

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

In the Matter of

Karl Hormann,

Respondent.

)
)
)
)
)

Proceeding No. D08-04

ORDER GRANTING COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT

INITIAL DECISION

On February 24, 2009, Harry I. Moatz, Director of the Office of Enrollment and Discipline ("Complainant") of the United States Patent and Trademark Office ("the PTO"), instituted this disciplinary proceeding under 35 U.S.C. § 32 and the regulations promulgated thereunder at 37 C.F.R. part 11, specifically §§ 11.32 and 11.34, against Karl Hormann ("Respondent"). Complainant charges Respondent with neglect, dishonesty, fraud, deceit or misrepresentation, failure to notify, inadequate preparation, habitual violations of disciplinary rules, and failure to promptly deliver client property. For these violations, Complainant requests an Order excluding Respondent from practice before the PTO.

As of the filing of this Initial Decision granting default judgment, Respondent has not answered the Complaint in this matter. On April 3, 2009, Complainant filed a Motion for Default Judgment and Imposition of Discipline, seeking an initial decision entering default judgment against Respondent and excluding him from the practice of patent, trademark, and other non-patent law before the PTO.

Complainant's Motion is hereby granted and an initial decision entering default judgment against Respondent is below.

I. PROCEDURAL HISTORY

Complainant filed a Complaint and Notice of Proceedings Under 35 U.S.C. § 32 ("Complaint") on February 24, 2009, via hand delivery, with the United States Environmental Protection Agency's Office of Administrative Law Judges¹ in accordance with 37 C.F.R. §§

¹ The U.S. Environmental Protection Agency's Office of Administrative Law Judges is authorized to hear cases pending before the U.S. Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective March 22, 1999.

11.32 and 11.34. The PTO certified in the Certificate of Service for the Complaint that it served the Complaint upon Respondent via first class certified mail, return receipt requested, on the same date, at his last registered address with the PTO, in accordance with 37 C.F.R. § 11.35(a)(2)(i).² See Complainant's Exhibit 1, which includes a Domestic Return Receipt signed by an individual identified as an "Agent" for Respondent, and showing receipt of the Complaint on February 26, 2009.³

Chief Administrative Law Judge Susan L. Biro designated the undersigned to preside over this matter and served a copy of the Order of Designation on the PTO and Respondent on March 3, 2009 via regular mail.

Complainant filed a Motion for Default Judgment and Imposition of Discipline ("Motion") on April 3, 2009, via hand delivery, with the undersigned at the Office of Administrative Law Judges in accordance with 37 C.F.R. §§ 11.41(a) and 11.43. The PTO certified in its Certificate of Service for the Motion that it served a copy upon Respondent via certified mail, return receipt requested, on the same date, at the last address he registered with the PTO, in accordance with 37 C.F.R. § 11.42(b)(2).

As of the date of Complainant's Motion, Respondent had neither answered the Complaint, nor contacted the undersigned, the Office of Administrative Law Judges, or Complainant. Motion at 2. Respondent has not responded to the Motion.

II. FINDINGS OF FACT

1. Respondent has been registered as a patent attorney with the U.S. Patent and Trademark Office since March 13, 1973, and holds Registration No. 26,470. Respondent has been a practitioner representing clients in patent proceedings before the PTO.

2. A Complaint was filed with the undersigned on February 24, 2009, which initiated this disciplinary proceeding.

² The regulations governing these proceedings prescribe proper service of a complaint in a disciplinary proceeding as "any delivery service that provides ability to confirm delivery or attempted delivery to... [a] respondent who is a registered practitioner at the address provided to OED pursuant to § 11.11." 37 C.F.R. § 11.35(a)(2)(i). The regulations at 37 C.F.R. § 11.11(a) require any "registered attorney or agent" representing others in front of the PTO to "notify the OED Director of his or her postal address for his or her office...as well as every change to any of said addresses...within thirty days of the date of the change" by "separately fil[ing] written notice of the change...to the OED Director."

³ The signature of the agent for Respondent is not clearly legible but appears to be that of "Kim Hormann."

3. An Answer to the Complaint from Respondent was due on March 26, 2009, thirty days after the Complaint was filed.

4. Respondent did not file an Answer by March 26, 2009.

5. Respondent represented WHD elektronische Prueftechnik GmbH ("WHD") before the PTO in order to prosecute WHD's U.S. Patent Applications 09/485,734, 09/485,750, 09/931,694, 09/423,275, 10/110,600, 09/719,881, and 10/619,038.

6. During the course of Respondent's representation of WHD, Respondent allowed those U.S. Patent Applications of WHD listed in ¶ 5 to become abandoned without WHD's consent.

7. During the course of Respondent's representation of WHD, the PTO sent Notices of Abandonment to Respondent in connection with those U.S. Patent Applications of WHD listed in ¶ 5.

8. During the course of Respondent's representation of WHD, Respondent took no action, or only ineffective or untimely action, to revive those U.S. Patent Applications of WHD listed in ¶ 5 after each was deemed abandoned by the PTO.

9. During the course of Respondent's representation of WHD, Respondent did not timely notify, or notify at all, WHD of the PTO's Notices of Abandonment in connection with each of those U.S. Patent Applications of WHD listed in ¶ 5.

10. Respondent falsely represented to the PTO and WHD that he had mailed responses to a November 7, 2001 Office Action in regards to WHD's U.S. Patent Application 09/485,750, and a December 10, 2001 Office Action in regards to WHD's U.S. Patent Application 09/931,694.

11. During the course of Respondent's representation of WHD, and in regards to WHD's U.S. Patent Applications 09/485,750 and 09/931,694, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor.

12. Respondent's representation of WHD was terminated on December 8, 2005 after WHD filed with the PTO a Revocation and New Power of Attorney, which replaced Respondent with Richard A. Neifeld, a patent attorney registered to practice before the PTO.

13. On December 8, 2005, in a telephone conversation, Neifeld informed Respondent of the change in power of attorney and explained to Respondent that WHD had instructed Neifeld to handle each of those U.S. Patent Applications of WHD listed in ¶ 5 instead of Respondent.

14. Neifeld attempted to contact Respondent on December 8, 2005, December 13, 2005, December 16, 2005, and December 29, 2005 in order to retrieve information regarding the

abandonment of each of those U.S. Patent Applications of WHD listed in ¶ 5.

15. Respondent did not respond to Neifeld's communications.

16. On April 5, 2006, the PTO mailed Respondent a Notice Regarding Change of Power of Attorney, informing Respondent that his power of attorney for WHD had been revoked.

17. Respondent did not promptly deliver the information about those U.S. Patent Applications of WHD that Neifeld had requested.

18. Respondent represented CarlMiele & Cie, GMBH & Co. ("CarlMiele") before the PTO to prosecute U.S. Patent Application No. 10/413,071.

19. The PTO sent a Notice of Abandonment to Respondent in connection with CarlMiele's U.S. Patent Application No. 10/413,071 on December 29, 2004.

20. Respondent did not timely notify CarlMiele of the PTO's Notice of Abandonment regarding CarlMiele's U.S. Patent Application No. 10/413,071.

21. During the course of Respondent's representation of CarlMiele, Respondent allowed CarlMiele's U.S. Patent Application No. 10/413,071 to become abandoned without CarlMiele's consent.

22. During the course of Respondent's representation of CarlMiele, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to CarlMiele's U.S. Patent Application No. 10/413,071.

23. Respondent represented Miele & Cie, GMBH & Co. ("Miele") before the PTO to prosecute U.S. Patent Application No. 10/048,864.

24. The PTO sent a Notice of Abandonment to Respondent in connection with Miele's U.S. Patent Application No. 10/048,864 on November 3, 2004.

25. Respondent did not timely notify Miele of the PTO's Notice of Abandonment regarding Miele's U.S. Patent Application No. 10/048,864.

26. During the course of Respondent's representation of Miele, Respondent allowed Miele's U.S. Patent Application No. 10/048,864 to become abandoned without Miele's consent.

27. During the course of Respondent's representation of Miele, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Miele's U.S. Patent Application No. 10/048,864.

28. Respondent represented Helmut Matzunsky ("Matzunsky") before the PTO to prosecute U.S. Patent Application No. 11/209,060.

29. The PTO sent a Notice of Abandonment to Respondent in connection with Matzunsky's U.S. Patent Application No. 11/209,060 on May 11, 2006.

30. Respondent did not timely notify Matzunsky of the PTO's Notice of Abandonment regarding Matzunsky's U.S. Patent Application No. 11/209,060.

31. During the course of Respondent's representation of Matzunsky, Respondent allowed Matzunsky's U.S. Patent Application No. 11/209,060 to become abandoned without Matzunsky's consent.

32. Respondent did not provide sufficient evidence to support a Petition for Revival of Application under 37 C.F.R. 1.8(b) for the Matzunsky U.S. Patent Application No. 11/209,060, and the Petition was dismissed on September 22, 2006.

33. During the course of Respondent's representation of Matzunsky, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Matzunsky's U.S. Patent Application No. 11/209,060.

34. Respondent represented Hahn-Meitner-Institut Berlin GMBH ("Hahn") before the PTO to prosecute U.S. Patent Application No. 10/474,472.

35. The PTO sent a Notice of Abandonment to Respondent in connection with Hahn's U.S. Patent Application No. 10/474,472 on December 2, 2004.

36. Respondent did not timely notify Hahn of the PTO's Notice of Abandonment regarding Hahn's U.S. Patent Application No. 10/474,472.

37. During the course of Respondent's representation of Hahn, Respondent allowed Hahn's U.S. Patent Application No. 10/474,472 to become abandoned without Hahn's consent.

38. During the course of Respondent's representation of Hahn, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Hahn's U.S. Patent Application No. 10/474,472.

39. Respondent represented Walter Lea ("Lea") before the PTO to prosecute U.S. Patent Application No. 10/111,221.

40. The PTO sent a Notice of Abandonment to Respondent in connection with Lea's U.S. Patent Application No. 10/111,221 on December 14, 2004.

41. Respondent did not timely notify Lea of the PTO's Notice of Abandonment regarding Lea's U.S. Patent Application No. 10/111,221.

42. During the course of Respondent's representation of Lea, Respondent allowed Lea's U.S. Patent Application No. 10/111,221 to become abandoned without Lea's consent.

43. Respondent did not provide sufficient evidence to substantiate his allegation that he had mailed a response to a PTO Office Action regarding Lea's U.S. Patent Application No. 10/111,221.

44. During the course of Respondent's representation of Lea, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Lea's U.S. Patent Application No. 10/111,221.

45. Respondent represented Alexander Olowinsky, Thorsten Kramer, and Arnold Gillner ("OKG") before the PTO to prosecute U.S. Patent Application No. 10/486,298.

46. The PTO sent a Notice of Abandonment to Respondent in connection with OKG's U.S. Patent Application No. 10/486,298 on June 14, 2005.

47. Respondent did not timely notify OKG of the PTO's Notice of Abandonment regarding OKG's U.S. Patent Application No. 10/486,298.

48. During the course of Respondent's representation of OKG, Respondent allowed OKG's U.S. Patent Application No. 10/486,298 to become abandoned without OKG's consent.

49. Respondent mailed a Petition for Revival of Application on July 21, 2006, and a Renewed Petition for Revival of Application on September 25, 2007, each of which were dismissed on January 26, 2007 and April 2, 2008, respectively.

50. During the course of Respondent's representation of OKG, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to OKG's U.S. Patent Application No. 10/486,298.

51. Respondent represented Peer Haller and Joerg Wehsener ("Haller and Wehsener") before the PTO to prosecute U.S. Patent Application No. 10/479,439.

52. The PTO sent a Notice of Abandonment to Respondent in connection with Haller and Wehsener's U.S. Patent Application No. 10/479,439 on July 17, 2006.

53. Respondent did not timely notify Haller and Wehsener of the PTO's Notice of Abandonment regarding Haller and Wehsener's U.S. Patent Application No. 10/479,439.

54. During the course of Respondent's representation of Haller and Wehsener, Respondent allowed Haller and Wehsener's U.S. Patent Application No. 10/479,439 to become abandoned without Haller and Wehsener's consent.

55. Respondent sent to the PTO a Status Enquiry and Provisional Petition rather than a formal petition to revive Haller and Wehsener's U.S. Patent Application No. 10/479,439, because of Respondent's inadequate preparation.

56. During the course of Respondent's representation of Haller and Wehsener, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Haller and Wehsener's U.S. Patent Application No. 10/479,439.

57. Respondent represented Christian Hamm ("Hamm") before the PTO to prosecute U.S. Patent Application No. 29/227,674.

58. The PTO sent a Notice of Abandonment to Respondent in connection with Hamm's U.S. Patent Application No. 29/227,674 on July 25, 2006.

59. Respondent did not timely notify Hamm of the PTO's Notice of Abandonment regarding Hamm's U.S. Patent Application No. 29/227,674.

60. During the course of Respondent's representation of Hamm, Respondent allowed Hamm's U.S. Patent Application No. 29/227,674 to become abandoned without Hamm's consent.

61. Respondent sent to the PTO a Status Enquiry rather than a formal petition to revive Hamm's U.S. Patent Application No. 29/227,674, because of Respondent's inadequate preparation.

62. During the course of Respondent's representation of Hamm, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Hamm's U.S. Patent Application No. 29/227,674.

63. Respondent represented Fritz Loth ("Loth") before the PTO to prosecute U.S. Patent Application No. 10/499,527.

64. The PTO sent a Notice of Abandonment to Respondent in connection with Loth's U.S. Patent Application No. 10/499,527 on November 13, 2006.

65. Respondent did not timely notify Loth of the PTO's Notice of Abandonment regarding Loth's U.S. Patent Application No. 10/499,527.

66. During the course of Respondent's representation of Loth, Respondent allowed Loth's U.S. Patent Application No. 10/499,527 to become abandoned without Loth's consent.

67. During the course of Respondent's representation of Loth, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Loth's U.S. Patent Application No. 10/499,527.

68. Respondent represented Jin Liu ("Liu") before the PTO to prosecute U.S. Patent Application No. 10/129,217.

69. The PTO sent a Notice of Abandonment to Respondent in connection with Liu's U.S. Patent Application No. 10/129,217 on January 17, 2007.

70. Respondent did not timely notify Liu of the PTO's Notice of Abandonment regarding Liu's U.S. Patent Application No. 10/129,217.

71. During the course of Respondent's representation of Liu, Respondent allowed Liu's U.S. Patent Application No. 10/129,217 to become abandoned without Liu's consent.

72. During the course of Respondent's representation of Liu, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Liu's U.S. Patent Application No. 10/129,217.

73. Respondent represented Thing-Lok Tan, Frantz-Peter Montforts, and Daniela Meyer ("Tan, Montforts, and Meyer") before the PTO to prosecute U.S. Patent Application No. 10/451,518.

74. The PTO sent a Notice of Abandonment to Respondent in connection with Tan, Montforts, and Meyer's U.S. Patent Application No. 10/451,518 on June 25, 2007.

75. Respondent did not timely notify Tan, Montforts, and Meyer of the PTO's Notice of Abandonment regarding Tan, Montforts, and Meyer's U.S. Patent Application No. 10/451,518.

76. During the course of Respondent's representation of Tan, Montforts, and Meyer, Respondent allowed Tan, Montforts, and Meyer's U.S. Patent Application No. 10/451,518 to become abandoned without Tan, Montforts, and Meyer's consent.

77. During the course of Respondent's representation of Tan, Montforts, and Meyer, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Tan, Montforts, and Meyer's U.S. Patent Application No. 10/451,518.

78. Respondent represented Jeng-Ming Wu ("Wu") before the PTO to prosecute U.S.

Patent Application No. 10/488,316.

79. The PTO sent a Notice of Abandonment to Respondent in connection with Wu's U.S. Patent Application No. 10/488,316 on July 11, 2007.

80. Respondent did not timely notify Wu of the PTO's Notice of Abandonment regarding Wu's U.S. Patent Application No. 10/488,316.

81. During the course of Respondent's representation of Wu, Respondent allowed Wu's U.S. Patent Application No. 10/488,316 to become abandoned without Wu's consent.

82. During the course of Respondent's representation of Wu, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Wu's U.S. Patent Application No. 10/488,316.

83. Respondent represented Walther Thomas, Kai Ostermann, Hans-Frider Listewnik, Thomas Bley, and Gerhard Roedelan ("Thomas, Ostermann, Listewnik, Bley, and Roedelan") before the PTO to prosecute U.S. Patent Application No. 10/514,324.

84. The PTO sent a Notice of Abandonment to Respondent in connection with Thomas, Ostermann, Listewnik, Bley, and Roedelan's U.S. Patent Application No. 10/514,324 on August 13, 2007.

85. Respondent did not timely notify Thomas, Ostermann, Listewnik, Bley, and Roedelan of the PTO's Notice of Abandonment regarding Thomas, Ostermann, Listewnik, Bley, and Roedelan's U.S. Patent Application No. 10/514,324.

86. During the course of Respondent's representation of Thomas, Ostermann, Listewnik, Bley, and Roedelan, Respondent allowed Thomas, Ostermann, Listewnik, Bley, and Roedelan's U.S. Patent Application No. 10/514,324 to become abandoned without Thomas, Ostermann, Listewnik, Bley, and Roedelan's consent.

87. During the course of Respondent's representation of Thomas, Ostermann, Listewnik, Bley, and Roedelan, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Thomas, Ostermann, Listewnik, Bley, and Roedelan's U.S. Patent Application No. 10/514,324.

88. Respondent represented Gisela Ahrens, Gabi Gruetzner, Karl Pfeiffer, and Freimuth Reuther ("Ahrens, Gruetzner, Pfeiffer, and Reuther") before the PTO to prosecute U.S. Patent Application No. 10/433,589.

89. The PTO sent two Notices of Abandonment to Respondent in connection with Ahrens, Gruetzner, Pfeiffer, and Reuther's U.S. Patent Application No. 10/433,589 on November

16, 2007 and July 22, 2008.

90. Respondent did not timely notify Ahrens, Gruetzner, Pfeiffer, and Reuther of the PTO's Notices of Abandonment regarding Ahrens, Gruetzner, Pfeiffer, and Reuther's U.S. Patent Application No. 10/433,589.

91. During the course of Respondent's representation of Ahrens, Gruetzner, Pfeiffer, and Reuther, Respondent allowed Ahrens, Gruetzner, Pfeiffer, and Reuther's U.S. Patent Application No. 10/433,589 to become abandoned without Ahrens, Gruetzner, Pfeiffer, and Reuther's consent.

92. During the course of Respondent's representation of Ahrens, Gruetzner, Pfeiffer, and Reuther, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Ahrens, Gruetzner, Pfeiffer, and Reuther's U.S. Patent Application No. 10/433,589.

93. Respondent represented Manfred Danziger ("Danziger") before the PTO to prosecute U.S. Patent Application No. 10/520,366.

94. The PTO sent a Notice of Abandonment to Respondent in connection with Danziger's U.S. Patent Application No. 10/520,366 on March 13, 2008.

95. Respondent did not timely notify Danziger of the PTO's Notice of Abandonment regarding Danziger's U.S. Patent Application No. 10/520,366.

96. During the course of Respondent's representation of Danziger, Respondent allowed Danziger's U.S. Patent Application No. 10/520,366 to become abandoned without Danziger's consent.

97. During the course of Respondent's representation of Danziger, Respondent made representations to the PTO that were, upon the PTO's information and belief, knowingly false, deceitful, and/or lacking in candor in regards to Danziger's U.S. Patent Application No. 10/520,366.

98. Respondent represented Rudolf Slavicek ("Slavicek") before the PTO to prosecute U.S. Patent Application No. 10/491,581.

99. The PTO sent a Notice of Abandonment to Respondent in connection with Slavicek's U.S. Patent Application No. 10/491,581 on November 1, 2006.

100. Respondent did not timely notify Slavicek of the PTO's Notice of Abandonment regarding Slavicek's U.S. Patent Application No. 10/491,581.

101. During the course of Respondent's representation of Slavicek, Respondent allowed Slavicek's U.S. Patent Application No. 10/491,581 to become abandoned without Slavicek's consent.

102. Respondent represented Rolf Koenenkamp and Jie Chen ("Koenenkamp and Chen") before the PTO to prosecute U.S. Patent Application No. 10/487,802.

103. The PTO sent a Notice of Abandonment to Respondent in connection with Koenenkamp and Chen's U.S. Patent Application No. 10/487,802 on February 8, 2007.

104. Respondent did not timely notify Koenenkamp and Chen of the PTO's Notice of Abandonment regarding Koenenkamp and Chen's U.S. Patent Application No. 10/487,802.

105. During the course of Respondent's representation of Koenenkamp and Chen, Respondent allowed Koenenkamp and Chen's U.S. Patent Application No. 10/487,802 to become abandoned without Koenenkamp and Chen's consent.

106. Respondent represented Reimund Pichler ("Pichler") before the PTO to prosecute U.S. Patent Application No. 10/994,120.

107. The PTO sent a Notice of Abandonment to Respondent in connection with Pichler's U.S. Patent Application No. 10/994,120 on March 26, 2007.

108. Respondent did not timely notify Pichler of the PTO's Notice of Abandonment regarding Pichler's U.S. Patent Application No. 10/994,120.

109. During the course of Respondent's representation of Pichler, Respondent allowed Pichler's U.S. Patent Application No. 10/994,120 to become abandoned without Pichler's consent.

110. Respondent represented Annelie Flynn ("Flynn") before the PTO to prosecute U.S. Patent Application No. 11/111,514.

111. The PTO sent a Notice of Abandonment to Respondent in connection with Flynn's U.S. Patent Application No. 11/111,514 on May 17, 2007.

112. Respondent did not timely notify Flynn of the PTO's Notice of Abandonment regarding Flynn's U.S. Patent Application No. 11/111,514.

113. During the course of Respondent's representation of Flynn, Respondent allowed Flynn's U.S. Patent Application No. 11/111,514 to become abandoned without Flynn's consent.

114. Respondent represented Eberhard J. Sauter ("Sauter") before the PTO to prosecute

U.S. Patent Application No. 10/520,826.

115. The PTO sent a Notice of Abandonment to Respondent in connection with Sauter's U.S. Patent Application No. 10/520,826 on August 8, 2007.

116. Respondent did not timely notify Sauter of the PTO's Notice of Abandonment regarding Sauter's U.S. Patent Application No. 10/520,826.

117. During the course of Respondent's representation of Sauter, Respondent allowed Sauter's U.S. Patent Application No. 10/520,826 to become abandoned without Sauter's consent.

118. Respondent represented Bernd Sartorius ("Sartorius") before the PTO to prosecute U.S. Patent Application No. 10/474,249.

119. The PTO sent a Notice of Abandonment to Respondent in connection with Sartorius' U.S. Patent Application No. 10/474,249 on February 4, 2008.

120. Respondent did not timely notify Sartorius of the PTO's Notice of Abandonment regarding Sartorius' U.S. Patent Application No. 10/474,249.

121. During the course of Respondent's representation of Sartorius, Respondent allowed Sartorius' U.S. Patent Application No. 10/474,249 to become abandoned without Sartorius' consent.

III. CONCLUSIONS OF LAW

1. Respondent is subject to the PTO Disciplinary Rules set forth at 37 C.F.R. part 10.
2. Respondent neglected legal matters entrusted to him in violation of 37 C.F.R. § 10.77(c) by allowing patent applications to go abandoned without the consent of his clients, and by taking either no action or untimely and ineffective action to revive those abandoned applications listed in ¶¶ 5-121 of the above Findings of Fact.
3. Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of 37 C.F.R. § 10.23(b)(4) by falsely representing to the PTO and/or his clients that he mailed or received responses to Office Actions or other correspondence, checks in payment of fees, and/or amendments to applications in the case of WHD's Applications 09/485,750 and 09/931,694, Carl Miele's Application No. 10/413,071, Miele's Application No. 10/048,864, Matzunsky's Application No. 11/209,060, Lea's Application No. 10/111,221, Haller and Wehsener's Application No. 10/479,439, Loth's Application No. 10/499,527, Tan, Montforts, and Meyer's Application No. 10/451,518, Wu's Application No. 10/488,316, Thomas, Ostermann, Listewnik, Bley, and Roedelan's Application No. 10/514,324, Ahrens, Gruetzner, Pfeiffer, and Reuther's Application No. 10/433,589, Danziger's Application

No. 10/520,366, Liu's Application No. 10/129,217, Hahn's Application No. 10/474,472, OKG's Application No. 10/486,298, and Hamm's Application No. 29/227,674.

4. Respondent engaged in conduct that reflects adversely on his fitness to practice before the PTO in violation of 37 C.F.R. § 10.23(b)(6), as further identified in § 10.23(c)(8), by failing to notify each of the clients listed in ¶¶ 5-121 of the above Findings of Fact that he had received Notices of Abandonment regarding each of their respective applications.

5. Respondent handled a legal matter without preparation adequate in the circumstances in violation of 37 C.F.R. § 10.77(b) by not providing sufficient evidence to substantiate his allegation that he had mailed a response to an Office Action regarding Lea's Application No. 10/111,221, not supplying adequate evidence to support a petition for revival regarding Matzunsky's Application No. 11/209,060, and filing Status Enquiries rather than formal petitions to revive Haller and Wehsener's Application No. 10/479,439 and Hamm's Application No. 29/227,674.

6. Respondent has intentionally and habitually violated the PTO's disciplinary rules, specifically 37 C.F.R. §§ 10.77(b), 10.77(c), 10.23(b)(4), and 10.23(b)(6) as further identified in 10.23(c)(8), over a period of approximately six years, in violation of 37 C.F.R. § 10.89(c)(6).

7. Respondent failed to promptly deliver to his former client property that the client was entitled to receive, in violation of 37 C.F.R. § 10.112(c)(4), by ignoring repeated requests by WHD's attorney to deliver WHD's patent applications materials.

8. Respondent's failure to answer the Complaint constitutes an admission of each allegation in the Complaint, and default judgment may be entered against him for violating 37 C.F.R. §§ 10.77(b), 10.77(c), 10.23(b)(4), 10.23(b)(6) as further identified in § 10.23(c)(8), and 37 C.F.R. § 10.112(c)(4). 37 C.F.R. § 11.36(e).

9. Upon consideration of the duties Respondent owed to his clients, the public, and the PTO, the extent to which he intentionally violated those duties, the amount of actual or potential injury caused by Respondent's conduct, and any other mitigating or aggravating factors, Respondent's exclusion from practice before the PTO is warranted. 37 C.F.R. § 11.54(b).

IV. APPLICABLE LAW

Jurisdiction

The PTO "may establish regulations" that "govern the recognition and conduct of agents, attorneys, or other persons representing applications or other parties before the Office." 35 U.S.C. § 2(b)(2)(D). Because Respondent is an attorney registered to represent parties before the PTO and has practiced law before the PTO, his conduct in that capacity is governed by all regulations promulgated under 35 U.S.C. § 2(b)(2)(D), notably, those under 37 C.F.R. part 10.

Any "person, agent or attorney...who does not comply with the regulations" may be suspended or excluded from practicing before the PTO "after notice and opportunity for a hearing." 35 U.S.C. § 32. The PTO may initiate a disciplinary action by filing a complaint with a hearing officer chosen by the PTO Director, in accordance with 37 C.F.R. § 11.34, and serving the complaint on Respondent in accordance with 37 C.F.R. § 11.35. 37 C.F.R. §§ 11.32 and 11.39; 5 U.S.C. § 3105.

Any "registered attorney or agent" before the PTO is required to "notify the OED Director of his or her postal address for his or her office...as well as every change to any of said addresses...within thirty days of the date of the change" by "separately fil[ing] written notice of the change...to the OED Director." 37 C.F.R. § 11.11(a). The regulations at 37 C.F.R. § 11.35(a)(2)(i) prescribe proper service of a complaint in a disciplinary proceeding as "any delivery service that provides ability to confirm delivery or attempted delivery to... a respondent who is a registered practitioner at the address provided to OED" by that registered attorney or agent.

Because Complainant properly mailed a copy of the Complaint to Respondent via first-class certified mail, return receipt requested, at the address Respondent last provided to the PTO, service was completed in accordance with the regulations in 37 C.F.R. part 11. Complaint Certificate of Service; Motion Exhibit 1. Respondent did receive the Complaint, as evidenced by the signature of an individual identified as his agent on the Domestic Return Receipt. *Id.*

Complaint

A complaint must contain the substance required in 37 C.F.R. § 11.34. *Inter alia*, the Complaint must inform Respondent of the allegations against him, the opportunity to file an answer within thirty days from the date of the complaint, and that a failure to answer may result in Respondent's admission of the complaint's allegations and a default judgment against him.

The Complaint sufficiently meets all requirements set forth in 37 C.F.R. § 11.34. The Complaint names Respondent, gives a plain and concise description of the allegations for discipline, states the appropriate address for delivery, the addressee, and the limited time period for filing an answer. The signed Complaint informed Respondent that a "decision by default may be entered against Respondent if a written answer is not timely filed." Complaint at 1, 49.

Default Judgment

Respondent is in default. His failure to answer the Complaint constitutes an admission of each and every allegation in the Complaint, and default judgment may be entered against him. 37 C.F.R. § 11.36(e). The allegations in the Complaint, the assertions in the Motion, and all accompanying exhibits of each, are incorporated into this Order by reference.

Count One - Respondent's Neglect

37 C.F.R. § 10.77(c) provides in pertinent part:

A practitioner shall not:

* * *

(c) Neglect a legal matter entrusted to the practitioner.

Respondent violated 37 C.F.R. § 10.77(c) by neglecting to maintain or adequately prosecute the U.S. Patent Applications of WHD, CarlMiele, Miele, Matzunsky, Hahn, Lea, OKG, Haller and Wehsener, Hamm, Loth, Liu, Tan, Mortforts, and Meyer, Wu, Thomas, Ostermann, Listewnik, Bley, and Roedelan, Ahrens, Gruetzner, Pfeiffer, and Reuther, Danziger, Slavicek, Koenenkamp and Chen, Pichler, Flynn, Sauter and Sartorius.

Respondent's neglect is demonstrated by his failure to timely respond, or respond at all to correspondence from the PTO, requests for more information, and various notices, particularly Office Actions and Notices of Abandonment. His neglect is further evidenced by his failure to communicate with those clients whose patent applications were abandoned by his lack of cooperation with the PTO, as well as his lack of corrective action to revive the applications.

Count Two - Respondent's Dishonesty, Fraud, Deceit, or Misrepresentation

37 C.F.R. § 10.23(b)(4)⁴ provides in pertinent part:

(b) A practitioner shall not:

* * *

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Respondent violated 37 C.F.R. § 10.23(b)(4) by falsely representing to the PTO that he had mailed responses to the PTO's November 7, 2001 Office Action in the matter of WHD's Application No. 09/485,750, the PTO's December 10, 2001 Office Action in the matter of WHD's Application No. 09/931,694, the PTO's April 5, 2004 Office Action in the matter of CarlMiele's Application No. 10/413,071, the PTO's March 25, 2004 Office Action in the matter

⁴ Complainant actually alleges that Respondent violated "37 U.S.C. § 10.23(b)(4)." Complaint at ¶ 41, Motion at ¶ 2. That citation is incorrect. Presumably, Complainant meant to allege a violation of 37 C.F.R. § 10.23(b)(4), the language of which matches the PTO's allegation. Because Complainant's error was purely ministerial, and there is no confusion as to what Complainant intended to allege against Respondent, I will treat Complainant's citation as it was intended to be written.

of Miele's Application No. 10/048,864, the PTO's August 30, 2005 Notice of File Missing Parts of Nonprovisional Application in the matter of Matzunsky's Application No. 11/209,060, the PTO's May 18, 2004 Office Action in the matter of Lea's Application No. 10/111,221, the PTO's December 20, 2005 Office Action in the matter of Haller and Wehsener's Application No. 10/479,439, the PTO's March 10, 2006 Office Action in the matter of Loth's Application No. 10/499,527, the PTO's December 7, 2005 Office Action in the matter of Tan, Montforts, and Meyer's Application No. 10/451,518, the PTO's March 6, 2006 Office Action in the matter of Thomas, Ostermann, Listewnik, Bley, and Roedelan's Application No. 10/514,324, the PTO's April 19, 2007 Office Action in the matter of Ahrens, Gruetzner, Pfeiffer, and Reuther's Application No. 10/433,589, and the PTO's August 24, 2006 Office Action in the matter of Danziger's Application No. 10/520,366.

Respondent also violated 37 C.F.R. § 10.23(b)(4) by falsely representing to the PTO that he had mailed a check in payment of fees to the PTO in the matter of Tan, Montforts, and Meyer's Application No. 10/451,518, a check in payment of fees and a Status Enquiry in the matter of Wu's Application No. 10/488,316, an amendment to Ahrens, Gruetzner, Pfeiffer, and Reuther's Application No. 10/433,589, and an amendment to Danziger's Application No. 10/520,366.

Respondent also violated 37 C.F.R. § 10.23(b)(4) by falsely representing to Liu that he had sent a response to the PTO's December 14, 2005 Office Action on February 9, 2006 in the matter of Liu's Application No. 10/129,217.

Respondent also violated 37 C.F.R. § 10.23(b)(4) by falsely representing to the PTO that he did not receive a July 24, 2004 Notice of Allowance and Fee(s) Due from PTO in the matter of Hahn's Application No. 10/474,472, a September 30, 2004 Office Action consisting of an *Ex Parte Quayle* action, and a January 26, 2007 decision from the PTO dismissing Respondent's Petition for Revival of Application and Response to *Ex Parte Quayle* action in the matter of OKG's Application No. 10/486,298, and a January 24, 2006 Office communication from the PTO in the matter of Hamm's Application No. 29/227,674.

Count Three - Respondent's Failure to Notify

37 C.F.R. § 10.23(b)(6) provides in pertinent part:

(b) A practitioner shall not:

* * *

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

37 C.F.R. § 10.23(c)(8) provides in pertinent part:

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

* * *

(8) Failing to inform a client...of correspondence received from the Office...when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client...and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client...should be notified.

Respondent violated 37 C.F.R. § 10.23(b)(6), as further identified in 37 C.F.R. § 10.23(c)(8), by failing to notify clients WHD, Carl Miele, Miele, Matzunsky, Hahn, Lea, OKG, Haller and Wehsener, Hamm, Loth, Liu, Tan, Mortforts, and Meyer, Wu, Thomas, Ostermann, Listewnik, Bley, and Roedelan, Ahrens, Gruetzner, Pfeiffer, and Reuther, Danziger, Slavicek, Koenenkamp and Chen, Pichler, Flynn, Sauter, and Sartorius that he had received Notices of Abandonment in regards to each of their U.S. Patent Applications.

The Notices of Abandonment were critical correspondences about which Respondent was obligated to inform his clients. The Notices were significant in that they alerted Respondent that his client's application had been abandoned, and that timely steps were necessary for revival. Because the Notices were mailed to Respondent, he was under a duty to report them to his clients; any reasonable practitioner, cognizable of his attorney-client relationship, would do this.

Count Four - Respondent's Inadequate Preparation

37 C.F.R. § 10.77(b) provides in pertinent part:

A practitioner shall not:

* * *

(b) Handle a legal matter without preparation adequate in the circumstances.

Respondent violated 37 C.F.R. § 10.77(b) by failing to adequately prepare for the prosecution of the U.S. Patent Applications of Matzunsky, Lea, Haller and Wehsener, and Hamm when he filed incomplete, inappropriate or insufficient materials regarding the processing or maintenance of those applications.

Specifically, Respondent did not provide sufficient evidence to substantiate his allegation that he had mailed a response to an Office Action regarding Lea's Application No. 10/111,221, did not supply adequate evidence to support a Petition for Revival regarding Matzunsky's Application No. 11/209,060, and filed Status Enquiries rather than formal petitions to revive

Haller and Wehsener's Application No. 10/479,439 and Hamm's Application No. 29/227,674.

Count Five - Respondent's Habitual Violations of Disciplinary Rules

37 C.F.R. § 10.89(c)(6) provides in pertinent part:

(c) In appearing in a professional capacity before a tribunal, a practitioner shall not:

* * *

(6) Intentionally or habitually violate any provision of this subchapter or established rule of evidence.

While registered to practice and while practicing patent law before the PTO, Respondent has habitually violated that tribunal's disciplinary rules, specifically 37 C.F.R. §§ 10.77(b), 10.77(c), 10.23(b)(4), and 10.23(b)(6) as further identified in 10.23(c)(8), over a period of approximately six years.

Count Six - Respondent's Failure to Promptly Deliver Client Property

37 C.F.R. § 10.112(c)(4) provides in pertinent part that,

(c) A practitioner shall:

* * *

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the practitioner which the client is entitled to receive.

Respondent failed to deliver WHD's patent application materials, as requested by WHD's attorney Neifeld, after repeated requests to do so, and after being informed by both Neifeld and the PTO that WHD had terminated Respondent's representation of WHD. After WHD terminated its relationship with Respondent, Respondent was no longer entitled to maintain the application files of WHD.

This is not an instance where an attorney may be justified in keeping the property of a client (or former client) because there exists a genuine dispute as to its ownership. *See Halvonik v. Dudas*, 398 F.Supp.2d 115 at 130 (D.D.C. 2005) (holding that the PTO practitioner who would not refund \$500 to his entitled client was in violation of 37 C.F.R. § 10.112(c)(4) because no bona fide fee dispute existed). Nor were WHD's patent application materials of a de minimus value, but instead were extremely valuable given the applications' abandoned status and the time sensitivity of taking action to protect WHD's intellectual property rights. *See id.* at 131 (holding

that even if the disclosure materials in question had minimal value, the wrongful act of keeping them without entitlement cannot be excused). In *Halvonik*, the court determined that a practitioner before the PTO who violated 37 C.F.R. § 10.112(c)(4) by keeping both \$500 and documents from clients without being “entitled” to them was properly suspended for seven months. Id.

IV. PENALTY

The presiding officer in a PTO disciplinary hearing is required to consider four factors, “if they are applicable,” when determining an appropriate penalty:

- (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 conduct; and
- (4) The existence of any aggravating or mitigating factors.

37 C.F.R. § 11.54(b)(1)-(4).

Complainant alleges Respondent violated duties owed to clients as well as to the legal system, notably the duty to competently represent his clients’ interests and the duty to maintain candor and truthfulness towards the PTO. Motion at 5-8. Complainant points out that Respondent mishandled the patent applications of thirty-five clients and that his violations of his ethical duties were substantive and directly resulted in twenty-eight patent applications being abandoned without the consent of his clients. Motion at 5-6. Complainant also alleges Respondent engaged in these various violations intentionally. Motion at 9. Accepting all allegations as true in accordance with this order in default judgment, Respondent is found to have violated his duties to not only his clients, but also the PTO and patent legal system.

The American Bar Association notes that “potential injury” is harm that is “reasonably foreseeable at the time of the lawyer’s misconduct.” *Standards for Imposing Lawyer Sanctions*, as amended 1992, ABA, at 13 (2005). In Complainant’s Motion for default judgment, Complainant does not specifically allege any potential injury against the PTO or Respondent’s clients, but only those injuries “actual and continuing.” Motion at 9. However, given that Respondent has been registered to practice before the PTO for thirty-five years, harm to his clients and the PTO from repeated acts of neglect, misrepresentation, failure to notify, and inadequate preparation should certainly have been reasonably foreseeable.

Respondent’s actions caused potential and actual harm to his clients and the PTO. However, 37 C.F.R. § 11.54(b) states that what should be considered in penalty determinations is the “amount” of potential or actual injury. Because the appropriate analysis depends on the *quantity* of harm “caused by practitioner’s conduct,” the penalty cannot be adjusted from the finding that Respondent caused harm alone. 37 C.F.R. § 11.54(b)(3).

Complainant admits that “[w]hile the harm to all 35 clients is actual, [the PTO] does not have evidence of the amount of monetary damages, if any, those persons may have sustained.” Motion at 10 n.9. In an attempt to substantiate the harm caused by Respondent, Complainant states:

The harm caused by Respondent’s neglect is particularly egregious for those seven clients whose applications became abandoned after the USPTO had issued a Notice of Allowance informing Respondent that a patent would issue on the application upon payment of the issue fee.

Motion at 9-10. Complainant would have us assume that those seven clients’ applications were further in the process of being approved and therefore, those clients were closer to obtaining patents. However, nothing in the Motion or Complaint provides a way to quantify the difference between these seven clients’ injuries and Respondent’s other clients who had not received Notices of Allowance. Complainant merely mentions that some clients “have expended additional financial resources by hiring other practitioners.” Motion at 10. While this may be enough to demonstrate an actual or potential injury to Respondent’s former clients, this tribunal can only speculate as to the “amount” of injury Respondent has caused.

The penalty determined here - exclusion - is justified after consideration of the other three factors of 37 C.F.R. § 11.54(b)(1), (2), and (4), regardless of the limited effect of this third consideration. At the very least, exclusion will protect the public and the PTO from any further injury caused by Respondent, thereby accomplishing the most fundamental goal of attorney discipline. “The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.” *Standards for Imposing Lawyer Sanctions* 1.1.

Complainant’s Motion asserts that there are no mitigating factors to consider in the penalty determination, but suggests that there are aggravating circumstances. Motion at 10. Citing a “recent review of more applications being prosecuted by Respondent,” Complainant alleges that Respondent “permitted seven more applications to become abandoned for failure to respond to Office Actions” at the expense of sixteen clients. Motion at 10-11.

None of these clients or applications are mentioned in the Complaint or elsewhere in the Motion, so Complainant clearly intends this information to act as a penalty aggravation only.⁵ I observe that while the record before me does not show that Respondent has a history of prior violations, he has continued to violate the PTO’s disciplinary rules since the Complaint was filed.

⁵ Complainant *does* identify the application numbers and clients that the Motion references, such that Complainant might have considered filing an Amended Complaint if Respondent had answered the original. Motion at 11 n.10-12.

Courts have repeatedly held that attorneys who continuously violate disciplinary rules over a lengthy period of time should receive a substantial suspension if not exclusion. See *In the Matter of McAllister*, 265 Ga. 420 (1995) (disbarring attorney engaged in multiple violations of state disciplinary rules over three years, including abandoning legal matters entrusted to him, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and failing to respond to state disciplinary authorities); and *In the Matter of Hammock*, 278 Ga. 385 (2004) (majority holding that a two-year suspension was proper; two dissenting justices claiming disbarment appropriate when attorney failed to communicate with clients for months, misrepresented the status of their cases, had three prior disciplinary infractions and neglected clients' legal matters).

Serious and willful violations of disciplinary rules, even when an attorney holds a record free of violations, may justify disbarment. See *In the Matter of Shehane IV*, 276 Ga. 168 (2003) (disbarring attorney, holding that even though "respondent has not been the subject of any prior disciplinary action during his eight-year membership in the State Bar of Georgia, we take very seriously his deliberate, deceitful acts to obfuscate the truth"). The record before me reflects that Respondent has not only been repeatedly offending the integrity of his attorney-client relationships and failing to abide by the rules of the PTO for six years, but he has also demonstrated a deliberate lack of interest in participating in his own disciplinary proceeding before the PTO by not answering Complainant's allegations.

Presiding officers in disciplinary proceedings before the PTO have excluded patent attorneys for the same violations in question here. See *In the Matter of Lawrence Y.D. Ho*, Proceeding No. D09-04 (2009) (excluding attorney in default judgment for violating 37 C.F.R. § 10.23); *In the Matter of Halvonik*, Proceeding No. D06-15 (2008) (excluding patent attorney for violations of 37 C.F.R. §§ 10.77, 10.112, and 10.40); *In re Rosenberg*, Proceeding No. D06-07 (2007) (excluding patent attorney from practice before the PTO for failing to inform a client about correspondence from the PTO, handling a legal matter without adequate preparation and neglecting a legal matter entrusted to him); *Bovard v. Uland*, Proceeding No. D99-03 (1999) (excluding patent attorney in default judgment for mishandling two patent applications); *Bovard v. Gould*, Proceeding No. D96-02 (1997) (excluding patent attorney in default judgment for neglect, misconduct, incompetent representation, and keeping a client's property to which he was not entitled); and *Slater v. Quigg*, 647 F.Supp. 8 (D.D.C. 1986) (holding that the PTO Commissioner's suspension of patent attorney for more than one year for neglect and misconduct in handling two patent applications in violation of 37 C.F.R. § 10.23 was not arbitrary, capricious, or an abuse of discretion).

The number of clients harmed and patent applications mishandled by Respondent, and the multiple, repeated resulting violations he has committed, warrant the sanction of exclusion. The lesser penalty of suspension would not be appropriate here, as it is properly assessed against patent attorneys who have not committed nearly as many violations, and who have at least been responsive to the PTO's investigation, if not cooperative. See *Moatz v. Gordon-Lendvay*, Proceeding No. D06-02 (2007) (suspending patent attorney for five years for violating four

sections of 37 C.F.R. part 10 during the prosecution of one client's single patent application); *In the Matter of Hierl*, Proceeding No. D06-19 (2007) (suspending patent attorney for three months when attorney "resigned from his firm, ... expressed regret," cooperated with the PTO in their investigation, and only violated 37 C.F.R. §§ 10.23(b)(6), 10.23(c)(8), and 10.112(c)(4) once each); *In re Schaefer*, Proceeding No. D07-001 (2007) (suspending patent attorney for three months for harming one client by allowing an application to become abandoned, neglecting a legal matter entrusted to him, failure to withdraw, failure to deliver property, and failure to notify the client).

V. ORDER

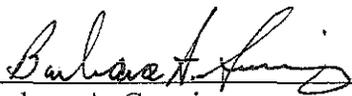
After finding Respondent in violation of regulations governing the behavior of patent attorneys practicing before the U.S. Patent and Trademark Office, located at 37 C.F.R. part 10, and default judgment being appropriate in accordance with 37 C.F.R. § 11.36(e), I hereby grant Complainant's Motion, and in entering default judgment against Respondent,

IT IS HEREBY ORDERED that Respondent, Karl Hormann, U.S. PTO Registration No. 26,470, be excluded from practice before the United States Patent and Trademark Office.

Respondent's attention is directed toward 37 C.F.R. § 11.58 regarding responsibilities in the case of suspension or exclusion, and 37 C.F.R. § 11.60 concerning any subsequent petition for reinstatement.

Pursuant to 37 C.F.R. § 11.55, any appeal by 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 PTO Director at the address provided in 37 C.F.R. § 1.1(a)(3)(ii) within thirty (30) days of the date of this Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision. Failure to file such an appeal in accordance with § 11.55 above will be deemed to be both an acceptance by Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

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



Barbara A. Gunning
United States Administrative Law Judge

Dated: July 8, 2009
Washington, DC