

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

In the Matter of:)
)
Lawrence Y.D. Ho) **Proceeding No. D09-04**
)
Respondent.)

INITIAL DECISION ON DEFAULT

On December 8, 2008, Harry I. Moatz, Director, Office of Enrollment and Discipline (OED) of the United States Patent and Trademark Office (PTO), instituted this disciplinary proceeding under 35 U.S.C. § 32 and the regulations promulgated thereunder at 37 C.F.R. Part 11 (Rules), against Lawrence Y.D. Ho (Respondent). The Complaint in this matter states that Respondent is an attorney who is licensed to practice law in California, who practices trademark law before the PTO, and who is authorized to practice before the PTO in trademark or other non-patent cases and matters. The Complaint thus alleges that Respondent is a "practitioner" under the Rules. The Complaint charges Respondent with two counts of violating the Rules for failing to provide or report knowledge in connection with OED's investigation. For these violations, the Complaint seeks entry of an order suspending or excluding Respondent from practice before the PTO in trademark and all other non-patent cases or matters.

No Answer to the Complaint having been received from the Respondent, the Director filed and served on Respondent a Motion for Default Judgment and Imposition of Discipline (Motion) on January 14, 2009.

I. Applicable Rules Relevant to Default

PTO Rule 11.35 provides in pertinent part that -

(a) A complaint may be served on a respondent in any of the following methods:

(1) By delivering a copy of the complaint personally to the respondent

(2) By mailing a copy of the complaint by "Express Mail," first-class mail, or any delivery service that provides ability to confirm delivery or attempted delivery

* * *

(4) In the case of a respondent who resides outside the United States, by sending a copy of the complaint by any delivery service that provides ability to confirm delivery or attempted delivery to:

* * *

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

37 C.F.R. § 11.35.

PTO Rule 11.36 provides in pertinent part that -

(a) *Time for answer.* An answer to a complaint shall be filed within the time set in the complaint but in no event shall that time be less than thirty days from the date the complaint is filed.

* * *

(e) *Default judgment.* Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment.

37 C.F.R. § 11.36.

II. Findings and Conclusions Regarding Default

The Motion states that on December 8, 2008, OED served the Complaint on Respondent by mailing a copy of it via Federal Express to Respondent at the last address he provided to OED, namely: Lawrence Y.D. Ho, Lawrence Y.D. Ho and Associates PTE LTD, Thonsia Building, 30 Bideford Road #02-02, Singapore 229922. Attached to the Motion are Exhibits 1 and 2, which are copies of emails sent to counsel for OED from Federal Express providing notification of receipt for shipment on December 8, 2008 of a FedEx International Priority package addressed to Lawrence Ying Dat Ho, and notification of delivery on December 11, 2008 of the package, showing the address referenced herein above. The Motion states further that on January 8, 2009, Respondent spoke with OED Associate Solicitor Sydney O. Johnson, Jr., by telephone, and that Respondent informed Mr. Johnson that he had received the Complaint and did not intend to answer the charges. The Motion indicates that, upon request by Mr. Johnson, Respondent sent a letter by facsimile confirming the conversation.

That letter, from Lawrence Y.D. Ho to Mr. Johnson, which OED presents as an attachment to the Motion, is signed and dated January 8, 2009, states in part:

I refer to USPTO's complaint and notice of proceedings under 35 USC Section 32 dated 8 December 2008. I wish to inform USPTO and the Office of the Administrative Law Judges that I do not wish to answer the charges. . . . I would appreciate if you can relay to the Office of Administrative Law Judges my decision.

Motion, Exhibit 3.

On the basis of the foregoing, and 37 C.F.R. § 11.35, it is concluded that adequate service of process of the Complaint upon Respondent has been made.

The Complaint provides on the first page thereof that -

Within thirty (30) days from the date of this Complaint, Respondent's written answer shall be filed with the hearing officer and a copy of the answer shall be served on the Director of the Office of Enrollment and Discipline A decision by default may be entered against Respondent if a written answer is not timely filed.

The addresses of the Director and this Tribunal appear on page 6 of the Complaint, with an instruction to file an answer within thirty days to those addresses.

In accordance with 37 C.F.R. § 11.36(a) and the Complaint, the time for Respondent to file an answer to the Complaint expired on January 7, 2009, which is thirty days from December 8, 2008. The Motion indicates that Respondent has not served OED with an answer to the Complaint, and to date, this Tribunal has not received an answer to the Complaint. Further, Respondent has explicitly communicated his intent not to answer the Complaint, as indicated in Exhibit 3 attached to the Motion.

In addition, to date, Respondent has not responded to the Motion. The Certificate of Service on the Motion indicates that the Motion was served on Respondent at both the mailing address and email address that he requested communications be sent, in his letter dated January 8, 2009. *See*, Motion, Exhibit 3. It is noted that the regulations provide at 37 C.F.R. § 11.43 that "[t]he hearing officer will determine . . . the time period for filing . . . a response" to a motion. In the context of a motion for default, where the respondent has not answered the complaint or otherwise appeared in the proceeding, it is not necessary to allow an extended period of time for a response to the motion. 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. § 11.36(e) (emphasis

added). The Rules do not require, for default to be entered, that a motion for default be filed, and thus do not require that any period be provided to respond to any such motion.

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

III. Rules Regarding Violations Charged in the Complaint

The following sections of the PTO Code of Professional Responsibility and Disciplinary Rules, 37 C.F.R. Part 10, are cited in the Complaint with regard to the alleged violations:

§ 10.23 Misconduct

* * *

(b) A practitioner shall not:

* * *

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to:

* * *

(16) Willfully refusing to reveal or report knowledge or evidence to the Director contrary to § 10.24 or paragraph (b) of § 10.131.

37 C.F.R. § 10.23.

IV. Discussion

Both Counts 1 and 2 of the Complaint are premised on the identical set of alleged facts, namely paragraphs 1-16 and 18 through 22 of the Complaint. See, Complaint ¶¶ 17, 24. Count 1 alleges that -

Respondent engaged in conduct that is prejudicial to the administration of justice in violation of 37 C.F.R. § 10.23(b)(5), as set forth in 37 C.F.R. § 10.23(c)(16), by failing to provide or report knowledge or evidence in connection with OED's investigation.

Complaint ¶ 23. Count 2 alleges similarly that -

Respondent engaged in conduct that adversely reflects on his fitness to practice before the USPTO in violation of 37 C.F.R. § 10.23(b)(6), as set forth in 37 C.F.R. § 10.23(c)(16), by failing to provide or report knowledge or evidence in connection with OED's investigation.

Complaint ¶ 25.

The referenced regulation provides that “[a] practitioner shall not . . . [e]ngage in any *other* conduct that adversely reflects on the practitioner's fitness to practice before the Office.” 37 C.F.R. § 10.23(b)(6)(emphasis added). To give the word “other” significance in the regulation, the facts alleged to constitute a violation of 10.23(b)(6) must be *other* than facts alleged to constitute violation of another provision of Section 10.23(b)(b) charged in a complaint. As stated by the PTO's appellate tribunal, “to be ‘other’ conduct within the scope [of] Section 10.23(b)(6), conduct must not be prohibited by Section 10.23(b)(1)-(5).” *Moatz v. Colitz*, 68 U.S.P.Q.2d 1079, 1102-1103 (Comm'r Pat & Trademarks, Jan. 2, 2003).

Therefore, Respondent cannot be found to have violated *both* 37 C.F.R. § 10.23(b)(5) and 37 C.F.R. § 10.23(b)(6) based on the facts alleged in the Complaint. Instead, the facts can only support a violation of 37 C.F.R. § 10.23(b)(5).

As concluded above, Respondent is deemed to have admitted all of the allegations in the Complaint. Accordingly, the following findings and conclusions are rendered based upon the allegations in the Complaint and the discussion above.

V. Findings and Conclusions

1. At all times relevant to the Complaint, Respondent has been an attorney licensed by the State of California to practice law (California State Bar No. 134536), has practiced trademark law before the PTO, and had several trademark matters pending before the PTO. Therefore Respondent is subject to the PTO Code of Professional Responsibility and Disciplinary Rules set forth in 37 C.F.R. Part 10.

2. This Tribunal has jurisdiction of this proceeding under 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.32 and 11.39.
3. Respondent is an individual authorized under 5 U.S.C. § 500(b) to practice before the PTO in trademark or other non-patent cases and matters, and is therefore a "practitioner" as defined in 37 C.F.R. § 10.1(r)(2).
4. Respondent is not now, and has not been in the past, registered to practice patent law before the PTO.
5. In October and November 2007, the OED Director received information from the Intellectual Property Office of Singapore (IPOS) that Respondent had submitted a falsified document to IPOS when Respondent applied to become an IPOS patent agent. The falsified document was a PTO registration certificate that had been materially altered to reflect that Respondent was registered to practice patent law before the PTO. Upon information and belief, IPOS relied on the falsified document in granting Respondent a license to practice patent law before IPOS.
6. The OED Director, pursuant to 37 C.F.R. § 11.22, began an investigation of Respondent based upon the information received from IPOS.
7. As part of its investigation, OED sent a letter to Respondent on or about December 31, 2007, informing Respondent that OED was investigating him for alleged practitioner misconduct in connection with the submission of a falsified document to IPOS. The letter asked Respondent to provide information concerning his knowledge of the falsified document and asked that he reply by January 31, 2008.
8. Respondent responded in writing to OED's letter on January 28, 2008 asking that he be given an extension of time until March 15, 2008 to provide "a chronology of my account of the events and submission of documents." The letter further stated that Respondent intended to look through boxes of personal documents to retrieve evidence relating to OED's investigation.
9. On March 15, 2008, Respondent sent a letter to OED seeking a second extension of time, until May 25, 2008, to provide the chronology and submit documents.
10. By email on June 4, 2008 and a letter dated June 5, 2008, OED informed Respondent that his response to its December 31, 2007 letter was due on June 16, 2008.
11. On June 7, 2008, Respondent sent an email to OED seeking a third extension of time to respond, stating that he would provide "a complete response" by July 30, 2008.

12. Respondent did not communicate with OED from June 7, 2008 through the date the Complaint was issued on December 8, 2008. Respondent did not provide any information in response to OED's letters.
13. The information requested by OED from Respondent was not privileged.
14. On three separate occasions, Respondent represented to OED that he would provide the requested information to OED.
15. Respondent did not abide by his assertions in the letters dated January 28, 2008, March 15, 2008, and June 7, 2008 that he would provide a response.
16. Respondent knowingly failed to provide the requested information to OED.
17. Respondent intentionally failed to cooperate with OED's investigation.
18. Respondent engaged in conduct that is prejudicial to the administration of justice, in violation of 37 C.F.R. § 10.23(b)(5), as set forth in 10.23(c)(16), by failing to provide or report knowledge or evidence in connection with OED's investigation.

V. Penalty

As to the penalty for this violation, OED requests issuance of an initial decision excluding Respondent from practice before the PTO.

Rule 11.54(b) provides that in determining any penalty the following factors be taken into consideration:

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

37 C.F.R. § 11.54.

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. However,

the findings of fact listed above indicate that Respondent knowingly failed to provide information requested by OED and intentionally failed to cooperate with OED's investigation.

In its Motion (at 3), OED asserts that Respondent's misconduct offends core ethical standards, pointing out, *inter alia*, that "[c]andor and truthfulness are two of the most important moral character traits of a lawyer." *Attorney Grievance Comm'n of Maryland v. Myers*, 635 A.2d 1315, 1319 (Md. 1994)(citations omitted). OED argues that by dishonoring his repeated assurances to OED, knowingly failing to provide the requested information to OED, purposefully misleading OED, and intentionally failing to cooperate with OED's investigation, a penalty of exclusion is warranted. Motion at 3-4. In addition, OED asserts that such penalty is warranted because of the aggravating factor of Respondent's prior disciplinary history before the PTO, a reprimand for attempting to defraud, deceive, and/or mislead prospective patent applicants by knowingly misrepresenting on his firm's website that he was registered to practice patent law before the PTO. *In the Matter of Lawrence H.D. Ho*, No. D2006 (January 17, 2007).

Courts have imposed a sanction of disbarment on attorneys who failed to cooperate with an investigation of their conduct by the judicial grievance committee. *In the Matter of Patterson*, 26 A.D.3d 12 (N.Y. 2005); *In re Redl*, 14 A.D.3d 60 (N.Y. 2004). Moreover, Respondent has expressly stated that he "do[es] not wish to answer the charges." Motion, Exhibit 3. As an attorney, Respondent is fully aware of the consequences of choosing not to answer the charges, and having received a copy of the Complaint, he is specifically aware of OED's request to exclude him from practice before the PTO. Proceeding to submission of evidence and testimony as to a sanction would result in unnecessary expenditure of government resources on a case in which Respondent has expressly chosen not to participate. Therefore, exclusion from practice before the PTO is an appropriate sanction.


ORDER

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

IT IS HEREBY ORDERED that Respondent, **Lawrence Y.D. Ho**, be excluded from practice before the Patent and Trademark Office.

The Respondent's attention is directed to 37 C.F.R. § 11.58 regarding responsibilities in the case of exclusion, and 37 C.F.R. § 11.60 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. Bilo
Chief Administrative Law Judge¹

Dated: January 30, 2009
Washington, D.C.


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

¹ 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.

In the Matter of Lawrence Y.D. Ho, Respondent
Proceeding No. D09-04

CERTIFICATE OF SERVICE

I hereby certify that a true copy of **Initial Decision On Default**, dated January 30, 2009, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: January 30, 2009.

Copy By Regular Mail To:

U.S. Patent and Trademark Office
Ronald K. Jaicks
Sydney O. Johnson, Jr.
Associate Solicitors
P.O. Box 15667
Arlington, VA 22314

Copy By Regular Mail and Certified Mail Return Receipt To: