

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

In the Matter of)
)
Philip T. Virga,)
)
Respondent)
_____)

Proceeding No. D2017-14

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 Mr. Philip T. Virga (“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 conclusions, and agreed upon sanctions.

Jurisdiction

1. At all times relevant hereto, Respondent of Redondo Beach, California, has been a patent attorney registered to practice before the Office in patent matters (Registration No. 36,710) and is subject to the USPTO Rules of Professional Conduct, 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.

Joint Stipulated Facts

3. Respondent became registered as a patent agent on April 19, 1993.
4. Respondent became registered as a patent attorney on September 27, 1993.
5. Respondent’s registration number is 36,710.
6. Respondent is admitted to practice law in California.
7. Between approximately May 2014 and May 2016, Respondent contracted with Desa Industries, Inc., a New York business corporation, doing business as World Patent Marketing (“WPM”) in Miami Beach, Florida. WPM does not appear to be a law firm or otherwise authorized to offer or provide legal services.

8. Respondent claims that WPM offered him a contract to provide overflow patent prosecution services. At no time prior to agreeing to provide patent legal services did Mr. Virga speak with any registered practitioner, nor any other attorney, either employed by or otherwise associated with WPM.

9. Respondent claims that WPM offered him a flat fee to prepare, file, and respond to the first Office Action in WPM-referred design and utility patent applications.

10. Respondent was involved in the preparation, filing, or prosecution of at least 166 patent applications for WPM-referred clients.

11. According to documents provided to OED, WPM charged individual inventor-applicants \$8,995 for a U.S. design patent application; \$11,995 for a U.S. utility patent application; \$21,995 for both a PCT and U.S. patent application; and \$64,995 for a "global patent," which included U.S., PCT, European Union, and China patent applications, as well as trademark and copyright applications. In at least one instance, a WPM customer claimed that he paid \$7,000 to file a provisional patent application.

12. Respondent represents that he was unaware of the amounts WPM-referred clients paid WPM for legal services. Similarly, Respondent represents that his WPM-referred clients were likely not aware of what he received in compensation for legal services. At no time did Respondent confirm whether legal fees were properly deposited and kept safe in a client trust account.

13. Respondent admits that he did not consult with his WPM-referred clients regarding the appropriateness of the patent protection sought. Rather, Respondent claims that WPM and its agents advised Respondent as to which type of patent application to file. Some WPM customers stated to OED that WPM's non-practitioner agents told them to select the type of patent application they could afford.

14. As to provisional and nonprovisional utility patent applications, Respondent represents that: a) WPM provided pre-drafted patent applications; b) WPM employees obtained signatures of the inventor-applicants on oaths, powers of attorney, and micro-entity certifications; c) Respondent would review the applications and make revisions as necessary and then file these applications with the USPTO. Respondent did not ensure that the inventor-applicants reviewed the finalized applications before filing, contrary to the rules of the USPTO.

15. As to design patent applications, Respondent represents that: a) WPM provided a disclosure and Respondent prepared design patent applications, outsourcing the drawings to a draftsman; b) WPM employees obtained signatures of the inventor-applicants on oaths, powers of attorney, and micro-entity certifications; c) Respondent would then file these applications with the USPTO. Respondent did not ensure that the inventor-applicants reviewed the applications before filing, contrary to the rules of the USPTO.

16. Respondent represents that he generally did not communicate with his WPM-referred clients, unless they directly contacted him.

17. As a result, Respondent had a pattern and practice of not communicating with his WPM-referred clients prior to filing their applications with the USPTO. Respondent did not consult with his clients about the means by which his clients' objectives were to be accomplished. Respondent did not explain matters to his clients so as to permit his clients to make informed decisions. Respondent did not question whether the applications selected by his clients, as advised by WPM, were appropriate for their situation.

18. Because Respondent failed to communicate with his clients, clients who Respondent filed provisional applications for did not understand that their applications would expire by law within 12 months from the date of filing. In many cases, because of Respondent's failure to communicate with his clients, their provisional applications expired without their knowledge.

19. Because Respondent failed to communicate with his clients, clients who Respondent filed utility applications for subsequent to filing provisional applications were not advised as to whether they should claim priority to the earlier-filed provisional application.

20. Because Respondent failed to communicate with his clients, clients who chose to file design patent applications were not advised as to the protection afforded by a design patent application, and whether such protection was more or less appropriate than a utility patent application.

21. Respondent failed to communicate adequate information and explain the material risks of, and reasonably available alternatives to, his arrangement with WPM as a third-party payor of legal services. For example, Respondent did not alert his clients of the potential conflict arising from his personal financial interest in continuing to receive remuneration from WPM. Nor did he inform his clients of the risk that WPM might not safeguard the funds paid for the procurement of patent legal services. As such, Respondent failed to obtain the requisite informed consent from his clients as to such arrangements.

22. After filing applications for his WPM-referred clients, Respondent remained attorney of record in such applications. As of September 20, 2016, Respondent had received numerous Office Actions which he neither informed his clients of, nor forwarded to WPM.

23. Because Respondent did not respond to the numerous Office Actions, many patent applications became abandoned. Respondent did not notify his clients of the abandonments.

24. Respondent had not entered into written representation agreements with his WPM-referred clients. His clients had not agreed to a limited-scope representation and Respondent had not informed his clients that his representation of them was limited in scope.

25. On September 20, 2016, Respondent met with OED at its offices in Alexandria, Virginia. At the September 20, 2016 meeting, Respondent acknowledged failing to notify his clients of Office Actions and abandonments and pledged to rectify his shortcomings. Over the course of the proceeding five months, Respondent took no action to do so and did not contact his clients regarding the Office Actions or abandonments, nor forwarded such information to WPM.

Joint Legal Conclusions

26. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.102(c) (failing to obtain informed consent for limited-scope representation) by failing to obtain his clients' informed consent to representation limited only to the filing of applications, and not the continuing prosecution of such applications.

27. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.105(b) (failing to communicate the scope of the representation and the basis of a fee) by failing to advise his clients at the outset of the representation of the scope of his representation and the basis of his fee.

28. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.103 (failing to act with reasonable diligence and promptness) by failing to advise his clients promptly regarding Office Actions and Notices of Abandonment.

29. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.104(b) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) by failing to explain the material risks of, and reasonably available alternatives to, his employment arrangement with WPM and the benefits and risks of the patent protection sought.

30. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.107(a)(2) (failing to obtain informed consent where a practitioner's responsibilities were materially limited due to a conflict of interest) by representing WPM-customer clients where his representation of those clients was materially limited by (a) his responsibilities under his contract with WPM, and (2) his personal interest in maintaining the steady flow of referrals from WPM.

31. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.108(f)(1) (accepting compensation for representing a client from one other than the client without obtaining informed consent) by accepting compensation from WPM while failing to explain to his clients the material risks of, and reasonably available alternatives to, WPM acting as a third-party payor, or to obtain the clients' informed consent.

32. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. §§ 11.108(f)(2) (allowing interference with the practitioner's independent professional judgment) and 11.504(c) (allowing a person who pays the practitioner to render legal services to another to direct or regulate the practitioner's professional judgment in rendering such legal services) by allowing WPM personnel to direct him to file various types of patent applications without independently determining in his own professional judgment whether the patent protection his clients sought was appropriate for them.

33. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. §§ 11.102(a) (requiring a practitioner to abide by a client's decision concerning the objectives of the representation) and 11.104(a)(2) (requiring that a practitioner reasonably consult with the client about the means by which the client's objectives are to be accomplished)

by failing to consult with his clients as to the means by which their objectives were to be pursued.

34. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.104(a)(1), (3) (failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required, and failing to keep the client reasonably informed of the status of a matter) by failing to notify multiple clients that their provisional patent applications were going to expire.

35. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.504(a) (sharing legal fees with a non-practitioner) by allowing WPM to bill clients for legal services.

36. Respondent admits that, based on the above stipulated facts, he violated 37 C.F.R. § 11.505 (assisting another to practice law in a jurisdiction in violation of the legal profession in that jurisdiction) by assisting WPM's practice of patent law, to wit: assisting WPM's non-practitioner employees in consulting with or giving advice to clients in contemplation of filing a patent application.

Additional Considerations

37. Respondent has accepted responsibility for his misconduct. Respondent recognizes the seriousness of his misconduct and has expressed remorse for it and for its detrimental effect on his former clients as well as on the reputation of the legal profession.

38. Respondent no longer accepts referrals from third-party payors.

39. Respondent has not been previously disciplined.

40. Respondent cooperated with OED's investigation into his conduct. Respondent also traveled at his own expense to meet with OED to provide information relevant to the investigation.

41. Respondent has sought to mitigate the harm to his clients by providing them with legal services at no charge.

42. During the course of the investigation, Respondent experienced a substantial physical injury causing him some delay in taking corrective action.

Agreed Upon Sanction

43. 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 five (5) years commencing on the date the Final Order is signed;

- b. Respondent may, at any time after twenty-four (24) months from the date the Final Order is signed, file a petition for reinstatement pursuant to 37 C.F.R. § 11.60 requesting reinstatement;
- c. Respondent shall remain suspended from the practice of patent, trademark, and non-patent law before the USPTO until the OED Director grants a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60;
- d. As a condition of being reinstated, Respondent shall (1) take the Multistate Professional Responsibility Examination ("MPRE"), (2) attain a score of 85 or better, and (3) provide a declaration to the OED Director verifying his compliance with this subparagraph;
- e. Respondent shall be granted limited recognition to practice before the Office beginning on the date the Final Order is signed, and expiring thirty (30) days after the date the Final Order is signed, with such limited recognition being granted for the sole purpose of facilitating Respondent's compliance with 37 C.F.R. § 11.58(b);
- f. Respondent shall comply with 37 C.F.R. § 11.58;
- g. Respondent shall serve a 2-year probationary period commencing on the date of reinstatement;
- h. Respondent shall be permitted to practice before the USPTO in patent, trademark, and other non-patent law 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;
- i. (1) If the OED Director is of the opinion that Respondent, during the 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 the Respondent for up to one additional year for the violations set forth in the Joint Legal Conclusions, 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(a); and
 - (C) grant Respondent fifteen (15) days to respond to the Order to Show Cause;

and

(2) 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 the probationary period, failed to comply with any provision of the Agreement, Final Order, or any provision of the USPTO Rules of Professional Conduct, the OED Director shall:

- (A) deliver to the USPTO Director or his designee: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) argument and evidence supporting the OED Director's position; and
 - (B) request that the USPTO Director enter an order suspending Respondent from practice before the USPTO for up to one additional year for the violations set forth in the Joint Legal Conclusions, above;
- j. Nothing therein shall prevent the OED Director from seeking discrete discipline for any misconduct that formed the basis for an Order to Show Cause issued pursuant to the preceding paragraph "i" above;
 - k. In the event the Respondent seeks a review of any action taken pursuant to paragraph "i" above, such review shall not operate to postpone or other hold in abeyance such action;
 - l. 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>;
 - m. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Suspension and Probation

This notice concerns Mr. Philip T. Virga of Redondo Beach, California, who is a registered practitioner (Registration No. 36,710). In settlement of a disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO" or "Office") has suspended Mr. Virga from practice before the Office in patent, trademark, and non-patent matters for five years and placed him on probation for two years following any reinstatement. Mr. Virga may petition for reinstatement after serving twenty-four (24) months of his suspension, but he must, *inter alia*, take and pass the Multistate Professional Responsibility Exam, with a score of 85 or better, as a condition of reinstatement.

The suspension is predicated upon Mr. Virga's violations of numerous provisions of the USPTO Rules of Professional Conduct in connection with his providing patent preparation, filing, and prosecution services for inventors who contracted with a non-practitioner company. Between approximately May 2014 and May 2016, Mr. Virga contracted with Desa Industries, Inc., a New York business

corporation, doing business as World Patent Marketing (“WPM”) in Miami Beach, Florida. Mr. Virga received referrals of clients seeking patent legal services from WPM. WPM employees appear to have advised inventor-applicants as to which type of patent application to file and had inventor-applicants sign oaths of inventorship without regard to whether they had actually reviewed the application to be filed with the Office, and generally before Mr. Virga had even prepared the application. Mr. Virga did not obtain informed consent from the inventor-applicants to be paid by the non-practitioner company (37 C.F.R. § 11.108(f)(1)); did not communicate the scope of the representation and basis of fee to the inventor-applicants (37 C.F.R. § 11.105(b)); did not obtain informed consent from the inventor-applicants to represent the inventor-applicants in light of actual or potential conflicts of interest (37 C.F.R. § 11.107(a)(2)); did not explain a matter to the extent reasonably necessary to permit the inventor-applicants to make informed decisions regarding the representation (37 C.F.R. § 11.104(b)); did not communicate Office Actions and Notices of Abandonments to his clients in a reasonable and prompt manner (37 C.F.R. § 11.103); did not consult with the inventor-applicants as to the means by which their objectives were to be accomplished (37 C.F.R. §§ 11.102(a) and 11.104(a)(2)); did not obtain informed consent for limited scope representation (37 C.F.R. § 11.102(c)); did not promptly inform the inventor-applicants of any decision or circumstance with respect to which the inventor-applicants’ informed consent was required, and did not keep the inventor-applicants reasonably informed of the status of their matters (37 C.F.R. § 11.104(a)(1), (3)); allowed the non-practitioner company to interfere with and/or to direct or regulate his professional judgment (37 C.F.R. §§ 11.108(f)(2) and 11.504(c)); shared legal fees with the non-practitioner company (37 C.F.R. § 11.504(a)); and assisted the non-practitioner company to practice before the Office in patent matters in violation of the Office’s rules regarding unauthorized practice before the Office (37 C.F.R. § 11.505). In short, Mr. Virga disregarded his important ethical obligations to each inventor-applicant who contracted with the non-practitioner company for patent legal services.

Mr. Virga has expressed contrition and understands how his actions violated the USPTO Rules of Professional Conduct.

Practitioners are reminded that the USPTO Director has disciplined practitioners for having violated their professional responsibilities to inventors under circumstances where a non-practitioner third party—such as a company that aims to assist inventors in protecting and/or marketing their inventions—refers inventors to registered practitioners to provide the patent legal services purchased by inventors from the third party. *See, e.g., In re Cohen*, Proceeding No. D2002-15 (USPTO Dec. 4, 2002); *In re Colitz*, Proceeding No. D1999-04 (USPTO Jan. 2, 2003); *In re Bender*, Proceeding No. D2000-01 (USPTO Sept. 30, 2003); *In re Kaardal*, Proceeding No. D2003-08 (USPTO Feb. 24, 2004); *In re Schoonover*, Proceeding No. D2008-24 (USPTO July 14, 2009); *In re Gibney*, Proceeding No. D2009-33 (USPTO Mar. 4, 2010); *In re Galasso*, Proceeding No. 2009-17

(USPTO Aug. 20, 2010); *In re Sung*, Proceeding No. D2010-19 (USPTO Jan. 18, 2011); *In re Campbell*, Proceeding No. D2009-39 (USPTO Feb. 18, 2011); *In re Mackenzie*, Proceeding No. D2010-27 (USPTO Oct. 12, 2011); and *In re Harrington*, Proceeding No. D2012-14 (USPTO Apr. 18, 2012). *See also In re Meyer*, Proceeding No. D2010-41 (USPTO Sept. 7, 2011) (referral of trademark applicants). Accordingly, practitioners should be mindful that several interrelated provisions of the USPTO Rules of Professional Conduct apply to such situations.

First, prior to entering into a practitioner-client relationship with an inventor who is referred by a non-practitioner third party, the practitioner should properly consider the various conflicts of interest that already exist or may arise during the relationship. *See generally* 37 C.F.R. §§ 11.107 and 11.108. Such conflicts may include those between the inventor and other inventors previously referred to the practitioner by the non-practitioner third party. Such conflicts may also include those between the inventor and the practitioner due to the practitioner's personal financial interest in continuing to receive inventor referrals from the non-practitioner third party. One specific conflict of interest is addressed by the USPTO Rules of Professional Conduct, which require the practitioner to obtain "informed consent" from the inventor to accept compensation from someone other than the client. *See* 37 C.F.R. § 11.108(f). Informed consent means the agreement by a prospective client to be represented by a practitioner after the practitioner has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the client being represented by the practitioner. The mere fact that the inventor authorizes the third party to pay the practitioner is not informed consent. *See In re Colitz*, Proceeding No. D1999-04 (USPTO January 2, 2003). Hence, under circumstances where a non-practitioner third party refers inventors to a registered practitioner to provide the patent legal services purchased by inventors from the third party, the inventor would likely be unable to provide the requisite informed consent absent a meaningful discussion with the practitioner that fully informs the referred inventor of the actual and potential conflicts of interest arising from the fee arrangement between inventor, third party, and practitioner. Additionally, the practitioner must communicate the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible, *see* 37 C.F.R. § 11.105(b), and shall obtain informed consent whenever limiting the scope of the representation (*e.g.*, such as when only preparing and filing an application and not prosecuting it), *see* 37 C.F.R. § 11.102(c).

Second, a practitioner must exercise independent professional judgment and render candid advice in representing a client. *See* 37 C.F.R. § 11.201. In part, this means that a practitioner shall not share legal fees with the non-practitioner third party that refers the inventors to the practitioner. *See* 37 C.F.R. § 11.504(a). Under circumstances where a non-practitioner third party regularly refers inventors to registered practitioners to provide the patent legal services purchased by inventors from the third party, practitioners may unwittingly violate the fee-

sharing prohibition if the practitioner does not know the amount the inventor has paid to the third party for patent legal services. If the entire amount received by the third party for the practitioner's compensation is not distributed to the practitioner and any undistributed compensation held by the third party is not returned to the inventor, then the practitioner has likely impermissibly shared fees with a non-practitioner. Hence, a practitioner is reasonably expected to question carefully the inventor and the referring non-practitioner third party about the amounts being charged to the inventor for the patent legal services to ensure the entire amount is remitted to the practitioner.

Third, exercising independent professional judgment and rendering candid advice also means that a practitioner may not form a partnership with a non-practitioner if any of the activities of the partnership consist of the practice of law. See 37 C.F.R. § 11.504(b). Nor may a practitioner assist a non-practitioner in committing the unauthorized practice of law. See 37 C.F.R. § 11.505. Where a non-practitioner third party refers inventors to registered practitioners to provide the patent legal services purchased by inventors from the third party, the practitioner may not merely fill a purchase order. Instead, the practitioner must independently assess the suitability of the sought-after patent protection and communicate his or his assessment to the inventor. For example, prior to the referral of an inventor to a practitioner, it is not uncommon for an inventor to have direct communication with a non-practitioner company that aims to assist inventors in protecting and/or marketing their inventions—e.g., the company may review the inventor's submission and, thereafter, provide the inventor with a patent search report or marketing report that induces the inventor to purchase a provisional, design, or utility patent application from the company. By remaining passive and merely providing the patent legal services purchased by the referred inventor, a practitioner may be found to have formed a *de facto* partnership with the non-practitioner and also may be assisting the company commit the unauthorized practice of law. Hence, when a practitioner receives a referral for patent services from a non-practitioner company that aims to assist inventors in protecting and/or marketing their inventions, the practitioner is reasonably expected to obtain copies of all documents exchanged between the company and the inventor so that the practitioner may understand whether company is engaging in practice before the Office in patent matters as defined in 37 C.F.R. § 11.5(b)(1). If the documents indicate that the company is doing so, the practitioner should be mindful that he or she may likely be in violation of both 37 C.F.R. §§ 11.504(b) and 11.505 by accepting the referral and providing the purchased patent legal services.

Fourth, a practitioner is ethically obligated to communicate with the inventor. Ethical communication between a practitioner and an inventor requires the practitioner to consult reasonably with the inventor about the means by which the inventor's objectives are to be accomplished; keep the inventor reasonably informed about the status of the application, including informing the inventor promptly of Office correspondence; and explain a matter to the extent reasonably

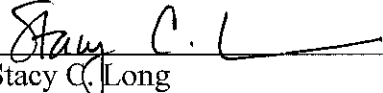
necessary to permit the inventor to make informed decisions regarding the prosecution of the application. See 37 C.F.R. §11.104; see also 37 C.F.R. § 11.102(a). The communication with an inventor under circumstances where a non-practitioner third party refers inventors to registered practitioners to provide the patent legal services purchased by inventors from the third party should be no different in the scope or substance from the communication with inventors that directly engaged the practitioner. Furthermore, practitioners may not delegate their ethical responsibilities to communicate with their clients regarding the substance of their representation by using subordinates or others, including third parties. See, e.g., *In re Meyer*, Proceeding No. D2010-41 (USPTO Sept. 7, 2011) (practitioner reprimanded for, *inter alia*, failing to directly communicate with his clients regarding their trademark applications).

Finally, regarding communications with clients, the USPTO Director is aware that a practitioner may communicate with someone other than the client in cases where there is a bona fide corporate liaison or a foreign agent who conveys instructions to the practitioner. In such an arrangement, the practitioner may rely upon instructions of the corporate liaison or the foreign agent as to the action to be taken in a proceeding before the Office so long as the practitioner is aware that the client has consented to have instructions conveyed through the liaison or agent. Accordingly, nothing in this notice should be construed as contradictory to the discussion entitled "Practitioner's Responsibility to Avoid Prejudice to the Rights of a Client/Patent Applicant" set forth in *Official Gazette* Notice published at 1086 OG 457 (Jan. 12, 1988) or the discussion entitled "Responsibilities of Practitioners Representing and Clients in Proceeding Before The Patent and Trademark Office" set forth in *Official Gazette* Notice published at 1421 OG 2641 (Dec. 29, 2015). Nevertheless, this notice is to be read as providing additional, specific guidance to practitioners under circumstances where a non-practitioner third party refers inventors to registered practitioners to provide the patent legal services purchased by inventors from the third party.

This action is the result of a settlement agreement between Mr. Virga and the OED Director pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.19, 11.20, and 11.26. Disciplinary decisions involving practitioners are posted for public reading at the OED Reading Room, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

- n. Nothing in the Agreement or 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; (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 (3) in connection with any request for reconsideration submitted by Respondent pursuant to 37 C.F.R. § 11.60;

- o. Respondent waives all rights to seek reconsideration of the Final Order under 37 C.F.R. § 11.56, waives the right to have the Final Order reviewed under 37 C.F.R. § 11.57, and waives the right otherwise to appeal or challenge the Final Order in any manner; and
- p. The OED Director and Respondent shall each bear their own costs incurred to date and in carrying out the terms of the Agreement and this Final Order.



Stacy C. Long
Acting Deputy General Counsel for General Law
United States Patent and Trademark Office

Date 3/14/17

on behalf of

Michelle K. Lee
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
United States Patent and Trademark Office

Mr. Robert Schruhl, Esq.
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Counsel for Respondent

Mr. Philip T. Virga

