's objectives, 2) deferring to Invents' advice to Ms. Thrasher to delay the filing of her patent application and thereby failing to counsel Ms. Thrasher of the possible loss of rights that may result from delaying the filing of her patent application, 3) failing to notify Ms. Thrasher of either the non-final Office action or the Notice of Abandonment issued in the '736 application, and 4) failing to counsel Ms. Thrasher of the consequences of failing to reply to either the non-final Office action or the Notice of Abandonment;

- e. 37 C.F.R. § 11.104(a)(3) (requiring a practitioner to keep the client reasonably informed about the status of the matter) by failing to notify Ms. Thrasher of either the non-final Office action or the Notice of Abandonment issued in the '736 application;
- f. 37 C.F.R. § 11.104(a)(4) (requiring a practitioner to promptly comply with reasonable requests for information from the client) by failing to respond to Ms. Thrasher's information requests regarding the status of the '736 application;
- g. 37 C.F.R. § 11.104(b) (requiring a practitioner to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) by 1) failing to obtain Ms. Thrasher's informed consent to Respondent's representation of her intellectual property interests in view of the risks and inherent conflict of interest created by Respondent's business relationship with Invents and by Respondent's acceptance of compensation from Invents to represent Ms. Thrasher, 2) deferring to Invents' advice to Ms. Thrasher to file a provisional patent application and thereby failing to counsel Ms. Thrasher about what type of intellectual property protection, if any, would be best suited to achieve Ms. Thrasher's objectives, 3) deferring to Invents' advice to Ms. Thrasher to delay the filing of her patent application and thereby failing to counsel Ms. Thrasher of the possible loss of rights that may result from delaying the filing of her patent application, 4) failing to notify Ms. Thrasher of either the non-final Office action or the Notice of Abandonment issued in the '736 application, and 5) failing to counsel Ms. Thrasher of the consequences of failing to reply to either the non-final Office action or the Notice of Abandonment;

- h. 37 C.F.R. § 11.107(a)(2) (a practitioner shall not represent a client if there is a significant risk that the representation of the client will be materially limited by a personal interest of the practitioner unless, *inter alia*, the client gives informed consent, confirmed in writing) by failing to obtain Ms. Thrasher's informed consent to Respondent's representation of her intellectual property interests in view of the risks and inherent conflict of interest created by Respondent's business relationship with Invents;
- i. 37 C.F.R. § 11.108(f)(1) (a practitioner shall not accept compensation for representing a client from one other than the client unless the client gives informed consent) by failing to obtain Ms. Thrasher's informed consent to Respondent's representation of Ms. Thrasher's intellectual property interests in view of Respondent's acceptance of compensation from Invents to represent Ms. Thrasher and the risks and inherent conflict of interest involved with such a fee arrangement;
- j. 37 C.F.R. § 11.108(f)(2) (a practitioner shall not accept compensation for representing a client from one other than the client unless there is no interference with the practitioner's independence of professional judgment or with the client-practitioner relationship); 37 C.F.R. § 11.504(c) (a practitioner shall not permit a person who recommends, employs, or pays the practitioner to render legal services for another to direct or regulate the practitioner's professional judgment in rendering such legal services); and 37 C.F.R. § 11.505 (a practitioner shall not assist another in the practice of law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction) by 1) deferring to Invents' advice to Ms. Thrasher to file a provisional patent application and thereby failing to counsel Ms. Thrasher about

what type of intellectual property protection, if any, would be best suited to achieve Ms. Thrasher's objectives and 2) deferring to Invent's advice to Ms. Thrasher to delay the filing of her patent application and thereby failing to counsel Ms. Thrasher of the possible loss of rights that may result from delaying the filing of her patent application;

- k. 37 C.F.R. § 11.804(d) (a practitioner shall not engage in conduct that is prejudicial to the administration of justice) by failing to notify Ms. Thrasher of, or reply to, either the non-final Office action or the Notice of Abandonment issued in the '736 application.

4. Without admitting to violating any of the USPTO Rules of Professional Conduct investigated by the OED Director in OED File No. [REDACTED], Respondent acknowledges that, if and when she applies for reinstatement under 37 C.F.R. § 11.60 to practice before the USPTO in patent, trademark, and/or other non-patent matters, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that:

- a. the facts regarding her in OED File No. [REDACTED] are true, and
- b. she could not have successfully defended herself against the allegations embodied in the opinion of the OED Director that she violated 37 C.F.R. §§ 11.101, 11.103, 11.104(a)(1)-(4), 11.104(b), 11.107(a)(2), 11.108(f)(1)-(2), 11.504(c), 11.505, and 11.804(d).

5. She has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of consenting to exclusion from practice before the USPTO in patent, trademark, and other non-patent matters.

6. She consents to being excluded from practice before the USPTO in patent, trademark, and other non-patent matters.

Exclusion on Consent

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

1. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
2. Respondent shall be, and hereby is, excluded on consent from practice before the Office in patent, trademark, and other non-patent matters commencing on the date of this Final Order;
3. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <https://foiadocuments.uspto.gov/oed/>;
4. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns Ruth Eure, a registered patent agent (Registration No. 35,131). The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Ms. Eure's affidavit of resignation and ordered her exclusion on consent from practice before the Office in patent, trademark, and non-patent law.

Ms. Eure voluntarily submitted her affidavit at a time when a disciplinary investigation was pending against her. The investigation concerned information indicating that Ms. Eure 1) failed to obtain a client's informed consent to Ms. Eure's representation of the client's intellectual property interests in view of the risks and inherent conflict of interest created by Ms. Eure's business relationship with a non-practitioner invention promotion

firm and by Ms. Eure's acceptance of compensation from the invention promotion firm to represent the client, 2) deferred to the invention promotion firm's advice to the client to file a provisional patent application and thereby failed to counsel the client about what type of intellectual property protection, if any, would be best suited to achieve the client's objectives, 3) deferred to the invention promotion firm's advice to the client to delay the filing of the client's patent application and thereby failed to counsel the client of the possible loss of rights that may result from delaying the filing of the client's patent application, 4) failed to notify the client of, or reply to, the non-final Office action or the Notice of Abandonment issued in the client's patent application, 5) failed to counsel the client of the consequences of failing to reply to the non-final Office action or the Notice of Abandonment, and 6) failed to respond to the client's information requests regarding the status of the client's patent application. Ms. Eure acknowledged that the OED Director was of the opinion that her conduct violated 37 C.F.R. §§ 11.101 (requiring a practitioner to provide competent representation to a client); 11.103 (requiring a practitioner to act with reasonable diligence and promptness in representing a client); 11.104(a)(1) (requiring a practitioner to promptly inform a client of any decision or circumstance with respect to which the client's informed consent is required by the USPTO Rules of Professional Conduct); 11.104(a)(2) (requiring a practitioner to reasonably consult with the client about the means by which the client's objectives are to be accomplished); 11.104(a)(3) (requiring a practitioner to keep the client reasonably informed about the status of the matter); 104(a)(4) (requiring a practitioner to promptly comply with reasonable requests for information from the client); 11.104(b) (requiring a practitioner to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); 11.107(a)(2) (a practitioner shall not represent a client if there is a significant risk that the representation of the client will be materially limited by a personal interest of the practitioner unless, *inter alia*, the client gives informed consent, confirmed in writing); 11.108(f)(1) (a practitioner shall not accept compensation for representing a client from one other than the client unless the client gives informed consent); 11.108(f)(2) (a practitioner shall not accept compensation for representing a client from one other than the client unless there is no interference with the practitioner's independence of professional judgment or with the client-practitioner relationship); 11.504(c) (a practitioner shall not permit a person who recommends, employs, or pays the practitioner to render legal services for another to direct or regulate the practitioner's professional judgment in rendering such legal services); 11.505 (a

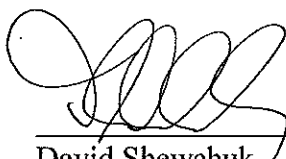
practitioner shall not assist another in the practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction); 11.804(d) (a practitioner shall not engage in conduct that is prejudicial to the administration of justice).

While Ms. Eure did not admit to violating any of the USPTO Rules of Professional Conduct as alleged in the pending investigation, she acknowledged that, if and when she applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the facts set forth in the OED investigation against her are true, and (ii) she could not have successfully defended herself against the allegations embodied in the opinion of the OED Director that she violated 37 C.F.R. §§ 11.101, 11.103, 11.104(a)(1)-(4), 11.104(b), 11.107(a)(2), 11.108(f)(1)-(2), 11.504(c), 11.505, and 11.804(d).

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <https://foiadocuments.uspto.gov/oed/>;

5. Respondent shall comply fully with 37 C.F.R. § 11.58; and
6. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement.

5 May 2021
Date



David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

on delegated authority by

Andrew Hirshfeld
Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and
Trademark Office