

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

In the Matter of	)	
	)	
Kevin H. Fortin,	)	
	)	Proceeding No. D2014-39
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 Kevin H. Fortin (“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 relevant times, Respondent of Louisville, Colorado, has been registered to practice in patent matters before the Office (Registration No. 35,140) and is subject to the disciplinary rules of the USPTO Rules of Professional Conduct set forth at 37 C.F.R. §§ 11.101 through 11.901
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, 11.20, and 11.26.

**Stipulated Facts**

3. Respondent became registered as a patent agent on March 24, 1992, and as a patent attorney on May 11, 1994 (Registration No. 35,140). The OED Director reverted his registration status to patent agent on February 10, 2014.
4. Respondent has been admitted to the State Bar of California since December 9, 1993.
5. At all times relevant, Rule 9.22(a) of the California Rules of Court provided that “[u]nder Family Code section 17520, the State Bar is authorized to transmit to the Supreme Court on an annual basis the names of those members listed by the State Department of Social

Services as delinquent in their payments of court-ordered child or family support with a recommendation for their suspension from the practice of law.”

6. At all times relevant, Rule 9.22(b) of the California Rules of Court provided that a member suspended under this rule may be reinstated only after receipt by the Supreme Court of notification from the State Bar that the member’s name has been removed from the State Department of Social Services list.

7. On August 27, 2013, California Supreme Court Chief Justice Cantil-Sakauye entered an order suspending Respondent from the practice of law in California for being delinquent in his payment of his child support obligations. The effective date of the suspension was September 23, 2013.

8. At no time has Respondent been reinstated to practice in the State of California.

9. Pursuant to 37 C.F.R. § 11.24(a), “[w]ithin thirty days of being publicly censured, publicly reprimanded, subjected to probation, disbarred, or suspended by another jurisdiction, or being disciplinarily disqualified from participating in or appearing before any Federal program or agency, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of same....”

10. On September 30, 2013, Respondent timely sent a letter and supporting information notifying the OED Director of Respondent’s suspension from the practice of law by the State Bar of California as required by 37 C.F.R. § 11.24(a).

11. On November 6, 2013, the Office of Enrollment and Discipline (“OED”) sent Respondent a Request for Information and Evidence (“RFI”) requesting information about the circumstances surrounding his failure to pay child support, the underlying court case ordering him to pay child support and his failure to do so, and his suspension from the practice of law by the State Bar of California. The RFI was mailed to the address that Respondent had previously provided to the OED Director pursuant to 37 C.F.R. § 11.11(a).

12. Respondent received OED’s November 6, 2013 RFI on November 8, 2013, but did not file a response within 30 days.

13. On December 16, 2013, OED sent Respondent a “Failure to Respond” letter stating that OED had not received a response to the November 6, 2013 RFI. OED attached a copy of the November 6, 2013 RFI to the December 16, 2013 letter and provided Respondent with ten days to respond.

14. Respondent received OED’s December 16, 2013 letter on December 20, 2013, but did not file a response.

15. On January 24, 2014, OED sent Respondent another letter, stating that OED had not received a response to the November 6, 2013 RFI or the December 16, 2013 letter. The January 24, 2014 letter also stated that based on the order of suspension from the practice of law

by the State Bar of California, and Respondent's September 30, 2013 letter informing OED of his suspension, OED was treating Respondent's September 30, 2013 letter as a request to change his registration status before the Office from patent attorney to patent agent. OED provided Respondent with ten days to respond to its January 24, 2014 letter.

16. Respondent received OED's January 24, 2014 letter on January 27, 2014, but he did not file a response.

17. As of the filing date of the Complaint, Respondent had not filed a response to the RFI propounded by OED.

18. Respondent has no prior disciplinary history before OED, and timely self-reported his suspension from the State Bar of California.

19. Respondent represents that on July 25, 2014, the Superior Court of California, County of Siskiyou awarded Respondent sole custody of his minor son and entered an order reducing the monthly child support obligation to zero. As of October 3, 2014, Respondent remained in arrears in the amount of \$26,565.49. Respondent is currently paying the balance owed in monthly payments of \$200, an amount which is based on his current income.

20. Respondent now fully understands and appreciates his behavior deviated from the ethical standards and disciplinary rules of the USPTO Rules of Professional Conduct.

21. Respondent has expressed remorse and is cooperating at present towards resolution of this matter.

### **Joint Legal Conclusions**

22. Based on the foregoing stipulated facts, Respondent acknowledges that his conduct violated the following USPTO Rules of Professional Conduct:

- a. knowingly disobeying an obligation under the rules of a tribunal, by failing to comply with court-ordered child or family support payments, in violation of 37 C.F.R. § 11.304(c);
- b. engaging in conduct prejudicial to the administration of justice, by failing to comply with his court-ordered child or family support payments, in violation of 37 C.F.R. § 11.804(d);
- c. failing to cooperate with OED in an investigation of any matter before it, and failing to respond to a lawful demand for information from a disciplinary authority, by failing to respond to OED's written requests of November 6, 2013, December 16, 2013, and January 24, 2014, in violation of 37 C.F.R. § 11.801(b); and

- d. engaging in conduct prejudicial to the administration of justice, by failing to cooperate with, or respond to lawful demands for information from OED, in violation of 37 C.F.R. § 11.804(d).

### **Agreed Upon Sanction**

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

- a. Respondent is hereby suspended from practice before the Office in patent, trademark, and other non-patent matters for six months, with the suspension stayed in its entirety by probation for a period of five years or until he has fully complied with applicable state court order(s) regarding his arrearage for child support, whichever event occurs first, commencing on the date the Final Order is signed;
- b. Respondent shall be permitted to practice before the USPTO as a patent agent in patent matters before the USPTO 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;
- c. If the OED Director is of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Agreement, Final Order, or any disciplinary rule of the USPTO Rules of Professional Conduct, the OED Director shall:
  - (1) issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for six (6) months for the violations set forth in the Joint Legal Conclusions above;
  - (2) 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(a); and
  - (3) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

In the event that after the 15-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, Final Order, or any disciplinary rule of the USPTO Rules of Professional Conduct, the OED Director shall:

- (1) 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 disciplinary rule of the USPTO Rules of Professional Conduct; and

- (2) Request that the USPTO Director enter an order immediately suspending Respondent for up to an additional twelve (12) months for the violations set forth in the Joint Legal Conclusions above;
- d. Nothing herein shall prevent the OED Director from seeking discipline for the misconduct leading to Respondent's additional suspension pursuant to the preceding paragraph;
- e. In the event the USPTO Director suspends Respondent pursuant to paragraph c, 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;
- f. The OED Director shall electronically publish the Final Order at OED's electronic FOIA Reading Room, which is publicly accessible at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;
- g. The OED Director shall publish the following notice in the *Official Gazette*:

#### **Notice of Suspension and Probation**

This notice regards Kevin H. Fortin of Louisville, Colorado, a registered patent agent (Registration Number 35,140). The United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Fortin for six months with the suspension stayed in its entirety by probation for a period of five years or until he has fully complied with applicable state court order(s) regarding his arrearage for child support, whichever event occurs first, for violating the following USPTO Rules of Professional Conduct: 37 C.F.R. § 11.304(c), 37 C.F.R. § 11.804(d), and 37 C.F.R. § 11.801(b).


Mr. Fortin failed to pay his court-ordered child and family support obligations in California. As a result, the State Bar of California suspended Respondent from the practice of law in that state. Respondent timely notified the Office of his suspension in California to the OED Director, and the OED Director changed his registration status from patent attorney to patent agent as a result of the California suspension. The OED Director then initiated an investigation of his conduct and sent requests for information to Respondent, but he failed to respond to the requests. The Superior Court of California has since amended the support obligation to

zero based on a change in family circumstances, and Respondent is making monthly payments toward the amount he is in arrears. Respondent has no prior disciplinary history before OED, and has expressed remorse for his conduct.

This action is the result of a settlement agreement between Mr. Fortin and the OED Director pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.20, 11.26, and 11.59. Disciplinary decisions involving practitioners are posted at the Office of Enrollment and Discipline's Reading Room located at:  
<http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

and

- h. Nothing in this Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order: (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 (i) as an aggravating factor to be taken into consideration in determining any discipline to be imposed, and/or (ii) to rebut any statement or representation by or on Respondent's behalf; and/or (3) in connection with any request for reconsideration submitted by Respondent pursuant to 37 C.F.R. § 11.60.

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

DEC 9 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

Kevin H. Fortin  
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