

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR OF THE UNITED STATES PATENT AND
TRADEMARK OFFICE**

In the Matter of:)

Alton W. Payne, Jr.,)

Respondent)

Proceeding No. D08-22

FINAL ORDER UNDER 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24(d), the Director of the United States Patent and Trademark Office (USPTO or Office) hereby orders the suspension of Alton W. Payne, Jr. (Respondent) from the practice of patent, trademark, and other non-patent law before the USPTO for violation of the ethical standards set out in 37 C.F.R. §§ 10.23(b), via 37 C.F.R. § 10.23(c)(5).

A "Notice and Order Under 37 C.F.R. § 11.24" mailed February 13, 2009, (Notice and Order) informed Respondent that the Director of the Office of Enrollment and Discipline (OED Director) had filed a "Complaint for Reciprocal Discipline Under 37 C.F.R. § 11.24" (Complaint) requesting that the USPTO Director suspend Respondent from practice before the USPTO. The request for suspension of the Respondent in the Complaint was based upon the November 25, 2008, Corrected Agreed Judgment of Partially Probated Suspension in *Comm'n for Lawyer Discipline v. Alton W. Payne* (No. H0030724104) suspending Respondent from the practice of law based on ethical grounds. The Notice and Order directed Respondent to file, within 40 days, a response containing all information Respondent believes is sufficient to establish a genuine issue of material fact that the

imposition of discipline identical to that imposed by the Texas State Bar would be unwarranted based upon any of the grounds permissible under 37 C.F.R. § 11.24(d)(1).

Respondent has not filed a response to the Notice and Order. 37 C.F.R. § 11.24(d)(1). Accordingly, the USPTO Director hereby determines that: 1) there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and 2) suspension of Respondent from practice before the USPTO is appropriate.

ACCORDINGLY, it is hereby **ORDERED** that:

(a) Respondent is suspended from the practice of patent, trademark, and other non-patent law before the USPTO for twenty-four (24) months beginning thirty (30) days after the date of this Final Order indicated below;

(b) Respondent shall comply fully with 37 C.F.R. § 11.58 while serving the suspension imposed herein;

(c) After Respondent serves the initial two months of his 24-month suspension, the final twenty-two (22) months of Respondent's suspension shall be immediately stayed and Respondent shall be immediately eligible to request reinstatement to practice before the Office as set for the in subparagraph (n), below;

(d) Respondent shall serve a twenty-two (22) month probationary period commencing three months after the date of this Final Order indicated below;

(e) The OED Director shall publish this Final Order;

(f) The OED Director shall publish the following notice in the Official Gazette:

NOTICE OF SUSPENSION

Alton W. Payne, Jr. of Houston, Texas, a patent attorney whose Registration Number is 30,580 has been suspended for twenty-four (24) months with the final

twenty-two (22) months being stayed and has been placed on probation for twenty-two months by the United States Patent and Trademark Office for violating 37 C.F.R. § 10.23(b), via 37 C.F.R. § 10.23(c)(5), by being suspended from practice as an attorney on ethical grounds by a duly constituted authority of the State of Texas predicated upon Respondent's failure to timely file three international patent applications, to cure fee deficiencies regarding one of the three applications, to communicate accurate information to the client regarding the patent applications, and to maintain file materials that Respondent should have maintained. This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. §§ 11.24 and 11.59.

(g) The OED Director shall give notice of this Final Order to 1) appropriate employees of the USPTO; 2) interested departments, agencies, and courts of the United States; 3) appropriate authorities of any State in which Respondent is known to be a member of the bar;

(h) In the event that the OED Director is of the opinion that Respondent failed to comply with any of the terms of this Final Order at any time during the 22-month probationary period:

(1) the OED Director shall issue to Respondent an Order to Show Cause why Respondent should not be suspended for twenty-two months, send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to § 11.11(a), and grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

(2) in the event, after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent failed to comply with any of the terms of this Final Order during the 22-month probationary period, the OED Director shall deliver to the USPTO Director or his designate for imposition of an immediate suspension: the Order to Show Cause, Respondent's response to the Order to Show Cause, and evidence causing the OED Director to be of the opinion that Respondent failed to comply with any of the terms of this Final Order during the 22-month probationary period;

(i) In the event Respondent seeks a review of the USPTO Director's decision to suspend Respondent pursuant to this Final Order, any such review shall not operate to postpone or otherwise hold in abeyance the immediate suspension of Respondent;

(j) If Respondent is suspended during any portion of the 22-month probationary period pursuant to the terms of this Final Order, Respondent shall comply fully with 37 C.F.R. § 11.58;

(k) If Respondent is suspended during any portion of the 22-month probationary period pursuant to the terms of this Final Order, the OED Director shall comply with 37 C.F.R. § 11.59;

(l) Nothing in this Final Order shall limit the number of times during his probation that Respondent may be suspended pursuant to this Final Order;

(m) Nothing in this Final Order shall prevent the Office from seeking discipline against Respondent for the same misconduct that causes a suspension pursuant to this Final Order;


(n) Respondent, after completing the initial two months of the 24-month suspension imposed by this Final Order, may apply for reinstatement to practice before the Office upon filing a petition for reinstatement that complies fully with 37 C.F.R. § 11.60;

(o) The record of this disciplinary proceeding, including this Final Order, be considered when addressing any further complaint or evidence of the same or similar misconduct brought to the attention of the Office, and/or in any future disciplinary proceeding as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or to rebut any statement or representation by or on Respondent's behalf;

(p) The OED Director and Respondent bear their own costs incurred to date and in carrying out the terms of this agreement.

JUN 1 0 2009

Date


James A. Toupin
General Counsel
United States Patent and Trademark Office

on behalf of

John Doll
Acting Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and
Trademark Office