

¹ The USPTO Code of Professional Responsibility applies to a practitioner conduct that occurred prior to May 3, 2013, while the USPTO Rules of Professional Conduct apply to a practitioner's conduct occurring on or after May 3, 2013.

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent's Affidavit of Resignation and to exclude Respondent on consent from the practice of patent, trademark, and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in his November 23, 2021 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.
2. He is aware that, pursuant to 37 C.F.R. § 11.22, the OED Director opened an investigation of allegations that he violated the USPTO Rules of Professional Conduct, namely: OED File No. [REDACTED]. The investigation delved into and obtained information, *inter alia*, about Respondent's guilty plea for Possession of Child Pornography in the Circuit Court For Anne Arundel County, Case Number: C-02-CR-19-002885, *State of Maryland v. David Patrick Kardian*.
3. He is aware that the OED Director is of the opinion based on this investigation that he violated the following provision of the USPTO Rules of Professional Conduct: 37 C.F.R. § 11.804(b) (It is professional misconduct for a practitioner to commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness or fitness as a practitioner in other respects).
4. Without admitting to violating any of the USPTO Rules of Professional Conduct investigated by the OED Director in OED File No. [REDACTED], he acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60 to practice before the USPTO in patent, trademark, and/or other non-patent matters, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that:
 - (a) the facts regarding him in OED File No. [REDACTED] are true, and

(b) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §11.804(b).

5. He has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of consenting to exclusion from practice before the USPTO in patent, trademark, and other non-patent matters.

6. He consents to being excluded from practice before the USPTO in patent, trademark, and other non-patent matters.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Accordingly, it is hereby ORDERED that:

1. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
2. Respondent shall be, and hereby is, excluded on consent from practice before the Office in patent, trademark, and other non-patent matters commencing on the date of this Final Order;
3. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <https://foiadocuments.uspto.gov/oed/>;
4. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns David Patrick Kardian, a registered patent attorney (Registration No. 73,311). The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Kardian's affidavit of resignation and ordered his exclusion on consent from practice before the Office in patent, trademark, and non-patent law.

Mr. Kardian voluntarily submitted his affidavit at a time when a disciplinary investigation was pending against him. The investigation concerned his guilty plea for Possession of Child Pornography in the Circuit Court For Anne Arundel County, Case Number: C-02-CR-19-002885, *State of Maryland v. David Patrick Kardian*. Mr. Kardian acknowledged that the OED Director was of the opinion that his conduct violated 37 C.F.R. § 11.804(b).

While Mr. Kardian did not admit to violating any of the disciplinary rules of the USPTO Code of Professional Responsibility and/or USPTO Rules of Professional Conduct as alleged in the pending investigation, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the facts set forth in the OED investigation against him are true, and (ii) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. § 11.804(b).

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <https://foiadocuments.uspto.gov/oed/>;

5. Respondent shall comply fully with 37 C.F.R. § 11.58; and

6. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement.

Users,
Shewchuk,
David

Digitally signed by
Users, Shewchuk, David
Date: 2021.12.08
13:10:14 -05'00'

David Shewchuk
Deputy General Counsel
United States Patent and Trademark Office

Date

on delegated authority by

Andrew Hirschfeld
Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office