

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

In the Matter of)	
)	
Qianqian Wu,)	Proceeding No. D2023-24
)	
Respondent)	
_____)	

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 Qianqian Wu (“Respondent”) have submitted a Proposed Settlement 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’ stipulated facts, legal conclusions, and sanctions.

Jurisdiction

1. At all times relevant, Respondent of Abington, Massachusetts, has been a registered agent (USPTO Registration Number 78,599) and, therefore is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*

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.

Legal Background

Micro Entity Status for Certain Patent Applicants

3. Certain applicants and patent owners can benefit from a significant reduction on most USPTO fees if they qualify and file the appropriate papers in their application or patent. To benefit from this fee reduction, applicants and patentees must establish “micro entity” status pursuant to 37 C.F.R. § 1.29. *See generally* Manual of Patent Examining Procedure (“MPEP”) § 509.04.

4. There are two separate bases for establishing micro entity status. One is referred to as the “gross income basis” under 35 U.S.C. § 123(a), and the other is referred to as the “institution of higher education basis” under 35 U.S.C. § 123(d). *See* MPEP § 509 (“II. Bases for Establishing Micro Entity Status.”) Under the “gross income” basis for establishing micro entity status, there is a limit to the number of previously filed applications for an applicant to qualify for micro entity status.

5. In order to qualify as a micro entity, patent applicants must certify that:

- (1) the applicant qualifies as a small entity as defined in § 1.27;
- (2) neither the applicant nor the inventor nor a joint inventor has been named as the inventor or a joint inventor on more than four previously filed patent applications;
- (3) neither the applicant nor the inventor nor a joint inventor, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income . . . exceeding three times the median household income for that preceding calendar year; and
- (4) neither the applicant nor the inventor nor a joint inventor has assigned, granted, or conveyed, nor is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that . . . had a gross income . . . exceeding three times the median household income for that preceding calendar year

See generally 37 CFR § 1.29; MPEP § 509.04 (underline added).

Calculating the “Previously Filed Applications” Limit

6. For purposes of establishing micro entity status under the “gross income” basis, the application filing limit includes: (i) previously filed U.S. nonprovisional applications (e.g., utility, design, plant, continuation, and divisional applications), (ii) previously filed U.S. reissue applications, and (iii) previously filed U.S. national stage applications under the Patent Cooperation Treaty (PCT). *See* MPEP § 509.04(a) (“B. Application Filing Limit”).

7. “All such applications naming the inventor or a joint inventor are counted toward the application filing limit, whether the applications were filed before, on, or after March 19, 2013. Further, it does not matter whether the previously filed applications are pending, patented, or abandoned; they are still included when counting to determine whether the application filing limit has been reached.” MPEP § 509.04(a) (“B. Application Filing Limit”).

8. “The application filing limit does not include: (i) foreign applications; (ii) international (PCT) applications for which the basic U.S. national stage filing fee was not paid; and (iii) provisional applications. In addition, where an applicant, inventor, or joint inventor has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant’s, inventor’s, or joint inventor’s previous employment; the applicant, inventor or joint inventor is not considered to be named on the prior filed application for purposes of determining micro entity status. *See* 37 CFR 1.29(b).” MPEP § 509.04(a) (“B. Application Filing Limit”).

9. “Because the four application limit is a limit on previously filed U.S. nonprovisional applications, reissues applications, and national stage applications, the maximum number of applications in which fees can be paid at the micro entity discount rate can vary from 0 to 5 for any given inventor.” MPEP § 509.04(a) (“B. Application Filing Limit”).

Certification of Micro Entity

10. “35 U.S.C. 123 requires a certification as a condition for an applicant to be considered a micro entity. The certification must be in writing and must be filed prior to or at the time a fee is first paid in the micro entity amount in an application or patent.” MPEP § 509.04.

11. “A fee may be paid in the micro entity amount only if it is submitted with, or subsequent to, the submission of a certification of entitlement to micro entity status. *See* 37 C.F.R. § 1.29(f).” MPEP § 509.04.

12. “Any attempt to fraudulently establish status or pay fees as a micro entity shall be considered as a fraud practiced or attempted on the Office. Improperly, and with intent to deceive, establishing status or paying fees as a micro entity shall be considered as a fraud practiced or attempted on the Office. *See* 37 CFR 1.29(j).” MPEP § 509.04.

Certifications to the USPTO when Presenting Papers

13. Registered practitioners make important certifications via 37 C.F.R. § 11.18 whenever presenting (*e.g.*, by signing, filing, submitting, or later advocating) any paper to the USPTO.

14. The registered practitioner certifies that all statements made on his or her own knowledge are true, and that all statements based on the presenter’s information and belief are believed to be true. *See* 37 C.F.R. § 11.18(b)(1).

15. The registered practitioner also certifies that:

[t]o the best of the party’s knowledge, information and belief, *formed after an inquiry reasonable under the circumstances* (i) the paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; (ii) the other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (iii) the allegations and other factual contentions have evidentiary support or, if

specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (iv) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

37 C.F.R. § 11.18(b)(2) (emphasis added). Accordingly, a registered practitioner who presents any paper to the USPTO—including certifications of micro entity status—certifies that he or she has conducted an inquiry reasonable under the circumstances that supports the factual assertions set forth in the paper. *See* 37 C.F.R. § 11.18(b)(2)(iii).

16. Violations of § 11.18 may jeopardize the probative value of the filing, and any false or fraudulent statements are subject to criminal penalty under 18 U.S.C. § 1001. *See* 37 C.F.R. § 11.18(b)(1).

17. Any registered practitioner who violates the provisions of this section may also be subject to disciplinary action. *See* 37 C.F.R. § 11.18(d).

Joint Stipulated Facts

18. On February 20, 2021, an inventor purportedly signed nine “Assignment by Inventor(s) of U.S. Patent Application” forms in favor of an applicant/assignee (“the patent client”).

19. On February 20, 2021, Respondent personally signed her name to nine “Certification of Micro Entity Status (Gross Income Basis)” forms for nine applications to be filed on behalf of the patent client.

20. On February 25, 2021, Respondent filed three applications with the USPTO on behalf of the patent client. Each of these three applications included one the aforementioned micro entity certification forms that she had previously signed.

21. On February 27, 2021, Respondent filed six applications with the USPTO on behalf of the patent client. Each of these six applications included one of the aforementioned micro entity certification forms that she had previously signed.

22. On February 27, 2021, Respondent presented again three micro entity certification in three of the applications she had previously filed on behalf of the patent client on February 25, 2021.

23. The nine micro entity certification forms filed by Respondent on February 27, 2021, were filed within an approximate seventy (70)-minute time period.

24. When OED asked Respondent about her signing and presenting the micro entity certifications forms to the USPTO, she stated, in part, "Neither the applicant nor the inventor has been named as an inventor on more than four previously filed applications." Respondent also stated to OED, "I depended on my applicant to be honest with me about how many prior patent applications he had filed in the past. In each case, the applicant advised that he had not filed more than 4 prior applications."

25. In accordance with the agency's micro entity status rules and regulations, the USPTO issued a Notice of Payment Deficiency in seven of the nine applications.

26. In response to the notices, Respondent changed the patent client's entity status and paid the deficient amount.

27. Regarding the filing of nine micro entity certifications for the patent client during the approximately 70-minute time span, Respondent acknowledged that it was not reasonable for her to rely on her client's certification of micro entity status. She explained that, as she reviewed the matter, she realized that her client had made a mistake and that she, herself, was not acting carefully enough to catch it.

28. Respondent acknowledged that she was, in fact, not paying adequate attention to the filings and she should have noticed that the number of micro entity certifications for the patent client exceeded the allowable limit for micro entity status.

29. Respondent also recognized that she potentially placed her client's patent applications in jeopardy.

30. Respondent represents that she has taken corrective action to prevent a recurrence of erroneous micro entity certifications including: (a) creating a sufficient docketing system to keep track of the names of applicants and inventors in Chinese characters and Romanized characters; (b) creating a customized micro entity declaration forms for the inventors and applicants to personally sign in support of the USPTO micro entity form SB0015A to account for all prior applications; (c) traveling to China to meet and counsel, in person, her clients on all relevant USPTO requirements; and (d) joining the AIPLA and applying to its Mentorship Program to have an experienced registered practitioner as a personal mentor.

Additional Considerations

31. Respondent has never been the subject of professional discipline by the USPTO, and she represents that he has not been disciplined on ethical grounds by any other jurisdiction.

32. Respondent has demonstrated genuine contrition and accepted responsibility for her acts and omissions.

33. Respondent cooperated with OED's investigation by engaging in an online interview with OED.

Joint Legal Conclusions

34. Based on the information contained in the Joint Stipulated Facts, above, Respondent violated the following provisions of the USPTO Rules of Professional Conduct:

- a. 37 C.F.R. § 11.103 (diligence) *inter alia* by (i) not always conducting a reasonable inquiry under the circumstances pursuant to 37 C.F.R. § 11.18 prior to signing and presenting certifications of micro entity status to the USPTO, (b) not paying adequate attention to micro entity certifications that she signed and presented to the USPTO on behalf of the same applicant within an approximate 70-minute time span; and (iii) failing to have in place adequate procedures to ensure that certifications of micro entity status complied with USPTO regulations and, instead, relying on the clients' erroneous representations; and
- b. 37 C.F.R. § 11.804(d) (conduct prejudicial to the administration of the patent application process) *inter alia* by (i) not always conducting a reasonable inquiry under the circumstances pursuant to 37 C.F.R. § 11.18 prior to signing and presenting certifications of micro entity status to the USPTO, (b) not paying adequate attention to micro entity certifications that she signed and presented to the USPTO on behalf of the same applicant within an approximate 70-minute time span; and (iii) failing to have in place adequate procedures to ensure that certifications of micro entity status complied with USPTO regulations and, instead, relying on the clients' erroneous representations.

Agreed-Upon Sanction

35. Respondent has freely and voluntarily agreed, and it is hereby ORDERED that:
- a. Respondent be, and hereby, is publicly reprimanded;
 - b. The OED Director shall electronically publish the Final Order at the OED's electronic FOIA Reading Room, which is publicly accessible through the Office's website at: <https://foiadocuments.uspto.gov/oed/>;
 - c. 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 Qianqian Wu of Abington, Massachusetts, who is a registered patent agent (Registration Number 78,599). Ms. Wu is hereby reprimanded for violating 37 C.F.R. §§ 11.103 (failing to act with reasonable diligence in representing a client) and 11.804(d) (engaging in conduct that is prejudicial to the integrity of the patent application process). The reprimand is predicated upon Ms. Wu's violations of these provisions of the United States Patent and Trademark Office ("USPTO") Rules of Professional Conduct in connection with the submission of

erroneous Certifications of Micro Entity Status. *See* 37 C.F.R. § 1.29(a)(2).

On February 27, 2021, Ms. Wu presented to the USPTO nine (9) micro entity certification that she had signed for the same patent client. She presented the nine forms within an approximate 70-minute time period.

In accordance with the agency's micro entity status rules and regulations, the USPTO issued Notices of Payment Deficiency. In response to the notices, Ms. Wu changed the applicant's entity status and paid the deficient amount.

Regarding the filing of nine micro entity certifications for the client during the approximately 70-minute time span, Ms. Wu acknowledged that it was not reasonable for her to rely on her client's certification of micro entity status. She explained that, as she reviewed the matter, she realized that her client had made a mistake and that she, herself, was not acting carefully enough to catch it. Ms. Wu acknowledged that she was, in fact, not paying adequate attention to the filings and she should have noticed that the number of micro entity certifications filed for the client. Ms. Wu also recognized that she potentially placed her client's patent applications in jeopardy.

In reaching this settlement, the Office of Enrollment and Discipline ("OED") Director considered the following: (1) Ms. Wu has never been the subject of professional discipline by the USPTO, and Ms. Wu represented that he has not been disciplined on ethical grounds by any other jurisdiction; (2) Ms. Wu has acknowledged her lapses, demonstrated genuine contrition, and accepted responsibility for her acts and omissions; (3) Ms. Wu fully cooperated with OED's investigation, including engaging in a personal interview with OED; (4) Ms. Wu represented that she has taken corrective action to prevent a recurrence of erroneous micro entity certifications including (a) creating a sufficient docketing system to keep track of the names of applicants and inventors in Chinese characters and Romanized characters, (b) creating a customized micro entity declaration forms for the inventors and applicants to personally sign in support of the USPTO micro entity form SB0015A to account for all prior applications, (c) traveling to China to meet and counsel, in person, her clients on all relevant USPTO requirements, and (d) joining the AIPLA and applying to its Mentorship Program to have an experienced registered practitioner as a personal mentor.

This action is the result of a settlement agreement between Qianqian Wu and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.20, and 11.26. Disciplinary decisions involving practitioners are posted for public reading

at the Office of Enrollment and Discipline Reading Room accessible at:
<https://foiadocuments.uspto.gov/oed/>;

- d. Nothing in this Agreement or the 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 brought to the attention of the Office and (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;
- e. Respondent, by her agreement, has waived all rights to seek reconsideration of the Final Order under 37 C.F.R. § 11.56, waived the right to have the Final Order reviewed under 37 C.F.R. § 11.57, and waived the right otherwise to appeal or challenge the Final Order in any manner; and
- f. Each party shall each bear their own costs incurred to date and in carrying out the terms of this Agreement and any Final Order.

Users, Shewchuk, David
Digitally signed by Users, Shewchuk, David
Date: 2023.04.07
08:43:34 -04'00'

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

Date

on delegated authority by

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

CUI//PRIVILEGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order was sent, on this day, to the parties in the manner indicated below-

Via first-class mail and e-mail:

Ms. Qianqian Wu



Respondent

Via e-mail:

Hendrik DeBoer



Counsel for the OED Director

4/7/2023

Date

A handwritten signature in black ink, appearing to read 'H. DeBoer', written over a horizontal line.

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450