

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

In the Matter of:)
)
)

Jill G. Welytok,)

Respondent.)

Proceeding No. D2021-15

ORDER

This Order addresses the following motions filed by Respondent:

- Motion for Reconsideration (Nov. 7, 2024);
- Motion to Stay (Nov. 22, 2024);
- Amended Motion for Stay of Ruling on Motion for Reconsideration Proceedings Pending Investigation of Office of Inspector General (Dec. 3, 2024); and
- Motion to Strike Reply and to Disqualify Attorneys Hendrik deBoer and Sydney Johnson from Representation (Dec. 12, 2024).

For the reasons set forth below, these Motions are **DENIED**.

Background

The Director of the Office of Enrollment and Discipline (“OED Director”) filed a three-count complaint against Respondent on September 9, 2021, alleging violations of the United States Patent and Trademark Office (“USPTO”) Rules of Professional Conduct. (A.28-48). After a hearing held on September 21 and 22, 2022, the Administrative Law Judge (“ALJ”) issued an Initial Decision and Order (“Initial Decision”) on April 29, 2024. The Initial Decision found that Respondent engaged in serious misconduct, including the submission of fabricated evidence to

Office of Enrollment and Discipline (“OED”), and imposed a sanction of exclusion. (A.1-27).

On May 10, 2024, Respondent filed a timely notice of appeal.

On August 14, 2024, two days prior to the deadline to file her appellate brief, Respondent filed an “Emergency Motion for Extension of time to File Brief in Response to Initial Decision of Administrative Law Judge” (“Motion for Extension of Time”). Therein, Respondent requested a 60-day extension due to the “complexity of the issues” and also to file motions addressing the constitutionality of the appointment of the Administrative Law Judge in the case and to supplement the record. Respondent’s motion did not include any statement that she conferred with counsel for the OED Director prior to filing the motion as required by 37 C.F.R. § 11.55(o), nor did she represent that she notified counsel of her intent to file the motion or inquire as to their position.

On August 16, 2024, Respondent filed a “Supplemental Motion for Extension of Time to Correct Record as to Date of Transmission of the Certified Record” (“Supplemental Motion”), claiming that the OED Director had not yet served her with the record and asserting that counsel for the OED Director stated that he would not be able to grant access to the Certified Record until at least August 19, 2024. Supplemental Motion at 2. The OED Director opposed both Motions on August 20, 2024, and on September 5, 2024, the Motions were denied, on the basis of failing to comply with the procedural requirements of 37 C.F.R. § 11.55(o) and for not articulating good cause for the requests.

On September 13, 2024, the OED Director filed a motion to dismiss Respondent’s appeal, as Respondent had not filed a timely brief in support of her appeal. On October 18, 2024, the USPTO Director granted the OED Director’s motion and ordered Respondent’s appeal dismissed and the ALJ’s Initial Decision to be the Final Order in this matter.

On November 7, 2024, Respondent filed a timely Motion for Reconsideration of the USPTO Director's October 18, 2024 order pursuant to 37 C.F.R. § 11.56(c), thereby staying the effective date of the order of discipline. The OED Director opposed the Motion on November 19, 2024.

On November 22, 2024, Respondent filed a Motion to Stay, wherein she claimed that two lawsuits would be filed and served in the United States District Court for the Eastern District of Virginia ("EDVA") and requested a stay on that basis. There is no evidence that Respondent filed or served any lawsuits on that date. Respondent's Motion to Stay also did not include any statement that she conferred with counsel for the OED Director prior to filing the motion as required by 37 C.F.R. § 11.55(o), nor does it represent that she notified counsel of her intent to file the motion or inquire as to any opposition or resolution.

On December 3, 2024, Respondent filed an Amended Motion for Stay of Ruling on Motion for Reconsideration Proceedings Pending Investigation of Office of Inspector General ("Amended Motion to Stay"), wherein she claimed that she anticipated filing lawsuits in the EDVA and that there was a pending investigation by the Office of Inspector General ("OIG") based on her allegations of misconduct by the USPTO and Solicitor's Office, and requested a stay on that basis. Again, no leave to file was sought and she did not include any statement that she conferred with counsel for the OED Director.

Finally, on December 12, 2024, Respondent filed a Motion to Strike Reply and to Disqualify Attorneys Hendrik deBoer and Sydney Johnson from Representation ("Motion to Strike"), citing the Model Rules of Professional Conduct of the American Bar Association and USPTO Rule S11.07(b)(2). She states that both attorneys have an ethical duty to recuse themselves from this proceeding given an OIG investigation that she has filed, as well as being named defendants in a not yet filed "civil rights lawsuit." She also cites a variety of other actions, including deBoer

filing an “objectively false declaration” and USPTO General Counsel David Berdan having signed an order of dismissal without complying with his duty to confirm service, among other things. No evidence of these alleged wrongdoings have been provided, no leave was sought to file the motion, and she does not represent that she conferred with counsel for the OED Director.

For the reasons set forth below, Respondent’s Motions are **DENIED**.

Opinion and Order

As an initial matter, no briefs or motions are permitted in hearing appeals without permission of the USPTO Director. *See* 37 C.F.R. § 11.55(m). The USPTO’s rules also set forth the procedure for filing motions in matters involving appeals to the USPTO Director. This procedure includes that “[e]very motion must include a statement that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in a good faith effort to resolve the issues raised by the motion and whether the motion is opposed.” 37 C.F.R. § 11.55(o).

Here, Respondent did not seek leave to file any of her motions and she failed to include any statement that she conferred with the OED Director in a good faith effort to resolve the issues raised by her motions filed on November 22, 2024 and December 3 and 12, 2024, as required by § 11.55(o). Respondent has been previously warned about compliance with these procedures. *See* Order (Dec. 5, 2024). Having again failed to comply with the procedural prerequisites of 37 C.F.R. § 11.55(o), Respondent’s Motion to Stay, Amended Motion to Stay, and Motion to Strike are **DENIED**.

Decision on Motion to Stay and Amended Motion to Stay

Respondent’s Motion to Stay, premised on pending litigation in federal court, and Amended Motion to Stay due to a pending OIG investigation are also denied on their merits. As discussed

below and as noted in the OED Director's filing, this matter is already stayed by the filing of Respondent's Motion for Reconsideration.

The regulations governing these proceedings provide that "[t]he respondent or the OED Director may make a single request for reconsideration or modification of the decision by the USPTO Director if filed within 20 days from the date of entry of the decision. . . . *Such a request shall have the effect of staying the effective date of the order of discipline in the final decision.*" 37 C.F.R. § 11.56(c) (emphasis added). The regulations further provide that "Review of the final decision of the USPTO Director in a disciplinary case may be had by a petition filed in accordance with 35 U.S.C. 32." *Id.* § 11.57(a). "Except as provided for in § 11.56(c), an order for discipline in a final decision will not be stayed except on proof of exceptional circumstances." *Id.* § 11.57(c).

While "exceptional circumstances" is not defined, the disciplinary rules also provide that "[i]n an extraordinary situation, when justice requires, any requirement of the regulations of this Part which is not a requirement of statute may be suspended or waived by the USPTO Director or the designee of the USPTO Director, *sua sponte*, or on petition by any party, including the OED Director or the OED Director's representative, subject to such other requirements as may be imposed. *Id.* § 11.3(a). The USPTO Director has interpreted that similar standard as requiring a "flood or fire" situation in order to find an extraordinary situation pursuant to this regulation. *See In re Schindler*, Proceeding No. D2019-43, at 3 (USPTO Jan. 8, 2024) (Order on Motion for Leave to File a Reply).

Here, although the USPTO Director has ordered that the ALJ's April 29, 2024 Initial Decision be adopted as the Final Order of discipline in this case, that ruling was stayed, pursuant to 37 C.F.R. § 11.56(c), by Respondent's November 7, 2024 Motion for Reconsideration. Thus,

until the USPTO Director rules on Respondent's Motion for Reconsideration, there is no final decision in this case and, as the OED Director notes in his Opposition, 37 C.F.R. § 11.57(c) is inapplicable and Respondent's Motion to Stay and her Amended Motion to Stay are not ripe for consideration under this authority.

Even if 37 C.F.R. § 11.57(c) were applicable, there is no "proof of exceptional circumstances" supporting the issuance of a stay. *See* 37 C.F.R. § 11.57(c). Respondent has failed to make any such showing of exceptional circumstances. The presence of a pending OIG investigation or lawsuits do not amount to exceptional circumstances justifying a stay. Though not defined in the § 11.57(c), 37 C.F.R. § 11.3 is instructive on the issue of what is an "extraordinary situation" and this is limited to things like "flood or fire." *See In re Schindler*, Proceeding No. D2019-43, at 3 (Order on Motion for Leave to File a Reply), not routine court filings and investigations. This is especially true where Respondent provides no support for these other proceedings, including any evidence of filing and no proof whatsoever of the allegations made therein. As the OED Director notes, Respondent also makes no claim that the USPTO Director ruling on the pending Motion for Reconsideration would somehow prejudice the alleged investigation or potential lawsuits. Finally, the OED Director is correct that a stay is particularly inappropriate here where Respondent has engaged in serious misconduct justifying exclusion, and remains a threat to the public as long as she remains registered to practice before the USPTO. *See In re Schindler*, Proceeding No. D2019-43, at 11 (USPTO Jan. 18, 2024) (Final Order on Reconsideration) (refusing to impose stay where appellant "was found to have violated his duty to the public and his clients and allowing him to continue practicing could put additional clients at risk").

Although Respondent argues that the USPTO Director has the inherent authority to stay these proceedings, Respondent provides no authority in support of that proposition.

Accordingly, for all of the foregoing reasons, there is no basis for a stay of these proceedings and these Motions are **DENIED**.

Motion to Strike Reply and to Disqualify Attorneys
Hendrik deBoer and Sydney Johnson from Representation

In addition to being denied on the basis of not complying with procedural requirements, as previously noted, this Motion is denied on the basis that there is no authority or good cause for the Motion. Respondent cites no binding authority for the Motion. She also provides no evidence whatsoever to support the request. Rather, the Motion is a jumble of unsupported assertions and is wholly insufficient to justify the requested action. This Motion is **DENIED**.

Motion for Reconsideration

Following a final decision of the USPTO Director, either party may make a single request for reconsideration or modification of the decision by the USPTO Director if such request is filed within twenty days from the date of entry of the decision. *See* 37 C.F.R. § 11.56(c). The provisions governing reconsideration state: “No request for reconsideration or modification shall be granted unless the request is based on newly discovered evidence or error of law or fact, and the requestor must demonstrate that any newly discovered evidence could not have been discovered any earlier by due diligence.” *Id.*

The standard of review governing requests under § 11.56(c) are not defined beyond what appears in the text of the regulation. However, although the Federal Rules of Civil Procedure are not applicable in administrative proceedings, courts have at times looked to them for useful guidance in judging actions taken by the USPTO. The standard of review used by federal courts for motions to alter or amend a judgment under Rules 59(e) and 60 of the Federal Rules of Civil

Procedure are most similar to requests for reconsideration filed pursuant to § 11.56(c). Because of that, the standard set forth in those rules has been previously utilized by the USPTO in analyzing reconsideration requests. *See In re Walpert*, Proceeding No. D2018-07 (USPTO Apr. 29, 2021); *In re Faro*, Proceeding No. D2015-27 (USPTO Feb. 9, 2018); *In re Denison*, Proceeding No. D2016-01 (USPTO Oct. 25, 2017); *In re Piccone*, Proceeding No. D2015-06 (USPTO Feb. 9, 2018); *In re Kroll*, Proceeding No. D2014-14 (USPTO May 18, 2016); *In re Bang-er Shia*, Proceeding No. D2014-31 (USPTO Aug. 1, 2016). Accordingly, those authorities are referenced and utilized here to analyze Appellant's Motion for Reconsideration.

Federal courts have viewed the standard of review for Rules 59(c) and 60 as narrow and limited to only circumstances involving new evidence, or to correct errors of law or fact. *See Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). Any new evidence submitted must not have been available before the issuance of the final decision. *See Boryan v. United States*, 884 F.2d 767, 771-72 (4th Cir. 1989) ("Evidence that is available to a party prior to entry of judgment, therefore, is not a basis for granting a motion for reconsideration as a matter of law.") (citing *Frederick S. Wyle Pro. Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985)). Furthermore, it is long-settled that requests for reconsideration are not a vehicle to state a party's disagreement with a final judgment. *See Hutchinson*, 994 F.2d at 1082 ("mere disagreement does not support a Rule 59(e) motion"); *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007), *cert. denied*, 552 U.S. 1040 (2007) (stating that a Rule 59(e) motion cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment). A request for reconsideration should not be used to rehash "arguments previously presented" or to submit evidence that should have been previously submitted. *Wadley v. Park at Landmark, LP*, 2007 WL 1071960, at *2 (E.D. Va. 2007) (citing *Hutchinson*, 994 F.2d at 1081-

82); *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983) (holding improper a motion for reconsideration “to ask the Court to rethink what the Court had already thought through—rightly or wrongly”); *Durkin v. Taylor*, 444 F. Supp. 879, 889 (E.D. Va. 1977) (stating that Rule 59(e) is not intended to give “an unhappy litigant one additional chance to sway the judge”). Instead, reconsideration is appropriate where, for example, “the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.” *Above the Belt, Inc.*, 99 F.R.D. at 101; *United States v. Ali*, No. PWG-13-3398, 2014 WL 5790996, at *3 (D. Md. 2014).

Requests for reconsideration are permitted but they are seldom granted. These types of motions are extraordinary remedies reserved only for extraordinary circumstances. *See Dowell v. State Farm Fire & Cas. Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993) (limiting relief under Rule 60(b)(6) to “extraordinary circumstances”); *Projects Mgmt. Co. v. DynCorp Int’l, LLC*, 17 F. Supp. 3d 539, 541 (E.D. Va. 2014), *aff’d*, 584 F. App’x 121 (4th Cir. 2014) (reconsideration of a judgment after its entry is an “extraordinary remedy which should be used sparingly”) (quoting *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)); *see also Netscape Commc’ns Corp. v. ValueClick, Inc.*, 704 F. Supp. 2d 544, 546 (E.D. Va. 2010)). Consequently, the standard for granting a Request for Reconsideration under § 11.56(c) is very high and are granted sparingly and only in extraordinary circumstances. For the reasons discussed below, Appellant’s Motion for Reconsideration is denied.

The standard for granting reconsideration under 37 C.F.R. § 11.56(c) is that “[n]o request for reconsideration or modification shall be granted unless the request is based on newly discovered evidence or error of law or fact. . . .” As detailed below, Appellant’s Motion completely fails to

satisfy this standard. Appellant does not argue, and there is not a single reference to, any “newly discovered evidence” in her Motion. That being the case, a grant of reconsideration rests solely on Appellant’s ability to show and error of law or fact and she fails to make such a showing. To the contrary, Appellant’s Motion does little more than raise allegations previously made and rejected. These include arguments regarding the transmission of, and access to, the administrative record and challenges to the ALJ’s appointment. Appellant also provides no citations or proof in support of her Motion, and fails to identify any errors of law or fact. Rather, her Motion is a hodge-podge of cut-and-pasted legal provisions and incomplete sentences with no analysis. This is insufficient to satisfy the standards governing reconsideration.

Having failed to identify any newly discovered evidence, and failed to demonstrate an error of law or fact, Respondent’s Motion for Reconsideration is **DENIED**.

APPEAL RIGHTS

Appellant is entitled to seek judicial review on the record in the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 “within thirty (30) days after the date of the order recording the Director's action.” *See* E.D.Va. Local Civil Rule 83.5.

IT IS SO ORDERED.

Date

Users, Berdan,
David

Digitally signed by Users,
Berdan, David
Date: 2024.12.23 13:39:55
-05'00'

David Berdan
General Counsel
United States Patent and Trademark Office

on delegated authority by

Derrick L. Brent
Acting Under Secretary of Commerce for Intellectual Property and
Acting Director of the United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was served today on Respondent via email at

Jill G. Welytok
jwelytok@abtechlaw.com
Appellant

And to the OED Director via email at:

Hendrik deBoer
Associate Solicitor
Office of the Solicitor
U.S. Patent and Trademark Office
hendrik.deboer@uspto.gov
[REDACTED]
Counsel for the OED Director

12/23/2024

Date

/s/ Sean M. Newsam

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

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

In the Matter of:

Jill G. Welytok,

Appellant.

Proceeding No. D2021-15

ORDER

This Order addresses the OED Director's Combined Motion for Leave and to Dismiss, and related pleadings. For the reasons set forth below, the OED Director's Motion is GRANTED.

Background

The Director of the Office of Enrollment and Discipline ("OED Director") filed a three-count complaint against Appellant, alleging violations of the United States Patent and Trademark Office ("USPTO") Rules of Professional Conduct on September 9, 2021 and a hearing was held on September 21 and 22, 2022, which the record shows was conducted after Appellant's failures to file a timely answer and comply with discovery orders, leading to the imposition of sanctions against Appellant, and after multiple requests by Appellant to continue the proceedings. (A.28-48; A.22820-23143).¹ Appellant did not attend the hearing, but she did file a post-hearing brief. (A.1746-1759).

On April 29, 2024, the Administrative Law Judge ("ALJ") issued the Initial Decision and Order. The Order found that Appellant engaged in serious misconduct, including the submission of fabricated evidence to Office of Enrollment and Discipline ("OED"), and imposed a sanction of exclusion. (A.1-27). On May 10, 2024, Appellant filed a notice of appeal. (A.1778).

¹ The references to "A. _" are to the administrative record in this matter.

On July 17, 2024, the OED Director served the USPTO Director and Appellant with a copy of the complete administrative record, using Kiteworks—a secure file transfer platform typically used by the USPTO. *See* OED Director’s Opposition to Respondent’s Motions, dated August 20, 2024 (“OED’s Opposition”), Attachment B. The Kiteworks link sent to Appellant was set to expire on August 16, 2024, the day that Appellant’s appellate brief was due. *Id.* The July 17, 2024 transmission stated, “Please let me know if you have any problems accessing these documents.” *Id.*

On July 18, 2024, Hendrik deBoer, counsel for the OED Director, emailed Appellant stating that the OED Director had served her with the administrative record the day before and that the deadline for her appellate brief under 37 C.F.R. § 11.55(d) was August 16, 2024. OED’s Opposition, Attachment C. As of August 13, 2024, Appellant had not yet downloaded the administrative record from Kiteworks, and Appellant was re-sent the Kiteworks link and reminded that her brief was due August 16, 2024. OED’s Opposition, Attachment D. These facts are also supported by the Appellant’s Memorandum in Opposition to OED Director’s Motion to Dismiss (“Appellant’s Opposition”), and exhibits.

On August 14, 2024, two days prior to the deadline to file her appellate brief, Appellant filed an Emergency Motion for Extension of Time to File Brief in Response to Initial Decision of Administrative Law Judge (“Motion for Extension of Time”). Therein, Appellant acknowledged that her Appellate brief was due on August 16, 2024, but stated that she was requesting a 60-day extension due to the “complexity of the issues” and also to file motions addressing the constitutionality of the appointment of the Administrative Law Judge in the case and to supplement the record. Appellant’s motion did not include any statement that she conferred with

counsel for the OED Director prior to filing the motion as required by 37 C.F.R. § 11.55(o), nor did she notify counsel of her intent to file the motion or inquire as to their position.

Also on August 14, 2024, Appellant emailed Mr. deBoer and claimed that she was unable to access the record through Kiteworks. OED's Opposition, Attachment D. She attached a screenshot purporting to show that her email address was not given access to the record. *Id.* at 4. Mr. deBoer responded that he would ask Michael Domenico, the paralegal who compiled and served the record, to check that Appellant had access when he returned from leave. OED's Opposition, Attachment E.

On August 15, 2024, Appellant emailed Mr. deBoer requesting, among other things, that the OED Director confirm that the time period for the filing of the appellant's brief had not yet begun as the record had not been transmitted. OED's Opposition, Attachment F.

On August 16, 2024, Appellant filed a Supplemental Motion for Extension of Time to Correct Record as to Date of Transmission of the Certified Record ("Supplemental Motion"), claiming that the OED Director had not yet served her with the record and asserted that counsel for the OED Director stated that he would not be able to grant access to the Certified Record until at least August 19, 2024. Supplemental Motion, at 2. Appellant requested an additional sixty days to prepare her brief.

On August 19, 2024, Mr. Michael Domenico, paralegal specialist with the Office of the Solicitor, checked Kiteworks and confirmed that Appellant in fact had been granted access on July 17, 2024, but that she had not downloaded a copy of the record. OED's Opposition, Attachments B, G (Declaration of Michael W. Domenico).

The OED Director opposed Appellant's Motion for Extension of Time and Supplemental Motion on August 20, 2024, stating that Appellant failed to abide by the rules governing the

filing of motions and has not demonstrated good cause for granting the motions. On September 5, 2024, the USPTO Director denied Appellant's Motions.

Thereafter, Appellant submitted a letter addressed to USPTO General Counsel David Berdan, as well as counsel for the OED Director and "Attorney Walker" again stating that she had not been granted access to a copy of the record and stating that she would file a motion to compel service of the record on Monday, September 9, 2024, the same day that her brief was due pursuant to the USPTO Director's September 5, 2024 Order. However, Appellant never filed either her brief or the motion to compel.

On September 13, 2024, the OED Director filed the OED Director's Combined Motion for Leave and to Dismiss ("Combined Motion"), alleging good cause for dismissing Appellant's appeal. The OED Director, through counsel, contacted Appellant to meet and confer about the Combined Motion, and Appellant opposes the Motion. *See* Combined Motion, at 1. The OED Director argues that the OED Director should permit the filing of a motion to dismiss on the basis that Appellant has failed to meet the September 9, 2024 deadline to file an appeal brief, and there is no basis for the appeal to remain pending. Combined Motion, at 3-4. Further, Appellant has not filed her brief in support of her appeal and has not filed any other motions in this matter. *Id.* Thus, the OED Director argues that any appeal brief would be untimely at this point. *Id.*

Appellant was allotted 21 days – until October 4, 2024 – to respond to the Combined Motion. *See* 37 C.F.R. § 11.55(o). However, it was not until October 7, 2024 that Appellant filed an Opposition to the Combined Motion re-stating that she did not have access to the record of the proceedings. This argument is substantially similar to the arguments already raised, and denied, in her prior August 2024 Motions.

The OED Director replied to the Appellant's Opposition on October 16, 2024 ("Reply"). Therein, the OED Director stated that the Appellant's Opposition is untimely and that the Opposition provides no basis to continue the appeal. Reply, at 1-2. Specifically, the OED Director notes that Appellant admits in her Opposition that she agreed to electronic service of documents in the appeal, that the OED Director provided a link to access the record electronically, sent reminder emails about the link, but that she took no reasonable or timely steps to access the record. Reply, at 2. Thus, failure to access the record does not provide a basis to excuse her untimely appeal brief and there is no basis to allow the appeal to continue.

Opinion and Order

No briefs or motions are permitted in hearing appeals without permission of the USPTO Director. *See* 37 C.F.R. § 11.55(m). The USPTO's rules also set forth the procedure for filing motions in matters involving appeals to the USPTO Director. This procedure includes that "[e]very motion must include a statement that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in a good faith effort to resolve the issues raised by the motion and whether the motion is opposed." *Id.* § 11.55(o). "[W]ithin 21 days of the date of service of the motion, an opposing party shall serve and file a response to the motion, and the moving party may file a reply within 14 days after service of the opposing party's responsive memorandum." *Id.* Here, the OED Director made a good faith effort to address the Combined Motion with Appellant. Further, as set forth below, good cause supports granting the Combined Motion.

As an initial matter, Appellant's Opposition to the OED Director's Combined Motion is untimely. *See* 37 C.F.R. § 11.55(●) (allowing 21 days to respond to motions). But, even if it was not untimely, good cause exists to grant the Combined Motion.

Appellant has unequivocally failed to meet the September 9, 2024 deadline to file an appeal brief. Additionally, she has not filed any other motions in this matter to justify or excuse that failure to file an appeal brief. Instead, in opposition to the OED Director's Combined Motion, she merely reiterates the arguments concerning the record of these proceedings that have been previously raised by her, and rejected. Thus, her appeal brief is plainly untimely at this point and good cause exists to dismiss the appeal.

For these reasons, and all of the reasons stated in the Combined Motion, the OED Director's Combined Motion is hereby **GRANTED**. The ALJ's April 29, 2024 Initial Decision and Order is adopted as the Final Order in this matter, effective the date of this Final Order.

RECONSIDERATION AND APPEAL RIGHTS

Any request for reconsideration of this decision must be filed within twenty (20) days from the date of entry of this decision pursuant to 37 C.F.R. § 11.56(c). Any request for reconsideration mailed to the USPTO must be addressed to:

David Berdan
General Counsel
United States Patent and Trademark Office
600 Dulany St.
P.O. Box 1450
Alexandria, VA 22313-1450

A copy of the request must also be served on the attorney for the Director of Enrollment and Discipline:

Sydney Johnson
Counsel for the Director of Office of Enrollment and Discipline
600 Dulany St.
P.O. Box 1450
Alexandria, VA 22313-1450

Any request hand-delivered to the USPTO must be hand-delivered to the Office of the General Counsel, in which case the service copy for the attorney for the Director shall be hand-delivered to the Office of Enrollment and Discipline.

If a request for reconsideration is not filed, and Appellant desires further review, Appellant is notified that he is entitled to seek judicial review on the record in the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 “within thirty (30) days after the date of the order recording the Director’s action.” *See* E.D. Va. Local Civil Rule 83.5.

IT IS SO ORDERED.

Users, Berdan, David
Digitally signed by Users, Berdan, David
Date: 2024.10.18
14:04:25 -04'00'

Date

David Berdan
General Counsel
United States Patent and Trademark Office

on delegated authority by

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

CERTIFICATE OF SERVICE

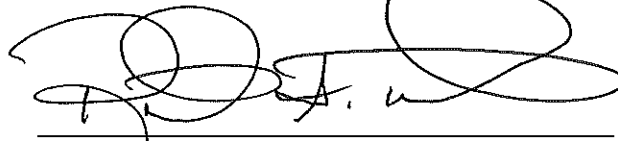
I hereby certify that a copy of the foregoing Order was served today on Respondent via email at:

jwelytok@abtechlaw.com
Appellant

And to the OED Director via email at:

Hendrik deBoer
hendrik.deboer@uspto.gov
[REDACTED]
Counsel for the OED Director

10.18.2024
Date


United States Patent and Trademark Office

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

In the Matter of:

JILL G. WELYTOK,

Respondent.

Proceeding No. D2021-15

April 29, 2024

Appearances:

Hendrik R. deBoer, Esq.

Eteena J. Tadjigoueu, Esq.

Associate Solicitors, United States Patent and Trademark Office

Jill G. Welytok, Esq.

Pro Se

Before: Alexander **FERNÁNDEZ-PONS**, United States Administrative Law Judge

INITIAL DECISION AND ORDER

This matter arises from a disciplinary complaint filed by the Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “the Office”) against USPTO practitioner Jill G. Welytok (“Respondent”) pursuant to 35 U.S.C. § 32, as implemented by 37 C.F.R. part 11, alleging that Respondent violated multiple provisions of the USPTO Rules of Professional Conduct, 37 C.F.R. §§ 11.101, *et seq.*, during her representation of clients Jack Garczynski, Elizabeth Kemp, and two companies associated with Ms. Kemp.

PROCEDURAL HISTORY

On September 9, 2021, the OED Director filed a *Complaint and Notice of Proceeding under 35 U.S.C. § 32* (“*Complaint*”) against Respondent, and the matter was assigned to the undersigned for hearing.¹ The Tribunal issued a *Notice of Hearing and Order* scheduling a hearing to take place in January 2022.

On December 2, 2021, the Tribunal issued an *Order to Show Cause and Stay Order* finding Respondent to be in default due to her failure to timely file an answer to the *Complaint* or otherwise defend herself in this matter. Thereafter, Respondent filed an *Answer*. On February

¹ Pursuant to an Interagency Agreement effective March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development have been appointed by the U.S. Commerce Secretary and are authorized to hear cases brought by USPTO.

14, 2022, the Tribunal issued an order accepting Respondent's *Answer*, rescheduling the hearing to take place by videoconference in June 2022, and establishing new prehearing deadlines, including deadlines to submit anticipated exhibits and identify anticipated witnesses.

Respondent did not identify any witnesses or submit any exhibits by the established deadlines. She also failed to comply with an *Order to Compel* issued by the Tribunal on May 26, 2022, leading the OED Director to file a *Motion for Sanctions*.

On June 1, 2022, the Tribunal issued a *Ruling on Summary Judgment* granting partial summary judgment against Respondent.

On June 8, 2022, the Tribunal held a videoconference with both parties present. Topics of discussion included the outstanding *Motion for Sanctions*, Respondent's failure to comply with discovery obligations, and Respondent's desire to offer evidence despite missing the deadline to identify witnesses and submit exhibits. On June 10, 2022, the Tribunal issued an order granting, in part, the OED Director's *Motion for Sanctions*; rescheduling the hearing to begin on September 19, 2022, to ensure Respondent would have adequate opportunity to prepare; and giving Respondent a second chance to submit her anticipated exhibits. Respondent was ordered to file exhibits by July 8, 2022. She did not do so.

On September 14, 2022, Respondent filed a motion ("*Emergency Motion*") requesting a two-week adjournment due to a purported illness and hospitalization. On September 16, 2022, the Tribunal issued a *Ruling on Emergency Motion* finding that the documents submitted by Respondent in support of her motion did not clearly identify her illness or show that she was incapable of participating in the hearing and did not corroborate her claimed dates of hospitalization. Further, certain documentation submitted by Respondent suggested she may have been dishonest about her hospitalization. Accordingly, the Tribunal postponed the start date for the hearing by one day (from September 19, 2022, to September 20, 2022) to give Respondent time to show cause why she should not be sanctioned for her apparent lack of candor.

On September 19, 2022, after both parties had responded to the show cause order, the Tribunal issued an order postponing the start date for the evidentiary hearing by one more day (from September 20, 2022, to September 21, 2022) and directing the parties to attend an oral hearing to be held by videoconference on September 20, 2022, to discuss their responses to the show cause order and whether Respondent had made false statements in her *Emergency Motion*.

Respondent did not appear before the Tribunal on September 20. Counsel for the OED Director did appear, and urged the Tribunal not to postpone the evidentiary hearing again, arguing that Respondent had not proven her inability to participate; that the hearing had already been continued several times; that the Government's witnesses who had taken time off work to attend would be burdened by yet another postponement; and that, if Respondent failed to appear but later established she was truly unable to call in to the hearing, the OED Director would not oppose allowing her to re-call the Government's witnesses for cross-examination at a later date.

On the afternoon of September 20, the Tribunal issued an *Order Denying Continuance Request and Granting Additional Time to Show Cause*. The Tribunal found, among other things, that Respondent had failed to establish her inability to participate in the hearing and had provided inconsistent and potentially false information about her purported dates of hospitalization. The Tribunal denied Respondent's continuance request and notified Respondent that it intended to sanction her for making false statements, but that it would hold the sanctions in abeyance until October 21, 2022, to give Respondent a final opportunity to establish her candor. The Tribunal also explained that, if Respondent were to establish a legitimate medical reason for failure to appear at the hearing, an order would be issued giving her a later opportunity to appear before the Tribunal and cross-examine the Government's witnesses.

The Tribunal held an evidentiary hearing on September 21-22, 2022, with all participants attending remotely via the Microsoft Teams platform. Respondent failed to appear. The Tribunal received into evidence Government's Exhibits 1-5, 8, 10, 13-15, 23-24, 27-28, 31, 33, 36-37, 39-44, 50, 59-61, 72, 89, 131, 135, 139, 142-144, and 148 and Court Exhibit 1 and heard the testimony of Jack Garczynski; attorney Jeanette Braun, who handled Mr. Garczynski's patent matter after he terminated Respondent's representation; Elizabeth Kemp; digital forensics expert Bobby R. Williams, Jr.; and OED investigator Kimberly Weinreich.

On October 28, 2022, after receiving and considering the parties' responses to the September 20, 2022, *Order Denying Continuance Request and Granting Additional Time to Show Cause*, the Tribunal issued an order finding that Respondent had made false statements about her purported dates of hospitalization and sanctioning her by referring her conduct to the OED Director. The Tribunal further found that Respondent had not demonstrated a valid reason for her failure to appear at the September 21-22, 2022, evidentiary hearing; ordered the evidentiary record to be closed; and set deadlines for the parties to submit closing briefs.

Both parties submitted post-hearing briefs in November 2022, and the OED Director submitted a response brief on December 16, 2022.

APPLICABLE LAW

USPTO Disciplinary Proceedings. USPTO has the "exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it." Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001); see also Sperry v. Fla. ex rel. Fla. Bar, 373 U.S. 379 (1963). This authority flows from 35 U.S.C. § 2(b)(2)(D), which authorizes USPTO to establish regulations governing the conduct of patent attorneys and agents who practice before it, and 35 U.S.C. § 32, which authorizes USPTO to discipline malfeasant practitioners. The regulations governing the conduct of USPTO practitioners are known as the Rules of Professional Conduct and are codified at 37 C.F.R. §§ 11.101 to 11.901. Before disciplining a practitioner who is accused of violating the Rules of Professional Conduct, USPTO must provide notice and an opportunity for a hearing. 35 U.S.C. § 32. Disciplinary hearings are conducted in accordance with the procedural rules at 37 C.F.R. part 11 and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by an impartial hearing officer appointed by USPTO. See 37 C.F.R. §§ 11.39, 11.44.

Standard and Burden of Proof. The OED Director has the burden of proving any alleged violations by clear and convincing evidence, and the respondent bears the burden of proving any affirmative defenses by clear and convincing evidence. 37 C.F.R. § 11.49. “Clear and convincing” evidence is an intermediate standard of proof, falling somewhere between the “beyond a reasonable doubt” standard governing criminal cases and the “preponderance of the evidence” standard governing most civil cases, and requires evidence of such weight that it “produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established” or “proves the facts at issue to be ‘highly probable.’” Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001); see also Colorado v. New Mexico, 467 U.S. 310, 316 (1984) (requiring evidence sufficient to produce “an abiding conviction” that the factual allegations are “highly probable”).

BACKGROUND AND FINDINGS OF FACT

I. Respondent’s Background and Disciplinary History

Respondent was licensed as an attorney in the state of Illinois in 1984 and the state of Wisconsin in 1992. On July 2, 1999, the Supreme Court of Wisconsin found that Respondent had engaged in professional misconduct while representing a client over whom she held general durable power of attorney and health care power of attorney.² Respondent was suspended from practice for two years in Wisconsin, with a reciprocal suspension in Illinois, and was ordered to pay restitution to the client. Respondent’s license was later reinstated in both states, but was inactive in Illinois as of the hearing date.

Respondent registered with USPTO as a patent attorney in 2004. Respondent owns Absolute Technology Law Group, LLC, a law firm with offices in Chicago, Illinois, and Milwaukee, Wisconsin, that provides legal services in the field of intellectual property.

II. Respondent’s Representation of Jack Garczynski

In late 2019, entrepreneur Jack Garczynski hired Respondent to prepare and file a non-provisional utility patent application for his [REDACTED] invention. On November 24, 2019, Mr. Garczynski tendered to Respondent an advance payment of \$1,250 for her services, which she did not deposit into a client trust account.

In emails sent to Mr. Garczynski between December 3 and 18, 2019, Respondent discussed market research and prior art, stated she had found someone to prepare drawings for \$200, and advised that they should file the patent application immediately so that Mr. Garczynski could research materials to be used in manufacturing the invention and incorporate his findings.

² The Wisconsin disciplinary records describe misconduct by Respondent that included, among other things, submitting bills that were fraudulent and contained misrepresentations, such as bills charging the client for hours she claimed to have spent with him while he was actually hospitalized; using the client’s money to buy a \$3,000 television for herself; charging and paying herself excessive fees from the client’s funds, including after the representation had ended and a grievance had been filed; failing to diligently manage the client’s finances, such as by allowing the client’s checkbook to become overdrawn; and engaging in dishonest conduct during the disciplinary proceeding by creating and submitting to the disciplinary board a misleading videotape.

On December 24, 2019, Mr. Garczynski tendered to Respondent a second payment of \$1,250 for her services, which she did not deposit into a client trust account.

On December 30, 2019, Mr. Garczynski sent Respondent an email asking whether the application had been filed and whether it was “safe to publish web site and promote [REDACTED]r.” Respondent replied, “Yes, I will send the packet shortly.” That day, Mr. Garczynski published a website promoting his invention to the public in reliance on Respondent’s representation that she had filed a patent application to protect his intellectual property rights.³

On January 11, 2020, Mr. Garczynski sent Respondent an email noting that his website was active and asking if there was documentation showing the patent application had been filed. Respondent replied, “Yes[.] I am sending it to you with an explanation of post filing matters shortly.” Two minutes later, she sent another email asking if the website had gone active that day. Mr. Garczynski replied that it had gone active on December 30, the day she told him the application was filed.

On February 12, 2020, Mr. Garczynski emailed Respondent that he had never received a charge on his credit card for the government filing fee. Once again, he requested documents showing the application had been filed.

Within ten minutes, Respondent sent three separate emails stating that the charge was on her credit card and that a provisional application had been filed on November 21, 2019, and a non-provisional on December 24, 2019. Then, about forty minutes later, Respondent sent another email reiterating those filing dates. The email further stated that the invoice for formal drawings was \$384; that Respondent’s firm had paid the filing fee for the provisional application; that she had filed the non-provisional without a filing fee or final drawings at Mr. Garczynski’s request so he could launch his website⁴; and that she would send him the application as filed with formal drawings for his review. Respondent attached to this email an “Acknowledgement Receipt” purporting to show that USPTO had received a submission from her on December 24, 2019, for an application assigned number [REDACTED] naming Mr. Garczynski as the inventor.

Mr. Garczynski eventually became uncomfortable with Respondent as his representative. He testified he “never did a deep study into what [she] was doing,” but she did not seem focused on the matter for which he had hired her—obtaining a patent. Instead, “It was all over the board. It was hours of meeting every time I would call,” with Respondent discussing extraneous topics such as marketing. Thus, Mr. Garczynski contacted Jeanette Braun, a registered patent attorney with her own intellectual property firm and many years of experience practicing before USPTO, for a second opinion, and eventually asked Ms. Braun to take over the representation.

³ Mr. Garczynski would not have published his invention to the Internet absent Respondent’s assurance that she had filed an application because he was aware that public disclosure can foreclose an inventor’s intellectual property rights. After public disclosure, the inventor must file a patent application with the USPTO within one year, or else the invention is no longer considered “novel” and he loses his right to file forever. See 35 U.S.C. § 102.

⁴ Specifically, Respondent wrote: “The non-provisional was filed December 24, 2019, without a filing fee pending the final drawings. ... We did not have formal drawings on December 24, but you asked me to file to launch the website” (emphasis in original).

On November 13, 2020, Mr. Garczynski forwarded to Ms. Braun the “Acknowledgement Receipt” Respondent had sent him. However, Ms. Braun was unable to use the information in the document to file a power of attorney in Mr. Garczynski’s patent matter because, according to the USPTO e-filing system, the application and confirmation numbers listed on the receipt did not match. Ms. Braun observed that the title of the invention was blank on the receipt, other information fields appeared to be missing entirely, and the formatting and alignment seemed “wonky.” After speaking to a USPTO representative by phone, Ms. Braun discovered that the application number listed on the receipt was associated with a published patent for a different invention that was completely unrelated to Mr. Garczynski or Respondent. For these reasons, it appeared to Ms. Braun that the “Acknowledgement Receipt” had been forged.

Meanwhile, the record shows that Respondent emailed Mr. Garczynski three times within a one-hour span on November 14, 2020, first stating that a utility application had not been filed, then asking him to review drawings “so that we can submit them in final form and convert the application to non-provisional status,” then stating that “[t]he non-provisional was filed, but requires your completion of drawings, an[d] payment of fees.” The next day, Respondent sent Mr. Garczynski another email stating that the application would need to be modified because the current version of the invention differed substantially from what had been disclosed in the prior application.

On November 19, 2020, Mr. Garczynski forwarded Respondent a copy of her own prior email advising him of the purported filing dates for his applications, and asked if they needed to file by Monday, November 23, 2020. Respondent replied, “Yes. I am on it.” After Mr. Garczynski sent her updated drawings later that day, Respondent emailed that she needed to rewrite the application to add new elements and would hire a freelancer to number the drawings, despite Mr. Garczynski’s offer to number them himself; she concluded that the matter would require “a lot of work.”

Mr. Garczynski forwarded Respondent’s messages to attorney Braun. Ms. Braun emailed him on Saturday, November 21, 2020, advising that USPTO did not permit new matter to be introduced to an application after its filing date and that she was very concerned about what had happened to Mr. Garczynski’s patent applications. “I am beginning to think [Respondent] did not file the utility and fabricated the Acknowledgement Receipt,” Ms. Braun wrote. Although Ms. Braun could not locate Mr. Garczynski’s patent applications in the USPTO system, she and an assistant worked through the weekend to prepare and file a new application for Mr. Garczynski, as the one-year deadline to claim the benefit of any provisional filing dated November 21, 2019, would have expired imminently.⁵

⁵ Ms. Braun explained that the purpose of a provisional application, which need not include claims and is not examined by the Office, see 35 U.S.C. § 111(b), is to “put your stake in the ground” for twelve months to give the inventor time to perfect the invention. She testified it did not make sense for Respondent to have filed a non-provisional application just one month after filing a provisional. Nonetheless, if a provisional application had, indeed, been filed on November 21, 2019, Mr. Garczynski would have needed to submit a non-provisional filing within one year. He testified that the deadline was set to expire on a Sunday night and that Ms. Braun worked through an entire weekend to get his application filed by the deadline. Publicly available USPTO records show that his application was filed on November 22, 2021, which was a Sunday. See U.S. Patent No. 2022/0160156 A1, at [22] (filed Nov. 22, 2019).

Thereafter, Ms. Braun continued trying to find out from Respondent what had happened to Mr. Garczynski's patent matter. On November 23, 2020, Respondent sent Ms. Braun and Mr. Garczynski an email stating, among other things, that a provisional application had been filed on November 23, 2019, and a non-provisional on December 24, 2019. But after Ms. Braun requested filing receipts for both, Respondent replied with an email admitting, for the first time, that no provisional application had been filed. "On 11/21, we intended to file a provisional and I agreed to pay the filing fee. However, we decided to proceed to a non-provisional and I advanced \$400 for drawings," she wrote. Regarding the non-provisional application, Respondent wrote, "The USPTO confirmed my understanding that the application does not receive an official filing receipt *if the fee is not paid by the client*. ... The 12/24 was correctly uploaded under my customer number, but another application is pulling up[.] The USPTO told me that it is because of something I indicated on the IDS" (emphasis in original). Respondent further stated that Mr. Garczynski owed her a balance of \$1,000, but she would waive it.

Ms. Braun testified that "IDS" stands for "information disclosure sheet," which is a form disclosing any prior art that may impact patentability, and there is nothing on the IDS form that should prevent a patent application from being pulled up on the USPTO filing system. Further, on November 24, 2020, Ms. Braun called USPTO and confirmed that the Office issues a filing receipt when an application is filed regardless of whether the filing fee is paid, meaning that the information Respondent had provided the day before was incorrect.

Later that day, in reference to the "Acknowledgement Receipt," Respondent emailed Ms. Braun that she had hired a contractor named Panjar Kumar to prepare and upload the December 24, 2019, application, and that he had uploaded an application data sheet with information for the wrong client. During this disciplinary proceeding, Respondent has blamed the purported contractor for fabricating the "Acknowledgement Receipt." However, she has never produced his contact information or any evidence to corroborate his involvement in this matter.

On November 25, 2020, Respondent emailed Ms. Braun that she had made a payment for drawings on November 17, 2019, leading her to erroneously believe she had filed a provisional application on that date, but the error should not impact Mr. Garczynski's rights because his website had not been launched until December 2019. "I do not know why a website depicting a prototype was uploaded ... and I do not recall being consulted," she wrote. The next day, Respondent sent an email asserting that Mr. Garczynski had agreed on November 17, 2019, not to file a provisional application, and that she would refund his money.

Ultimately, Respondent refunded \$1,650 of the \$2,500 Mr. Garczynski had advanced. On November 30, 2020, after Ms. Braun continued to request a filing receipt for the non-provisional application Respondent claimed to have filed, Respondent admitted she had issued a refund because she did not have documentation of a December 24, 2019, priority date. Ms. Braun testified that, during a phone conversation in which she pressed Respondent to explain the missing documentation, Respondent advised that Ms. Braun should "pretend like neither [of the applications] were ever filed."

On December 17, 2020, Ms. Braun filed a grievance against Respondent with USPTO. She testified she did not want to report a colleague, but felt obligated to do so because her

interactions with Respondent had raised substantial questions about Respondent's honesty and trustworthiness, and because Mr. Garczynski had made a public disclosure based on Respondent's false representations, impacting his intellectual property rights.

III. Respondent's Representation of Elizabeth Kemp, Pro1Tek, and SMTMT

Elizabeth Kemp is an inventor, entrepreneur, and President and Chief Executive Officer of several companies, including Priority Environmental Solutions, Inc. d/b/a Pro1Tek ("Pro1Tek") and SMT Medical Technologies, LLC ("SMTMT"). Ms. Kemp testified that she had a long history with Respondent going back to 2011.

Representation of Pro1Tek and Elizabeth Kemp. On behalf of Pro1Tek and herself, Ms. Kemp engaged Respondent on December 4, 2017, to file patent applications with USPTO and develop a patent portfolio for three inventions, including an invention Ms. Kemp called [REDACTED] consisting of a kit for responding to active shooters. Respondent was to perform this work for an initial flat fee of \$6,900. Ms. Kemp, who was the inventor for all three items in the portfolio, testified that Respondent was also supposed to file international patents to protect the inventions.⁶ On December 8, 2017, Ms. Kemp paid Respondent an advance fee of \$6,900, which Respondent placed into an account holding Respondent's own funds instead of a client trust account.

On [REDACTED] 2018, Respondent's law firm electronically filed U.S. Patent Application No. [REDACTED] ("the [REDACTED] application") for [REDACTED]. The USPTO acknowledgement receipt listed the filer as "Jill Gilbert-Welytok/Natasha Sansone." The application included a declaration required to be executed by the inventor pursuant to 37 C.F.R. § 1.63. The declaration bore Ms. Kemp's typewritten signature in the format "s/Elizabeth Kemp/". However, Ms. Kemp testified that she did not actually enter the signature on the filed document, explaining that she had instead physically signed a hard copy of the declaration, scanned it, and sent it to Respondent. The [REDACTED] application was still pending when Respondent's practitioner-client relationship with Ms. Kemp and her companies ended in or about May 2019.

Representation of SMTMT. In October 2018, Ms. Kemp, on behalf of SMTMT, engaged Respondent's services with respect to an invention called Needle Shark. A third party had previously applied for a patent on Needle Shark, which is a device that disposes of medical waste such as needles and razors, and the application was still pending and unpublished. SMTMT had licensed the rights to develop and sell the device. According to Ms. Kemp, SMTMT hired Respondent to file international patents and a continuation-in-part ("CIP") to the pending application and to manage the patent portfolio, including by answering any Office actions issued in the pending application. Ms. Kemp explained that she intended to develop and seek patent protection for derivative models of the Needle Shark device, potentially necessitating a CIP to ensure USPTO would not treat the original application as prior art.

⁶ In her post-hearing brief, Respondent disputes that Ms. Kemp hired her to file international patents for Pro1Tek, arguing that her engagement letter expressly excluded international filing and could only be modified in writing. However, the December 4, 2017, engagement letter expressly contemplates that the client may elect to file for foreign patent protection at a later date, and Respondent has not presented any testimony or other evidence to contradict Ms. Kemp's account of the scope of the representation.

An October 24, 2018, engagement letter executed by Respondent (but not Ms. Kemp) described the scope of work in the Needle Shark matter as including a patent search, license review, and the filing of a CIP and provisional application(s) for prospective products, with a target filing date of November 14, 2018. The engagement letter set forth an estimated cost of \$10,970. The letter explained that the CIP would claim priority to “the pending application filed May 20, 2016,” and would have an effective filing date as early as May 20, 2015, because a provisional application had been filed on that date. However, USPTO records show that the referenced non-provisional application was actually filed on [REDACTED] 2016, and the provisional on [REDACTED], 2015.

On November 5, 2018, Ms. Kemp emailed Respondent stating, among other things, that she would send the certifications and drawings for Needle Shark and that SMTMT also needed Respondent to file for reinstatement of the related trademark. Later that day, Respondent replied that she had preliminarily identified legal options for SMTMT to assert rights in the trademark; that she would invoice the client \$4,360 to revive the expired word and image marks; and that she required a \$2,500 advance, which Ms. Kemp testified was paid by SMTMT. Respondent’s email also stated, among other things: “Your prior counsel has not yet completed and filed a ‘partial assignment’ of trademark rights to protect your company. Please note, that USPTO procedures do not allow trademark owners to file licenses—only assignments are recognized pursuant to TMEP 501.06.” This statement was inaccurate because, in fact, USPTO does recognize and record license agreements for trademarks. See Trademark Manual of Examining Procedure (“TMEP”) § 503.02 (Oct. 2018).⁷

On the same day as the email exchange described in the preceding paragraph, Respondent filed U.S. Trademark Serial No. 88/182,392 for the word mark “Needle Shark.” Ms. Kemp testified that this was not the mark she had requested and was of no use to SMTMT, as she had hired Respondent to file applications for both a logo and the word mark “Sharps Needle Shark.” There is no evidence Respondent filed trademark applications for the marks Ms. Kemp requested.

On [REDACTED], USPTO issued a non-final rejection of the pending Needle Shark patent application with a deadline to respond by [REDACTED], or [REDACTED], if an extension were granted. Although Ms. Kemp had understood when she hired Respondent that it would take just a few weeks to prepare the Needle Shark patent applications, Respondent had not yet filed a power of attorney or any other documents in the patent matter. Ms. Kemp testified that SMTMT already had extensive CAD drawings for the invention, but Respondent had told her “that those drawings were crap and that [Respondent] needed to hire a CAD drawer and have her own drawings.” So, on February 15, 2019, SMTMT paid Respondent an advance of \$5,000 to obtain new CAD drawings.

⁷ An assignment is a transfer of the owner’s rights in a trademark. See 37 C.F.R. § 3.1; Mary Moreno, *One of These Things Is Not Like the Others: Concurrent Use, Assignment, and Licensing of Trademarks*, 19 J. CONTEMP. LEGAL ISSUES 194, 195 (2006). A license is an agreement giving permission to use a trademark without transferring actual ownership. See id. USPTO guidance expressly cites license agreements as a type of instrument that may be recorded in trademark matters to give third parties notice of equitable interests or other matters relevant to a mark. See TMEP § 503.02 (Oct. 2018).

On February 28, 2019, Ms. Kemp emailed Respondent requesting an update on the Needle Shark patent matter. Respondent replied, “I have a have [sic] been working on the application. We will have this all done in a couple weeks. ... We have sufficient novelty to proceed with the new applications. We will have a draft and drawings next week and claim priority to the application that is pending.”

On April 21, 2019, Respondent sent Ms. Kemp a text message stating, “I will be working on this all next week.” Ms. Kemp testified that Respondent was referring to Needle Shark and that she still had not substituted in as attorney of record.

On April 29, 2019, Respondent emailed Ms. Kemp that she would be “looking at the drawings tonight” and wanted to “work with what we have” to file an application the following day. Ms. Kemp testified that “what we have” referred to existing CAD drawings she had uploaded to a Dropbox for Respondent because Respondent kept misplacing documents and requesting copies of the same things over and over.

Respondent copied her April 29 email to Ron Spoerl, who owned 50% of SMTMT at the time, and wrote: “Ron needs to show me his inventive features ... I believe that the rule that does not distinguish the amount of inventive concept is a planned loophole for investors and to allow for negotiation with minor inventors who make capital contributions.” This advice was misleading, as inventorship is determined by sharing in the conception of an invention, not by financial contributions, see Manual of Patent Examining Procedures (“MPEP”) § 2137.01(II) (9th ed. Rev.08.2017, Jan. 2018) (“Unless a person contributes to the conception of the invention, he is not an inventor.”) (citing Federal Circuit caselaw), and Ms. Kemp testified that Mr. Spoerl had not contributed to the conception of the invention.

On May 2, 2019, Respondent emailed Ms. Kemp that she was planning to file applications the next week and had called in a favor with another client to reverse engineer a 3D CAD model from SMTMT’s existing drawings. The same day, Ms. Kemp replied that she had not been consulted on this plan and that, for various reasons, “you can’t continue to remain our attorney.” At hearing, Ms. Kemp indicated that she and the corporate attorneys working with her had lost confidence in Respondent due to Respondent’s inaction and excuses. Ultimately, they re-engaged the attorney who had originally filed the Needle Shark patent application to help them submit a timely response to the [REDACTED] 2019 non-final rejection, and thereafter hired a new patent attorney.

IV. Respondent’s Actions After Termination of the Kemp Representations

Although Ms. Kemp’s May 2, 2019, email terminating Respondent pertained specifically to SMTMT and the Needle Shark matter, her relationship with Respondent had deteriorated to the point that Respondent stopped representing her and her other companies in any matters, including the [REDACTED] application Respondent had been handling for Ms. Kemp and Pro1Tek. By June 11, 2019, Ms. Kemp had requested copies of all her files. However, Respondent never filed a notice of withdrawal in the [REDACTED] application and remained attorney of record with USPTO until Ms. Kemp’s new lawyer entered a power of attorney in September 2019.

Failure to Notify Client of Office Actions and Fabrication of Client Notices. On [REDACTED] 2019, USPTO issued an Office Action (a non-final rejection) in the [REDACTED] application with a response deadline of [REDACTED] 2019, or [REDACTED] 2019, with an extension. On [REDACTED] 2019, USPTO issued a Notice of Publication in the [REDACTED] application, though Ms. Kemp testified she had not intended it to be published, as the disclosure impacted her foreign rights. USPTO sent the Office Action and Notice of Publication to Respondent's correspondence address because she was still the attorney of record. Ms. Kemp testified that Respondent never sent her a copy of these documents and that she did not learn of their existence until her new patent attorney informed her of them months later.

During the disciplinary investigation in this matter, Respondent provided OED with PDF and Outlook files of email messages dated June 10, 2019, and June 11, 2019, purportedly notifying Ms. Kemp of the [REDACTED] Office Action and the deadline to respond. However, the header displayed at the top of the June 11 email indicated it was sent *to* Respondent *from* Ms. Kemp, instead of *from* Respondent *to* Ms. Kemp. Because of this and other irregularities in the documentation Respondent had produced, OED hired Bobby R. Williams, Jr., a data scientist with a concentration in digital forensics, to analyze the PDF and Outlook files and provide an expert opinion. After using forensic tools to extract metadata from the files, Mr. Williams found that the two Outlook items had actually been created in 2020, not the dates displayed on the face of the documents, and had almost certainly never been sent, as they contained none of the essential metadata such as a sender, recipient, or sent and received date to show they had been routed to a recipient's mailbox. He explained that these files could have been created as draft messages or scheduled messages that were never actually sent.⁸

Respondent has produced two other documents purporting to notify Ms. Kemp of the [REDACTED] Office Action. One is another email dated June 10, 2019 ("the second June 10 email"), and the other is a purported transition memorandum dated June 4, 2019. However, Ms. Kemp testified that she did not receive and had never seen either of these documents until Respondent produced them during subsequent litigation and during a disciplinary investigation by the Wisconsin Office of Lawyer Regulation ("OLR"), with whom she filed a grievance against Respondent.

Failure to Return Client Files. Ms. Kemp testified that, after terminating Respondent's representation, she requested complete copies of all the files for each of her companies and for herself personally, but Respondent never produced them, despite a court order requiring her to do so in related outside litigation.

On May 2, 2019, in reply to Ms. Kemp's email terminating her representation of SMTMT in the Needle Shark matter, Respondent attempted to justify some of her actions and told Ms. Kemp that she expected "a response acknowledging you are mistaken in you[r] allegations." But Respondent also promised to immediately transition the file to Ms. Kemp with an invoice and final accounting. She did not do so.

⁸ In her post-hearing brief, Respondent claims that the expert report also "contains an email exchange ... in which Ms. Kemp acknowledges receiving a copy of her entire electronic file at the conclusion of the representation" and shows that "Ms. Kemp responded to some email she claimed she did no receive [sic]." It does not.

On June 11, 2019, Respondent emailed Ms. Kemp that she would send “a Transition Memorandum with attachments via email” instead of sending documents on a flash drive, and Ms. Kemp asked her not to commingle information for her different companies. Respondent never transmitted files to Ms. Kemp in the manner indicated in the email. She did produce to OED a PDF of a purported transition memorandum dated June 4, 2019, referencing matters related to both SMTMT and Pro1Tek, but Ms. Kemp testified she never received this document from Respondent. Rather, the first time she saw it was when Respondent produced it during a separate lawsuit Ms. Kemp had filed against her in Wisconsin state court.

In addition, the second June 10 email states that Respondent is transmitting the SMTMT casefile in three ZIP files. However, Ms. Kemp testified she never received the referenced ZIP files, and the first time she saw this email was when it was sent to her by the Wisconsin OLR.

Discrepant Billing Records. On June 7, 2019, Ms. Kemp asked Respondent to send her a copy of billings and payments for SMTMT. Respondent replied that the final balance due for the six-month period from January 1 to May 30, 2019, was \$10,105, and that she was sending the final invoice. Later, Respondent produced two other documents each purporting to be the final invoice for the same time period, both of which were addressed to Mr. Spoerl instead of Ms. Kemp. These invoices are dated July 30, 2018, and May 31, 2019, and show final balances of \$10,830 and \$5,830, respectively. Respondent has not provided any explanation for the duplicate invoices or for the discrepancies between them.

V. Disciplinary Investigation

On September 19, 2019, Ms. Kemp, on behalf of herself and the companies with which she is associated, filed a grievance against Respondent with OED. In the grievance and subsequent correspondence with OED, Ms. Kemp alleged, among many other things, that Respondent had taken advance payments for work she never completed and had overbilled for matters that were not as complicated as she made them seem.

After receiving the grievance, OED investigating attorney Kimberly Weinreich sent Respondent several Requests for Information and Evidence under 37 C.F.R. § 11.22(f) (“RFIs”). On May 6, 2020, Respondent transmitted to OED a document intended to serve as a combined response to the RFIs and to questioning from the Wisconsin OLR, with whom Ms. Kemp had also filed a grievance. The response denied wrongdoing and referenced various exhibits that were not attached. Respondent never provided clearly labeled exhibits, but in June 2020, she uploaded to OED’s file sharing system a collection of nested ZIP folders containing documents relevant to the investigation. Ms. Weinreich testified that the folders were very disorganized, containing duplicate files, empty folders, and labels that did not match their contents, and it took her about a month to go through the submission and connect the documents to Respondent’s RFI response.

On December 17, 2020, OED received Ms. Braun’s grievance concerning the Garczynski representation. Thereafter, Ms. Weinreich sent Respondent a separate RFI relating to this grievance. On August 24, 2021, Respondent transmitted a response denying wrongdoing. She

told Ms. Weinreich that she was being treated for Lyme's disease and would upload supporting exhibits later, but she never did.

At the close of her investigation, Ms. Weinreich concluded that Respondent had violated multiple ethical rules and recommended that the USPTO Committee on Discipline find probable cause to bring charges against Respondent.

DISCUSSION

The *Complaint* consists of three Counts alleging that Respondent violated multiple USPTO Rules of Professional Conduct during her representation of Mr. Garczynski (Count I), Elizabeth Kemp and Pro1Tek (Count II), and SMTMT (Count III).

On summary judgment, the Tribunal found six violations of the USPTO Rules of Professional Conduct. Two violations stemmed from Respondent's improper handling of advance payments and commingling of client funds. The Tribunal found that Respondent violated 37 C.F.R. § 11.115(c), which requires a practitioner to deposit advance fees and expenses into a client trust account to be withdrawn only as earned or incurred, by failing to place advance payments received from Mr. Garczynski and Ms. Kemp into a trust account. The Tribunal also found that Respondent violated § 11.115(a), which requires a practitioner to hold clients' property separate from the practitioner's own property, by depositing Ms. Kemp's December 4, 2017, advance payment into an account holding Respondent's own funds.⁹ The Tribunal also found violations of §§ 11.101 (incompetence), 11.104(a)(3) and (b) (inadequate client communications), and 11.116(d) (failure to protect a client's interests upon termination).

The OED Director now alleges additional violations of §§ 11.101, 11.104(a)(3) and (b), and 11.116(d), as well as violations of §§ 11.102 (failure to abide by the client's decisions); 11.103 (lack of diligence); 11.105(b) (failure to properly communicate the basis of fees); 11.303(a)(1) (lack of candor toward a tribunal); 11.804(c) (dishonesty); and 11.804(d) (conduct prejudicial to the administration of justice).¹⁰ Respondent did not appear at the hearing to offer any testimony or evidence, but she submitted a post-hearing brief disputing some of the OED Director's allegations.¹¹

⁹ Respondent's post-hearing brief repeats arguments she previously raised concerning the § 11.115(a) and (c) violations, but the Tribunal has already addressed these arguments and found by clear and convincing evidence that the violations occurred. Respondent has provided no reason to revisit those findings.

¹⁰ The *Complaint* also charged a violation of § 11.104(a)(2), but the OED Director is no longer pursuing this charge.

¹¹ Respondent's brief also raises general challenges to this proceeding on procedural grounds, but these arguments are unsupported and lack merit. First, she argues that the OED Director failed to comply with the certain pre-filing procedural requirements, including those set forth in 5 U.S.C. § 558(c) and 37 C.F.R. § 11.32. She argues that the *Complaint* contains allegations unrelated to the matters investigated by OED, but Ms. Weinreich's testimony and the RFIs prove this argument wrong. The RFIs also show that Respondent was given the requisite notice and procedure mandated under 5 U.S.C. § 558(c), contrary to Respondent's arguments. See *Moatz v. Bender*, Proceeding No. D00-01, at 9-11 (USPTO Sept. 30, 2003) (describing application of § 558(c) in USPTO disciplinary proceedings and finding that RFIs provide requisite opportunity to demonstrate compliance under the statute). Ms. Weinreich testified as to the pre-filing procedure she followed, which included submitting recommendations to the USPTO Committee on Discipline, who then issued findings of probable cause in accordance with 37 C.F.R. § 11.32. There is no evidence the OED Director failed to satisfy any pre-filing procedural requirements. Respondent also suggests

After considering the parties' evidence and arguments and the entire record, the Tribunal finds by clear and convincing evidence that Respondent violated the USPTO Rules of Professional Conduct as set forth below.¹²

I. Violations of 37 C.F.R. § 11.101

The USPTO Rules of Professional Conduct require a practitioner to “provide competent representation” to her clients. 37 C.F.R. § 11.101. Competent representation “requires the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Id.

The Tribunal has already found, on summary judgment, that Respondent violated her duty to provide competent representation to Mr. Garczynski when she repeatedly gave him inaccurate information about the status of his patent matter by falsely advising that she had filed a patent application or applications on his behalf and that it was safe for him to publish his invention to the Internet, which imperiled his intellectual property rights.

The OED Director now argues that Respondent violated § 11.101 in two additional ways. First, the OED Director asserts that Respondent violated § 11.101 by signing or allowing someone else to sign an inventor's declaration on Ms. Kemp's behalf in the [REDACTED] application instead of having Ms. Kemp sign the declaration herself. USPTO rules require all patent applications to be accompanied by an oath or declaration personally executed by the inventor. See 37 C.F.R. § 1.63 (requiring each inventor named on a patent application to execute an oath or declaration); MPEP § 602.08(b) (9th ed. Rev.08.2017, Jan. 2018) (stating that electronically filed applications must contain an oath or declaration “personally signed by the inventor” and that “[o]nly inventors can execute” the oath or declaration). Nonetheless, Ms. Kemp testified that she did not sign the version of the declaration uploaded by Respondent's firm when the [REDACTED] application was filed, meaning that either Respondent or someone acting under her direction typed Ms. Kemp's signature onto the declaration instead.

In her post-hearing brief, Respondent alleges that “the investigative file includes transmittal correspondence to Ms Kemp and from Paralegal Natasha Sansone” that refutes the charged violation. However, Respondent has not submitted any supporting evidence, and counsel for the OED Director states in his response brief that he is unaware of any such evidence. Ms. Kemp's testimony provides clear and convincing evidence that Respondent allowed the [REDACTED] application to be filed with an improperly executed inventor's declaration. By allowing this impropriety, Respondent breached her duty to provide competent legal representation to Ms. Kemp. Cf. Disciplinary Counsel v. Moore, 75 N.E.3d 1252, 1253-54

that investigations by OED, the Wisconsin OLR, and the Illinois disciplinary authorities have produced no adverse findings against her. She claims to attach to her post-hearing brief an exhibit providing “a thorough record of all matters investigated by OLR and OED.” However, she did not submit any exhibits with her brief. The Tribunal has no information on the disciplinary proceedings in Wisconsin and Illinois, but the outcomes are not determinative here, and Respondent's claims regarding the OED investigation are plainly inaccurate.

¹² The Tribunal has considered all issues raised and all documentary and testimonial evidence both in the record and presented at hearing. Those issues not discussed herein are not addressed because the Tribunal finds that they lack materiality or importance to the decision.

(Ohio 2017) (publicly reprimanding attorney for making a false statement to a tribunal when attorney forged client's signature on an affidavit, even though client had consented).

The OED Director charges Respondent with further violating § 11.101 by providing inaccurate legal information to Ms. Kemp and SMTMT on several occasions. The record supports this charge.

First, in her October 24, 2018, engagement letter to SMTMT, Respondent represented that she would file a CIP claiming priority to a pending patent application filed May 20, 2016, which itself claimed priority to an application filed [REDACTED]. But in fact, the applications in question had been filed on [REDACTED]. As attorney Braun explained at hearing, application filing dates trigger important deadlines, such as the deadlines to claim priority and to file for international patent protection under the Patent Cooperation Treaty ("PCT"). A competent practitioner would not misstate or miscalculate them.

Respondent also wrongly advised Ms. Kemp and SMTMT in a November 5, 2018, email that "USPTO procedures do not allow trademark owners to file licenses." In fact, USPTO does record trademark license agreements. See TMEP § 503.02 (Oct. 2018).

Further, Respondent provided misleading legal advice by suggesting in an April 29, 2019, email that a "planned loophole" in the law would permit investor Ronald Spoerl to claim joint inventorship in Needle Shark based on his financial contributions. But he had not contributed ideas to the invention, and USPTO guidance clearly states that a person is not an inventor unless he shares in the conception of the invention. See MPEP § 2137.01(II) (9th ed. Rev.08.2017, Jan. 2018).

By giving Ms. Kemp and SMTMT materially inaccurate and misleading legal advice, Respondent violated her duty to provide them with competent representation.

II. Violations of 37 C.F.R. § 11.102

The USPTO Rules of Professional Conduct provide that a practitioner "shall abide by a client's decisions concerning the objectives of representation." 37 C.F.R. § 11.102(a). A practitioner violates this rule when she fails to follow a client's "instructions regarding the course of action of the litigation." Att'y Grievance Comm'n of Md. v. Powers, 164 A.3d 138, 151 (Md. 2017); see also In re Disciplinary Proceedings Against Mross, 830 N.W.2d 640, 646 (Wis. 2013) (finding violation of ethics rules when attorney consulted with clients about objectives of representation, but "failed to carry out the planned objectives").

Clear and convincing evidence shows that Respondent violated § 11.102 in the three ways alleged by the OED Director.

First, she failed to abide by Mr. Garczynski's decisions concerning the objectives of the representation because she did not file a patent application for his invention as he had hired her to do. In her post-hearing brief, Respondent alleges that Mr. Garczynski affirmatively chose to defer filing an application and to instead rely on the grace period for public disclosures to protect

his invention after he published it to a website on December 30, 2019. These allegations are bereft of evidentiary support. In addition, if Respondent truly believed her client had chosen not to file an application, she would not have repeatedly assured both him and his new attorney, as late as November 2020, that she had filed an application on his behalf. It is clear that Mr. Garczynski hired her to file a patent application to protect his invention. She did not do so. This violated § 11.102.

Respondent violated § 11.102 in a second instance when she did not file a CIP application for the Needle Shark invention on behalf of SMTMT despite being hired to do so. Respondent's October 24, 2018, engagement letter to Ms. Kemp indicated that the CIP could be completed within a few weeks. Mrs. Kemp paid \$5,000 in February 2019 for Respondent to obtain new CAD drawings she claimed were needed, and over the next two months, Respondent repeatedly promised her client she would be filing something very soon. Yet she had not obtained new drawings or filed the CIP by the time Ms. Kemp terminated the representation on May 2, 2019, in significant part due to Respondent's failure to complete the work she had been hired to perform.

Finally, Respondent also failed to abide by Ms. Kemp's instructions to file a trademark application for the word mark "Sharps Needle Shark," instead filing an application for the wrong verbiage.¹³ This conduct also violated § 11.102.

III. Violations of 37 C.F.R. § 11.103

The USPTO Rules of Professional Conduct require practitioners to "act with reasonable diligence and promptness in representing a client." 37 C.F.R. § 11.103.

Respondent violated this provision when she neglected to prepare, file, and prosecute a patent application for Mr. Garczynski's invention. He hired her to do so on late 2019 and informed her that he had publicly disclosed his invention on December 30, 2019, thereby triggering the running of a one-year grace period to file for U.S. patent protection before losing that right forever. But as of late November 2020, Respondent still had not filed an application for her client, leading him to engage Ms. Braun, who had to work with an assistant over a weekend to submit a filing by the date Respondent had led them to believe her provisional filing would expire. Respondent's neglectful conduct with respect to Mr. Garczynski's patent matter fell far short of the diligence and promptness required under § 11.103.

Likewise, Respondent violated § 11.103 when she neglected to prepare and file a CIP application for SMTMT in the Needle Shark matter over the course of several months, despite representing that it would only take a few weeks to do so and repeatedly assuring Ms. Kemp that she was working on the patent matter and planned to submit a filing imminently. As of May 2019, despite receiving an advance several months earlier, Respondent still had not prepared any patent filings for her client. Thus, she failed to represent SMTMT with the diligence and promptness required under § 11.103.

¹³ Respondent's post-hearing brief suggests, without offering any evidence or citation to the record, that an engagement letter exists which shows she did not file for the wrong mark. However, the record contains no such letter.

IV. Violations of 37 C.F.R. § 11.104(a)(3) and (b)

The USPTO Rules of Professional Conduct set forth guidelines a practitioner must follow when communicating with a client in a matter before the Office. One fundamental requirement is that the practitioner must “[k]eep the client reasonably informed about the status of the matter.” 37 C.F.R. § 11.104(a)(3). The practitioner also must explain matters “to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” *Id.* § 11.104(b).

On summary judgment, the Tribunal found that Respondent violated these duties by repeatedly telling Mr. Garczynski that she had filed a patent application for his invention when she had not, thereby failing to keep him reasonably informed and depriving him of the ability to make informed decisions about how to proceed in the representation.

The OED Director now asserts that Respondent violated the same provisions by neglecting to tell Ms. Kemp about the [REDACTED] Office Action and the [REDACTED], Notice of Publication issued in the [REDACTED] application.

As a threshold matter, though Respondent’s attorney-client relationship with Ms. Kemp and Pro1Tek ended around the time the Office Action and Notice of Publication issued, Respondent was the person who received these documents from USPTO on behalf of Ms. Kemp and Pro1Tek, as she had not filed a withdrawal of appearance with the Office and remained attorney of record in the [REDACTED] application until September 2019. The Office Action and Notice of Publication were important communications from USPTO; Ms. Kemp needed to know about the Office Action so she could respond in a timely manner to prevent her patent application from going abandoned, and the Notice of Publication significantly impacted her international filing rights. Under the circumstances, Respondent had a duty to notify Ms. Kemp and Pro1Tek of these documents.

However, Ms. Kemp testified she did not learn of the Office Action or Notice of Publication until she retained new counsel months later. The record supports her testimony. There is no evidence Respondent ever forwarded the Notice of Publication. As for the [REDACTED] Office Action, one of the sanctions the Tribunal imposed on Respondent on June 10, 2022, due to her failure to cooperate in discovery was to draw a negative inference, “rebuttable only by evidence proving otherwise,” that she did not actually notify her client of the Office Action; the evidence does not rebut this inference. The record contains four documents purporting to show that Respondent notified her client of the Office Action. These documents were produced by Respondent in various forms during the OED investigation, an investigation by the Wisconsin OLR, and a related litigation in Wisconsin state court, and consist of a transition memorandum dated June 4, 2019; two emails dated June 10, 2019; and an email dated June 11, 2019. However, Ms. Kemp testified Respondent never sent her this correspondence. Digital forensic expert Bobby Williams was able to examine the metadata for the June 11 email, which contains indicia of fabrication on its face, and for one of the June 10 emails, and determined that both were created in 2020 and neither were actually sent to Ms. Kemp. His expert report and testimony clearly and convincingly establish that Respondent fabricated these two emails during the OED disciplinary investigation. In light of Respondent’s fabrication of the June 10 and 11

emails, as well as her refusal to provide the expert witness with limited access to her email account to collect further relevant data during discovery in this matter, the Tribunal credits Ms. Kemp's testimony that Respondent did not actually send the emails or memo and never notified her of the May 6 Office Action. This conduct violated § 11.104(a)(3) and (b).

V. Violation of 37 C.F.R. § 11.105(b)

The USPTO Rules of Professional Conduct require a practitioner to communicate to her clients the basis or rate of the fees and expenses for which the client will be responsible. 37 C.F.R. § 11.105(b). Respondent violated this provision as charged by the OED Director when she told Ms. Kemp that SMTMT's final balance for work performed during the first half of 2019 was \$10,105, then prepared at least two "final invoices" that listed different balances altogether. There is no evidence Respondent ever explained the discrepancy to her client or clarified the amount for which she believed SMTMT was responsible.

VI. Violations of 37 C.F.R. § 11.116(d)

The USPTO Rules of Professional Conduct require a practitioner to "take steps to the extent reasonably practicable to protect a client's interests" upon termination of representation. 37 C.F.R. § 11.116(d). Such steps include "surrendering papers and property to which the client is entitled." Id.

On summary judgment, the Tribunal found a violation of § 11.116(d) based on Respondent's admission, in connection with Count II of the *Complaint* (pertaining to her representation of Ms. Kemp and Pro1Tek), that she did not forward all of Ms. Kemp's files after their client-practitioner relationship ended. The Tribunal deemed this allegation admitted based on Respondent's failure to clearly admit or deny it in her *Answer*, despite being given an opportunity to clarify her position.

The OED Director now seeks a further finding that Respondent violated § 11.116(d) as charged in Count III based on her failure to provide Ms. Kemp with a complete copy of the file for SMTMT after termination of representation. The record shows that Respondent did not forward a complete copy of *any* files to Ms. Kemp after she stopped representing Ms. Kemp and her companies, despite repeatedly assuring Ms. Kemp that she would send files or documents in various formats. As explained on summary judgment, the files related to Ms. Kemp and her companies' patent applications constituted papers to which she was entitled upon termination of the representation. Accordingly, Respondent failed to protect her clients' interests as required under § 11.116(d) by failing to produce a complete copy of these files.

VII. Alleged Violation of 37 C.F.R. § 11.303(a)(1)

The Rules of Professional Conduct mandate that a practitioner "shall not knowingly ... [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the practitioner." 37 C.F.R. § 11.303(a)(1). USPTO is considered a tribunal for purposes of this rule. See 37 C.F.R. § 11.1 (defining "tribunal" to include the Office).

The OED Director alleges that Respondent violated § 11.303(a)(1) by signing or allowing another to sign Ms. Kemp's name on the declaration filed with USPTO in the [REDACTED] application, arguing that Respondent knew or should have known that USPTO rules require inventors to personally enter the keystrokes comprising their electronic signatures. In support, the OED Director cites In re Vieira, Proceeding No. D2020-31, at 8-9 (USPTO Apr. 20, 2021),¹⁴ wherein a practitioner was found to have violated § 11.303(a)(1) by knowingly applying his clients' signatures to power of attorney forms he filed with USPTO, and In re Sweeney, Proceeding No. D2019-33, at 3-5 (USPTO June 19, 2019), wherein a practitioner was found to have violated § 11.303(a)(1) by filing trademark applications that were not personally signed by the applicants.

The decisions cited by the OED Director carry limited precedential value because neither is a decision on the merits. The Vieira opinion is a decision on default judgment, and the Sweeney order sets forth an agreed settlement.

Also, the facts are distinguishable in some respects from the instant case. Sweeney involved signatures in trademark matters, which are subject to a set of very specific rules governing electronic filings and signature methods, signaling to practitioners the importance of following the procedures precisely. See generally In re Shia, Proceeding No. D2014-31, at 2-5 (USPTO Mar. 4, 2016) (describing trademark filing regulations, the Trademark Electronic Application System ("TEAS"), and methods for signing TEAS filings). By contrast, the alleged § 11.303(a)(1) violation in this case involves a signature on a patent filing, which is not subject to such detailed and particular rules.

Moreover, in both cases cited by the OED Director, the practitioner had actual knowledge that clients had not personally entered their own signatures. In Vieira, the practitioner expressly told his clients, who had asked whether they needed to sign certain documents, that "no physical signatures are necessary because ... I can do an electronic signature on your behalf." Vieira, *supra*, at 4. And in Sweeney, the attorney stipulated that she had allowed an electronic document preparation system to automatically fill in her clients' signatures because she did not adequately understand the USPTO trademark signature rules. Sweeney, *supra*, at 3-4.

By contrast, in this case, it is unclear whether Respondent knew that Ms. Kemp had not entered her own signature on the declaration in the [REDACTED] application, as the application appears to have been filed by her assistant Natasha Sansone, and Respondent would have had no reason to question the authenticity of the electronic signature until Ms. Kemp raised the issue after filing a grievance. In a similar case involving the forgery of a client's signature on a filing, the Court of Appeals of Maryland found that the evidence did not establish an attorney had made a false statement to a tribunal or engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation when the signature had been entered by the attorney's paralegal, and the attorney was not aware of the forgery until the client filed a complaint. See Att'y Grievance Comm'n of Md. v. Neverdon, 251 A.3d 1157, 1193-94 (Md. 2021). Likewise, in this case, though the Tribunal has found that Respondent violated her duty of competence by allowing a filing to be submitted with an improper signature, the evidence does not clearly and convincingly establish that her conduct was "knowing" within the meaning of § 11.303(a)(1). See ABA, STANDARDS FOR IMPOSING LAWYER SANCTIONS (1992) ("ABA Standards") (defining

¹⁴ All USPTO disciplinary decisions cited herein are available online at <https://foiadocuments.uspto.gov/oed/>.

“knowledge” as requiring “conscious awareness of the nature or attendant circumstances of the conduct”). Accordingly, the Tribunal declines to find a violation of this provision.

VIII. Violations of 37 C.F.R. § 11.804(c)

The USPTO Rules of Professional Conduct prohibit a practitioner from engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation.” 37 C.F.R. § 11.804(c). Dishonest conduct is characterized by a lack of truth, honesty, straightforwardness, or trustworthiness. *In re Lane*, Proceeding No. D2013-07, at 14 (USPTO Mar. 11, 2014) (citing Merriam-Webster definition); see also *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990). “Deceit” encompasses “dishonest behavior” and “behavior that is meant to fool or trick someone.” *Lane*, *supra*, at 14 (citing Merriam-Webster definition). Misrepresentation constitutes “[t]he act of making a false or misleading assertion about something, usu[ally] with the intent to deceive.” *Id.* (citing Black’s Law Dictionary).

In this case, clear and convincing evidence shows that Respondent violated § 11.804(c) in at least three different ways.¹⁵

First, Respondent repeatedly misrepresented the status of Mr. Garczynski’s patent matter and lied to both Mr. Garczynski and successor counsel, Ms. Braun, about whether she had filed a patent application. On February 12, 2020, after Mr. Garczynski noted he had not been charged a filing fee and requested documentation of filing, Respondent fired off three emails in rapid succession providing specific, false filing dates, and falsely representing that a fee had been charged to her own credit card. She sent a fabricated “Acknowledgement Receipt” and reiterated the false filing dates about forty minutes later. Later, between November 14 and 19, 2020, before Respondent knew Mr. Garczynski was talking to another attorney, she sent him confusing emails indicating further work was needed to “convert the application to non-provisional status,” when in fact she must have known the work was needed because she had not filed an application at all.

After attorney Braun joined the case and requested filing receipts, Respondent admitted for the first time that she had not filed a provisional application, but continued to falsely insist she had filed a non-provisional application. She provided varying, dubious explanations for her failure to produce supporting documentation, including by falsely stating that USPTO did not provide receipts without a filing fee, by claiming that the application could not be pulled up on USPTO’s system because she had uploaded information incorrectly on the IDS, and by blaming a contractor for uploading the incorrect information. When pressed, she eventually admitted she

¹⁵ The OED Director argues Respondent violated § 11.804(c) in a fourth instance by causing the [REDACTED] application to be filed with an improperly signed declaration. However, sanctionable dishonesty or misrepresentation generally requires an intent to deceive. *In re Swayze*, Proceeding No. D2019-44, at 19 (USPTO Aug. 24, 2023) (citing *In re Achterhof*, Proceeding No. D2017-24, at 15 (USPTO Dec. 11, 2018) (finding that a misrepresentation based on a sincere yet mistaken belief does not violate § 11.804(c)), and *In re Piccone*, Proceeding No. D2015-06, at 48 (USPTO June 16, 2016) (finding no violation of § 11.804(c) in absence of evidence that practitioner’s conduct in making misrepresentation was anything more than negligent)). For the reasons discussed above in connection with § 11.303(a)(1), it is not clear that Respondent had the intent to deceive the Office because the evidence does not clearly and convincingly show whether she knew the signature had been entered by someone other than Ms. Kemp. Accordingly, the Tribunal declines to find a violation of § 11.804(c) with respect to the improperly signed declaration.

had no documentation of the purported [REDACTED] 2019, priority date and told Ms. Braun to proceed as if no applications had been filed. In sum, Respondent made many misrepresentations to both her client and successor counsel with the intent of concealing her failure to file a patent application as she had been hired to do. This conduct was dishonest, deceitful, and violated § 11.804(c).

Respondent's fabrication of the "Acknowledgement Receipt" that she sent Mr. Garczynski on February 12, 2020, also violated § 11.804(c). Initially, in her *Answer* to the *Complaint*, Respondent blamed a contractor for the fake receipt, stating she "was unaware that the acknowledgement receipt provided by Mr. Kumar was fabricated or invalid until successor counsel alerted" her. In her post-hearing brief, Respondent now claims the "Acknowledgement Receipt" was a sample receipt that she sent Mr. Garczynski to remind him he had not paid filing fees. This current story is inconsistent with Respondent's prior allegations, is unsupported by any testimony or evidence, and is undermined by her express representations to Mr. Garczynski, both on February 12, 2020, and on multiple other occasions, that she had, in fact, filed an application on the date listed at the top of the fake "Acknowledgement Receipt." The record shows that Respondent fabricated this document to mislead her client into believing she had performed the work she had been hired to do, which was dishonest and deceitful and violated § 11.804(c).

Finally, Respondent also violated § 11.804(c) by fabricating documents in an attempt to conceal her failure to notify Ms. Kemp of the [REDACTED] 2019, Office Action in the [REDACTED] application. As discussed above, Respondent produced three emails and a memorandum purporting to notify Ms. Kemp in [REDACTED] 2019 of the Office Action and the deadline to respond, but Ms. Kemp did not receive any of these documents from Respondent and did not learn about the Office Action until months later from successor counsel. Notably, metadata extracted from two of the emails demonstrates that they were created in 2020 and were never actually sent. Taken as a whole, the evidence in this case clearly and convincingly establishes that Respondent engaged in dishonest and deceitful conduct by fabricating client correspondence to create the false impression she had informed Ms. Kemp of the May 6 Office Action.

IX. Violation of 37 C.F.R. § 11.804(d)

The USPTO Rules of Professional Conduct proscribe conduct that is "prejudicial to the administration of justice." 37 C.F.R. § 11.804(d). An attorney is considered to have engaged in such conduct when his behavior negatively impacts the public's perception of the courts or legal profession or undermines public confidence in the efficacy of the legal system. See Att'y Grievance Comm'n v. Rand, 981 A.2d 1234, 1242 (Md. 2009); In re Pasquine, Proceeding No. D2019-39, p.18 (USPTO Aug. 13, 2021).

In this case, Respondent engaged in conduct prejudicial to the administration of justice as charged by the OED Director, thereby violating § 11.804(d), when she allowed her firm to file with USPTO an inventor's declaration in a patent application in which the inventor's signature had been entered by someone other than the inventor. See Shia, supra, at 35-36 (finding that forgery of trademark applicants' signatures on documents filed with USPTO amounted to conduct prejudicial to the administration of justice).

SANCTIONS

The OED Director argues that exclusion from practice before USPTO is the appropriate sanction for Respondent's misconduct.

In determining sanctions, USPTO regulations require the Tribunal to consider the following four factors: (1) whether the practitioner has violated a duty owed to a client, the public, the legal system, or the profession; (2) whether the practitioner acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the misconduct; and (4) the existence of any aggravating or mitigating factors. 37 C.F.R. § 11.54(b). The Tribunal often looks to the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") for guidance when determining the proper length and severity of a sanction, or when determining whether aggravating or mitigating factors exist. See *In re Chae*, Proceeding No. D2013-01, p.4 (USPTO Oct. 21, 2013).

1. Violation of Duties Owed to a Client, the Public, the Legal System, or the Profession

Respondent violated numerous duties owed to her clients under the Rules of Professional Conduct, including her duty to provide them with competent and diligent representation under 37 C.F.R. §§ 11.101 and 11.103; to abide by their decisions and instructions under § 11.102; to keep them reasonably informed and explain matters adequately under § 11.104(a)(3) and (b); to communicate the basis of her fees under § 11.105(b); to hold advance payments in trust and keep client funds separate from her own under § 11.115(a) and (c); to protect the clients' interests upon termination under § 11.116(d); and to be honest toward her clients under § 11.804(c).

Respondent also violated her general fiduciary duty to her clients when she mishandled their funds under § 11.115. By placing an advance payment from Ms. Kemp into an account holding Respondent's own funds, Respondent committed what has been described as "the 'cardinal sin' of the legal profession," as the profession depends upon "scrupulous honesty by attorneys with other people's money," and the commingling of client funds with an attorney's own funds creates "an appearance of gross impropriety even if the transaction is otherwise benign." *In re Burmeister*, Proceeding No. D99-10, at 12 (USPTO Mar. 16, 2004) (quoting *Haimes v. Miss. Bar*, 601 So.2d 851, 854 (Miss. 1992)).

Respondent's dishonesty constituted a serious breach not only of her obligations to her clients, but also of the duty all attorneys owe to the public, the legal system, and the profession to maintain their personal integrity. "Honesty and integrity are chief among the virtues the public has a right to expect of lawyers." *In re Swayze*, Proceeding No. D2019-44, at 22 (USPTO Aug. 24, 2023) (quoting *In re Ruffenach*, 486 N.W.2d 387, 391 (Minn. 1992)). As an officer of the court and a representative of the judicial system, Respondent had a duty to maintain a high standard of personal integrity. See *In re Walpert*, Proceeding No. D2018-07, at 22 (USPTO June 14, 2019) (stating that attorneys bear duties of honesty and integrity, and excluding from practice an attorney who had engaged in misconduct that included falsifying client correspondence), *aff'd* (USPTO Jan. 19, 2021). She failed to meet this standard.

2. Whether Respondent Acted Intentionally, Knowingly, or Negligently

Respondent acted, at best, negligently when she allowed the [REDACTED] application to be filed by her firm with an improperly signed declaration and when she provided inaccurate and misleading legal advice to her clients.

Respondent acted knowingly when she failed to diligently represent Mr. Garczynski or SMTMT in their patent matters and failed to abide by their decisions concerning the objectives of the representations, as she knew what work she had been hired to perform, yet failed to do it. Respondent also engaged in conduct that was, at best, knowing when she failed to forward important USPTO correspondence to Ms. Kemp, failed to adequately explain her fees for the SMTMT representation, mishandled client funds under § 11.115, and failed to transfer Ms. Kemp's files after termination of the representation.

Respondent engaged in intentional misconduct—the highest level of culpability—when she repeatedly lied to Mr. Garczynski and Ms. Braun about the status of his patent matter and about whether she had filed an application to protect his invention; created and sent a fake “Acknowledgement Receipt” in an attempt to conceal her failure to file an application; and fabricated documents in an attempt to falsely show that she had notified Ms. Kemp of the May 6, 2019, Office Action.

3. Actual or Potential Injury

Respondent's misconduct in this case caused both actual and potential injury to her clients. Mr. Garczynski publicly disclosed his invention in reliance on Respondent's false representation that she had filed a patent application to protect it. Had he not followed up on the matter and retained Ms. Braun, he could have lost the benefit of patent protection forever due to Respondent's failure to perform the work for which he had hired and paid her, and due to her dishonest attempts to conceal this failure. On top of this potential harm, Mr. Garczynski suffered actual harm in that he had to find and pay a new attorney, Ms. Braun, who had to rush to finish the work Respondent had neglected to do.

Similarly, Ms. Kemp had to retain new attorneys to handle the Needle Shark patent matter after Respondent failed to timely complete the work she had been hired to do. With respect to the [REDACTED] application, Ms. Kemp suffered potential injury in that she could have lost her opportunity to respond to the May 6, 2019, Office Action due to Respondent's failure to forward it, had she not retained new counsel in a timely manner. At hearing, Ms. Kemp gave a prepared statement describing the “horror and endless nightmares” she feels Respondent has put her through and the toll it has taken on her to deal with Respondent's misconduct, as well as Respondent's alteration of documents and misrepresentations during the ensuing disciplinary proceedings and lawsuits Ms. Kemp has filed against Respondent.¹⁶ Though the OED Director

¹⁶ Ms. Kemp testified that she is pursuing lawsuits against Respondent in Wisconsin state court for defamation, failing to file a PCT application to obtain international patent protection for the [REDACTED] invention (the subject of the '136 application), and failing to perform work for SMTMT. Ms. Kemp testified that the loss of international market protection was the most devastating impact of Respondent's mismanagement of her patents. Ms. Kemp has also alleged, among other things, that Respondent “padded” her bills and retained money for projects

has not presented evidence quantifying an actual impact on Ms. Kemp's finances or intellectual property rights, it is clear that Respondent's wrongdoing, particularly her dishonesty, has caused Ms. Kemp significant distress and has required Ms. Kemp to expend considerable effort seeking recompense.

4. Aggravating and Mitigating Factors

The American Bar Association has promulgated a list of potential aggravating and mitigating factors to be considered when assessing disciplinary sanctions for attorneys. See ABA Standards §§ 9.22, 9.32. The OED Director argues that six aggravating factors warrant a severe sanction in this case: (1) a prior disciplinary offense; (2) a pattern of misconduct; (3) multiple violations; (4) bad faith obstruction of the disciplinary process; (5) refusal to acknowledge the wrongful nature of the misconduct; and (6) substantial experience in the practice of law.

The first aggravating factor is a prior disciplinary offense. See ABA Standards § 9.22(a). In 1999, Respondent was suspended for two years by the Supreme Court of Wisconsin for serious misconduct that included fraudulent billing, misappropriation of a vulnerable client's funds over which she had control, failure to exercise diligence, and dishonesty. Though the prior offense occurred long ago, it is an aggravating factor in light of its seriousness and the similarity to some of the misconduct at issue here.

Respondent's pattern of misconduct and multiple offenses in the instant matter are also aggravating factors. See ABA Standards § 9.22(c)-(d). Respondent violated eleven different provisions of the USPTO Rules of Professional Conduct in multiple ways during her representation of four clients. Notably, she engaged in a pattern of failing to diligently represent her clients' interests by neglecting to file the patent applications she had been hired to prepare in the Garczynski and SMTMT representations and neglecting to notify Ms. Kemp of important documents issued by USPTO in the '136 application. Most troublingly, Respondent also displayed a pattern of dishonest conduct in attempting to conceal her neglect of client matters.

Respondent has also engaged in "bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency." See ABA Standards § 9.22(e). In an October 28, 2022, order sanctioning Respondent for making false statements in this proceeding, the Tribunal summarized Respondent's conduct as follows:

Respondent has displayed a lack of candor and a pattern of dilatory conduct throughout these proceedings, beginning with her failure to comply with deadlines, cooperate in discovery, and prepare for hearing during the pretrial proceedings, and culminating in her repeated failure to follow through on promises to submit medical

she never completed; undertook the SMTMT representation despite having a conflict of interest; impermissibly shared intellectual property concerning Needle Shark with a competitor company; and fabricated defamatory lies about Ms. Kemp to intimidate her after the representation ended. Although the OED Director has not made these allegations the subject of this proceeding or submitted documentary evidence corroborating each allegation, they are in the record and uncontested by the existing evidence, and they help show how Respondent's established misconduct has affected Ms. Kemp.

records corroborating her various claims regarding an illness and hospitalization justifying continuance of the hearing.

The described behavior constitutes an aggravating factor in this matter. See, e.g., *In re Yelverton*, 105 A.3d 413, 429 (D.C. 2014) (finding aggravating factor where attorney filed frivolous motions during disciplinary proceedings); *People v. Barbieri*, 61 P.3d 488, 494-95 (Colo. OPDJ 2000) (finding that failure to comply with discovery orders constituted bad faith obstruction of disciplinary proceedings).

Respondent's refusal to acknowledge the wrongful nature of her conduct is also an aggravating factor in this matter. See ABA Standards § 9.22(g). For example, in her post-hearing brief, Respondent continues to assert the same arguments concerning the violations of 37 C.F.R. § 11.115 that the Tribunal already rejected on summary judgment. As another example, though the record contains an expert report and testimony clearly establishing that documents Respondent herself produced to OED are fabricated, Respondent declines to meaningfully address this evidence in her post-hearing brief, instead alleging, without support, that the associated charge of misconduct is based on suborned testimony. Further, the record contains several examples of Respondent prevaricating when she is caught in a misrepresentation, such by providing shifting explanations of what happened during the Garczynski representation and why she sent him an inauthentic "Acknowledgement Receipt," as well as her shifting explanations to this Tribunal as to why she could not attend the hearing in this matter.

A final aggravating factor is Respondent's substantial experience in the practice of law. See ABA Standards § 9.22(i). Respondent has been licensed as an attorney since 1984 and registered as a USPTO practitioner since 2004. Given her decades of experience, she should have known better than to conduct herself in the manner described herein.

Respondent has not identified, and the record does not reveal, any mitigating factors under ABA Standards § 9.32.

5. Conclusion

Respondent violated numerous ethical rules and obligations during her representations of Mr. Garczynski, Ms. Kemp, and Ms. Kemp's companies and during the ensuing disciplinary investigation. Most egregiously, she engaged in intentional dishonest and deceitful conduct by lying to Mr. Garczynski and successor counsel about the status of his patent matter, creating and sending him a fake "Acknowledgement Receipt" to conceal her failure to file his application, and fabricating client correspondence during the disciplinary investigation in an attempt to deceive OED into believing she had notified Ms. Kemp of an important Office Action.

Though the OED Director does not allege financial loss, Respondent's actions were harmful to her clients. In addition, several aggravating factors are present that warrant a severe sanction in this case, including Respondent's prior similar disciplinary offense, her obstruction of the disciplinary process, her refusal to acknowledge the wrongful nature of her conduct, and, most significantly, her pattern of dishonesty.

After considering all the foregoing, the Tribunal finds that Respondent's misconduct warrants exclusion from practice before USPTO.

ORDER

For the reasons set forth above, Respondent shall be **EXCLUDED** from practice before the U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters.¹⁷

So **ORDERED**,

ALEXANDER
FERNANDEZ-
PONS

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government
OU = Department of Housing and Urban
Development, Office of the Secretary
Date: 2024.04.29 13:38:19 -04'00'

Alexander Fernández-Pons
United States Administrative Law Judge

Notice of Required Actions by Respondent: Respondent is directed to refer to 37 C.F.R. § 11.58 regarding her responsibilities in the case of suspension or exclusion.

Notice of Appeal Rights: Within fourteen (14) days of the date of this initial decision, either party may appeal to the USPTO Director by filing a notice of appeal. 37 C.F.R. § 11.55(a). In the absence of an appeal, this decision will become the final decision of the USPTO Director pursuant to 37 C.F.R. § 11.54(d).

¹⁷ An excluded practitioner may apply for reinstatement no earlier than five years from the effective date of the exclusion. See 37 C.F.R. § 11.60(b). Eligibility is predicated upon full compliance with 37 C.F.R. § 11.58.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION AND ORDER**, issued by Alexander Fernández-Pons, Administrative Law Judge, in D2021-15, were sent to the following parties on this 29th day of April 2024, in the manner indicated:

VIA E-MAIL:

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A handwritten signature in blue ink that reads "Cinthia Matos". The signature is written in a cursive style and is positioned above a horizontal line.

Cinthia Matos, Docket Clerk
Office of Hearings and Appeals