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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of:)

James C. Weseman,)

Respondent.)

Proceeding No. D2009-22

INITIAL DECISION ON DEFAULT

This proceeding was initiated on January 7, 2010 with the filing of a Complaint and Notice of Proceedings Under 35 U.S.C. § 32 ("Complaint") by Harry I. Moatz, Director of the Office of Enrollment and Discipline ("OED") for the United States Patent and Trademark Office ("PTO") against James C. Weseman ("Respondent"). The Complaint alleges that Respondent, a registered patent attorney before the PTO since February 25, 1991, violated Section 10.(b)(5) of the applicable regulations promulgated at 37 C.F.R. Parts 10 and 11 ("Rules") by engaging in conduct prejudicial to the administration of justice. Specifically, the OED alleges that on three occasions Respondent submitted to the PTO checks in payment of patent fees and charges on behalf of clients which "bounced," *i.e.* were dishonored, and despite notice thereof, never "made good," on the checks or paid the PTO's returned check processing fee. For this violation, the Complaint seeks entry of an order suspending Respondent from practice before the PTO in patent, trademark, and all other non-patent cases or matters.

No Answer to the Complaint having been received from Respondent, on May 6, 2010, the OED filed and served on Respondent a Motion for Default Judgment and Imposition of Discipline ("Motion"). The Motion seeks an initial decision entering a default judgment against Respondent and suspending him from practice before the PTO in patent, trademark, and all other non-patent cases or matters for a period of at least one hundred eighty (180) days.

I. Applicable Rules Relevant to Default

The Rules at Section 11.35 provide 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

* * *

(b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case, the time for filing an answer shall be thirty days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with paragraph (d) of § 11.36, and the hearing officer may enter an initial decision on default.

37 C.F.R. § 11.35.

The Rules at Section 11.36 provide 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 January 7, 2010, PTO served the Complaint on Respondent by mailing a copy of it by certified mail, return receipt requested, to Respondent at the last known address he provided to PTO, namely: James C. Weseman, Law Offices of James C. Weseman, 401 West A. Street, Suite 1600, San Diego, CA 92101." Motion ("Mot.") ¶ 2. The certified mail was "returned to the sender," PTO alleges, because the mailing was not claimed by the addressee. Mot ¶ 4; Mot. Ex. 1. The United States Postal Service Track and Confirm Search Results, attached as Exhibit 1 to the Motion, appears to demonstrate that the mail was forwarded from a San Diego address on January 9, 2010, to a Del Mar, CA, address on January 14, 2010, and was marked "Unclaimed" on February 12, 2010. Mot. Ex. 1.

PTO then attempted service by publishing in the *Official Gazette*, for two consecutive weeks, "Service by Publication" of the Complaint, dated February 16, 2010, informing the reader of the disciplinary proceeding initiated against Respondent and providing instructions on how to obtain a copy of the Complaint. Mot. ¶ 5; Mot. Ex. 2, *Official Gazette* notices of "Service by Publication," March 9, 2010, and March 16, 2010. PTO states that as of the date of the Motion, Respondent has not answered the Complaint, "nor has he otherwise contacted counsel for the

OED Director about the pending Complaint.” Mot. at 2.

The applicable Rules provide that service by publication can be initiated “[i]f a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a),” which includes personal service at (a)(1), and mail with delivery confirmation capability at ¶(a)(2). 37 C.F.R. § 11.35. PTO attempted to serve Respondent by certified mail, return receipt requested, pursuant to Section 11.35(a)(2), which did not result in delivery of the Complaint on Respondent, as evidenced by the Track and Confirm results. See Mot. Ex.1. Thereafter, service by publication was appropriately commenced and executed, as evidenced by the copies of the March 9, 2010, and March 16, 2010, *Official Gazette*. See Mot. Ex. 2.

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.

Complaint (“Compl.”) at 1. The addresses of the Director and this Tribunal appear in the Complaint, with an instruction to file and serve an answer within thirty days to those addresses. Compl. at 7, Notice of Correspondence 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 February 8, 2010, which is thirty days from January 7, 2010. The Motion indicates that Respondent has not served OED with an answer to the Complaint. Mot. at 2. To date, this Tribunal has not received an answer to the Complaint.

In addition, Respondent has not responded to the Motion for Default. The Certificate of Service on the Motion indicates that the Motion was sent by certified mail, return receipt requested, to Respondent on May 6, 2010, at the mailing address to which PTO mailed the complaint without success. Mot. at 10. Regarding proper service of motions, the Rules instruct that motions may be served by first-class mail, “Express Mail,” or other delivery service, and that “[s]ervice by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.” 37 C.F.R. §§ 11.42(b)(2), (f). 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, and service has been completed in accordance with the Rules, 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. Nevertheless, a period of time has been provided for Respondent to reply to the Motion and he has not done so.

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, 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.

37 C.F.R. § 10.23(b)(5).

Section 151 of Title 25 of the United States Code, in describing the patent application process, states in pertinent part:

If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid *within three months thereafter*.

Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of this three-month period.

35 U.S.C. § 151 (emphasis added).

However, the particular Rules outlining patent application fees at 37 C.F.R. Part 1, Subpart A, provide in pertinent part:

Patent fees and charges payable to the United States Patent and Trademark Office

are required to be *paid in advance*; that is, at the time of requesting any action by the Office for which a fee or charge is payable, with the exception that under § 1.53 applications for patent may be assigned a filing date without payment of the basic filing fee.

37 C.F.R. § 1.22(a)(emphasis added): All payments required for PTO fees may be paid with a check, cashier's check, money order or credit card, in accordance with 37 C.F.R. § 1.23.

IV. Discussion of Issues Regarding Liability

The Complaint alleges that "Respondent violated 37 C.F.R. § 10.23(b)(5) by engaging in conduct that his [sic] prejudicial to the administration of justice" by failing to make good on returned checks he submitted, or caused to be submitted, to the USPTO in connection with patent applications he was prosecuting before the USPTO after receiving notice of the returned checks." Compl. ¶ 31. Respondent's conduct, PTO further alleges, was willful. Compl. ¶ 8.

The three "bad" checks referred to in the Complaint filed on January 7, 2010 are identified therein as follows:

Check No. 8911, in the amount of \$795, drawn on a Californian bank account in the name of "James C. Weseman A Professional Corporation," bearing the purported signature of Respondent, and submitted by Respondent to the PTO in connection with a Response to Notice to File Missing Parts of Application in U.S. Patent Application No. 10/531,106 on or about March 1, 2006. Compl. ¶¶ 9-11.

Check No. 1573, in the amount of \$730, drawn on a bank account in the name of "Lillian M. Montano," bearing the purported signature of Lillian Montano, and submitted by Respondent to the PTO in connection with a Request for Continued Examination in U.S. Patent Application No. 10/117,457 on or about March 18, 2005. Compl. ¶¶ 21-27.

Check No. 4676, in the amount of \$460, drawn on a Californian bank account in the name of "Ignacio R. Montano Lillian M. Montano," bearing the purported signature of Lillian Montano, and submitted by Respondent to the PTO in connection with a Request for Continued Examination in U.S. Patent Application No. 09/636,119 on or about *July 15, 2002*. Compl. ¶¶ 28-29.

The Complaint asserts that "Lillian M. Montano has been identified by Respondent as an assistant in his patent law office who ceased being employed by Respondent in July 2006." Compl. ¶ 23.

The general federal five-year statute of limitations codified at 28 U.S.C. § 2462 applies to actions such as this brought pursuant to 37 C.F.R. Part 11 for violations of the PTO Code of

Professional Responsibility. *Sheinbein v. Dudas*, 465 F.3d 493, 496 (Fed. Cir. 2006). That provision states in pertinent part as follows:

an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued

28 U.S.C. § 2462.

"A claim normally accrues when the factual and legal prerequisites for filing suit are in place." *Sheinbein*, 465 F.3d at 496 quoting *3M Co. v. Browner*, 17 F.3d 1453, 1460 (D.C. Cir. 1994). In *Sheinbein*, the PTO sought exclusion based upon the practitioner's prior state disbarments. *Id.*, 465 F.3d at 494. Noting that *Sheinbein* could not be reciprocally charged by the PTO until his disbarment elsewhere, the Court found that "the legal prerequisites for his exclusion were not satisfied until those acts occurred." *Id.*, 465 F.3d at 496.

In this case, the predicate for the disbarment on the basis of having engaged in conduct prejudicial to the administration of justice is Respondent's submission to the PTO of three "bad" checks. Issuance of bad checks has been found to evidence professional misconduct, even where the checks were not related to a practitioner's professional practice. See e.g., *In re Kaufman*, 32 A.D.2d 358, 359 (N.Y. App. Div. 1st Dep't 1969) ("Although the worthless checks were not related to his law practice, their issuance cannot be condoned and is a violation of professional standards."); *In re Dixon*, 744 So. 2d 618 (La. Oct. 1, 1999) (attorney who uttered bad checks for personal expenses sanctioned in disciplinary proceeding for, *inter alia*, engaging in conduct prejudicial to the administration of justice); *In re Sifly*, 279 S.C. 113, 114-115 (S.C. 1983) (attorney sanctioned for, *inter alia*, drawing 101 bad checks on his personal account over a period of about one year); *In re Morrissey*, 648 A.2d 185, 190 (D.C. 1994) (in reciprocal disciplinary action finding noting Virginia's six-month suspension for passing a bad check "gives us no reason for pause.").

To the extent that the Complaint here (filed on January 7, 2010), is predicated on the two bad checks submitted by Respondent in 2005 and 2006, the action clearly falls within the five year statute of limitations. However, to the extent that the charge is predicated upon Check No. 4676 submitted by Respondent to the PTO in connection on or about *July 15, 2002*, it is time-barred in that the legal and factual prerequisites for disciplining him based upon such check existed at the time the PTO received notice that the check was dishonored for insufficient funds, sometime in or about 2002, more than five years before this action was initiated. The fact that the PTO may have notified Respondent that the check had been returned for insufficient funds or made a demand therefor thereafter does not extend such time period in that neither Virginia (where the PTO is sited) nor California (where Respondent is sited) extend the time for filing suit to enforce the obligation of a party to pay the draft upon the giving of notice of the dishonor or the making of a demand for payment. Va. Code Ann. § 8.3A-118(c) (2010); Cal U Com Code § 3118(c)(2010).

Otherwise, 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. Respondent was initially registered as a patent agent on December 15, 1981, and has been registered as a patent attorney since February 25, 1991 (Registration No. 30,507). Therefore, Respondent is subject to the PTO Code of Professional Responsibility and Disciplinary Rules set forth in 37 C.F.R. Parts 10 and 11.
2. This Tribunal has jurisdiction of this proceeding pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.32 and 11.39.
3. PTO mailed Respondent a Notice of Allowance and Issue Fee dated December 13, 2004, which included a three-month response period.
4. In response to a Notice of Allowance and Issue Fee in connection with U.S. Application No. 10/117,457, on or about March 18, 2005, Respondent caused to be submitted to the PTO Check No. 1573 in the amount of \$730, made payable to the order of "Comm. of Patents and Trademarks" and drawn from a Bank of America account entitled "Lillian M. Montano" and bearing the purported signature of Lillian M. Montano.
5. Lillian M. Montano has been identified by Respondent as an assistant in his patent law office whom Respondent permitted to submit papers to the PTO and who ceased being employed by Respondent in July 2006.
6. Check No. 1573 was returned for insufficient funds, a fact known to Respondent since at least March 9, 2009.
7. On June 28, 2005, the Issue Branch of the PTO permitted the issuance of Patent Number 6,912,417 on U.S. Patent Application No. 10/117,457, without knowledge that Check No. 1573, the check for the issue fee, had been returned for insufficient funds.
8. As of the date of the Complaint, Respondent has failed to provide sufficient information to show that he has made good on Check No. 1573 and the return check processing fees, and has not submitted papers to PTO to remedy the abandonment of the application occurring via operation of 35 U.S.C. § 151.

9. Because the issue fee was not paid timely and because action has not been taken to revive the application, there is a cloud on the enforceability of the patent issued in U.S. Patent Application No. 10/117,457.
10. On or about March 1, 2006, in Response to Notice to File Missing Parts of Application in connection with U.S. Patent Application No. 10/531,106. Respondent signed and caused to be submitted to the PTO Check No. 8911 in the amount of \$795.00. Said check was made payable to the order of "Commissioner of Patents & Trademarks" and drawn from a California Bank & Trust account entitled "James C. Weseman A Professional Corporation," and bearing the purported signature of Respondent.
11. On July 17, 2006, September 26, 2006, October 5, 2007, and March 9, 2009 the PTO informed Respondent in writing that Check No. 8911 had been returned for insufficient funds.
12. Respondent received the four written notifications, but did not "make good" on the check, *i.e.* otherwise provide the necessary funds.
13. As of the date of the Complaint, Respondent has failed to provide sufficient information to show that he has made good on Check No. 8911 and the return check processing fees.
14. As an experienced patent practitioner, Respondent knew or reasonably should have known that PTO charges patent fees and that those fees are to be paid in advance in accordance with 35 U.S.C. § 151 and 37 C.F.R. § 1.22.
15. As an experienced patent practitioner, Respondent knew or reasonably should have known of the potential adverse consequences to his clients' intellectual property rights, including the abandonment of his clients' patent applications, when required payments are not made to PTO.
16. Because Respondent was notified in writing by PTO that Checks 1573 and 8911 had been returned for insufficient funds, and has known of this fact at least since March 9, 2009, which was more than nine months before the filing of the Complaint, Respondent's failures to complete payment in connection with his clients' patent applications constitute willful violations of the PTO Code of Professional Responsibility.
17. Said aforementioned conduct evidences that Respondent engaged in conduct prejudicial to the administration of justice, in violation of 37 C.F.R. § 10.23(b)(5).

V. Penalty

As to the penalty for this violation, in its Motion the PTO requests issuance of an initial decision suspending Respondent from practice before the PTO for a period of no less than one hundred eighty (180) days based upon the *three* bad checks. Mot. at 9.

Rule 11.54(b) provides that in determining any penalty, the following factors are to be considered:

- (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(b).

In its Motion, PTO asserts that Respondent's misconduct "reveals Respondent's unwillingness to satisfy his financial responsibilities to the USPTO and, as significant, his indifference to his duty to tend to the intellectual property interests entrusted to him by his clients." Mot. at 3. PTO argues that Respondent violated duties owed to the patent law system, because as an experienced patent practitioner, he "knew that patent fees and charges to the [PTO] are required to be paid in advance," yet caused PTO "to examine three patent applications without paying the USPTO for such services." Mot. at 4. PTO specifically notes that the agency issued Patent No. 6,912,417 on Patent Application No. 10/117,457 before it discovered that the check submitted to pay for the issue fee had bounced. *Id.* Further, PTO argues, Respondent's clients entrusted him to prosecute their applications, and he owed them a duty to represent their interests competently, as is prescribed in 37 C.F.R. § 10.77. Mot. at 5.

Second, PTO asserts that Respondent intentionally engaged in conduct that is prejudicial to the administration of justice because he was notified in writing of a problem with checks he submitted and "failed to take remedial action." *Id.* Regarding U.S. Patent Application No. 09/636,119 and Application No. 10/117,457, PTO argues, Respondent has known at least since March 2009 that the checks had bounced, and has still failed to complete payment as required. *Id.* In the case of Application No. 10/531,106, PTO points out, the Agency notified Respondent "on four separate occasions" in writing that the check submitted towards its issuance had been returned, yet Respondent still did not address the deficiency. *Id.*

Third, the injury to Respondent's clients is actual, PTO argues. Mot. at 6. Untimely

payment of an issue fee “shall” result in a patent application being “regarded as abandoned” unless the delay is shown to have been unavoidable. *Id.*; 35 U.S.C. § 151. Indeed, if the fee is not paid within the time specified by the Agency, the statute provides that “the patent shall lapse.” Mot. at 6. PTO adds that because Respondent did not pay the issue fee in connection with Application No. 10/117,457, “the patent is subject to being held unenforceable.” *Id.*

Fourth, PTO contends that the aggravating factors in this matter outweigh the mitigating facts that Respondent has not been disciplined in over 28 years of practicing before the PTO, and that “it appears that he [sic] check bouncing was confined to the few occasions referenced in the Complaint.” Mot. at 6. “[I]ndifference to making restitution,” PTO argues, is an aggravating factor in attorney discipline cases, and Respondent’s failure to remediate in this case “means that a client has a patent of questionable enforceability.” *Id.*; see *In re Katz*, 981 A.2d 1133, 1145 (Del. 2009); see *American Bar Association Standards for Imposing Lawyer Sanctions*, as amended (1992), 9.22(j).

In light of its analysis of the four factors of 37 C.F.R. § 11.54(b), PTO requests that this Tribunal impose an one hundred eighty (180) day suspension from practice before the PTO upon Respondent. Mot. at 4, 7, 9. PTO contends such suspension is appropriate given that attorney disciplinary authorities have found that issuing a worthless check and failing to substitute the check with satisfactory payment “is a very serious ethical violation.” Mot. at 7; see *Attorney Grievance Commission of Maryland v. Adams*, 706 A.2d 1080, 1086 (Md. 1998) (suspending attorney for thirty days when his handling of a client’s funds and bouncing checks amounted to “sloppy and derelict behavior” rather than “a willful act”); see *Carter v. Anger*, 409 A.2d 137, (R.I. 1979) (suspending attorney for six months for writing six bad personal checks in connection with the purchase of an automobile and real estate); see *Kentucky Bar Ass’n v. Lococo*, 54 S.W.3d 164 (Ky. 2001) (suspending attorney for three years for bouncing a check drawn from an escrow account in an amount of over \$11,000, and taking nine months to complete payment, in addition to other counts of professional misconduct). Recognizing the range of sanctions imposed upon lawyers for conduct similar to Respondent’s, PTO asserts that Respondent’s violation was willful, and therefore warrants a more severe sanction than the three-month suspension in *Adams*, yet was not as egregious as the violations in *Lococo*, which involved insufficient funds in an attorney’s escrow account in addition to other misconduct, and warranted a multi-year suspension. Mot. at 8.

PTO suggests that Respondent’s circumstances are most similar to those in *Anger*, where a six-month suspension was imposed, except that the mitigating factors found in *Anger* are absent in Respondent’s case, e.g. “youth and comparative inexperience,” efforts at restitution, repayment. *Anger*, 409 A.2d at 139. A one hundred eighty (180) day suspension, PTO finally argues, “will be sufficiently severe to maintain the integrity of the profession, protect the public and the courts, and to deter Respondent and possibly other patent practitioners from engaging in similar misconduct.” Mot. at 9.

There has not been a record developed respecting all of the circumstances surrounding

Respondent's professional misconduct; his default has prevented such an inquiry. However, the findings of fact listed above indicate that Respondent submitted *two checks* (totaling \$1,190) to the PTO for fees in connection with his clients patent applications, which were dishonored for insufficient funds, and, despite notice, he failed to make good on the checks and pay the return check fees. Mot. at 3. By such actions, Respondent violated duties he owed to the public, the legal system, and the profession, if not also to his clients. Further, while Respondent may not have intentionally, knowingly submitted the checks which were returned unpaid, he subsequently received notice of the checks being dishonored and did not act to remediate the errors by making good on the checks and paying the return check fees assessed by the PTO. The actual or potential injury caused by Respondent's misconduct involves not only the waste of government resources by the PTO in processing the applications as to which fees were unpaid, but the resources subsequently spent in attempting to secure such fees from Respondent and in pursuing this action. The aggravating factor documented by the record is Respondent's refusal to remediate the unpaid fees. The mitigating factors are that Respondent has an extensive history of practice of almost 30 years, the violative conduct involved only two bad checks issued in March 2005 and March 2006, over five and four years ago, respectively, the bad checks were not issued for Respondent's personal benefit, and there is no evidence of the misuse of client funds. After considering the various cases cited by Complainant and others cited by the Tribunal herein, it is hereby found that a 120 day suspension is the appropriate sanction to be imposed.

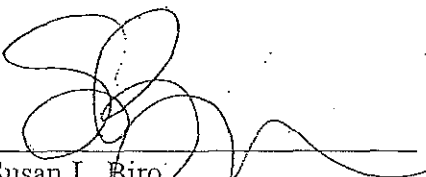
ORDER

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, JAMES C. WESEMAN, be **SUSPENDED** from the practice of patent, trademark, and other non-patent law before the Patent and Trademark Office for a period of one hundred twenty (120) days from the date of this Order.

Respondent's attention is directed to 37 C.F.R. § 11.58 regarding his responsibilities in the case of suspension, 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. Biro
Chief Administrative Law Judge¹

Dated: June 1, 2010
Washington, D.C.

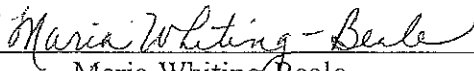
Pursuant to 37 C.F.R. § 11.55, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 11.54, must be filed with the U.S. Patent and Trademark Office at the address provided in 37 C.F.R. § 1.1(a)(3)(ii) within 30 days after the date of this Initial Decision. 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 37 C.F.R. § 11.55 will be deemed both an acceptance by Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

¹ 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 James C. Weseman, Respondent
Proceeding D2009-22

CERTIFICATE OF SERVICE

I hereby certify that a true copy of **Initial Decision On Default**, dated June 1, 2010, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: June 1, 2010

Copy by Regular Mail to:

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

Copy By Certified Mail Return Receipt and Regular Mail To:

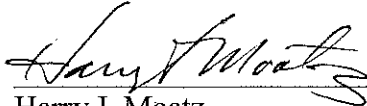
James C. Weseman
Law Office of James C. Weseman
401 West A. Street, Suite 1600
San Diego, CA 92101

James C. Weseman
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Del Mar, CA 92014

NOTICE OF SUSPENSION

James C. Weseman, of San Diego, CA, a registered patent attorney whose registration number is 30,507, has been suspended from practice of patent, trademark, and other non-patent law before the Office. The disciplinary complaint filed against Mr. Weseman alleged that he violated USPTO Disciplinary Rules 10.23(b)(5) by willfully failing to make good on returned checks he submitted, or caused to be submitted, to the USPTO in connection with patent applications he was prosecuting before the USPTO after receiving notice of the returned checks. The Administrative Law Judge (ALJ), having found that Mr. Weseman failed to file an answer, concluded that the allegations were deemed admitted, entered a default judgment and found Mr. Weseman had engaged in conduct in violation of § 10.23(b)(5). The ALJ entered an Initial Decision dated June 1, 2010, ordering Mr. Weseman be suspended for one-hundred twenty days. No appeal to the Director of United States Patent and Trademark Office has been filed. In the absence of a timely appeal, the Initial Decision becomes final and effective thirty days from the date of the Initial Decision. 37 CFR § 11.55(i). Mr. Weseman has been suspended as of Thursday, July 1, 2010, from practice before the United States Patent and Trademark Office. This action is taken pursuant to 35 U.S.C. § 32, and 37 CFR §§ 11.55(i) and 11.59(a). Disciplinary decisions regarding registered practitioners are posted at the Office of Enrollment and Discipline's Reading Room accessible at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

July 6, 2010
Date



Harry I. Moatz
Director of Enrollment and Discipline