

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

In the Matter of)
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)

Peter G.H. Hwang,)
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Respondent)
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)
_____)

Proceeding No. D09-26

Final Order

Office of Enrollment and Discipline Director Harry I. Moatz (“OED Director”) and Peter G.H. Hwang (“Respondent”) have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) or his designate for approval.

The OED Director and Respondent’s Proposed Settlement Agreement sets forth certain stipulated facts, legal conclusions, and sanctions to which the OED Director and Respondent have agreed in order to resolve voluntarily a disciplinary complaint against Respondent. The Proposed Settlement Agreement, which satisfies the requirements of 37 C.F.R. § 11.26, resolves all disciplinary action by the United States Patent and Trademark Office (“USPTO” or “Office”) arising from the stipulated facts set forth below.

Pursuant to such Proposed Settlement Agreement, this Final Order sets forth the parties’ stipulated facts, legal conclusions, and agreed upon discipline.

Jurisdiction

1. At all times relevant hereto, Respondent of San Rafael, California, has been an agent registered to practice before the United States Patent and Trademark Office (“USPTO” or “the Office”) and is subject to the Disciplinary Rules of the USPTO Code of Professional Responsibility set forth at 37 C.F.R. § 10.20 et seq.

2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.20(a)(3) and 11.26.

Stipulated Facts

3. At all times relevant hereto, Respondent of San Rafael, California, has been registered as an agent to practice before the United States Patent and Trademark Office (“USPTO” or “the Office”) and is subject to the Disciplinary Rules of the USPTO Code of Professional

Responsibility set forth at 37 C.F.R. § 10.20 et seq. Respondent's registration number is 50,265.

4. A U.S. Patent Application ("the '612 application") was filed with the USPTO via EFS-Web on November 27, 2006. The '612 application listed three individuals as inventors.

5. A Power of Attorney or Authorization of Agent was filed with the USPTO via EFS-Web in the '612 application on November 28, 2006, and signed electronically by the inventors on November 27, 2006. In the Power of Attorney or Authorization of Agent the inventors appointed the registered practitioners associated with Customer Number 43143 as their representative to prosecute the '612 application before the USPTO and to transact all business with the USPTO.

6. A Declaration for Utility or Design Application was filed in the '612 application via EFS-Web on November 28, 2006. The Declaration for Utility or Design Application lists each of the three named inventors of the '612 application; however, instead of the inventors' signatures being included in the Declaration for Utility or Design Application, Respondent's electronic signature was submitted for each of the named inventors, annotated by the word "Agent".

7. 35 U.S.C. § 115 recites that the applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen. 35 U.S.C. § 25 recites that a Declaration may be submitted in lieu of oath; however, whenever such written declaration is used, the document must warn the declarant that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. § 1001).

8. There is no evidence that the '612 application was being filed under 37 C.F.R. § 1.47. Therefore, the signature of each inventor was required on the Declaration for Utility or Design Application.

9. The Declaration submitted in the '612 application via EFS-Web on November 28, 2006, includes the statutory language of 18 U.S.C. § 1001; however, the Declaration in the '612 application was executed by Respondent and not by the inventors. Respondent believed at the time, albeit erroneously, that annotating the document with the word Agent was appropriate.

Legal Conclusions

10. Based on the information contained in paragraphs 3 through 9, Respondent acknowledges that his conduct violated 37 C.F.R. § 10.23(b)(5) by engaging in conduct that is prejudicial to the administration of justice; § 10.23(b)(6) by engaging in any conduct that adversely reflects on the practitioner's fitness to practice before the Office; and § 10.23(c)(15) by signing a paper filed in the Office in violation of the provisions of § 11.18.¹

Sanctions

11. Respondent agreed, and it is ORDERED that:
- a. Respondent be, and hereby is, publicly reprimanded;
 - b. The OED Director shall publish this Final Order;
 - c. The OED Director shall publish the following Notice in the Official Gazette:

Notice of Reprimand

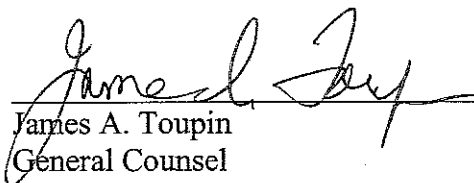
Peter G.H. Hwang of San Rafael, California, who is a registered patent agent (Registration Number 50,265), has been reprimanded by the United States Patent and Trademark Office for violating 37 C.F.R. §§ 10.23(b)(5), (b)(6) and (c)(15) based on his submission of his electronic signature in the place of the signatures of each inventor on a Declaration filed under 35 U.S.C. § 25 in a U.S. patent application. This action is taken pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.20(a)(3), 11.26 and 11.59. Disciplinary decisions regarding practitioners are posted at the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- d. The OED Director shall give notice of public discipline and the reasons for the discipline to disciplinary enforcement agencies in the State where the practitioner is admitted to practice, to courts where the practitioner is known to be admitted, and the public; and

¹ The Proposed Settlement Agreement inadvertently references 37 C.F.R. § 10.18. The correct reference is to 37 C.F.R. § 11.18. See Changes to Representation of Others Before the Patent and Trademark Office, Final Rule; Correction, 73 Fed. Reg. 59513, 59514 (October 9, 2008) (correcting final rule and explaining that the substance of § 10.18 was transferred to § 11.18).

- e. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this agreement.

May 27, 2009
Date


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

on behalf of

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

cc:

Harry I. Moatz
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