

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

In the Matter of)	
)	
Gary M. Sutter,)	Proceeding No. D2020-08
)	
Respondent)	
_____)	

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.27

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 Gary M. Sutter (“Respondent”) on December 20, 2019. Respondent submitted the three-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 Toledo, Ohio, is a registered patent attorney (Registration Number 31,574). 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 his December 20, 2019 Affidavit of Resignation that:

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

2. He is aware that, pursuant to 37 C.F.R. § 11.22, the OED Director opened an investigation of allegations that he violated the USPTO Rules of Professional Conduct, namely: OED File No. [REDACTED]. The investigation delved into and obtained information that, *inter alia*:

- a. Respondent pled guilty in *U.S. v. Gary M. Sutter*, Case No. 3:17-CR-00046-JJH(1) (N.D. Ohio May 21, 2019) to violating 18 U.S.C. § 2252(a)(2) (receipt and distribution of visual depictions of minors engaged in sexually explicit conduct);
- b. Respondent has been committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of seventy-two (72) months;
- c. Respondent submitted an application for retirement or resignation from the practice of law in the State of Ohio pursuant to Ohio Gov. Bar R. VI(11)(B);
- d. Respondent's resignation was accepted by the Supreme Court of Ohio in *In re Gary Michael Sutter*, Case No. 2019-0641 (Ohio 2019) as a resignation with disciplinary action pending; and
- e. Respondent's rights and privileges to practice law in the State of Ohio have been withdrawn.

3. He is aware that the OED Director is of the opinion based on this investigation that he also violated the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. § 11.804(b) (it is professional misconduct for a practitioner to commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness or fitness as a practitioner in other respects); 37 C.F.R. § 11.804(h) (it is professional misconduct for a practitioner to be publicly disciplined on ethical or professional misconduct grounds by any duly constituted authority of a State); and 37 C.F.R. § 11.804(i) (it is professional misconduct to engage in other conduct that adversely reflects on the practitioner's fitness to practice before the USPTO).

4. Without admitting to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct investigated by the OED Director in OED File No. [REDACTED], he acknowledges that, if and when he 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 him in OED File No. [REDACTED] are true, and

(b) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.804(b), 11.804(h), and 11.804(i).

5. He has fully read and understands 37 C.F.R. §§ 11.5(b), 11.24, 11.25, 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. He 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 Gary M. Sutter, a registered patent attorney (Registration No. 31,574). The Director of the United States Patent and Trademark Office (“USPTO” or “Office”) has accepted Mr. Sutter’s affidavit of resignation and ordered his exclusion on consent from practice before the Office in patent, trademark, and other non-patent matters.

Mr. Sutter voluntarily submitted his affidavit at a time when a disciplinary investigation was pending against him. The investigation concerned the acceptance by the Supreme Court of Ohio in *In re Gary Michael Sutter*, Case No. 2019-0641 (Ohio 2019) of Mr. Sutter’s application for retirement or resignation from the practice of law in the State of Ohio pursuant to Ohio Gov. Bar R. VI(11)(B) as a resignation with disciplinary action pending. Mr. Sutter acknowledged that the OED Director was of the opinion that Mr. Sutter’s conduct violated 37 C.F.R. §§ 11.804(b) (it is professional misconduct for a practitioner to commit a criminal act that reflects adversely on the practitioner’s honesty, trustworthiness or fitness as a practitioner in other respects); 11.804(h) (it is professional misconduct for a practitioner to be publicly disciplined on ethical or professional misconduct grounds by any duly constituted authority of a State); and 11.804(i) (it is professional misconduct to engage in other conduct that adversely reflects on the practitioner’s fitness to practice before the USPTO).

While Mr. Sutter did not admit to violating any of the USPTO Rules of Professional Conduct as alleged in the pending investigation, he acknowledged that, if and when he 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 him are true, and (ii) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.804(b), 11.804(h), and 11.804(i).

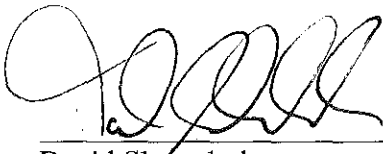
This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <https://foiadocuments.uspto.gov/oed/>;

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.

(signature page follows)

(signature page – Final Order Pursuant to 37 C.F.R. § 11.27- Sutter, Gary D2020-08)



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

26 Feb 2020
Date

on delegated authority by

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

cc:

Robin Crabb
Counsel for Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Mr. Gary M. Sutter, Register Number: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]