

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

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| In the Matter of |) | |
| |) | |
| Tracy W. Druce, |) | |
| |) | Proceeding No. D2014-13 |
| Respondent |) | |
| _____ |) | |

FINAL ORDER

The Director of the Office of Enrollment and Discipline (“OED Director”) for the United States Patent and Trademark Office (“USPTO” or “Office”) and Tracy W. Druce (“Respondent”) have submitted a Proposed Settlement Agreement (“Agreement”) to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO Director”) for approval.

The Agreement, which resolves all disciplinary action by the USPTO arising from the stipulated facts set forth below, is hereby approved. This Final Order sets forth the parties’ stipulated facts, legal conclusion, and agreed upon sanction.

Jurisdiction

1. At all times relevant hereto, Respondent of Houston, Texas, was a registered patent attorney (Registration No. 35,493) and was subject to the USPTO Code of Professional Responsibility, which is set forth at 37 C.F.R. § 10.20 *et seq.*¹
2. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19 and 11.26.

Stipulated Facts

3. The USPTO registered Respondent as a patent attorney on March 24, 1992.
4. Respondent’s registration number is 35,493.
5. In 2004, Respondent established a law firm, Novak Druce LLP.
6. In 2005, Novak Druce LLP became Novak, Druce & Quigg LLP.

¹ The USPTO Code of Professional Responsibility applies to Respondent’s alleged misconduct that occurred prior to May 3, 2013. The USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*, apply to a practitioner’s misconduct occurring after May 2, 2013.

7. At all times relevant to this Agreement, a non-lawyer assistant, [REDACTED] worked for Respondent at Novak Druce LLP and Novak, Druce & Quigg LLP from 2004 through late 2006. ([REDACTED] is hereinafter referred to as "the non-lawyer assistant.")

8. At all relevant times, Respondent was responsible for the supervision of the non-lawyer assistant.

9. From at least 2004 through 2006, the non-lawyer assistant submitted, with intent to deceive, knowingly false statements to the Office in many patent applications that Respondent was responsible for prosecuting on behalf of clients.

10. The non-lawyer assistant submitted the following types of false statements to the Office in patent applications that Respondent was responsible for prosecuting:

- a. fabricating email confirmation messages and submitting the fabricated emails to the Office as evidence that papers had been sent to the Office via facsimile transmission when, in fact, the papers were never sent to the Office;
- b. affixing USPTO receipt stamps to postcards and submitting the doctored postcard receipts to the Office as evidence that the Office had received papers when, in fact, the papers were never sent to the Office;
- c. fabricating a United States Postal Service Express Mail label that falsely represented a patent application had been mailed to the Office on a certain date when, in fact, the application had never been sent to the Office; and
- d. backdating certificates of mailing that falsely represented that papers had been mailed to the Office weeks and/or months earlier than they actually had been sent.

11. Additionally, the non-lawyer assistant signed Respondent's signature to papers filed with the Office in many patent applications that Respondent was responsible for prosecuting on behalf of clients.

12. Additionally, the non-lawyer assistant electronically "cut and pasted" a digital version of Respondent's signature and affixed it to papers filed with the Office in many patent applications that Respondent was responsible for prosecuting on behalf of clients.

13. Additionally, the non-lawyer assistant prepared petitions; signed Respondent's name to the petitions and/or affixed a digital version of Respondent's signature to the petitions; and filed the petitions in the Office.

14. Respondent knew that the non-lawyer assistant had signed Respondent's name to application papers submitted to the Office in many patent applications that Respondent was responsible for prosecuting on behalf of clients.

15. The non-lawyer assistant represented in a declaration that he engaged in the misconduct described in paragraphs 9-12, above, without Respondent's knowledge.

16. Respondent represents that he did not know of the non-lawyer assistant's misconduct described in paragraphs 9-12, above, and the non-lawyer assistant represents that he acted alone and kept his misconduct secret from Respondent.

17. Respondent acknowledges he did not adequately supervise the non-lawyer assistant's activities.

18. Previously, Respondent completed and returned to the OED Director the USPTO Mandatory Survey (Form PTO 107S) issued under 37 C.F.R. § 11.11(a)(2). Respondent indicated on the survey that he did not wish to remain on the register of registered practitioners (37 C.F.R. § 11.5), and the OED Director removed Respondent from the register. Accordingly, pursuant to 37 C.F.R. § 11.10(a), Respondent is not permitted to prosecute patent applications of others before the Office or represent others in any proceedings before the Office unless and until he is reinstated to the register.

Joint Legal Conclusion

19. Respondent acknowledges that, based on the above stipulated facts, he violated 37 C.F.R. § 10.77(c) (a practitioner shall not neglect a legal matter entrusted to the practitioner) by not adequately supervising his non-lawyer assistant.

Agreed Upon Sanction

20. Respondent agrees, and it is hereby ORDERED that:

- a. If Respondent seeks reinstatement to the Office's register of practitioners under 37 C.F.R. § 11.7, Respondent shall be suspended from practice before the Office in patent, trademark, and other non-patent matters for twenty-four (24) months commencing on the date that a request for Respondent's reinstatement to the register is granted;
- b. The 24-month suspension, which is contingent upon Respondent seeking and being granted reinstatement, shall be stayed;
- c. Respondent shall serve a twenty-four (24) month period of probation commencing on the date that a request for Respondent's reinstatement to the register is granted;

- d. Respondent shall be permitted to practice before the USPTO in patent, trademark, and other non-patent matters during his probationary period unless his probation is revoked and he is suspended by order of the USPTO Director or otherwise no longer has the authority to practice;
- e. When and if Respondent seeks reinstatement pursuant to 37 C.F.R. § 11.7, the present disciplinary proceeding will not be a basis for barring his reinstatement provided that Respondent complies with the terms of the Final Order;
- f. Respondent shall provide certain information to certain present and former client(s) as set forth in subparagraphs i. through aa., below;
- g. Respondent shall use his best efforts to identify each patent application that Respondent prosecuted before the Office at any time between January 1, 2004, and December 31, 2006, that meet all of the following three conditions:
 - (1) The Office received between January 1, 2004, and December 31, 2006, any of the following: (i) a petition to revive an abandoned application, (ii) a petition to withdraw the holding of abandonment; and/or (iii) a petition for extension of time where the petition for extension of time was transmitted to the Office by the non-lawyer assistant and where the petition for extension of time's transmittal date preceded the Office's receipt date by more than thirty (30) days;
 - (2) The non-lawyer assistant transmitted any paper in the application to the Office at any time between January 1, 2004, and December 31, 2006; and
 - (3) The Office issued a patent on the application at any time;
- h. For each patent application identified by Respondent pursuant to the preceding subparagraph, Respondent shall identify the present client(s) and former client(s) for whom patent legal services on the application were performed;
- i. For each present and former client(s) identified by Respondent pursuant to the preceding subparagraph, Respondent shall provide each such present and former client(s) with the following documents:
 - (1) A copy of the April 10, 2014 declaration executed by the non-lawyer assistant with the patent application serial numbers redacted; and
 - (2) A copy of the redacted Final Order;
- j. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent

Application No. [REDACTED] of the specific false statements described in ¶ 14 of the April 10, 2014 declaration;²

- k. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the specific potentially false statements described in ¶ 15 of the April 10, 2014 declaration;
- l. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the specific potentially false statements described in ¶ 15 of the April 10, 2014 declaration;
- m. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the specific potentially false statements described in ¶ 15 of the April 10, 2014 declaration;
- n. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the specific potentially false statements described in ¶ 15 of the April 10, 2014 declaration;
- o. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the specific potentially false statements described in ¶ 15 of the April 10, 2014 declaration;
- p. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the specific potentially false statements described in ¶ 16 of the April 10, 2014 declaration and the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- q. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- r. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent

² The patent application serial number identified in ¶ 14 of the April 10, 2014 declaration as “[REDACTED]” is incorrect. The correct serial number is [REDACTED]

Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;

- s. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- t. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- u. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with of U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- v. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- w. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- x. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with of U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- y. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- z. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;³

³ The patent application serial number identified in ¶ 14 of the April 10, 2014 declaration as "[REDACTED]" is incorrect. The correct serial number is [REDACTED]

- aa. Respondent shall also provide unambiguous written notification to the present and former client(s) that Respondent represented in connection with U.S. Patent Application No. [REDACTED] of the potential backdating of certificates of mailing described in ¶ 17 of the April 10, 2014 declaration;
- bb. Within 120 days of the day that the Final Order is signed, Respondent shall submit the following to the OED Director: (1) an affidavit or declaration attesting to his compliance with the terms of this Agreement and the Final Order for notifying present and former client(s) as set forth in subparagraphs i. through aa., above, and (2) a copy of the correspondence to clients, including the written notifications transmitted to the current and former client(s), evidencing his compliance with the terms of this Agreement and the Final Order for notifying present and former client(s); the client correspondence provided to the OED in accordance with this subparagraph shall be marked "CONFIDENTIAL" by the Respondent, and the OED shall keep the correspondence confidential;
- cc. (1) If the OED Director is of the good faith opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Agreement, this Final Order, or any provision of the USPTO Rules of Professional Conduct, the OED Director shall:
- (A) Issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for up to twenty-four (24) months for the violation set forth in paragraph 19, above;
 - (B) Send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11; and
 - (C) Grant Respondent thirty (30) days to respond to the Order to Show Cause; and
- (2) In the event that after the 30-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Agreement, this Final Order, or any provision of the USPTO Rules of Professional Conduct, the OED Director shall:
- (A) Deliver to the USPTO Director: (i) the Order to Show Cause; (ii) Respondent's response to the Order to Show Cause, if any; and (iii) argument and evidence causing the OED Director to be of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Agreement, Final Order, or any provision of the USPTO Rules of Professional Conduct; and

- (B) Request that the USPTO Director enter an order immediately suspending Respondent for up to twenty-four (24) months for the violation set forth in paragraph 19, above;
- dd. Nothing herein shall prevent the OED Director from seeking discipline for the misconduct leading to Respondent's suspension pursuant to the preceding subparagraph;
- ee. In the event the USPTO Director suspends Respondent pursuant to subparagraph cc., above, and Respondent seeks a review of the suspension, any such review of the suspension shall not operate to postpone or otherwise hold in abeyance the suspension;
- ff. The OED Director shall comply with 37 C.F.R. § 11.59 except that [REDACTED] name and all patent application serial numbers shall be redacted from the Final Order.
- gg. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
- hh. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Discipline

This notice concerns Tracy W. Druce of Houston, Texas (Registration No. 35,493), who previously left the United States Patent and Trademark Office ("USPTO" or "Office") register of practitioners. The USPTO Director has ordered that, if Mr. Druce is reinstated to the register of practitioners, then he shall be suspended from practice before the Office in patent, trademark, and other non-patent matters for twenty-four (24) months, with the entirety of the suspension stayed, for violating 37 C.F.R. § 10.77(c) (a practitioner shall not neglect a legal matter entrusted to the practitioner). Mr. Druce will also be required to serve a twenty-four (24) month period of probation upon being reinstated to the register.

Mr. Druce was responsible for the supervision of a non-lawyer assistant who, from at least 2004 through 2006, submitted, with intent to deceive, knowingly false statements to the Office in many patent applications that Mr. Druce was responsible for prosecuting on behalf of clients. The non-lawyer assistant did the following: (1) fabricated email confirmation messages and submitted the fabricated emails to the Office as evidence that papers had been sent to the Office via facsimile transmission when, in fact, the papers were never sent to the

Office; (2) affixed USPTO receipt stamps to postcards and submitted the doctored postcard receipts to the Office as evidence that the Office had received papers when, in fact, the papers were never sent to the Office; (3) fabricated a United States Postal Service Express Mail label that falsely represented that a patent application had been mailed to the Office on a certain date when, in fact, the application had never been sent to the Office; and (4) backdated certificates of mailing that falsely represented that papers had been mailed to the Office weeks and/or months earlier than they actually had been sent.

The violation of 37 C.F.R. § 10.77(c) is predicated upon Mr. Druce not adequately supervising a non-lawyer assistant.

Mr. Druce represents that he did not have actual knowledge of the non-lawyer assistant's false submissions to the Office, and the non-lawyer assistant represents that he acted alone and kept his misconduct secret from Mr. Druce.

In reaching a settlement with Mr. Druce, OED Director took into consideration the following: (a) the non-lawyer assistant's misconduct occurred many years ago in 2004, 2005, and 2006; (b) Mr. Druce cooperated with the investigation of the facts and circumstances involved in this disciplinary proceeding; and (c) Mr. Druce will take prompt action to notify present and former clients about the misconduct committed in patent applications where patents were granted.

This action is the result of a settlement agreement between Respondent and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.26 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

- ii. Nothing in this Agreement or the Final Order approving this Agreement shall prevent the Office from considering the record of this disciplinary proceeding (1) when addressing any further complaint or evidence of the same or similar misconduct concerning Respondent brought to the attention of the Office; and/or (2) in any future disciplinary proceeding against Respondent (a) as an aggravating factor to be taken into consideration in determining any discipline to be imposed and/or (b) to rebut any statement or representation by or on Respondent's behalf;
- jj. The OED Director shall file a motion with the administrative law judge requesting the dismissal of the pending disciplinary proceeding within fourteen (14) days of the date of the Final Order; and

kk. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of this Agreement and the Final Order.

The foregoing is understood and agreed to by:



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

SEP - 5 2014

Date

on behalf of

Michelle K. Lee
Deputy Under Secretary of Commerce for Intellectual Property
and Deputy Director of the United States Patent and Trademark Office

cc: Director of the Office of Enrollment and Discipline
United States Patent and Trademark Office

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