

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of:

Travis Chandler,

Respondent.

Proceeding No. D2011-31

INITIAL DECISION ON DEFAULT

This proceeding was initiated on September 8, 2011, with the filing of a Complaint and Notice of Proceedings Under 35 U.S.C. § 32 ("Complaint") by William R. Covey, Director of the Office of Enrollment and Discipline ("OED") for the United States Patent and Trademark Office ("PTO" or "USPTO"), against Travis Chandler ("Respondent"). The Complaint alleges that Respondent, a registered patent attorney before the PTO, violated the applicable regulations promulgated at 37 C.F.R. Parts 10 and 11 ("Rules") by consistently failing to carry out his contractual and ethical obligations to his clients. For these violations, the Complaint seeks entry of an order: (1) suspending or excluding Respondent from practice before the PTO in patent, trademark, and all other non-patent cases or matters; and (2) directing Respondent to pay monetary restitution to six named individuals. The Complaint notified Respondent that he had thirty days from the date of the notice to file an Answer with the hearing officer, and that a decision by default might be entered against him if he should fail to file a timely written Answer. The Complaint also provided Respondent with the undersigned hearing officer's correct address.

The Director filed a Motion for Entry of Default Judgment and Imposition of Discipline ("Motion") on October 24, 2011, forty-six days after the Complaint was filed. To date, Respondent has filed with the undersigned neither an Answer to the Complaint nor a Response to the Motion. Generally the hearing officer determines the time period in which a response to a motion must be filed. 37 C.F.R. § 11.43. In the context of a motion for default, where as here "the respondent has not answered the complaint or otherwise appeared in the proceeding, it is not necessary to allow time for a response" to the Motion. *Bovard v. Uland*, at 2 (Proceeding No. D99-03) (Aug. 3, 1999). According to the pertinent procedural Rules, Respondent's failure to file a timely answer constitutes an admission of the allegations in the Complaint, and a default judgment may be entered. 37 C.F.R. § 11.36(e).

The record shows that the Director properly served Respondent with the Complaint as required by the Rules. Section 11.35 provides that the Director may serve a complaint on a respondent "[b]y mailing a copy of the complaint by 'Express Mail,' first-class mail, or any delivery service that provides ability to confirm delivery or attempted delivery to . . . [a] respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11,"

or if the respondent is not registered, to the respondent's last address known to the Director. 37 C.F.R. § 11.35(a)(2). Rule 11.11 requires an attorney or agent registered to appear before the PTO to notify the "Director of his or her postal address for his or her office, . . . e-mail addresses . . . , and business telephone number, as well as every change to any of said addresses or telephone numbers within thirty days of the date of the change." 37 C.F.R. § 11.11(a).

In the Motion, the Director states that the last address Respondent provided pursuant to Rule 11.11 was: 1489 West Warm Springs Road, Suite 110, Henderson, NV 89014. Motion at 1. On September 8, 2011, the Director served the Complaint on Respondent by sending a copy to that address by certified mail, return receipt requested. Motion at 2. The Complaint was successfully delivered to this address on September 12, 2011, as evinced by copies of the U.S. Postal Service Track and Confirm notification and domestic return receipt attached to the Motion.¹ Motion at 3, Ex. A. In addition, copies of the Complaint were successfully delivered to the address on file with Respondent's state bar association and to Respondent's home address. Motion at 2, Exs. B and C. The return receipt attached to the copy mailed to Respondent's home address purports to bear Respondent's signature. Motion at 2, Ex. C.

According to the applicable procedural Rules, service of the Complaint was accomplished when the Complaint was mailed and delivered by first-class mail, return receipt requested, to the address Respondent provided to the Director pursuant to Rule 11.11. 37 C.F.R. § 11.35(a)(2)(I). For service to be complete, the Rules do not require that Respondent personally take delivery. However, evidence showing that Respondent did take personal delivery of the Complaint at his home address indicates that Respondent had personal knowledge of this Complaint and further confirms that resort to the public notice procedure of 37 C.F.R. § 11.35(b) was unnecessary. Motion Ex. C. Because the Director served Respondent with the Complaint in full compliance with the requirements set forth in 37 C.F.R. § 11.35(a)(2), and Respondent then failed to file a timely Answer, Respondent is hereby found to be in **DEFAULT**. 37 C.F.R. § 11.36(e). Respondent's failure to file a timely Answer to the Complaint constitutes an admission of the allegations in the Complaint, as recounted below. *Id.*

FINDINGS OF FACT

1. The Director filed the Complaint against Respondent on September 8, 2011.
2. The Director served Respondent with the Complaint in full compliance with the requirements set forth in 37 C.F.R. § 11.35(a)(2).
3. An Answer to the Complaint was due to be filed on October 11, 2011, the first business day that was not a Saturday, Sunday, or Federal holiday thirty days after the Complaint was filed. *See* 37 C.F.R. § 1.7 (computation of time in patent cases brought under C.F.R. Title 37, part 1).

¹ U.S. Postal Service Tracking No. 7009 0500 0001 2810 4839.

4. Respondent did not file an Answer to the Complaint.
5. Respondent was initially registered as a patent agent on August 5, 2002, and has been registered as a patent attorney since June 14, 2004. Respondent's registration number is 51,544.
6. Respondent is a member of the State Bar of Nevada, Bar Number 8778.
7. Effective August 20, 2009, the State of Nevada suspended Respondent's license to practice law in that jurisdiction.
8. Respondent knowingly failed to advise the Director in writing that the State of Nevada suspended his licence to practice law in that jurisdiction.
9. In or around 2006, Aldo Banova and his daughter, Elizabeth Maguinness, hired Respondent to prepare, file, and prosecute two patent applications.
10. Mr. Banova did not speak, read, or write English well, so Ms. Maguinness served as the primary contact for Respondent in patent matters concerning the patent applications.
11. Respondent received two thousand dollars (\$2,000.00) on or about December 21, 2006, and two thousand and five hundred dollars (\$2,500.00) on or about March 15, 2007, for the patent prosecution services Ms. Maguinness and Mr. Banova hired Respondent to perform on their behalf in connection with U.S. Patent Application No. 11/933,423 ("the '423 application").
12. Respondent prepared the '423 application and filed it with the PTO on or about November 1, 2007.
13. Mr. Banova passed away on February 20, 2008, and Respondent continued to represent the interests of Ms. Maguinness in the '423 application.
14. The PTO sent Respondent an Office Action Summary dated February 17, 2009, informing Respondent that all of the claims in the application were subject to a restriction and/or election requirement.
15. The February 17, 2009 Office Action Summary informed Respondent that a response thereto was required within one month.
16. The February 17, 2009 Office Action Summary was correspondence that could have a significant effect on the '423 application, was received by Respondent on

behalf of Ms. Maguinness, and was correspondence of which a reasonable practitioner would believe under the circumstances Ms. Maguinness should be notified.

17. Respondent did not inform Ms. Maguinness of the February 17, 2009 Office Action Summary.
18. Respondent failed to respond to the February 17, 2009 Office Action Summary.
19. The '423 application became abandoned because Respondent failed to respond to the February 17, 2009 Office Action Summary.
20. The '423 application became abandoned without Ms. Maguinness's knowledge or consent.
21. On August 28, 2009, after Ms. Maguinness learned of the abandonment of the '423 application and questioned Respondent about it, Respondent stated in an e-mail message to Ms. Maguinness, "I will file the petitions to get the ['423] application reinstated for further examination and prosecution, at no cost, including any USPTO fees."
22. Respondent's August 28, 2009 statement to Ms. Maguinness was knowingly false or misleading.
23. Respondent's August 28, 2009 statement to Ms. Maguinness was knowingly false or misleading because Respondent never took any remedial action in the PTO to revive the abandoned application.
24. Respondent failed to communicate with Ms. Maguinness following the August 28, 2009 e-mail message, and did not inform her that he did not take the remedial action described in his August 28, 2009 e-mail message, or any other remedial action.
25. The PTO sent Respondent a Notice of Abandonment dated September 14, 2009.
26. The September 14, 2009 Notice of Abandonment was correspondence that could have a significant effect on the '423 application, was received by Respondent on behalf of Ms. Maguinness, and was correspondence of which a reasonable practitioner would believe under the circumstances Ms. Maguinness should be notified.
27. Respondent did not inform Ms. Maguinness of the September 14, 2009 Notice of Abandonment.

28. Respondent failed to respond to the September 14, 2009 Notice of Abandonment, or otherwise take action to protect his client's interest in the '423 application.
29. On October 13, 2009, after Ms. Maguinness learned that Respondent had not taken corrective action in the '423 application, Ms. Maguinness requested that Respondent refund the funds paid to Respondent for legal services to prepare, file, and prosecute the '423 application.
30. Respondent did not respond to Ms. Maguinness's request for a refund.
31. As of September 8, 2011, Respondent had not refunded any of the money he received to prepare, file, and prosecute the '423 application.
32. On or about February 22, 2010, Ms. Maguinness removed Respondent as the attorney of record in the '423 application and hired another attorney to prosecute the application.
33. Respondent did not provide valuable patent legal services in connection with the '423 application, but instead abandoned Ms. Maguinness as a client and financially injured her and/or Mr. Banova (and/or his heirs).
34. Respondent received two thousand dollars (\$2,000.00) on or about March 21, 2007; two thousand dollars (2,000.00) on or about September 20, 2007; and eight hundred dollars (\$800.00) on or about December 5, 2007, for the patent prosecution services Respondent was hired to perform on behalf of Mr. Banova and Ms. Maguinness in connection with U.S. Patent Application No. 11/695,020 ("the '020 application").
35. Respondent filed the '020 application on or about March 31, 2007, using "1489 West Warm Springs Road, Suite 110, Henderson, Nevada" as his address of record for the '020 application.
36. The PTO mailed Respondent an Office Action Summary dated January 12, 2010, informing Respondent that all of the claims in the '020 application were subject to a restriction and/or election requirement.
37. The PTO mailed the January 12, 2010 Office Action Summary to Respondent's "1489 West Warm Springs Road, Suite 110, Henderson, Nevada" address.
38. As of January 11, 2011, Respondent had not notified the PTO of a change in his address of record.

39. The U.S. Postal Service returned the January 12, 2010 Office Action Summary to the PTO with the explanation: "Attempted—Not Known."
40. After filing the '020 application, Respondent did not take adequate action to keep himself apprised of the status of the '020 application.
41. After filing the '020 application, Respondent did not keep Ms. Maguinness adequately informed of the status of the '020 application.
42. Respondent did not take adequate steps to protect Mr. Banova's interests in the '020 application.
43. On or about February 22, 2010, after learning the status of the '020 application, Ms. Maguinness removed Respondent as the attorney of record in the '020 application and hired another attorney to prosecute the application.
44. Respondent did not provide valuable patent legal services in connection with the '020 application; instead he abandoned Ms. Maguinness as a client and financially injured her and/or Mr. Banova (and/or his heirs).
45. On or about August 11, 2005, Edward Lane hired Respondent to prepare, file, and prosecute a patent application.
46. Mr. Lane paid Respondent three thousand dollars (\$3,000.00) in September 2005, and an additional one thousand dollars (\$1,000.00) in August 2006, for the patent prosecution services that Respondent was hired to perform.
47. Respondent prepared U.S. Patent Application No. 11/307,697 ("the '697 application") on behalf of Mr. Lane and filed it in the PTO on or about February 17, 2006.
48. The PTO sent Respondent a non-final Office Action dated October 14, 2008, in the '697 application.
49. The October 14, 2008 non-final Office Action informed Respondent that a response was required within three months.
50. The October 14, 2008 non-final Office Action was correspondence that could have a significant effect on a matter pending before the PTO, was received by Respondent on behalf of Mr. Lane, and was correspondence of which a reasonable practitioner would believe under the circumstances Mr. Lane should be notified.
51. Respondent did not inform Mr. Lane of the October 14, 2008 non-final Office

Action.

52. Respondent failed to respond to the October 14, 2008 non-final Office Action.
53. Because Respondent failed to respond to the October 14, 2008 non-final Office Action, the '697 application became abandoned.
54. The '697 application became abandoned without Mr. Lane's knowledge or consent.
55. Because Respondent failed to respond to the October 14, 2008 non-final Office Action, the PTO mailed Respondent a Notice of Abandonment dated April 24, 2009.
56. The April 24, 2009 Notice of Abandonment was correspondence that could have a significant effect on a matter pending before the PTO, was received by Respondent on behalf of Mr. Lane, and was correspondence of which a reasonable practitioner would believe under the circumstances Mr. Lane should be notified.
57. Respondent did not inform Mr. Lane of the April 24, 2009 Notice of Abandonment.
58. Respondent failed to respond to the April 24, 2009 Notice of Abandonment or otherwise take adequate steps to protect Mr. Lane's interests in the '697 application.
59. Respondent failed to keep Mr. Lane adequately informed of the status of his patent application, including failing to respond to a certified letter Respondent received from Mr. Lane on October 24, 2008.
60. Respondent abandoned Mr. Lane as a client.
61. Instead of receiving valuable patent legal services from Respondent, Mr. Lane has been financially injured by Respondent's acts and/or omissions.
62. In or around April 2006, David Liao hired Respondent to prepare, file, and prosecute a patent application.
63. Mr. Liao paid Respondent two thousand and five hundred dollars (\$2,500.00) on April 27, 2006, and two thousand and five hundred dollars (\$2,500.00) on May 22, 2006, for the patent prosecution services Respondent was hired to perform.
64. Respondent filed U.S. Patent Application No. 11/383,362 ("the '362 application")

in the PTO on or about May 15, 2006, using the wrong customer number.²

65. When filing the '362 application, Respondent provided the PTO with the customer number 57,582, instead of Respondent's customer number, 57,852.
66. Customer number 57,582 is associated with "Mohammadali Oloomiyazdi, 1708 West Southfork Drive, Pheonix, Arizona."
67. Mr. Oloomiyazdi is not a registered practitioner and has no association with Mr. Liao or Respondent.
68. On July 31, 2006, the PTO sent a non-final Office Action pertaining to the '362 application to "Mohammadali Oloomiyazdi" at "1708 West Southfork Drive, Phoenix, Arizona."
69. The PTO received no response to the July 31, 2006 non-final Office Action.
70. The '362 application became abandoned because there was no response to the July 31, 2006 non-final Office Action.
71. The application became abandoned without Mr. Liao's knowledge or consent.
72. The PTO mailed a Notice of Abandonment dated March 1, 2007.
73. The PTO mailed the March 1, 2007 Notice of Abandonment to "Mohammadali Oloomiyazdi" at "1708 West Southfork Drive, Phoenix, Arizona."
74. After filing the '362 application, Respondent did not adequately monitor the '362 application to learn whether the PTO had sent communications regarding it, nor did Respondent otherwise keep himself adequately apprised of the status of the '362 application.
75. Respondent has taken no action to revive the '362 application or otherwise acted to protect Mr. Liao's interests in the '362 application.
76. Respondent abandoned Mr. Liao as a client.
77. Respondent did not provide valuable patent legal services to Mr. Liao.

² A customer number contains an applicant's contact information, including the address to which correspondence regarding a patent application should be sent. *See* 37 C.F.R. §§ 1.32(a)(5), 1.76.

78. Respondent's acts and/or omissions financially injured Mr. Liao.
79. In or around October 2007, John Donnelley³ paid approximately three thousand and five hundred dollars (\$3,500.00) to Respondent to prepare, file, and prosecute a patent application.
80. Respondent filed U.S. Patent Application No. 11/875,829 ("the '829 application") on behalf of Mr. Donnelley on or about October 19, 2007.
81. The PTO mailed Respondent a non-final Office Action dated June 15, 2009.
82. The June 15, 2009 non-final Office Action informed Respondent that a response was due within three months.
83. The June 15, 2009 non-final Office Action was correspondence that could have a significant effect on a matter pending before the PTO, was received by Respondent on behalf of Mr. Donnelley, and was a correspondence of which a reasonable practitioner would believe under the circumstances Mr. Donnelley should be notified.
84. Respondent did not inform Mr. Donnelley of the June 15, 2009 non-final Office Action.
85. Respondent failed to respond to the June 15, 2009 non-final Office Action.
86. The '829 application became abandoned because Respondent failed to respond to the June 15, 2009 non-final Office Action.
87. The '829 application became abandoned without Mr. Donnelley's knowledge or consent.
88. The PTO sent Respondent a Notice of Abandonment dated January 20, 2010.
89. The January 20, 2010 Notice of Abandonment was correspondence that could have a significant effect on a matter pending before the PTO, was received by Respondent on behalf of Mr. Donnelley,⁴ and was correspondence of which a reasonable practitioner would believe under the circumstances Mr. Donnelley should be notified.

³ The Complaint spells this client's last name as both Donnelley and Donnelly, with Donnelley being the more prevalent spelling.

⁴ The Complaint mistakenly refers to another client, Mr. Lane, here.

90. Respondent did not inform Mr. Donnelley of the January 20, 2010 Notice of Abandonment.
91. Respondent failed to respond to the January 20, 2010 Notice of Abandonment or otherwise take action to protect Mr. Donnelly's interest in the application.
92. Respondent abandoned Mr. Donnelley as a client.
93. Respondent did not provide valuable patent legal services to Mr. Donnelly, and Respondent's acts and/or omissions financially injured Mr. Donnelly.
94. In or around 2008, Russell D. Keller paid Respondent four thousand and eight hundred dollars (\$4,800.00) to prepare, file, and prosecute a patent application.
95. Respondent filed U.S. Patent Application No. 12/114,138 ("the '138 application" on behalf of Mr. Keller on or about May 2, 2008, using "1489 West Warm Springs Road, Suite 110, Henderson, Nevada" as his address of record.
96. The PTO mailed Respondent an Office Action Summary dated September 29, 2010.
97. The PTO mailed the September 29, 2010 Office Action Summary to Respondent at his "1489 West Warm Springs Road, Suite 110, Henderson, Nevada" address.
98. As of September 28, 2010, Respondent had not notified the PTO of a change in his address of record.
99. The U.S. Postal Service returned the September 29, 2010 Office Action Summary to the PTO with the explanation, "Attempted—Not Known."⁵
100. The PTO mailed Respondent a Notice of Abandonment dated May 3, 2011.
101. The PTO mailed the May 3, 2011 Notice of Abandonment to Respondent at his "1489 West Warm Springs Road, Suite 110, Henderson, Nevada" address.
102. As of May 3, 2011, Respondent still had not notified the PTO of a change in his address of record.
103. The U.S. Postal Service returned the May 3, 2011 Notice of Abandonment to the

⁵ The Complaint mistakenly dates this document January 12, 2010, which the undersigned concludes is a scrivener's error transcribing the date from paragraph 39 above.

PTO with the explanation, "Attempted—Not Known; Unable to Forward."

104. Respondent did not keep himself adequately apprised as to the status of the '138 application.
105. Mr. Keller was unaware of the application's abandonment and did not consent to the abandonment.
106. Respondent did not take adequate steps to protect Mr. Keller's interests in the '138 application.
107. Respondent abandoned Mr. Keller as a client.
108. Respondent did not provide valuable patent legal services in connection with the '138 application, and instead financially injured Mr. Keller.
109. In or around September 2007, Brian Romolino paid Respondent four thousand and five hundred dollars (\$4,500.00) to prepare, file, and prosecute two patent applications.
110. Respondent filed U.S. Patent Application No. 11/869,647 ("the '647 application") on behalf of Mr. Romolino on or about October 9, 2007.
111. The PTO mailed Respondent a non-final Office Action dated October 6, 2008.
112. The October 6, 2008 non-final Office Action was correspondence that could have a significant effect on a matter pending before the PTO, was received by Respondent on behalf of Mr. Romolino, and was correspondence of which a reasonable practitioner would believe under the circumstances Mr. Romolino should be notified.
113. Respondent did not inform Mr. Romolino of the October 6, 2008 non-final Office Action.
114. Respondent did not respond to the October 6, 2008 non-final Office Action.
115. Because Respondent did not respond to the October 6, 2008 non-final Office Action, the '647 application became abandoned.
116. The '647 application became abandoned without Mr. Romolino's knowledge or consent.
117. The PTO sent respondent a Notice of Abandonment dated May 1, 2009, for failure

to respond to the non-final Office Action.

118. The May 1, 2009 Notice of Abandonment was correspondence that could have a significant effect on a matter pending before the PTO, was received by Respondent on behalf of Mr. Romolino, and was correspondence of which a reasonable practitioner would believe under the circumstances Mr. Romolino should be notified.
119. Respondent did not inform Mr. Romolino of the May 1, 2009 Notice of Abandonment.
120. Respondent failed to respond to the May 1, 2009 Notice of Abandonment or otherwise take action to protect Mr. Romolino's interest in the '647 application.
121. Respondent filed U.S. Patent Application No. 12/110,286 ("the '286 application") on behalf of Mr. Romolino on or about April 26, 2008.
122. The PTO sent Respondent a Notice of Allowance and Fees Due dated June 16, 2009.
123. The June 16, 2009 Notice of Allowance and Fees Due was correspondence that could have a significant effect on a matter pending before the PTO, was received by Respondent on behalf of Mr. Romolino, and was correspondence of which a reasonable practitioner would believe under the circumstances Mr. Romolino should be notified.
124. Respondent did not inform Mr. Romolino of the June 16, 2009 Notice of Allowance and Fees Due.
125. Respondent did not respond to the June 16, 2009 Notice of Allowance and Fees Due.
126. Because Respondent did not respond to the June 16, 2009 Notice of Allowance and Fees Due, the '286 application became abandoned.
127. The '286 application became abandoned without Mr. Romolino's knowledge or consent.
128. The PTO sent Respondent a Notice of Abandonment dated September 30, 2009, for failure to respond to the June 16, 2009 Notice of Allowance and Fees Due.
129. The September 30, 2009 Notice of Abandonment was correspondence that could have a significant effect on a matter pending before the PTO, was received by

Respondent on behalf of Mr. Romolino, and was correspondence of which a reasonable practitioner would believe under the circumstances Mr. Romolino should be notified.

130. Respondent did not inform Mr. Romolino of the September 30, 2009 Notice of Abandonment.
131. Respondent failed to respond to the September 30, 2009 Notice of Abandonment or otherwise act to protect Mr. Romolino's interest in the '286 application.
132. Respondent abandoned Mr. Romolino as a client.
133. Respondent did not provide valuable patent legal services in connection with the '647 and '286 application and, instead, financially injured Mr. Romolino.
134. Respondent neglected six additional patent applications that became abandoned due to Respondent's failure to respond to PTO correspondence:
 - a. U.S. Patent Application No. 11/772,818, filed on July 2, 2007, on behalf of Anne Ricalde of Las Vegas, Nevada, for which the PTO sent Respondent a Notice of Abandonment dated October 3, 2008, for failure to respond to a non-final Office Action mailed to Respondent on March 20, 2008;
 - b. U.S. Patent Application No. 11/379,192, filed on April 18, 2006, on behalf of Robert Matthew Sparks of Las Vegas, Nevada, for which the PTO sent Respondent a Notice of Abandonment dated September 18, 2007, for failure to respond to a non-final Office Action mailed to Respondent on March 8, 2007;
 - c. U.S. Patent Application No. 11/381,745, filed on May 5, 2006, on behalf of Jamie Robertson of Henderson, Nevada, for which the PTO sent Respondent a Notice of Abandonment dated August 9, 2007, for failure to respond to a non-final Office Action mailed to Respondent on January 25, 2007;
 - d. U.S. Patent Application No. 11/532,096, filed on September 14, 2006, on behalf of Todd Bailey of Henderson, Nevada, and Kipp Tollefsrud of St. George, Utah, for which the PTO sent Respondent a Notice of Abandonment dated October 11, 2007, for failure to respond to a non-final Office Action mailed to Respondent on March 16, 2007;
 - e. U.S. Patent Application No. 11/961,168, filed on December 20, 2007, on

behalf of George Harouni of Henderson, Nevada, for which the PTO sent Respondent a Notice of Abandonment dated January 21, 2010, for failure to respond to a non-final Office Action mailed to Respondent on June 3, 2009; and

- f. U.S. Patent Application No. 12/118,679, filed on May 10, 2008, on behalf of Dan Hanson of Henderson, Nevada, for which the PTO sent Respondent a Notice of Abandonment dated May 12, 2009, for failure to respond to a non-final Office Action mailed to Respondent on October 1, 2008.

135. The patent applications referenced in Paragraph 134 became abandoned due to Respondent's acts and omissions and became abandoned without the clients' knowledge or consent.

136. The following thirteen trademark applications became abandoned due to Respondent's failure to respond to PTO correspondence:

- a. U.S. Trademark Application No. 77/430,336, for which a Notice of Abandonment dated January 26, 2009, was sent to Respondent for failure to respond to a June 28, 2008, non-final Office Action;
- b. U.S. Trademark Application No. 77/260,111, for which a Notice of Abandonment dated December 15, 2008, was sent to Respondent for failure to respond to a May 13, 2008, Notice of Allowance;
- c. U.S. Trademark Application No. 77/237,934 for which a Notice of Abandonment dated June 5, 2008, was sent to Respondent for failure to respond to an October 31, 2007, Office Action;
- d. U.S. Trademark Application No. 77/235,448 for which a Notice of Abandonment dated June 6, 2008, was sent to Respondent for failure to respond to a November 9, 2007, Office Action;
- e. U.S. Trademark Application No. 77/104,184 for which a Notice of Abandonment dated July 1, 2008, was sent to Respondent for failure to respond to an October 30, 2007, Notice of Allowance;
- f. U.S. Trademark Application No. 77/104,125 for which a Notice of Abandonment dated July 1, 2008, was sent to Respondent for failure to respond to an October 30, 2007, Notice of Allowance;
- g. U.S. Trademark Application No. 77/066,290 for which a Notice of

Abandonment dated December 24, 2009, was sent to Respondent for failure to respond to a May 14, 2009, Notice of Allowance;

- h. U.S. Trademark Application No. 77/070,027 for which a Notice of Abandonment dated June 12, 2008, was sent to Respondent for failure to respond to an October 9, 2007, Office Action;
 - i. U.S. Trademark Application No. 77/112,046 for which a Notice of Abandonment dated May 23, 2008, was sent to Respondent for failure to respond to an October 23, 2007, Office Action;
 - j. U.S. Trademark Application No. 77/086,193 for which a Notice of Abandonment dated June 25, 2008, was sent to Respondent for failure to respond to an October 23, 2007, Notice of Allowance;
 - k. U.S. Trademark Application No. 77/023,409 for which a Notice of Abandonment dated April 15, 2008, was sent to Respondent for failure to respond to an August 14, 2007, Notice of Allowance;
 - l. U.S. Trademark Application No. 77/023,406 for which a Notice of Abandonment dated April 15, 2007, was sent to Respondent for failure to respond to an August 14, 2007, Notice of Allowance; and
 - m. U.S. Trademark Application No. 78/873,483 for which a Notice of Abandonment dated June 23, 2008, was sent to Respondent for failure to respond to a November 1, 2007, Office Action.
137. The trademark applications referenced in paragraph 136 became abandoned due to Respondent's acts and omissions, and became abandoned without the clients' knowledge or consent.

CONCLUSIONS OF LAW

138. Respondent is subject to the PTO Disciplinary Rules set forth in 37 C.F.R. part 10. *See* 35 U.S.C. § 2(b)(2)(D); 37 C.F.R. §§ 10.1(h) and 10.20(b).
139. The Director has fully complied with the requirements for proper service of the Complaint set forth at 37 C.F.R. § 11.35.
140. After being properly served with the Complaint, Respondent failed to file a timely Answer to the allegations against him and is therefore in **DEFAULT**. 37 C.F.R. § 11.36(e).

141. Respondent's default constitutes an admission of each and every allegation in the Complaint, as recounted above. 37 C.F.R. § 11.36(e).
142. Respondent's conduct as described above and in the Complaint violated the following Disciplinary Rules of professional conduct set forth in 37 C.F.R. part 10:
- a. Rule 10.77(c) by failing to act competently through his neglect of legal matters entrusted to him;
 - b. Rules 10.23(a) and (b), via Rule 10.23(c)(8), by engaging in disreputable or gross misconduct by failing to inform his clients of correspondences received from the PTO that could have significant effects on matters pending before the PTO, were received by the Respondent on behalf of his clients, and were correspondences of which a reasonable practitioner would believe under the circumstances the clients should be notified;
 - c. Rules 10.23(a) and (b), via Rule 10.23(c)(14), by engaging in disreputable or gross misconduct by knowingly failing to advise the Director in writing that Respondent's license to practice law had been suspended by the State of Nevada, and that Respondent was therefore precluded from registration under Rule 11.6;
 - d. Rule 10.84(a)(1) by failing to represent his clients zealously and failing to seek the lawful objectives of his clients through reasonably available means permitted by law and the Disciplinary Rules when he knowingly failed to take adequate action to protect his clients' interests before the PTO;
 - e. Rule 10.89(c)(6), by intentionally or habitually violating the PTO Disciplinary Rules of professional conduct when representing clients before the PTO, as described in sub-paragraphs 142(a) through (e) above.
143. Respondent is found not to have violated Rule 10.89(c)(6), as was alleged in Count 5 of the Complaint, based on Respondent's "engaging in the acts and omissions discussed in Counts 1, 2, 3, . . . 4, . . . and . . . 6."⁶

⁶ As stated by the PTO's appellate tribunal, "to be 'other' conduct within the scope [of] Section 10.23(b)(6), conduct must not be prohibited by Section 10.23(b)(1)–(5)." *Moatz v. Colitz*, 68 U.S.P.Q.2d 1079, 1102–03 (2003); *see also Ho*, Proceeding No. D2009-04 (ALJ, Jan. 29, 2009) (Initial Decision on Default). Counts 2 and 3 of the Complaint against Mr. Chandler allege violations of Rule 10.23(b) in general. Although Counts 1, 4, and 6 allege violations of Rules outside Rule 10.23(b), those counts all involve violations of a Disciplinary Rule within the

SANCTION

In the Complaint, the Director requests an order “suspending or excluding Respondent from practice before the USPTO in patent, trademark, and all other non-patent cases or matters,” and “directing Respondent to pay monetary restitution” to six of Respondent’s clients. Complaint at 23. In the Motion, the Director narrows the requested relief to an order “that Respondent be excluded from the practice of patent, trademark, and other non-patent law before the” PTO, and “all other relief that the Tribunal deems appropriate and within its authority to enter.” Motion at 9.

This Tribunal, in determining the appropriate sanction or penalty to be imposed, must consider:

- (1) Whether the practitioner has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the practitioner acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the practitioner’s misconduct; and
- (4) The existence of any aggravating or mitigating factors.

37 C.F.R. § 11.54(b).

Regarding the first penalty consideration, the Director argues that “Respondent violated a core ethical duty to his clients, namely: zealous representation of their interests.” Motion at 5. The Director contends that Respondent directly transgressed Rule 10.77(c)⁷ by “neglecting the matters that his clients trusted to him,” allowing fourteen patent applications to become abandoned for twelve different patent applicant clients,⁸ and further allowing thirteen trademark

meaning of Rule 10.23(b)(1) and thus do not qualify as “other conduct” within the meaning of Rule 10.23(b)(6).

⁷ The Motion alleges that Respondent violated “37 C.F.R. § 11.77(c)” by neglecting matters entrusted to him. It is assumed that the Director intended to cite Rule 10.77(c) because that rule expressly refers to “neglect” of client matters, and because 37 C.F.R. § 11.77 does not exist.

⁸ The Director appears to be counting Mr. Banova and Ms. Maguinness, and Mr. Bailey and Mr. Tollefsrud, as two clients.

applications to become abandoned for thirteen trademark applicant clients. Motion at 5. The Director states that “[t]he neglect of client matters is a serious ethical violation” for which attorneys have been disbarred in multiple jurisdictions, and for which patent practitioners have been excluded from practice before the PTO. Motion at 5–7 (citing collected cases).

In reference to the second penalty consideration, the Director states that “Respondent’s abandonment of his clients was intentional,” because “[t]here appears to be no apparent reason that Respondent could not have represented his clients” before the PTO. Motion at 7. The Director argues that “at a minimum,” Respondent could have informed his clients “that he no longer desired to be their patent attorney.” Motion at 7.

As to the third penalty consideration, the Director claims that Respondent’s abandonment of his clients and their applications “resulted in actual harm to the clients’ intellectual property rights.” Motion at 8. Additionally, the Director argues that the six clients who paid a total of \$27,100 to Respondent in advance for promised legal services suffered direct financial harm “because Respondent provided little, if any, patent legal services of value” to them. Motion at 8.

Finally, with regard to the fourth penalty consideration, the Director states that he “is unaware of any mitigating factors in this case.” Motion at 8.

The purpose of attorney disciplinary proceedings is to protect the public and the justice system from lawyers who are derelict in their professional duties. *Robinson*, Proceeding No. D2009-28 (ALJ, May 26, 2010) (Order Granting Director’s Motion for Default Judgement and Imposition of Discipline) (citing *Standards for Imposing Lawyer Sanctions* § 1.1 (1992)). Attorneys who practice before the PTO have a duty to represent their clients competently and zealously, and to maintain “the integrity and competence of the legal profession.” 37 C.F.R. §§ 10.21, 10.76, 10.83. “Abandonment of a case or client after being paid for legal services is a significant” violation of these ethical duties. *Shippey*, Proceeding No. D2011-27 (ALJ, Oct. 14, 2011) (Order Granting Director’s Motion for Default Judgement and Imposition of Discipline). For such violations, attorneys have been disbarred, *see People v. Elliott*, 39 P.3d 551 (Colo. O.P.D.J. 2000); *In re Lyles*, 494 S.E.2d 338 (Ga. 1998), or excluded from practice before the PTO, *see Shippey*, Proceeding No. D2011-27 (ALJ, Oct. 14, 2011); *Golden*, Proceeding No. D07-09 (ALJ, Apr. 21, 2008) (Initial Decision on Default).

Here, Respondent abandoned eight separate patent applications for seven different clients after receiving payment for his promised legal services in connection with those patent applications. Respondent abandoned six additional patent applications belonging to seven additional clients, and also abandoned thirteen different trademark applications. Accepting the allegations as true, Respondent abandoned his clients and their applications intentionally, and by so doing, he caused them harm. The record contains no mitigating factors explaining Respondent’s behavior. After considering the factors enumerated in 37 C.F.R. § 11.54(b), Respondent’s repeated pattern of abandoning numerous clients and the matters they entrusted to his professional care warrants the penalty of exclusion. *See Lyles*, 494 S.E.2d at 339 (pattern of

neglecting client matters constituted grounds for disbarment). Therefore, the Director's request for an order excluding Respondent from the practice of patent, trademark, and other non-patent law before the PTO is **GRANTED**.

Regarding the Director's request for an order directing Respondent to pay restitution, the undersigned finds that this Tribunal does not have authority to grant such relief. The powers delegated to the undersigned hearing officer by Rule 11.39 include the power to make initial decisions under Rule 11.54. 37 C.F.R. § 11.39(c)(9). Rule 11.54 allows an initial decision to contain "[a]n order of default judgment, of suspension or exclusion from practice, of reprimand, or an order dismissing the complaint." 37 C.F.R. § 11.54(a)(2). However, the Rule does not include an order of restitution among the forms of relief available in an initial decision. While Rule 11.20(b) does authorize the USPTO Director to require that a practitioner pay restitution as a condition of probation or reinstatement, this authority appears to rest with the Director alone. 37 C.F.R. § 11.20(b), *see Shippey*, Proceeding No. D.2011-27 (ALJ, Oct. 14, 2011). Therefore, the Director's request for an order directing Respondent to pay restitution is hereby **DENIED**.

ORDER

After careful and deliberate consideration of the above facts and conclusions, as well as the factors identified in 37 C.F.R. § 11.54(b),

IT IS HEREBY ORDERED that Respondent, **TRAVIS CHANDLER**, PTO Registration No. 51,544, be **EXCLUDED** from the practice of patent, trademark, and other non-patent law before the U.S. Patent and Trademark Office.

Respondent's attention is directed to 37 C.F.R. § 11.58 regarding the duties of excluded practitioners, and 37 C.F.R. § 11.60 concerning any future petition for reinstatement.

The facts and circumstances of this proceeding shall be fully published in the U.S. Patent and Trademark Office's official publication.



Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency⁹

Dated: December 6, 2011
Washington, D.C.

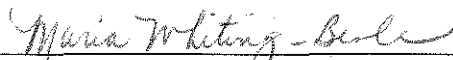
Pursuant to 37 C.F.R. § 11.55, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 11.54, must be filed with the U.S. Patent and Trademark Office at the address provided in 37 C.F.R. § 1.1(a)(3)(ii) within 30 days after the date of this Initial Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision and supporting reasons therefor. Failure to file such an appeal in accordance with 37 C.F.R. § 11.55 will be deemed both an acceptance by Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

⁹ The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning March 22, 1999.

In the Matter of Travis Chandler, Respondent
Proceeding No. D2011-31

CERTIFICATE OF SERVICE

I hereby certify that a true copy of **Initial Decision On Default**, dated December 6, 2011, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: December 6, 2011

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