

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

In the Matter of)	
)	
Edward Michael Livingston,)	Proceeding No. D2021-07
)	
Respondent)	
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FINAL ORDER PURSUANT TO 37 C.F.R. § 11.26

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Edward Michael Livingston (“Respondent”), by counsel, have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) for approval.

The Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties’ joint stipulated facts, joint legal conclusions, and agreed-upon sanction found in the Agreement.

Jurisdiction

1. At all times relevant hereto, Respondent of Naples, Florida, has been a practitioner engaged in practice before the Office in patent matters. Therefore, Respondent is subject to the USPTO Rules of Professional Conduct, which are set forth at 37 C.F.R. §§ 11.101 through 11.901.

2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.20, and 11.26.

Joint Stipulated Facts

3. Respondent was registered by the USPTO as an agent on May 19, 1977, and as an

attorney on November 16, 1978 (Registration Number 28,523).

4. The USPTO administratively removed Respondent from the Register of Attorneys and Agents on January 31, 2013, because he did not respond to a survey under 37 C.F.R. § 10.11.

5. Respondent represents that until recently he was unaware of the survey and his removal from the Register of Attorneys and Agents.

6. Promptly after learning of his removal from the Register of Attorneys and Agents, Respondent requested reinstatement on March 19, 2020.

7. Respondent practiced before the USPTO in patent matters after submitting his reinstatement request, but prior to reinstatement being granted.

8. Respondent acknowledges that he is now fully aware and understands that practitioners who are removed from the Register are not authorized to engage in practice before the USPTO in patent matters until reinstated.

Joint Legal Conclusions

9. Respondent acknowledges that, based on the information contained in the joint stipulated facts, above, his conduct violated 37 C.F.R. § 11.505 (unauthorized practice of law) and 37 C.F.R. § 11.804(d) (engaging in conduct prejudicial to the administration of justice) by representing others before the Office in patent matters prior to his request for reinstatement being granted.

Agreed-Upon Sanction

10. Respondent freely and voluntarily agreed, and it is hereby ORDERED that:

- a. Respondent shall be and is hereby publicly reprimanded;
- b. Respondent shall serve a twelve (12)-month period of probation commencing on the date of this Final Order;

c. (1) In the event the OED Director is of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Final Order, or any of the USPTO Rules of Professional Conduct, the OED Director shall:

- (A) issue to Respondent an Order to Show Cause why the USPTO Director should not order Respondent be immediately suspended for up to twelve (12) months for the violations set forth in the Joint Legal Conclusions, above;
- (B) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a); and
- (C) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

(2) In the event that after the 15 day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Final Order, or any of the USPTO Rules of Professional Conduct, the OED Director shall:

- (A) deliver to the USPTO Director or his designee: (i) the Order to Show Cause; (ii) Respondent's response to the Order to Show Cause, if any; and (iii) argument and evidence causing the OED Director to be of the opinion that Respondent failed to comply with any provision of the Final Order, or any

disciplinary rule of the USPTO Rules of Professional Conduct during the probationary period; and

- (B) request that the USPTO Director immediately suspend Respondent from practice before the USPTO for up to twelve (12) months for violations set forth in the Joint Legal Conclusions, above;
- d. In the event the USPTO Director suspends Respondent pursuant to paragraph “c” above, and Respondent seeks a review of the suspension, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;
- e. Nothing in the Agreement or this Final Order shall prevent the Office from seeking discipline against Respondent pursuant to 37 C.F.R. §§ 11.19 through 11.57 for any misconduct engaged in by Respondent prior to, during, or after his probationary period, including that which formed the basis for an Order to Show Cause issued pursuant to the preceding paragraph “c” above, or which led to the imposition of a suspension pursuant to paragraph “c” above;
- f. The OED Director shall electronically publish the Final Order at OED’s electronic FOIA Reading Room, which is publicly accessible at: <https://foiadocuments.uspto.gov/oed/>;
- g. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Reprimand and Probation

This notice concerns Edward Michael Livingston of Naples, Florida, a registered practitioner (Reg. No. 28,523). In settlement of a disciplinary proceeding, the Director of the United States Patent and

Trademark Office (“USPTO” or “Office”) has issued a Final Order publicly reprimanding practitioner and imposing a twelve (12) month probation for violating 37 C.F.R. §§ 11.505 and 11.804(d). Mr. Livingston may be suspended by the USPTO Director for up to twelve (12) months if he violates the terms of his probation.

The USPTO removed practitioner from the register of active patent attorney and agents after he did not to respond to a survey letter mailed to him by Office of Enrollment and Discipline (“OED”) endeavoring to ascertain whether he desired to remain on the register of practitioners authorized to practice before the Office in patent matters. Practitioner represents that he was unaware of the survey and his removal from the Register of Attorneys and Agents and promptly sought reinstatement upon learning of his removal. After submitting a request for reinstatement, but prior to the USPTO granting the reinstatement request, practitioner continued to practice before the Office in patent matters.

Practitioner agreed that he violated 37 C.F.R. § 11.505 (unauthorized practice of law) and 37 C.F.R. § 11.804(d) (engaging in conduct prejudicial to the administration of justice) by representing others before the Office in patent matters prior to his request for reinstatement being granted.

This action is the result of a settlement agreement between Mr. Livingston and the OED Director pursuant to provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R §§ 11.3, 11.19, 11.20, and 11.26. Disciplinary decisions involving practitioners are posted for public reading at the OED FOIA Reading Room, available at: <https://foiadocuments.uspto.gov/oed/>.

- h. Nothing in the Proposed Settlement Agreement or this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order: (1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent that should be brought to the attention of the Office; and/or (2) in any future disciplinary proceeding against Respondent (i) as an aggravating factor to be

taken into consideration in determining any discipline to be imposed, and/or (ii) to rebut any statement or representation by or on Respondent's behalf, and/or (3) in connection with any request for reconsideration submitted by Respondent pursuant to 37 C.F.R. § 11.60;

- i. Respondent waives all rights to seek reconsideration of the Final Order under 37 C.F.R. § 11.56, waives the right to have the Final Order reviewed under 37 C.F.R. § 11.57, and waives the right otherwise to appeal or challenge the Final Order in any manner; and
- j. The parties shall bear their own respective costs to date in complying with the terms of the Proposed Settlement Agreement and this Final Order.

**Users, Long,
Stacy**  Digitally signed by Users,
Long, Stacy
Date: 2021.09.16 09:06:47
-04'00'

Stacy Long
Acting Deputy General Counsel for General Law
U.S. Patent and Trademark Office
on delegated authority by

Date

Andrew Hirshfeld
Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office