

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

In the Matter of

Mark A. Levenda,

Respondent

Proceeding No. D2018-21

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by Mark A. Levenda (“Respondent”) on January 19, 2018.

Respondent submitted the 4-page Affidavit of Resignation 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 in patent, trademark, and other non-patent matters commencing on the date of this Final Order.

Jurisdiction

Respondent of Scottsdale, Arizona is a registered patent agent (Registration Number 57,413). Respondent is subject to the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*¹

¹ The USPTO Rules of Professional Conduct apply to a practitioner’s conduct occurring on or after May 3, 2013.

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 patent, trademark, and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in his January 19, 2018 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, pursuant to 37 C.F.R. § 11.22, the OED Director opened an investigation of allegations that he violated the USPTO Rules of Professional Conduct. The investigation delved into and obtained information, *inter alia*, about:
 - a. In or around June 2016, Respondent agreed to receive patent referrals from 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.
 - b. Respondent agreed to accept WPM customers on a referral basis for the preparation and filing of U.S. Provisional Patent Applications, U.S. Utility Patent Applications, U.S. Design Patent Applications, and/or PCT Patent Applications.
 - c. Ms. A was one of the 31 customers referred to Respondent by WPM from July 2016 to November 2016. Ms. A's file was forwarded to Respondent by WPM with a request to prepare and file a patent application for her invention.
 - d. In Ms. A's matter, Respondent provided Ms. A with an engagement letter on August 1, 2016. The engagement letter stated, in relevant part:
 - i. M.A. Levenda PLC is neither affiliated nor associated with World Patent Marketing;
 - ii. Upon filing your patent application, M.A. Levenda PLC invoices World Patent Marketing based on type of application filed and in accordance with the following rates:

US Provisional Patent Application	\$175.00
US Non-Provisional Patent Application	\$1200.00
US Design Patent Application	\$450.00

PCT Patent Application	\$1800.00
US Non-Provisional/PCT Application Combo	\$1700.00.

- iii. From time-to-time, a referred client may request a service that is beyond the scope of their agreement with World Patent Marketing. If M.A. Levenda PLC agrees to provide the requested service, I will communicate related fee amounts to the client directly prior to the start of the requested service.
 - e. Respondent discussed the content of Ms. A's patent application with her prior to filing with the USPTO.
 - f. Respondent filed a U.S. Patent Application on Ms. A's behalf.
 - g. Respondent invoiced WPM for \$1200.00 for "US Utility Application Preparation and USPTO Filing" of the patent application.
 - h. Respondent was not aware that an Office action was issued for the patent application, until it was brought to his attention by Ms. A.
 - i. Respondent informed Ms. A that a response to the Office action would generally cost her between \$1000 and \$3000, depending on who she hired to file the response. Respondent also offered to pay the extension of time fee if Ms. A wished for him to prepare and file a response for her.
 - j. Respondent believed Ms. A was upset by the cost, as she replied "[w]hen I signed on with WPM they mislead [sic] me and told me I would have no further expenses. I gave them 2k plus the 14, 995k [sic] in which they would handle marketing[,] Product Launch[,] etc. I am quite confused."
 - k. Respondent concluded that Ms. A either did not believe or did not comprehend his independence from WPM, as demonstrated by her continued reference to him as a member of WPM.
 - l. Ms. A revoked Respondent's Power of Attorney for the patent application.
3. He is aware that the OED Director is of the opinion based on this investigation that he violated the following provisions of the USPTO Rules of Professional Conduct:
- a. 37 C.F.R. § 11.102(a) (requiring that a practitioner abide by a client's decisions regarding objectives of representation and consult with the client as to the means to achieve representation);

- b. 37 C.F.R. § 11.104 (requiring that a practitioner shall reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information from the client, consult with the client about any relevant limitation on the practitioner's conduct and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation);
- c. 37 C.F.R. § 11.105(b) (requiring a practitioner to consult with client regarding the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible);
- d. 37 C.F.R. § 11.107(a) (setting forth a practitioner's duty regarding conflicts of interest where the representation may be limited by practitioner's responsibilities to another client, a third person or by a personal interest of the practitioner);
- e. 37 C.F.R. § 11.108(f) (setting forth that a practitioner shall not accept compensation from a third party without informed consent from the client);
- f. 37 C.F.R. § 11.116 (setting forth a practitioner's duties in terminating a representation of a client);
- g. 37 C.F.R. § 11.504(a) (setting forth that a practitioner shall not share legal fees with a non-practitioner);
- h. 37 C.F.R. § 11.504(c) (setting forth that a practitioner shall not permit a person who recommends, employs, or pays the practitioner to regulate the practitioner's professional judgment in rendering legal services);
- i. 37 C.F.R. § 11.804(d) (proscribing conduct that is prejudicial to the administration of justice); and
- j. 37 C.F.R. § 11.804(i) (proscribing conduct that adversely reflects on the practitioner's fitness to practice before the Office).

4. Without admitting to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct investigated by the OED Director, he acknowledges that, if and when he applies for reinstatement under 37 C.F.R. § 11.60 to practice before the USPTO in patent, trademark, and/or other non-patent matters, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that:

(a) the facts regarding him in the investigation are true, and

(b) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.102(a), 11.104, 11.105(b), 11.107(a), 11.108(f), 11.116, 11.504(a), 11.504(c), 11.804(d), and 11.804(i).

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 legal and factual consequences of consenting to exclusion from practice before the USPTO in patent, trademark, and other non-patent matters.

6. He consents to being excluded from practice before the USPTO in patent, trademark, and other non-patent matters.

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). Accordingly, it is hereby ORDERED that:

1. Respondent's Affidavit of Resignation shall be, and hereby is, approved;
2. Respondent shall be, and hereby is, excluded on consent from practice before the Office in patent, trademark, and other non-patent matters commencing on the date of this Final Order;
3. 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>;
4. 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 Mark A. Levenda, a registered patent agent (Registration No. 57,413). The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Levenda's affidavit of resignation and ordered his exclusion on consent from practice before the Office in patent, trademark, and non-patent law.

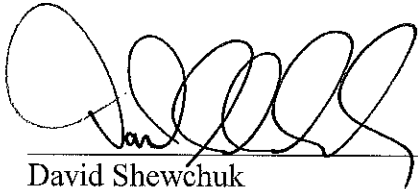
Mr. Levenda voluntarily submitted his affidavit at a time when a disciplinary investigation was pending against him. The investigation concerned Mr. Levenda's acceptance of patent referrals from Desa Industries, Inc., a New York business corporation, doing business as World Patent Marketing in Miami Beach, Florida. World Patent Marketing does not appear to be a law firm or otherwise authorized to offer or provide legal services. Mr. Levenda acknowledged that the OED Director was of the opinion that his conduct violated 37 C.F.R. §§ 11.102(a), 11.104, 11.105(b), 11.107(a), 11.108(f), 11.116, 11.504(a), 11.504(c), 11.804(d), and 11.804(i).

While Mr. Levenda did not admit to violating any of the disciplinary rules of the USPTO Rules of Professional Conduct as alleged in the pending investigation, 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 facts set forth in the OED investigation against him are true, and (ii) he could not have successfully defended himself against the allegations embodied in the opinion of the OED Director that he violated 37 C.F.R. §§ 11.102(a), 11.104, 11.105(b), 11.107(a), 11.108(f), 11.116, 11.504(a), 11.504(c), 11.804(d), and 11.804(i).

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, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

5. Respondent shall comply fully with 37 C.F.R. § 11.58; and

6. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement.



David Shewchuk
Deputy General Counsel for General Law
United States Patent and Trademark Office

2/27/18

Date

on delegated authority by

Andrei Iancu
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

Mr. Mark A. Levenda

