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(2) Pay all or a portion of the costs and expenses, not to exceed $1,500, of the disciplinary proceeding which led to suspension or exclusion.

(d) Any suspended or excluded practitioner who has violated the provisions of § 10.158 during his or her period of suspension or exclusion shall not be entitled to reinstatement until such time as the Director is satisfied that a period of suspension equal in time to that ordered by the Commissioner or exclusion for five years has passed during which the suspended or excluded practitioner has complied with the provisions of § 10.158.

(e) Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any suspended or excluded practitioner, the Director shall publish in the *Official Gazette* a notice of the suspended or excluded practitioner's petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

§ 10.161 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this part.

(b) No practitioner shall be subject to a disciplinary proceeding under this part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

§§ 10.162–10.169 [Reserved]

§ 10.170 Suspension of rules.

(a) In an extraordinary situation, when justice requires, any requirement of the regulations of this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of any party, including the Director or the Director's representative, subject to such other requirements as may be imposed.

(b) Any petition under this section will not stay a disciplinary proceeding unless ordered by the Commissioner or an administrative law judge.

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Subpart A—General Provisions

GENERAL INFORMATION

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PATENTS, TRADEMARKS, AND OTHER NON-PATENT LAW

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11.11 Notification.

AUTHORITY: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2)(D), 32.

SOURCE: 69 FR 35452, June 24, 2004, unless otherwise noted.

Subpart A—General Provisions

GENERAL INFORMATION

§ 11.1 Definitions.

This part governs solely the practice of patent, trademark, and other law before the United States Patent and Trademark Office. Nothing in this part shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the United States Patent and Trademark Office to accomplish its Federal objectives. Unless otherwise clear from the context, the following definitions apply to this part:

Attorney or *lawyer* means an individual who is a member in good standing of the highest court of any State, including an individual who is in good standing of the highest court of one State and under an order of any court

or Federal agency suspending, enjoining, restraining, disbarring or otherwise restricting the attorney from practice before the bar of another State or Federal agency. A *non-lawyer* means a person or entity who is not an attorney or lawyer.

Belief or *believes* means that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

Conviction or *convicted* means any confession to a crime; a verdict or judgment finding a person guilty of a crime; any entered plea, including *nolo contendre* or Alford plea, to a crime; or receipt of deferred adjudication (whether judgment or sentence has been entered or not) for an accused or pled crime.

Crime means any offense declared to be a felony or misdemeanor by Federal or State law in the jurisdiction where the act occurs.

Data sheet means a form used to collect the name, address, and telephone information from individuals recognized to practice before the Office in patent matters.

Fiscal year means the time period from October 1st through the ensuing September 30th.

Fraud or *fraudulent* means conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

Good moral character and reputation means the possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the legal process and the administration of justice, as well as the condition of being regarded as possessing such qualities.

Knowingly, known, or *knows* means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

Matter means any litigation, administrative proceeding, lobbying activity, application, claim, investigation, controversy, arrest, charge, accusation, contract, negotiation, estate or family relations practice issue, request for a ruling or other determination, or any other matter covered by the conflict of interest rules of the appropriate Government entity.

OED means the Office of Enrollment and Discipline.

OED Director means the Director of the Office of Enrollment and Discipline.

OED Director's representatives means attorneys within the USPTO Office of General Counsel who act as representatives of the OED Director.

Office means the United States Patent and Trademark Office.

Practitioner means:

(1) An attorney or agent registered to practice before the Office in patent matters,

(2) An individual authorized under 5 U.S.C. 500(b) or otherwise as provided by §10.14(b), (c), and (e) of this subchapter, to practice before the Office in trademark matters or other non-patent matters, or

(3) An individual authorized to practice before the Office in a patent case or matters under §11.9(a) or (b).

Proceeding before the Office means an application for patent, an application for reissue, a reexamination, a protest, a public use matter, an *inter partes* patent matter, correction of a patent, correction of inventorship, an application to register a trademark, an *inter partes* trademark matter, an appeal, a petition, and any other matter that is pending before the Office.

Reasonable or *reasonably* when used in relation to conduct by a practitioner means the conduct of a reasonably prudent and competent practitioner.

Registration means registration to practice before the Office in patent proceedings.

Roster means a list of individuals who have been registered as either a patent attorney or patent agent.

Significant evidence of rehabilitation means satisfactory evidence that is significantly more probable than not that there will be no recurrence in the foreseeable future of the practitioner's prior disability or addiction.

State means any of the 50 states of the United States of America, the District of Columbia, and other territories and possessions of the United States of America.

Substantial when used in reference to degree or extent means a material matter of clear and weighty importance.

Suspend or *suspension* means a temporary debarring from practice before the Office or other jurisdiction.

United States means the United States of America, and the territories and possessions the United States of America.

USPTO Director means the Director of the United States Patent and Trademark Office, or an employee of the Office delegated authority to act for the Director of the United States Patent and Trademark Office in matters arising under this part.

§ 11.2 Director of the Office of Enrollment and Discipline.

(a) *Appointment*. The USPTO Director shall appoint a Director of the Office of Enrollment and Discipline (OED Director). In the event of the absence of the OED Director or a vacancy in the office of the OED Director, or in the event that the OED Director recuses himself or herself from a case, the USPTO Director may designate an employee of the Office to serve as acting OED Director. The OED Director and any acting OED Director shall be an active member in good standing of the bar of a State.

(b) *Duties*. The OED Director shall:

(1) Supervise staff as may be necessary for the performance of the OED Director's duties.

(2) Receive and act upon applications for registration, prepare and grade the examination provided for in § 11.7(b), maintain the register provided for in § 11.5, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

(3) Conduct investigations into the moral character and reputation of any individual seeking to be registered as an attorney or agent, or of any individual seeking limited recognition, deny registration or recognition of individuals failing to demonstrate possession of good moral character and reputation, and perform such other duties in connection with enrollment matters and investigations as may be necessary.

(4) The Director shall conduct investigations into possible violations by practitioners of Disciplinary Rules, with the consent of the Committee on Discipline initiate disciplinary proceedings under § 10.132(b) of this subchapter, and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(5)–(7) [Reserved]

(c) *Petition to OED Director*. Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director. Any such petition not filed within sixty days from the mailing date of the action or notice from which relief is requested will be dismissed as untimely. The filing of a petition will not stay the period for taking other action which may be running, or stay other proceedings. A final decision by the OED Director may be reviewed in accordance with the provisions of paragraph (d) of this section.

(d) *Review of OED Director's decision*. An individual dissatisfied with a final decision of the OED Director, except for a decision dismissing a complaint or closing an investigation, may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5)(ii) of this subchapter. A decision dismissing a complaint or closing an investigation is not subject to review by petition. Any petition not filed within sixty days from the mailing date of the final decision of the OED Director will be dismissed as untimely. Any petition shall be limited to the facts of record. Briefs or memoranda, if any, in support of the petition shall accompany or be embodied therein. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director need not be submitted with the petition. No oral hearing on the petition will be held except when considered necessary by the USPTO Director. Any request for reconsideration of the decision of the USPTO Director will be dismissed as untimely if not filed within thirty days after the mailing date of said decision. If any request for reconsideration is filed, the decision on reconsideration shall be the final agency action.