

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

IN THE MATTER OF:)
)
RALPH L. MARZOCCO,) **Proceeding No. D00-04**
)
Respondent)

INITIAL DECISION ON DEFAULT

Preliminary Statement

This disciplinary proceeding was initiated under 35 U.S.C. §§ 31 and 32 and the regulations promulgated thereunder at 37 C.F.R. part 10 (Rules), against Ralph L. Marzocco, an attorney registered to practice before the Patent and Trademark Office (PTO) (Registration No. 27,698). The Complaint and Notice of Proceedings, issued by Harry I. Moatz, Director, Office of Enrollment and Discipline (OED), was dated June 28, 2000 and served on Respondent. The Complaint charges Respondent with violating disciplinary rules and conducting himself in a manner unworthy of a registered patent attorney. For these violations, the Complaint requests an entry of an order excluding or suspending Respondent from practice before the Patent and Trademark Office (PTO). The Respondent was notified in the Complaint that, pursuant to the Rules, 37 C.F.R. § 10.136(a), he was required to file an answer to the Complaint within thirty (30) days from the date of the notice, that is, on or before July 28, 2000, and that a default decision may be entered if an answer is not timely filed.

Respondent did not file an answer to the Complaint within thirty days from the date of the Complaint, as required by the Rules. Respondent did not request an extension of time to file an answer. Instead, Respondent filed a Motion to Dismiss and Memorandum in Support thereof ("Motion") on July 28, 2000. By Order dated August 23, 2000, Respondent's Motion to Dismiss was denied and Respondent was ordered to file an answer to the Complaint on or before September 5, 2000.

To date, Respondent has failed to file an answer or otherwise respond to the Complaint. The Rules provide that "[f]ailure to timely file an answer will constitute an admission of the allegations in the complaint." 37 C.F.R. § 10.136(d). The Rules provide further that "a decision by default may be entered against the respondent if an answer is not timely filed." 37 C.F.R. § 10.134(a)(4).

The Director served a Motion for Default on October 11, 2000. To date, Respondent has not filed a response to the Motion.

For his failure to file a timely answer, Respondent is hereby found in default, and is deemed to have admitted all of the allegations in the Complaint.

CHARGES

The Complaint charges Respondent in five counts. Specifically, Count 1 alleges that Respondent was disbarred on ethical grounds by the Supreme Court of Ohio on July 16, 1997, and that such conduct constitutes violations of Disciplinary Rules 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), and 10.23(c)(5). Count 2 alleges that Respondent did not report his disbarment by the Supreme Court of Ohio to the Director of the OED in a timely manner in violation of Disciplinary Rules 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), and 10.23(c)(14). Count 3 alleges that Respondent was disbarred on ethical grounds by the U.S. District Court for the Southern District of Ohio on April 9, 1998 and that such conduct constitutes violations of Disciplinary Rules 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), and 10.23(c)(5). Count 4 alleges that Respondent did not report his disbarment by the U.S. District Court for the Southern District of Ohio to the Director of the OED in a timely manner in violation of Disciplinary Rules 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), and 10.23(c)(14). Count 5 alleges that Respondent failed to respond to a Requirement for Information issued by the OED on May 7, 1999, in violation of Disciplinary Rules 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), 10.23(c)(16), and 10.131(b).

The disciplinary provisions at issue here relate to the definitions of professional misconduct as contained in 37 C.F.R. § 10.23. Specifically, Provision (a) of 37 C.F.R. §§ 10.23 provides that, “a practitioner shall not engage in disreputable or gross misconduct;” provision (b)(1) provides that a practitioner shall not “violate a Disciplinary Rule,” and provision (b)(6) establishes that, “a practitioner shall not engage in any other conduct that adversely reflects on the practitioner’s fitness to practice before the Office.” Subsection (c) of § 10.23 provides that “[c]onduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to . . . (5) [s]uspension or disbarment from practice as an attorney . . . on ethical grounds by any duly constituted authority of a State or the United States . . . (14) [k]nowingly failing to advise the Director in writing of any change which would preclude continued registration under § 10.6 . . . [and] (16) [w]illfully refusing to reveal or report knowledge or evidence to the Director contrary to § 10.24 or paragraph (b) of § 10.131.”¹

FINDINGS

1. On July 16, 1997, the Supreme Court of Ohio disbarred Respondent on ethical grounds, as alleged in Count 1 of the Complaint.
2. Respondent did not report his disbarment by the Supreme Court of Ohio on ethical grounds to the Director of OED in a timely manner, as alleged in Count 2 of the Complaint.

¹ Section 10.24 provides that practitioner are required to report to the Director knowledge of a violation of a Disciplinary Rule. Section 10.131 provides that practitioner shall cooperate with the Director in connection with investigations into possible violations of the Disciplinary Rules.

3. On April 9, 1998, the U.S. District Court for the Southern District of Ohio disbarred Respondent on ethical grounds, as alleged in Count 3 of the Complaint.

4. In April, 2000, Respondent filed objections to an Order Striking Memorandum Contra to Report and Recommendations of Magistrate Judge Michael R. Merz in the United States District Court for the Southern District of Ohio, Western Division, and to date, the Court has not yet ruled upon the objections. *In re Ralph L. Marzocco*, Case No. MC-3-97-048. Thus the matter of Respondent's disbarment in that Court is still pending.

5. Respondent did not report his disbarment by the U.S. District Court for the Southern District of Ohio on ethical grounds to the Director of OED in a timely manner, as alleged in Count 4 of the Complaint.

6. Respondent did not respond to the Requirement for Information sent to him by the OED on May 7, 1999 in a timely manner, as alleged in Count 5 of the Complaint.

CONCLUSIONS

(A) Respondent's conduct set forth above and in the Complaint with regard to Count 1 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), and 10.23(c)(5).

(B) Respondent's conduct set forth above and in the Complaint with regard to Count 2 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), and 10.23(c)(14).

(C) Respondent's conduct set forth above and in the Complaint with regard to Count 4 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), and 10.23(c)(14).

(D) Respondent's conduct set forth above and in the Complaint with regard to Count 5 constitutes professional misconduct justifying suspension or exclusion under 37 C.F.R. §§ 10.23(b)(1), 10.23(b)(6), 10.23(c)(16), and 10.131(b).

(E) Rather than excluding Respondent from practice before the PTO, an indeterminate suspension from such practice is appropriate because there has not been a record developed respecting all of the circumstances surrounding the professional misconduct. The Respondent's default has prevented such an inquiry. The Respondent may show cause in the future as to why he failed to respond and may provide some explanation for the misconduct set forth and found herein. Until he does so, his name should be removed from the rolls.

ORDER

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

IT IS HEREBY ORDERED, that Respondent, **RALPH L. MARZOCCO**, P.O. Box 123, Dayton, Ohio, 45449-0123, PTO Registration No. 27,698, **be suspended for an indeterminate period from practice as an attorney before the Patent and Trademark Office.**

The Respondent's attention is directed to 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.

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



Susan L. Biro
Chief Administrative Law Judge²

DATE: October 25, 2000
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 exception 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.

² This decision is issued by the Chief Administrative Law Judge of the United States Environmental Protection Agency. The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning March 22, 1999.