

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

In the Matter of:)

David P. Gaudio,)

Respondent.)

Proceeding No. D2012-12

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27, the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation, executed by David P. Gaudio (“Respondent”) on November 30, 2012. Respondent submitted the affidavit to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office effective on the date of this Final Order.

Jurisdiction

Respondent, who is not registered to practice patent law before the Office, has been an attorney in good standing in the State of Pennsylvania and was the attorney of record in trademark registration applications filed with the USPTO. As such, Respondent is an individual authorized under 37 C.F.R. § 11.14(a) to practice before the USPTO in trademark or other non-patent cases matters and, therefore, is subject to the USPTO Code of Professional Responsibility and Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.* See

37 C.F.R. §§ 11.1 (definition of “practitioner”) and 11.19.

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent’s Affidavit of Resignation and to exclude Respondent on consent from the practice of trademark and other non-patent law before the Office.

Respondent’s Affidavit of Resignation

Respondent acknowledges in his November 30, 2012 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.
2. He is aware that there is a disciplinary complaint is pending against him (*i.e.*, USPTO Disciplinary Proceeding No. D2012-12) and that the complaint alleges that:
 - a. Respondent is a lawyer licensed by the Commonwealth of Pennsylvania, but he is not now, nor has he ever been authorized to practice patent law before the Office;
 - b. Respondent is the principal of The Law Office of David P. Gaudio, P.C.;
 - c. The Law Office of David P. Gaudio, P.C. formed The Inventors Network, Inc., a corporation licensed by the Pennsylvania Department of State (Entity Number 2830076);
 - d. The Inventors Network is not authorized to practice patent law before the Office;
 - e. Respondent controlled the day-to-day operations of The Inventors Network;
 - f. Respondent knew that only registered patent practitioners are authorized to practice patent law before the Office, and knew that no registered patent practitioner would prepare, review, sign, file, or prosecute patent applications filed on behalf of patent applicants;
 - g. Respondent knowingly permitted The Inventors Network to file over 150 patent applications with the Office that were not prepared or reviewed and signed by a registered patent practitioner;
 - h. Respondent knowingly permitted The Inventors Network to prosecute over 150 patent applications before the Office without the requisite involvement

of a registered patent practitioner;

- i. Respondent knowingly permitted the Inventors Network to charge and collect fees for patent legal services from patent applicants based on the representation that a registered patent practitioner would prepare and prosecute their patent applications before the Office;
- j. Respondent knowingly permitted The Inventors Network to fail to disburse fully to a registered patent practitioner all fees for patent legal services collected from patent applicants and, instead, knowingly permitted The Inventors Network to keep the undisbursed portion of the fees as its own funds; and
- k. By and through The Inventors Network and/or The Law Office of David P. Gaudio, P.C.:
 - 1) Respondent represented to prospective patent applicants that The Inventors Network would provide patent legal services to them;
 - 2) Respondent did not divulge to prospective or actual patent applicants that, in fact, no registered patent practitioner would prepare, review, file, sign, or prosecute their patent applications;
 - 3) Respondent filed, or caused to be filed, in the Office executed "Power of Attorney and Correspondence Address Indication" forms purportedly granting a power of attorney to a specific registered patent practitioner, knowing that the identified registered patent practitioner would not be involved in the preparation or prosecution of the patent applications;
 - 4) Respondent prepared and signed in the name of the specified registered patent practitioner, or caused to be prepared and signed, patent applications and other patent application documents related to the prosecution of patent applications before the Office (*e.g.*, responses to Office communications);
 - 5) Respondent provided patent legal services to patent applicants without being licensed by the Office to do so, including preparing, or causing to be prepared, patent applications and other patent application documents related to the prosecution of patent applications before the Office (*e.g.*, responses to Office communications);
 - 6) Respondent provided patent legal services to patent applicants without being licensed by the Office to do so, including prosecuting applications before the Office without authority to do so; and
 - 7) Respondent misrepresented himself as a registered practitioner and/or authorized representative for patent applicants to the Office by participating

in telephone conferences with USPTO Patent Examiners.

3. He is aware that the disciplinary complaint pending against him alleges that he violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility:

- a. 37 C.F.R. § 10.23(a) (proscribing engaging in disreputable or gross conduct);
- b. 37 C.F.R. § 10.23(b)(4) (proscribing engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation);
- c. 37 C.F.R. §§ 10.23(b)(5) (proscribing engaging in conduct that is prejudicial to the administration of justice);
- d. 37 C.F.R. § 10.31(a) (proscribing misleading advertising);
- e. 37 C.F.R. § 10.23(b)(3) (proscribing engaging in illegal conduct involving moral turpitude) by engaging in acts and omissions constituting violations of 35 U.S.C. § 33;
- f. 37 C.F.R. § 10.23(b)(6) (proscribing engaging in other conduct that adversely reflects on the practitioner's fitness to practice before the USPTO); and
- g. 37 C.F.R. § 10.89(c)(6) (proscribing intentional or habitual violation of the Disciplinary Rules of the USPTO Code of Professional Responsibility).

4. Without admitting to any of the allegations of the disciplinary complaint or to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility, Respondent acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in USPTO Disciplinary Proceeding D2012-12 are true and (ii) he could not have successfully defended himself against such allegations.

5. He has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the consequences of consenting to exclusion from practice before the USPTO in trademark and other non-patent matters.

6. He consents to being excluded from practice before the USPTO.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Hence, it is ORDERED that:

- a. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
- b. Respondent shall be, and hereby is, excluded on consent from the practice before the Office in trademark and other non-patent matters beginning on the date this Final Order is signed;
- c. The OED Director shall publish this Final Order at the Office of Enrollment and Discipline's Reading Room found at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;
- d. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns David P. Gaudio of Carnegie, Pennsylvania. The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Gaudio's affidavit of resignation and ordered his exclusion on consent from practice before the Office in trademark and other non-patent matters. Mr. Gaudio is not a registered patent practitioner and is not authorized to practice before the Office in patent matters.

Mr. Gaudio voluntarily submitted his affidavit at a time when a disciplinary complaint was pending against him. The complaint alleged that Respondent, the principal of The Law Office of David P. Gaudio, P.C., formed and controlled the day-to-day operations of The Inventors Network, Inc., a corporation licensed by the Pennsylvania Department of State (Entity Number 2830076). The Inventors Network is not authorized to practice patent law before the Office. Respondent knowingly permitted The Inventors Network to file over 150 patent applications with the Office that were not prepared or reviewed and signed by a registered patent practitioner; knowingly permitted The Inventors Network to prosecute over 150 patent applications before the

Office without the requisite involvement of a registered patent practitioner; knowingly permitted the Inventors Network to charge and collect fees for patent legal services from patent applicants based on the representation that a registered patent practitioner would prepare and prosecute their patent applications before the Office; and knowingly permitted The Inventors Network to fail to disburse fully to a registered patent practitioner all fees for patent legal services collected from patent applicants and, instead, knowingly permitted The Inventors Network to keep the undisbursed portion of the fees as its own funds.

The complaint further alleged that, by and through The Inventors Network and/or The Law Office of David P. Gaudio, P.C., Respondent represented to prospective patent applicants that The Inventors Network would provide patent legal services to them; did not divulge to prospective or actual patent applicants that, in fact, no registered patent practitioner would prepare, review, file, sign, or prosecute their patent applications; Respondent filed, or caused to be filed, in the Office executed "Power of Attorney and Correspondence Address Indication" forms purportedly granting a power of attorney to a specific registered patent practitioner, knowing that the identified registered patent practitioner would not be involved in the preparation or prosecution of the patent applications; Respondent prepared and signed in the name of the specified registered patent practitioner, or cause to be prepared and signed, patent applications and other patent application documents related to the prosecution of patent applications before the Office (*e.g.*, responses to Office communications); Respondent provided patent legal services to patent applicants without being licensed by the Office to do so, including preparing, or causing to be prepared, patent applications and other patent application documents related to the prosecution of patent applications before the Office (*e.g.*, responses to Office communications); Respondent provided patent legal services to patent applicants without being licensed by the Office to do so, including prosecuting applications before the office without authority to do so; and Respondent misrepresented himself as a registered practitioner and/or authorized representative for patent applicants to the Office by participating in telephone conferences with USPTO Patent Examiners.

The complaint further alleged that he violated the following Disciplinary Rules of the USPTO Code of Professional Responsibility: 37 C.F.R. §§ 10.23(a), 10.23(b)(4), 10.23(b)(5), 10.31(a), 10.23(b)(3) by engaging in acts and omissions constituting violations of 35 U.S.C. §33, 10.23(b)(6), and 10.89(c)(6). While Mr. Gaudio did not admit to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in the disciplinary complaint were true, and (ii) he could not have successfully defended himself against such allegations.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- e. Respondent shall comply fully with 37 C.F.R. § 11.58;
- f. The OED Director shall comply with 37 C.F.R. § 11.59;
- g. Respondent shall comply with 37 C.F.R. § 11.60 upon any request for reinstatement;
- h. The OED Director and Respondent shall jointly move the hearing officer to dismiss the pending disciplinary complaint within 14 days of the date of this Final Order; and
- i. The OED Director and Respondent shall bear their own costs incurred to date and in carrying out the terms of this agreement.

DEC 12 2012

Date



JAMES O. PAYNE
Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

David M. Kappos
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and
Trademark Office

cc:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

David P. Gaudio
332 Academy St.
Carnegie, PA 15106
Respondent