

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

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|-----------------------|---|-------------------------|
| In the Matter of: |) | |
| |) | |
| Richard J. Tholstrup, |) | Proceeding No. D2011-12 |
| |) | |
| Respondent |) | |
| _____ |) | |

FINAL ORDER

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Richard J. Tholstrup (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and USPTO Director or his designee for approval.

The OED Director and Respondent’s Proposed Settlement Agreement sets forth certain stipulated facts, legal conclusions, and sanctions to which the OED Director and Respondent have agreed in order to resolve voluntarily a disciplinary complaint against Respondent.

The Proposed Settlement Agreement, which satisfies the requirements of 37 C.F.R. § 11.26, resolves all disciplinary action by the United States Patent and Trademark Office (“USPTO” or “Office”) arising from the stipulated facts set forth below.

Pursuant to such Proposed Settlement Agreement, this Final Order sets forth the parties’ stipulated facts, legal conclusions, and agreed upon discipline.

Jurisdiction

At all times relevant hereto, Respondent of Houston, Texas, has been a patent attorney registered to practice before the Office and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.* The USPTO Director has jurisdiction over this matter and the authority to approve the Proposed Settlement Agreement pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20 and 11.26.

Stipulated Facts

1. At all times relevant hereto, Respondent of Houston, Texas, has been registered as an attorney to practice before the Office and is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility. Respondent’s registration number is 40,838.
2. Respondent, personally and together with the Texas Commission for Lawyer Discipline, stipulated before the Grievance Committee for the State Bar of Texas District

No. 4 that Respondent knowingly offered or used evidence that Respondent knew to be false and that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. The Texas State Bar, District No. 4 Grievance Committee found that Respondent violated Rules 3.03(a)(5) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

3. The Texas State Bar, District No. 4 Grievance Committee suspended Respondent from the practice of law for two (2) years, with the suspension being fully probated, provided that (i) Respondent does not violate any term of the judgment, (ii) Respondent not engage in professional misconduct, (iii) Respondent not violate any state or federal criminal statutes, (iv) Respondent keep the State Bar or Texas informed of his current address, (v) Respondent comply with Minimum Continuing Legal Education requirements for the state of Texas, (vi) Respondent comply with Texas State IOLTA requirements, (vii) Respondent promptly respond to any request for information from the Texas State bar, (viii) Respondent pay attorney's fees to the Texas State Bar, and (ix) Respondent complete, in addition to the minimum continuing legal education ("CLE") requirements, six additional hours of Ethics CLE in a time period set by the Texas State Bar, District No. 4 Grievance Committee.

Legal Conclusion

4. Based on the foregoing stipulated facts, Respondent acknowledges that his conduct violated the Disciplinary Rules of the USPTO Code of Professional Responsibility, specifically 37 C.F.R. §§ 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(5), by being suspended from practice as an attorney on ethical grounds by any duly constituted authority of a State.

Sanctions

5. Respondent agreed, and it is ORDERED that:

- a. (i) Respondent be suspended for a period of twenty-four (24) months from the practice of patent, trademark, and non-patent law before the USPTO commencing on the date the Final Order is signed and (ii) the suspension be immediately stayed as of the date the Final Order is signed and that the stay remain in effect until further order of the USPTO Director or his designee;
- b. Respondent shall serve a twenty-four month probationary period commencing on the date the Final Order is signed;
- c. Respondent shall be permitted to practice patent, trademark, and non-patent law before the USPTO during his probationary period unless the stay of the suspension in subparagraph a. is lifted by order of the USPTO Director or his designee;
- d. Respondent shall, pursuant to 37 C.F.R. § 10.24, report in writing any revocation of his probation in Texas to the OED Director within thirty days of the revocation;

- e. 37 C.F.R. §§ 11.58 and 11.60 do not apply unless the USPTO Director or his designee lifts the stay of the suspension;
- f. If the stay of the suspension in subparagraph a. is not lifted by order of the USPTO Director or his designee by the end of the probationary period, Respondent is not required to serve the suspension;
- g. (1) in the event that the OED Director is of the opinion that Respondent, during the probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:

(A) issue to Respondent an Order to Show Cause why the USPTO Director or his designee should not order that the stay of the suspension be lifted and Respondent be immediately suspended for up to twenty-four (24) months for the violation set forth in paragraph 4., 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 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 Disciplinary Rule of the USPTO Code of Professional Responsibility, 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) evidence causing the OED Director to be of the opinion that Respondent failed to comply with the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the probationary period, and

(B) request that the USPTO Director or his designee immediately lift the stay of the suspension and suspend Respondent for up to twenty-four (24) months for the violation set forth in paragraph 4., above;

- h. If Respondent is suspended pursuant to the provisions of subparagraph g., above:
- (1) Respondent shall comply with 37 C.F.R. § 11.58;
 - (2) the OED Director shall disseminate information in accordance with 37 C.F.R. § 11.59;
 - (3) the USPTO shall promptly dissociate Respondent's name from all USPTO customer numbers and Public Key Infrastructure (PKI) certificates;
 - (4) Respondent shall not to use any USPTO customer number or PKI certificate unless and until he is reinstated to practice before the USPTO; and
 - (5) Respondent may not obtain a USPTO customer number or a PKI certificate unless and until he is reinstated to practice before the USPTO;
- i. In the event that the USPTO Director or his designee lifts the stay of the suspension and Respondent seeks a review of the USPTO Director's decision to lift the stay, any such review shall not operate to postpone or otherwise hold in abeyance the immediate suspension of Respondent;
- j. If the stay of the suspension in subparagraph a. is not lifted by order of the USPTO Director or his designee by the end of the probationary period, Respondent is not required to serve the suspension;
- k. Nothing in the Proposed Settlement Agreement or the Final Order shall prevent the Office from seeking discipline against Respondent in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57 for the misconduct that caused the stay of the suspension to be lifted;
- l. The OED Director shall publish the Final Order at the Office of Enrollment and Discipline's Reading Room electronically;
- m. The OED Director shall publish the following Notice of Stayed Suspension in the *Official Gazette*:

Notice of Stayed Suspension

Richard J. Tholstrup of Houston, Texas, is a registered patent attorney (Registration Number 40,838). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Tholstrup for twenty-four months, with the entirety of the suspension stayed, and placed him on a twenty-four (24) month probation for violating 37 C.F.R. §10.23(c)(5) by being suspended from practice as an attorney on ethical grounds by any duly constituted authority of a State. The violations are predicated upon the Texas State Bar finding that Mr. Tholstrup knowingly offered or used evidence that he knew to be false and that Mr. Tholstrup engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Mr. Tholstrup is permitted to practice before the Office during his probation unless the stay of the suspension is lifted.

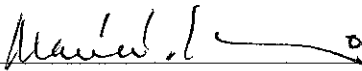
This action is the result of a settlement agreement between Mr. Tholstrup and the OED Director pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.20, 11.26, and 11.59. Disciplinary decisions involving practitioners are posted at the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- n. Pursuant to 37 C.F.R. § 11.59, the OED Director shall give notice 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;
- o. The record of this disciplinary proceeding, including the Final Order, be considered i) when addressing any further complaint or evidence of the same or similar misconduct brought to the attention of the Office, and/or ii) in any future disciplinary proceeding (1) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (2) to rebut any statement or representation by or on Respondent's behalf; and
- p. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this agreement.

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Date



MARIA C. CAMPO

Acting Deputy General Counsel for General Law

Office of General Counsel

United States Patent and Trademark Office

on behalf of

David M. Kappos

Under Secretary of Commerce for Intellectual Property and

Director of the United States Patent and Trademark Office

cc:

William R. Covey, Acting Director
Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Richard J. Tholstrup
The Tholstrup Law Firm, L.P.
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Suite 1750
Houston, Texas 77002

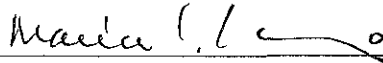
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MARIA C. CAMPO
Acting Deputy General Counsel for General Law
Office of General Counsel
United States Patent and Trademark Office

on behalf of

David M. Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office