

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

**HARRY I. MOATZ,** )  
    **Director, Office of** )  
    **Enrollment and Discipline** )  
                                  ) **Complainant,** )  
                                  ) )  
                                  ) **v.** )  
**STEVEN DALE GILLIAM,** )  
                                  ) **Respondent** )  
\_\_\_\_\_ )

**Proceeding No.: D02-04**

**INITIAL DECISION ON DEFAULT**

**BACKGROUND**

This disciplinary proceeding was initiated under 35 U.S.C. § 32 and 37 C.F.R. Part 10 against Steven Dale Gilliam (“Respondent”), a practitioner registered (Registration No. 32,987) before the United States Patent and Trademark Office (“USPTO”). On February 27, 2002, Harry I. Moatz, Director of Office of Enrollment and Discipline for the USPTO (“Complainant”) filed a Complaint and Notice of Proceedings on Respondent Under 35 U.S.C. § 32 (“Complaint”) against Respondent. Count I of the Complaint alleged that Respondent violated the USPTO Disciplinary Rules of Professional Conduct by neglecting a patent application and neglecting to communicate with a client regarding a patent application in violation of 37 C.F.R. § 10.77(c). Count II of the Complaint alleged that Respondent violated USPTO Disciplinary Rules of Professional Conduct by failing to cooperate with the Director in connection with an investigation and engaging in conduct prejudicial to the administration of justice in violation of 37 C.F.R. §§ 10.23(b)(5) and (c)(16). Complainant requested entry of an order to indefinitely suspend or exclude Respondent from practice before the USPTO and reimbursement of disciplinary costs and expenses, not to exceed \$1,500, by Respondent.

On February 27, 2002 and April 3, 2002, Complainant attempted to serve Respondent by mailing a copy of the Complaint via certified mail, return receipt requested, to Respondent's last address of record<sup>1</sup>, in accordance with 37 C.F.R. § 10.135(a)(2). Both attempts<sup>2</sup> to serve respondent via mail were returned by the U.S. Postal Service. Complainant then served Respondent by publishing a notice in the *Official Gazette* for a period of four (4) consecutive weeks<sup>3</sup>, pursuant to 37 C.F.R. § 10.135(b). The Notice of Complaint published in the *Official Gazette* stated that, pursuant to the regulations, unless Complainant filed an Answer on or before August 8, 2002, a decision by default may be entered against him.

To date, Respondent failed to file an Answer to the Complaint. On September 17, 2002, Complainant moved for Default Judgment, which was served on Respondent by first class certified mail pursuant to 37 C.F.R. § 10.142. The Director's Motion for Default Judgment requested entry of a judgment excluding Respondent from practice.<sup>4</sup> I entered an Order directing Respondent to serve his response to the Motion for Default Judgment on or before October 21, 2002. No response to the Motion for Default Judgment has been filed by Respondent to date.

For his failure to file any Answer, Respondent is hereby found to be in default. Pursuant to 37 C.F.R. § 10.136(d), the allegations contained in the Complaint are deemed admitted by the Respondent.

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<sup>1</sup> The addresses for which separate notice was last received by the Director were 618 Autumn Lane, Lexington KY 40502 and 608 Autumn Lane, Lexington KY 40502. On both February 27, 2002 and April 3, 2002, and in future attempts to serve filings upon Respondent, copies of the Complaint were sent via certified mail to both addresses.

<sup>2</sup> This involved four mailings, as the Complaint was sent to *both* addresses, first on February 27, 2002 and then again to both addresses on April 3, 2002.

<sup>3</sup> Notices of the Complaint were published in the *Official Gazette* on June 18, June 25, July 2, and July 9, 2002.

<sup>4</sup> As noted, the Complaint also requested entry of an order requiring Respondent to pay all or a portion of the costs and expenses of the disciplinary proceeding, not to exceed \$1,500. This request was not renewed in the Director's Motion for Default Judgment. I could find no basis of authority for an ALJ to grant costs within the rules of practice that govern this USPTO disciplinary proceeding. See 37 C.F.R. § 10.132(b) (stating that a disciplinary proceeding may result in a reprimand, suspension, or exclusion); 37 C.F.R. § 10.154(a)(2) (stating that an initial decision shall include an order of suspension, exclusion, reprimand, or an order dismissing the case, with no mention of costs); 37 C.F.R. § 10.160(c)(2) (granting the *Director* the authority to order that costs for the disciplinary proceeding be paid as a condition of reinstatement).

## FINDINGS

### Count 1:

1. In March 1994, Mr. Richard Byrd retained Respondent to prepare a patent application.
2. In September 1996, Respondent prepared and submitted a proposed patent application to Mr. Byrd for his signature.
3. In November 1997, Respondent informed Mr. Byrd that because of the lengthy delay since the patent application was prepared, some of the documents needed to be updated and required Mr. Byrd's signature.
4. After November 1997, Mr. Byrd attempted to contact Respondent on several occasions, but Respondent failed to return Mr. Byrd's phone calls.
5. Respondent never filed the Byrd patent application.
6. Mr. Byrd paid Respondent more than \$4,000 for services rendered.

### Count 2:

7. On December 1, 2002, the USPTO Office of Enrollment and Discipline (OED) sent Respondent, return receipt requested, a "Requirement for Information" to Respondent's address of record. On February 20, 2001, the "Requirement for Information" letter dated December 1, 2000 was returned marked "unclaimed - return to sender."
8. On March 30, 2001 a "Second Notice: Lack of Response" was sent to Respondent, return receipt requested, at his address of record. On April 30, 2001, the "Second Notice: Lack of Response" letter was returned marked "unclaimed - return to sender."
9. On May 3, 2001 a "Third Notice: Lack of Response" was sent to Respondent, return receipt requested, at his address of record. On May 29, 2001, the "Third Notice: Lack of Response" letter was returned marked "unclaimed - return to sender."

## CONCLUSIONS

1. Respondent's conduct set forth above with regard to Count 1 constitutes failure to act competently, justifying suspension or exclusion, pursuant to 37 C.F.R. § 10.77(c).
2. Respondent's conduct set forth above with regard to Count 2 constitutes professional misconduct, justifying suspension or exclusion, pursuant to 37 C.F.R. §§ 10.23(b)(5) and 10.23(c)(16).

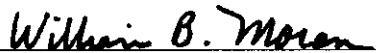
3. Exclusion from practice is an appropriate penalty given the public interest, the seriousness of the violation, the harm to the profession, and the need to deter future misconduct.

### ORDER

After careful and deliberate consideration of the facts, as set forth above, and the conclusions reached upon those facts, as well as the factors identified in 37 C.F.R. § 10.154(b),

**IT IS HEREBY ORDERED** that Respondent, **Steven Dale Gilliam**, USPTO Registration No. 32,987, **be excluded from practice before the United States Patent and Trademark Office.**

Respondent's attention is directed toward 37 C.F.R. § 10.158 regarding responsibilities in the case of suspension or exclusion, and 37 C.F.R. § 10.160 concerning petition for reinstatement.

  
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William B. Moran  
United States Administrative Law Judge<sup>5</sup>

Dated: November 25, 2002  
Washington, D.C.

**Pursuant to 37 C.F.R. § 10.155, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 10.154, must be filed in duplicate with the Director, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, P.O. Box 16116, Arlington, VA 22215, within 30 days of the date of this Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision. Failure to file such an appeal in accordance with § 10.155 above will be deemed to be both an acceptance by the Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.**

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<sup>5</sup> This decision is issued by an Administrative Law Judge of the United States Environmental Protection Agency ("EPA"). An Interagency Agreement, effective for a period beginning March 22, 1999, authorizes Administrative Law Judges of EPA to hear cases pending before the United States Department of Commerce, Patent and Trademark Office.

In the Matter of *Steven Dale Gilliam*  
Proceeding No. D02-04

**CERTIFICATE OF SERVICE**

I hereby certify that the **Initial Decision on Default**, dated November 25, 2002 was sent this day in the following manner to the addressees listed below:



Nelida Torres  
Legal Staff Assistant

Dated: November 25, 2002

By Facsimile and Regular Mail to:

United States Patent & Trademark Office  
Sydney O. Johnson Jr.  
P.O. Box 16116  
Arlington, VA 22215

By Certified Mail and Regular Mail to:

Steven D. Gilliam  
618 Autumn Lane  
Lexington, KY 40502

Steven D. Gilliam  
608 Autumn Lane  
Lexington, KY 40502