

4. The parties agree that this proposed settlement agreement resolves any and all disciplinary action by the USPTO arising from the allegations set forth in the Complaint.
5. Respondent acknowledges and agrees that he remains subject to disciplinary action by the USPTO with respect to any violations not addressed in this proposed settlement agreement.
6. Respondent freely and voluntarily enters this proposed settlement agreement and acknowledges that he is not acting under duress or coercion.
7. Respondent acknowledges that he is entitled to have a hearing conducted in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57, inclusive. Respondent hereby waives his right to a hearing provided that the USPTO Acting Director agrees to the terms and conditions of this proposed settlement agreement.
8. Respondent is fully aware of the implications of the USPTO Acting Director accepting this proposed settlement agreement. Respondent also understands and agrees that, unless the USPTO Acting Director enters a Final Order in accordance with the terms of this proposed settlement agreement, the disciplinary matter has not been resolved and the proposed settlement agreement is without effect.
9. The OED Director and Respondent also understand and agree that, pursuant to 37 C.F.R. § 11.26, if the USPTO Acting Director rejects this proposed settlement agreement, no reference to the offer of settlement, the contingent acceptance thereof, or the fact that the parties stipulated to facts in support of this proposed settlement agreement shall be admissible in evidence in a disciplinary proceeding unless the OED Director and Respondent agree to such admissibility in writing.
10. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this proposed settlement agreement.

STIPULATED FACTS

11. This Tribunal has jurisdiction of this proceeding under 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 10.132 and 10.139.
12. OED began the investigation leading to this complaint after it received information from the USPTO Office of Finance that Respondent had issued several checks that were returned for insufficient funds. Each of these checks was submitted in payment of required fees in several patent applications.
13. On or about May 17, 2006, OED sent Respondent a Request for Statement of Respondent's Position (First Request) about the checks that were returned for insufficient funds.

14. On or about June 14, 2006, OED received Respondent's Response to its First Request (First Response).
15. In his First Response, Respondent stated that he issued each of the returned checks in the mistaken belief that he had a sufficient balance in his bank account to cover each of the checks due to "double entries of deposits" and other problems associated with his accounting system:

. . . [T]here are several checks that I submitted that have been returned for insufficient funds. In every instance, I believed at that time that I had sufficient funds to cover each and every check. My ledger and online account balance both indicated that I had sufficient funds. Obviously, I did not have sufficient funds. Needless to say, I have had some problems with my accounting procedures in my office. I use the "QuickBooks" software, which allows for the computerized accounting of my operating account. At approximately the time I started bouncing checks, around the December timeframe of last year, I started to download and reconcile my operating account via the Internet. Because of the amount of transactions I have each month, well over one hundred transaction[s] per month, I thought this would be a faster and more accurate way of accounting for all transactions. However, what I was unaware [of] at the time was there is a tendency to download deposits while not counting the deposits against manually entered deposits, which resulted in double entries of deposits. This showed my ledger as having sufficient funds when, in fact, I did not have sufficient funds.
16. On or about January 18, 2007, OED sent Respondent a follow-up Request for Statement of Respondent's Position (Second Request) about the checks that were returned for insufficient funds. In the Second Request, OED asked Respondent, *inter alia*, to provide his firm's financial records regarding the clients affected by Respondent's failure to properly pay USPTO fees.
17. On or about February 14, 2007, OED received Respondent's Response to its Second Request (Second Response).
18. In his Second Response, Respondent admitted "bouncing checks" in several applications "in the time frame of December 2005," but averred that this was merely an unintentional consequence of "double entries of deposits" and other problems associated with his accounting system.
19. With the Second Response, however, Respondent did provide OED with printouts of his on-line bank records. These records show that Respondent deposited each of the monies he received from his clients to pay the fees corresponding to each of

the checks that were returned for insufficient funds into a single bank account, his Washington Mutual Bank Account No. [REDACTED] (WMB Account).

20. At relevant times, Respondent maintained only one bank account for his patent law practice, his WMB Account.
21. Respondent's on-line bank records show that between October 1, 2005, and April 30, 2006, Respondent made payments from his WMB Account that were unrelated to the applications discussed in each of the counts below to, *inter alia*, the following businesses and merchants, *e.g.*, Harry and David (10/24/05), Kohl's (11/14/05), Imperial Garden (12/08/05), Dillards (01/20/06), FTD Florist (02/13/06), 7-Eleven (03/06/06), Lenscrafters (04/24/06).
22. As of this filing, the status of the checks that Respondent submitted to the USPTO is as follows:

Status of Checks/EFTs Issued by Respondent but Declined for Insufficient Funds in Patent Applications

Patent Application No.	NSF Check #	USPTO Fee Code(s)	Date	(Total) Amount	Current Fee Status	NSF Surcharge Paid?
10/874,295	330	1504, 2501	12/13/05	\$1,000	Paid	Paid
09/796,840*	331	2801	12/07/05	\$395	Paid	N/A*
11/333,458	349	2011, 2111, 2311, 8021	01/19/06	\$540	Paid	Paid
	350; 365	1601, 1603, 1702, 2206, 8007	01/18/06; 02/16/06	\$1,766; \$1,816	Paid	Paid for #350 and #365
	357	2011, 2111, 2311	01/21/06	\$500	Paid	Paid
10/747,770	374	1504, 2501	03/07/06	\$1,000	Paid	Paid
11/377,783	375	2011, 2111, 2201, 2202, 2311	03/16/06	\$1,150	Paid	Paid
	377	2005	03/16/06	\$100	Paid	Paid

43. Respondent paid the \$50 fee required by 37 C.F.R. § 1.21(m) for dishonored check #331.

Patent Application U.S. Serial No. 11/333,458

44. Respondent is the attorney of record in Patent Application U.S. Serial No. 11/333,458 (the '458 application).
45. On or about August 22, 2005, his client, [REDACTED], paid Respondent \$4,500, including the monies for the payment of fees that would be incurred with the filing of the '458 application.
46. A portion of the \$4,500 paid by [REDACTED] was to cover Respondent's attorney fees.
47. Respondent deposited the \$4,500 into his WMB Account on August 22, 2005.
48. On January 17, 2006, Respondent filed the '458 application with the USPTO, along with a check for \$540 drawn on his WMB Account, check #349, to pay the \$150 small entity filing fee, the \$250 search fee, the \$100 examination fee, and the \$40 assignment recordation fee.
49. On or about January 19, 2006, the USPTO processed check #349, but the check was returned for insufficient funds on January 31, 2006.
50. On or about February 24, 2006, the USPTO sent Respondent a Notice to File Missing Parts in the '458 application, indicating that the basic filing, search, and examination fees had not been paid. The Notice set a **"TWO MONTHS"** (emphasis original) period for response, and indicated that this time period could be extended by one month increments by paying extension fees.
51. On May 24, 2006, *i.e.*, one month after a response to the February 24, 2006 Notice to File Missing Parts was due, Respondent submitted payment to the USPTO for the outstanding fees in the '458 application by check. Respondent also submitted \$65 to purchase a one month extension of time to file a response to the February 24, 2006 Notice to File Missing Parts.
52. On May 24, 2006, Respondent also paid the \$50 fee required by 37 C.F.R. § 1.21(m) for dishonored check #349.
53. Respondent avers that he personally paid the \$65 fee for the one month extension of time that was required by the late response to the February 24, 2006 Notice to File Missing Parts.

PCT Patent Application Serial No. PCT/US06/01712

54. On or about January 17, 2006, iTex paid Respondent the \$1,766 to cover the fees associated with the filing of PCT Patent Application Serial No. PCT/US06/01712 (the '712 application).
55. On information and belief, Respondent deposited the \$1,766 into his WMB Account on January 17, 2006.
56. On January 18, 2006, Respondent filed the '712 application in the USPTO, accompanied by a PCT Request bearing Respondent's signature. Included with the application was a check for \$1,766 drawn on Respondent's WMB Account, check #350, to pay the \$1,086 international filing fee, the \$300 PCT transmittal fee, the \$300 search fee, the \$100 examination fee, and the \$80 cost for obtaining a copy of the application as filed.
57. On or about January 23, 2006, the USPTO processed check #350, but the check was returned for insufficient funds on January 27, 2006.
58. On or about February 15, 2006, the USPTO sent Respondent a Notification Concerning the Payment of Prescribed Fees in the '712 application, informing Respondent that check #350 was returned for insufficient funds on January 27, 2006 and, thus, there were \$1,766 in outstanding fees due in the '712 application. The Notice also informed Respondent that he was required to pay a \$50 fee under 37 C.F.R. § 1.21(m) for dishonored check #350, bringing the total of outstanding fees to \$1,816.
59. On or about February 16, 2006, Respondent filed with the USPTO a check for \$1,816 drawn on his WMB Account, check #365, in the '712 application to pay the \$1,766 previously due in outstanding fees, as well as the \$50 fee required by 37 C.F.R. § 1.21(m) for dishonored check #350.
60. On or about March 1, 2006, the USPTO processed check #365, but the check was returned for insufficient funds on March 13, 2006.
61. On or about March 20, 2006, the USPTO sent Respondent a Notification Concerning the Payment of Prescribed Fees in the '712 application, informing Respondent that his prior payment was returned for insufficient funds. The Notification also informed Respondent that, in addition to the fees previously due and owing, he was also required to pay the \$50 fee under 37 C.F.R. § 1.21(m) for dishonored check "#000350 [*sic* 365?]."
62. On or about May 5, 2006, the USPTO sent Respondent an Invitation to Pay Prescribed Fees Together with Late Payment Fee in the '712 application, informing Respondent that the total amount of outstanding fees in the '712 application was then \$2,293, including the monies previously due in the '712

application, the \$50 fee under 37 C.F.R. § 1.21(m) for dishonored check #350, and a \$557 late payment surcharge. The Notification further indicated that an \$80 fee for the priority document was also due, bringing the total amount of fees then due to \$2,373.

63. On June 5, 2006, Respondent properly paid \$2,373 in outstanding fees in the '712 application.
64. Respondent avers that he personally paid the \$557 late payment surcharge.
65. Respondent paid the \$50 fee under 37 C.F.R. § 1.21(m) for dishonored check #365.

Patent Application U.S. Serial No. 11/359,281

66. Respondent is the attorney of record in Patent Application U.S. Serial No. 11/359,281 (the '281 application).
67. On or about January 25, 2006, his client, [REDACTED], paid Respondent \$500 for the payment of fees that would be incurred with the filing of the '281 application.
68. Respondent deposited the \$500 into his WMB Account on January 25, 2006.
69. On February 21, 2006, Respondent filed the '281 application with the USPTO, along with a check for \$500 drawn on his WMB Account, check #357, to pay the \$150 small entity filing fee, the \$250 search fee, and the \$100 examination fee.
70. On or about February 21, 2006, the USPTO processed check #357, but the check was returned for insufficient funds on March 1, 2006.
71. On or about March 22, 2006, the USPTO sent Respondent a Notice to File Missing Parts in the '281 application, indicating that the basic filing, search, and examination fees had not been paid. The Notice also informed Respondent that an additional \$65 surcharge was due.
72. On May 22, 2006, Respondent submitted proper payment to the USPTO for the outstanding fees in the '281 application.
73. On May 22, 2006, Respondent also paid the \$50 fee required by 37 C.F.R. § 1.21(m) for dishonored check #357.
74. Respondent avers that he personally paid the \$65 surcharge for filing an incomplete application.

86. On or about March 20, 2006, his client, [REDACTED], paid Respondent \$3,150, including \$1,150 to cover the fees associated with the filing of the '783 application.
87. A portion of the \$3,150 paid by [REDACTED] was to cover Respondent's attorney fees.
88. Respondent deposited the \$3,150 into his WMB Account on March 20, 2006.
89. On or about March 21, 2006 the USPTO processed check #375, but the check was returned for insufficient funds on April 3, 2006.
90. On or about April 12, 2006, the USPTO sent Respondent a Notice to File Missing Parts in the '783 application, indicating that the basic filing, search, and examination fees had not been paid. The Notice also informed Respondent that additional fees due included the \$150 basic filing fee, a \$65 surcharge, and the \$50 fee required by 37 C.F.R. § 1.21(m) for dishonored check #375.
91. On May 24, 2006, Respondent submitted payment to the USPTO for the outstanding fees in the '783 application by check.
92. On May 24, 2006, Respondent also paid the \$50 fee required by 37 C.F.R. § 1.21(m) for dishonored check #375.
93. Respondent avers that he personally paid the \$65 surcharge for filing an incomplete application.

Provisional Patent Application U.S. Serial No. _____

94. Respondent is the attorney of record in Provisional Patent Application U.S. Serial No. _____ (the _____ application).
95. On or about March 15, 2006, his client, [REDACTED], paid Respondent \$1,500, including \$100 to cover the fees that would be incurred by filing the '116 application.
96. A portion of the \$1,500 paid by [REDACTED] was to cover Respondent's attorney fees.
97. On information and belief, Respondent deposited the \$1,500 into his WMB Account on March 15, 2006.
98. On March 16, 2006, Respondent filed the '116 application with the USPTO, along with a check for \$100 drawn on his WMB Account, check #377, to pay the small entity filing fee for filing a provisional patent application.

