

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

In the Matter of:)	
)	
Divya Khullar,)	Proceeding No. D2020-07
)	
Respondent.)	
)	

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, Divya Khullar (“Respondent”) is hereby publicly reprimanded for violation of 37 C.F.R. § 11.804(h), having been disciplined by the duly constituted authority of a state.

I. Background

1. At all times relevant to this Complaint, Respondent of Tamarac, Florida has been registered to practice in patent matters before the United States Patent and Trademark Office (“USPTO”). Respondent’s USPTO Registration Number is 69,428. Respondent is subject to the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101 *et seq.*

2. The Director of the USPTO has jurisdiction over this proceeding pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.19 and 11.24.

3. On March 26, 2019, in *The Florida Bar v. Divya Khullar*, Case No. SC18-2083, the Supreme Court of Florida publicly reprimanded Respondent in that jurisdiction based on ethical grounds, namely: a finding of contempt predicated upon Respondent’s failure to timely respond to a number of the Florida Bar’s official inquiries.

4. On June 22, 2020 a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (“Notice and Order”) was sent by certified mail (receipt no. 70191640000071024666) notifying Respondent

that the Director of the Office of Enrollment and Discipline (“OED Director”) had filed a “Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24” (“Complaint”) requesting that the Director of the United States Patent and Trademark Office impose reciprocal discipline upon Respondent identical to the discipline imposed by the Supreme Court of Florida in *The Florida Bar v. Divya Khullar*, Case No.: SC18-2083. The Notice and Order provided Respondent with forty (40) days, until August 3, 2020, to file a response opposing the imposition of reciprocal discipline based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1).

5. On July 30, 2020, prior to the August 3, 2020 deadline for filing a response to the Notice and Order, Respondent requested a 30-day extension of time to respond to the Notice and Order. Respondent proposed an extended deadline of September 1, 2020 and cited unspecified “personal issues” that prevented him from being in the office for an unspecified period of time as the basis for his request. That request was denied.

6. On August 3, 2020, Respondent filed a Second Request for Extension of Time To File a Response to the Notice and Order, in which he restated that he “has been out of the office due to personal issues,” and for the first time cited various “problems” with OED staff, but provided no further details. That request was also denied.

7. Respondent filed a response to the June 22, 2020 Notice and Order on August 12, 2020. Therein, he primarily argues that the Florida discipline was nothing more than an unintentional “failure to respond to an innocuous request.” (Response to Notice and Order, ¶¶ 1, 2). He does not address any of the factors set forth in 37 C.F.R. § 11.24(d)(1) in his response.

II. Legal Standard

Pursuant to 37 C.F.R. § 11.24(d), and in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), the USPTO has codified standards for imposing reciprocal discipline based on a state’s disciplinary adjudication. Under *Selling*, state disbarment creates a federal-level presumption that

imposition of reciprocal discipline is proper, unless an independent review of the record reveals: (1) a want of due process; (2) an infirmity of proof of the misconduct; or (3) that grave injustice would result from the imposition of reciprocal discipline. Federal courts have generally “concluded that in reciprocal discipline cases, it is the respondent attorney’s burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline.” *In re Kramer*, 282 F.3d 721, 724 (9th Cir. 2002); *In re Friedman*, 51 F.3d 20, 22 (2d Cir. 1995). “This standard is narrow, for ‘[a Federal court, or here the USPTO Director is] not sitting as a court of review to discover error in the [hearing judge’s] or the [state] courts’ proceedings.’” *In re Zdravkovich*, 634 F.3d 574, 578 (D.C. Cir. 2011) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)) (second and third alternations in original).

The USPTO’s regulation governing reciprocal discipline, 37 C.F.R. § 11.24(d)(1), mirrors the standard set forth in *Selling*:

[T]he USPTO Director shall consider any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:

- (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute deprivation of due process;
- (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;
- (iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in a grave injustice; or
- (iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

Id.

To prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that there is a genuine issue of material fact as to one of these criteria by clear and convincing evidence. *See id.* As discussed below, however, Respondent has not shown by clear and

convincing evidence that there is a genuine issue of material fact with regard to any of the factors set forth in 37 C.F.R. § 11.24(d)(1).

III. The Response to Notice and Order Is Untimely.

After expiration of forty (40) days from the date of the Notice and Order pursuant to 37 C.F.R. § 11.24(b), the USPTO Director shall “consider any timely filed response” and issue an order of reciprocal discipline, if appropriate under 37 C.F.R. § 11.24(d)(1). In this case, on June 22, 2020, a Notice and Order was issued and advised Respondent that the OED Director had requested reciprocal discipline identical to that imposed by the Supreme Court of Florida in *The Florida Bar v. Divya Khullar*, Case No.: SC18-2083. Respondent, per the regulations governing reciprocal discipline, was allotted forty (40) days, until August 3, 2020, to respond. Respondent filed two unsuccessful requests to extend the time to file a response to the Notice and Order beyond the August 3, 2020 regulatory deadline.

Respondent ultimately filed a response to the Notice and Order on August 12, 2020. This was filed well outside the forty (40) days allotted by regulation to file a response. Although he had twice sought an extension of the 40-day deadline, those efforts were unsuccessful as the requests did not meet the standard for granting a waiver of the regulatory deadline. As such, the August 3, 2020 deadline for filing a response to the Notice and Order remained in place and Respondent’s August 12, 2020 response was untimely. Consequently, in light of there being no timely filed response to consider, it is hereby determined that there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and reprimanding Respondent is the appropriate discipline.

IV. Respondent’s Arguments Do Not Prevent Reciprocal Discipline Under 37 C.F.R. § 11.24.

In addition to filing an untimely response, Respondent’s August 12, 2020 response does not provide a basis for precluding reciprocal discipline here. As stated, Federal courts have generally “concluded that in reciprocal discipline cases, it is the respondent attorney’s burden to

demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline.” *In re Kramer*, 282 F.3d at 724; *In re Friedman*, 51 F.3d at 22. Thus, Respondent’s only recourse to mitigate or negate reciprocal discipline here is limited to arguing that the *Selling* factors, enshrined in 37 C.F.R § 11.24(d), precludes reciprocal discipline. Unfortunately, Respondent fails to make an argument addressing the § 11.24(d) factors, instead choosing to argue that his actions were insignificant and unintentional. As a result, having failed to carry his burden, it is hereby determined that there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and reprimanding Respondent is the appropriate discipline.

ORDER

ACCORDINGLY, it is ORDERED that:

1. Respondent is publicly reprimanded;
2. The OED Director shall publish a Notice in the *Official Gazette* that is materially

consistent with the following:

Notice of Public Reprimand

This notice concerns Divya Khullar of Tamarac, Florida, who is a registered patent attorney (Registration Number 69,428). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office (“USPTO”) has ordered that Mr. Khullar be publicly reprimanded for violating 37 C.F.R. § 11.804(h), predicated upon being publicly reprimanded by a duly constituted authority of a State.

On March 26, 2019, the Supreme Court of Florida, in *The Florida Bar v. Divya Khullar*, Case No.: SC18-2083, publicly reprimanded Mr. Khullar based upon a finding of contempt, which was predicated upon Mr. Khullar’s failure to timely respond to a number of the Florida Bar’s official inquiries.

This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline’s FOIA Reading Room, located at: <https://foiadocuments.uspto.gov/oed/>;

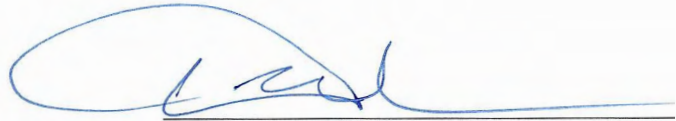
and

3. The OED Director gives notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public.

Pursuant to 37 C.F.R. § 11.57(a), review of the final decision by the USPTO Director may be had by a Petition filed with the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 “within thirty (30) days after the date of the order recording the Director’s action.” See E.D. Va. Local Civil Rule 83.5.

It is so ordered.

12/22/2020
Date



David Berdan
General Counsel
United States Patent and Trademark Office

on delegated authority by

Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office