

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

In the Matter of

Anthony Campbell,

Respondent

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Proceeding No. 2009-39

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 Anthony Campbell (“Respondent”) have submitted a proposed settlement agreement in this matter that meets the requirements of 37 C.F.R. § 11.26.

In order to resolve the pending disciplinary complaint and related matters without the necessity of a hearing, the OED Director and Respondent have agreed to certain stipulated facts, legal conclusions, and sanctions, all of which are set forth below. It was further agreed between the OED Director and Respondent that their proposed settlement agreement resolves any and all disciplinary action by the USPTO arising from the allegations set forth in the Complaint as well as all future disciplinary action by the Office arising from Respondent’s representation of any and all “ISC-referred clients”¹ whether known or unknown to the Office, and where such future disciplinary action is predicated on the same or similar types of acts and omissions described herein or set forth in the pending disciplinary complaint.

Pursuant to that agreement, this Final Order sets forth the following stipulated facts and agreed-upon legal conclusions and disciplinary sanctions.

Jurisdiction

Respondent of Austin, Texas, is an attorney registered to practice patent law before the Office (Registration Number 39,619) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 et seq. The USPTO Director has jurisdiction over this matter pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 CFR §§ 11.20 and 11.26.

¹ The term “ISC-referred Clients” is defined as all clients referred to Respondent by the Invention Submission Corporation (“ISC”) and for whom Respondent provided legal services before the USPTO.

Stipulated Facts

Background

1. Respondent of Austin, Texas, is an attorney registered to practice patent law before the Office (Registration Number 39,619) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 et seq.

2. Invention Submission Corporation ("ISC") is a company that solicited and contracted with inventors who hoped to obtain patents on their inventions. ISC arranged with patent practitioners, like Respondent, to prosecute patent applications for the inventors before the Office.

Representation of ISC-Referred Clients

3. Between 2002 and 2006, many inventors entered into contracts with ISC to assist them in obtaining a patent on their inventions.

4. Between 2002 and 2006, ISC referred a large volume of clients to Respondent, including M.H., J.E.S., S. and W.W., M.B.L., J.R.M., T.E.A., and J. G. (hereinafter referred to as "the ISC-referred clients").

5. ISC placed the funds paid by the ISC-referred clients for patent legal services in an escrow account maintained by a third-party and sent the ISC-referred clients' patent application materials to Respondent.

6. Respondent and the ISC-referred clients entered into respective attorney-client relationships wherein Respondent agreed to prepare, file, and prosecute their patent applications before the Office.

7. Generally speaking, during the course of the attorney-client relationship:

- a. Respondent did not speak directly with ISC-referred clients about their inventions, the patent legal services he intended to render on their behalf, the patentability opinion prepared for the ISC-referred clients by an independent patent practitioner, or the patent prosecution process before the Office;
- b. Respondent did not divulge the actual or potential conflict of interest that ISC's purported escrowing of attorney fees presented to Respondent's representation of ISC-referred clients' interests.
- c. Respondent did not divulge his business relationship with ISC to ISC-referred clients nor the actual or potential conflict of interest the business relationship presented to Respondent's representation of their interests, nor did Respondent obtain ISC-referred clients' consent after full disclosure to represent them in light of Respondent's business relationship with ISC; and

- d. During the course of the prosecution of their patent applications, Respondent did not engage in pre-filing discussions with ISC-referred clients about their patent applications; did not timely inform ISC-referred clients of Office actions he received on their behalf nor explain the significance of the Office actions; did not counsel ISC-referred clients on options when responding to Office actions; did not advise ISC-referred clients about the legal consequences of not responding to Office actions; did not assist ISC-referred clients in making decisions regarding Office actions but, instead, took action on their applications without their knowledge; did not keep ISC-referred clients fully and timely apprised of the status of their applications directly and/or through adequate supervision of Respondent's staff; allowed certain applications of ISC-referred clients to become abandoned without the clients' consent; and did not provide legal advice to an ISC-referred client when the client's patent application became abandoned.
8. Respondent voluntarily ceased receiving client referrals from ISC in 2006.

Legal Conclusion

9. Based on the information contained in the Stipulated Facts, Respondent acknowledges that his conduct violated:
- a. 37 C.F.R. § 10.23(c)(8) by failing to inform clients of correspondence received from the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client or former client, and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified;
 - b. 37 C.F.R. § 10.62(a) by accepting referred clients from a referring entity without the consent of the referred client after full disclosure, including not adequately describing the escrow and payment arrangement for patent legal services performed for the referred clients, where the exercise of Respondent's independent professional judgment on behalf of the referred client will be or reasonably may be affected by the practitioner's own financial, business, property, or personal interests (e.g., Respondent's business relationship with the referring entity);
 - c. 37 C.F.R. § 10.66(a) by not declining employment from a referring entity where the exercise of Respondent's independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment or if it would be likely to involve Respondent in representing differing interests and,
 - d. 37 C.F.R. § 10.77(c) by failing to act on legal matters entrusted to him, including not communicating with referred clients adequately and in a timely manner about their applications.

Mitigating Factors

10. Respondent has no prior disciplinary history before the Office during the nearly fifteen years he has been registered as a patent practitioner.

11. Respondent provided evidence to the Office of the Solicitor of the positive changes he has made in his law office management, including the manner in which he communicates with his clients.

12. Respondent cooperated with the Office of Enrollment and Discipline and the Office of the Solicitor during the investigation and resolution of this matter.

Sanctions

13. Respondent agreed, and it is ORDERED that:

- a. Respondent be, and hereby is, suspended for a period of sixty (60) months from the practice of patent, trademark, and non-patent law before the USPTO commencing on the date the Final Order is signed;
- b. Respondent be, and hereby is, 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 for the sole purpose of facilitating Respondent's compliance with the provisions of 37 C.F.R. § 11.58(b);
- c. Respondent shall comply with 37 C.F.R. § 11.58;
- d. Respondent shall, within forty-five (45) days of the date the Final Order is signed, make restitution in the total amount of eight thousand and eighty-five dollars (\$8,085.00) by remitting one thousand, one hundred and fifty-five dollars (\$1,155.00) to each of the seven ISC-referred clients identified in paragraph 4, above;²
- e. Respondent shall, within sixty (60) days of the date the Final Order is signed, provide an affidavit and corroborating documents (e.g., copies of checks and correspondence to the ISC-referred clients) to the OED Director establishing his compliance with the preceding subparagraph;
- f. The USPTO shall promptly dissociate Respondent's name from Customer Numbers 30,245 and 78,285 and the public key infrastructure ("PKI") certificate associated with those Customer Numbers;

² S. and W. W. constitute one client for purposes of making such restitution.

- g. Respondent shall not apply for or obtain a USPTO Customer Number unless and until he is reinstated to practice before the USPTO;
- h. At any time after fifteen (15) months from the date the Final Order is signed, Respondent may file a petition for reinstatement pursuant to 37 C.F.R. § 11.60 requesting reinstatement effective prior to the expiration of the 60-month period of suspension set forth in subparagraph a., above;
- i. 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 based upon Respondent showing proof to the satisfaction of the OED Director, as required under 37 C.F.R. § 11.60(c), that: (1) Respondent has the good moral character and reputation, competency, and learning in law required under 37 C.F.R. § 11.7 for admission, (2) the resumption of Respondent's practice before the Office will not be detrimental to the administration of justice or subversive to the public interest; (3) Respondent has complied with the provisions of the Final Order for the full period of suspension; and (4) Respondent has complied with the provisions of 37 C.F.R. § 11.58 while suspended;
- j. Respondent shall serve a period of probation commencing on the date the Final Order is signed and ending forty-five (45) months after the OED Director reinstates Respondent pursuant to 37 C.F.R. § 11.60 ("Respondent's probationary period");
- k. (1) If the OED Director is of the opinion that Respondent, during Respondent's probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director shall:
 - (A) (i) if Respondent has not yet been reinstated: issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order amending the Final Order such that Respondent may file a request for reinstatement only after he serves the sixty-month suspension set forth in subparagraph a., above, or
 - (ii) if Respondent has been reinstated: issue to Respondent an Order to Show Cause why the USPTO Director should not enter an order immediately suspending Respondent for up to forty-five (45) months for the violations set forth in paragraph 9, 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 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 Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, 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) 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 Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, and

(B) (i) if Respondent has not been reinstated: request that the USPTO Director enter an order amending the Final Order such that Respondent may file a request for reinstatement only after he serves the sixty-month suspension set forth in subparagraph a., above, or

(ii) if Respondent has been reinstated: request that the USPTO Director enter an order immediately suspending Respondent for up to forty-five (45) months for the violations set forth in paragraph 9, above;

1. If the Final Order is amended and/or Respondent is suspended pursuant to the provisions of the preceding subparagraph:

(1) Respondent shall comply with 37 C.F.R. § 11.58;

(2) the OED Director shall disseminate information in accordance with 37 C.F.R. § 11.59;

(3) the USPTO shall promptly dissociate Respondent's name from all USPTO Customer Numbers and PKI certificates;

(4) Respondent may not apply for or obtain a USPTO Customer Number unless and until he is reinstated to practice before the USPTO;

- m. In the event that the USPTO Director enters an order pursuant to the Final Order (a) amending the Final Order such that Respondent may request reinstatement only after he serves the sixty-month suspension set forth in subparagraph a., above, or (b) immediately suspending Respondent for up to forty-five (45) months, and Respondent seeks a review of the USPTO Director's action, any such review shall not operate to postpone or otherwise hold in abeyance the USPTO Director's order;
- n. The OED Director shall publish the Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at:
<http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;
- o. The OED Director shall publish the following Notice of Suspension in the *Official Gazette*:

Notice of Suspension

Anthony Campbell of Austin, Texas, registered patent attorney (Registration No. 39,619). Mr. Campbell has been suspended for sixty (60) months by the United States Patent and Trademark Office ("USPTO" or "Office") for violating 37 C.F.R. §§ 10.23(c)(8) by failing to inform clients of correspondence received from the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client or former client, and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified; 10.62(a) by accepting referred clients from a referring entity without the consent of the referred client after full disclosure, including not adequately describing the escrow and payment arrangement for patent legal services performed for ISC-referred Clients, where the exercise of a practitioner's independent professional judgment on behalf of the referred client will be or reasonably may be affected by the practitioner's own financial, business, property, or personal interests (e.g., Mr. Campbell's business relationship with the referring entity); 10.66(a) by not declining employment from a referring entity where the exercise of the practitioner's independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, without first obtaining the consent of each client to the representation after full disclosure of the possible effect of such representation on the exercise of the practitioner's independent professional judgment on behalf of each; and 10.77(c) by failing to act on legal matters entrusted to him, including not communicating with referred clients adequately and in a timely manner.

Under the terms of the settlement agreement, Mr. Campbell is eligible to request reinstatement after serving fifteen (15) months of his 60-month suspension subject to certain conditions and, if reinstated, Mr. Campbell will be permitted to practice before the Office. Mr. Campbell is also required to serve a probationary period.

Invention Submission Corporation ("ISC") is a company that solicited and contracted with inventors who hoped to obtain patents on their inventions. ISC arranged with patent practitioners, like Respondent, to prosecute patent applications for the inventors before the Office. Between 2002 and 2006, ISC referred a large volume of clients to Mr. Campbell. Generally speaking:

(a) Mr. Campbell did not speak with ISC-referred clients about their inventions, the patent legal services he intended to render on their behalf, the patentability opinion provided by ISC, or the patent prosecution process before the Office; (b) Mr. Campbell did not divulge the actual or potential conflict of interest that ISC's purported escrowing of attorney fees presented to Respondent's representation of ISC-referred clients' interests; (c) Mr. Campbell did not divulge his business relationship with ISC to ISC-referred clients nor the actual or potential conflict of interest that it presented in representing their interests, nor did he obtain ISC-referred clients' consent after full disclosure to represent them in light of his business relationship with ISC; and (d) during the course of the prosecution of their patent applications:

Mr. Campbell did not engage in pre-filing discussions with ISC-referred clients about their patent applications and the documents accompanying the initial filing of patent applications, did not timely inform ISC-referred clients of Office actions, did not adequately explain to ISC-referred clients the significance of Office actions, did not adequately counsel ISC-referred clients on options when responding to Office actions, did not adequately advise ISC-referred clients about the legal consequences of those options, did not adequately advise ISC-referred clients about the legal consequences of not responding to Office actions, did not adequately assist ISC-referred clients in making decisions regarding Office actions, took action on their applications without their knowledge, did not keep ISC-referred clients fully and timely apprised of the status of their applications directly and/or through adequate supervision of his staff, allowed certain applications of ISC-referred clients to become abandoned without the clients' consent, and did not provide sufficient legal advice to an ISC-referred client when the client's patent application became abandoned. Mr. Campbell voluntarily discontinued receiving referrals from ISC in 2006.

The OED Director considered the following mitigating factors in reaching this settlement: (a) Mr. Campbell has no prior disciplinary history before the Office during the nearly fifteen years he has been registered as a patent practitioner; (b) Mr. Campbell provided evidence of the positive changes he has made in his law office management, including the manner in which he communicates with his clients; and (c) Mr. Campbell cooperated with the Office of Enrollment and Discipline and the Office of the Solicitor during the investigation and resolution of this matter. It is also noted that Mr. Campbell has agreed to pay restitution in the total amount of eight thousand and eighty-five dollars (\$8,085.00).

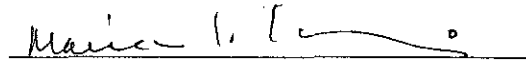
This action is taken pursuant to a settlement agreement between Mr. Campbell and the USPTO pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.20, 11.26, and 11.59. Disciplinary decisions regarding practitioners are posted electronically in the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- p. Pursuant to 37 C.F.R. § 11.59, the OED Director shall give notice of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;
- q. Nothing in the Proposed Settlement Agreement or the Final Order shall prevent the Office from seeking discipline against Respondent in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57 for the misconduct upon which an Order to Show Cause is issued by the OED Director under subparagraph k., above;
- r. Nothing in the Proposed Settlement Agreement or the Final Order shall prevent the Office from considering the record of this disciplinary proceeding, including the Final Order, be considered (1) when addressing any further complaint or evidence of the same or similar misconduct brought to the attention of the Office, and/or (2) in any future disciplinary proceeding (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;
- s. The OED Director shall file a motion to dismiss the pending disciplinary proceeding within fourteen (14) days of the date of the Final Order is signed; and
- t. The OED Director and Respondent shall bear their own costs incurred to date and in carrying out the terms of this agreement.

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FEB 18 2011

Date



MARIA C. CAMPO

Acting 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 Enrollment and Discipline
U.S. Patent and Trademark Office

Anthony Campbell
Registration Number 39,619