



# United States Patent and Trademark Office

Office of the Commissioner for Patents

In re Application of :  
[redacted] : FINAL ORDER –  
Application No. [redacted] : IMPOSITION OF SANCTIONS  
Filed: [redacted] :  
For: [redacted] :

On August 25, 2023 the United States Patent and Trademark Office (“USPTO” or “Office”) issued an order (the “Show Cause Order”) requiring the applicant to show cause as to why certain sanctions should not be imposed for conduct involving the impermissible entry of the purported S-signature of practitioner Jie Yang (Registration No. 77,665) by someone other than the practitioner in this application in violation of USPTO rules of practice in patent matters. The USPTO did not receive a response to the Show Cause Order. The Director has delegated the authority to decide this matter, including to impose appropriate sanctions, to Assistant Commissioner for Patents Hanlon pursuant to 35 U.S.C. § 3(a)-(b). For the reasons discussed below and in the Show Cause Order, sanctions are warranted and are hereby imposed.

## I. Relevant Legal Requirements

The USPTO Rules of Practice in Patent Cases, 37 C.F.R. Part 1, and Representation of Others before the United States Patent and Trademark Office, 37 C.F.R. Part 11 (collectively “USPTO Rules”), apply to all patent proceedings. These rules protect the integrity of the U.S. patent system and protect the public by facilitating the issuance of valid U.S. patents.

An individual must be a registered practitioner, or be given limited recognition in a specified application, in order to represent others before the USPTO in patent matters. 37 C.F.R. 11.6, 11.7, and 11.9. Additionally, for all applications in which the applicant is a juristic entity (e.g., a company or organization), the applicant is required to be represented by a registered practitioner. 37 C.F.R. 1.31.

Nearly every submission to the USPTO is required to be signed. 37 C.F.R. 1.33(b). The requirements for S-signatures are set forth in 37 C.F.R. 1.4(d)(2). In particular, a person, including a practitioner, must insert their own signature. See 37 C.F.R. 1.4(d)(2)(i); Manual of Patent Examining Procedure (“MPEP”) 502.02 subsection (II). The MPEP explains that “[t]he ‘must insert [your] own signature’ requirement is met by the signer directly typing their own signature using a keyboard. The requirement does not permit one person (e.g., an assistant) to type in the signature of a second person (e.g., a practitioner) even if the second person directs the first person to do so.” MPEP 502.02 subsection (II). 37 C.F.R. 1.4(d)(4)(ii) states that the person inserting an S-signature under § 1.4(d)(2) in a document submitted to the USPTO certifies that the inserted signature appearing in the document is their own signature. See also MPEP 502.02 subsection (III). “Violations of the certification as to the signature of another or a person’s own signature . . . may result in the imposition of sanctions under 37 C.F.R. 11.18(c) and (d).” 37 C.F.R. 1.4(d)(4)(ii). See also MPEP 502.02 subsection (III).

Inventors, authorized practitioners and “every other person who is substantively involved in the preparation or prosecution of the application” has a duty of candor and good faith. 37 C.F.R. 1.56; MPEP 2001; *Duties of Disclosure and Reasonable Inquiry During Examination, Reexamination, and Reissue, and for Proceedings Before the Patent Trial and Appeal Board*, 87 FR 45764, 45765 (July 29, 2022). A proper signature, that is, one that complies with USPTO Rules, identifies an individual who bears that duty.

Any person who submits a paper to the USPTO is certifying, among other things, that “[a]ll statements made therein of the person’s own knowledge are true, all statements made therein on information and belief are believed to be true” and that, “[t]o the best of the party’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances, . . . the paper is not being presented for any improper purpose” and “[t]he allegations and other factual contentions have evidentiary support” and “[t]he denials of factual contentions are warranted on the evidence.” 37 C.F.R. 11.18(b)(1)-(2); MPEP 410. Violations of 37 C.F.R. 11.18(b) may jeopardize the validity of the application or document, or enforceability of any patent and may result in the imposition of sanctions under 37 C.F.R. 11.18(c). MPEP 410.

Patent examination is an *ex parte* process, and the Office and the public rely on the equitable conduct of applicants, and parties acting on behalf of the applicant,<sup>1</sup> to ensure issuance of valid U.S. patents.<sup>2</sup> Courts have long held that applicants before the USPTO are in a relationship of confidence and trust to the agency.<sup>3</sup> In view of the limited ability of the Office to independently verify the contents of submissions, the agency relies heavily upon the truth and accuracy of the submissions of applicants.<sup>4</sup>

In particular, the USPTO relies on factual information submitted with the application, including inventorship information and ownership information, to conduct a prior art search. MPEP 904. The USPTO relies on the same information to determine which references are in fact prior art. MPEP 2153 and 2154.02. The USPTO relies on technical information in the specification in order to ensure compliance with patentability statutes. MPEP 2163 and 2164. The USPTO relies on the contents of replies to evaluate the propriety of rejections. MPEP 2145. The USPTO relies on the submissions of the applicant to determine whether the applicant qualifies for a discounted status. MPEP 509.02 and 509.04. The USPTO relies on the application data sheet to establish inventorship, correspondence information, domestic benefit claims, foreign priority, and the applicant(s). MPEP 601.05(a). The USPTO relies on statements in petitions in deciding whether to grant a petition, including petitions to advance applications out of turn (e.g., request for participation in the Patent Prosecution Highway) or petitions for revival under 37 C.F.R. 1.137(a). MPEP 708.02(a) and 711.03(c). In view of the heavy reliance on the relationship of confidence and trust with the applicant, courts have recognized that the

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<sup>1</sup> *Link v. Wabash R. Co.*, 370 U.S. 626, 633-634 (1962) (“Petitioner voluntarily chose this attorney as [their] representative in the action, and [they] cannot now void the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of [their] lawyer-agent and is considered to have ‘notice of all facts, notice of which can be charged upon the attorney.’”)

<sup>2</sup> *Norton v. Curtiss*, 433 F.2d 779, 794 (CCPA 1970) (“While being a fact-finding as well as an adjudicatory agency, [the USPTO] is necessarily limited in the time permitted to ascertain the facts necessary to adjudicate the patentable merits of each application. In addition, it has no testing facilities of its own. Clearly, it must rely on applicants for many of the facts upon which its decisions are based. The highest standards of honesty and candor on the part of applicants in presenting such facts to the office are thus necessary elements in a working patent system. We would go so far as to say they are essential.”)

<sup>3</sup> *Norton v. Curtiss*, 433 F.2d at 794.

<sup>4</sup> *Id.*

duty of candor to the USPTO is “uncompromising.”<sup>5</sup> The requirement for a proper signature on papers submitted to the USPTO, in which the signature actually identifies the party who is responsible for the papers, is necessary for such reliance, and is therefore necessary for the USPTO to perform its statutorily-mandated duty of examining patent applications and issuing patents that comply with U.S. patent law.<sup>6</sup>

The proceedings before the USPTO result in the creation of the patent application file which is of the utmost importance during patent enforcement.<sup>7</sup> The USPTO Rules and procedures are therefore not designed merely to facilitate examination, but are related to the creation of public records which have lasting importance. Of particular note, the public is entitled to rely on the prosecution history to understand the scope of a patent.<sup>8</sup> When the contents of an application file come into question, the person(s) who signed the papers in question can be called upon to answer for the contents of those papers.<sup>9</sup> It follows that a proper signature on papers submitted to the USPTO, in which the signature actually identifies the party who is responsible for the papers, is an inextricable part of the public’s rightful ability to scrutinize the file of an issued U.S. patent.

Courts have consistently held that patents should not be granted when, by violation of the USPTO rules or by affirmative misrepresentations to the Office, the conduct of the applicant or the applicant’s representative is incompatible with enforcement of patent rights.<sup>10</sup> This is consistent with the longstanding rule that “no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted.” 37 C.F.R. 1.56.

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<sup>5</sup> *Kansas Jack, Inc. v. Kuhn*, 719 F.2d 1144, 1151 (Fed. Cir. 1983); *GE v. Mitsubishi Heavy Indus.*, 946 F. Supp. 2d 582, 588 (N. Dist. Texas 2013).

<sup>6</sup> 37 C.F.R. Part 11 includes rules of professional conduct which set forth the duties and standards of conduct incumbent upon registered practitioners. Such duties include competency, confidentiality, conflicts of interest, honesty toward third parties, and many others. 37 C.F.R. 11.101-11.804. A proper signature by a registered practitioner establishes that an individual within the disciplinary jurisdiction of the Office is responsible for the contents of the signed paper. 37 C.F.R. 11.19. Nothing in this order precludes USPTO Office of Enrollment and Discipline (“OED”) investigation and enforcement under 37 C.F.R. 11.101-804.

<sup>7</sup> *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 726 (2002) (Review of the prosecution history is necessary to understand a patent); *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1359 (Fed. Cir. 2017) (Reliance on the application file is a “fundamental precept” of patent law.)

<sup>8</sup> *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d at 1359 (The public is “entitled to rely on [representations made during prosecution] when determining a course of lawful conduct.”)

<sup>9</sup> *General Electro Music Corp. v. Samick*, 19 F.3d 1405 (Fed. Cir. 1994) (Practitioner was called to testify regarding a certification made during examination.); *Ulead Sys., Inc. v. Lex Computer & Mgmt. Corp.*, 351 F.3d 1139, 1146 (Fed. Cir. 2003) (President of company was deposed in regards to having signed a statement claiming small entity status.)

<sup>10</sup> *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 816 (1945) (“The far-reaching social and economic consequences of a patent, therefore, give the public a paramount interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct.”); *Norton v. Curtiss*, 433 F.2d 779, 794 (CCPA 1970) (“[A]ny conduct which will prevent the enforcement of a patent after the patent issues should, if discovered earlier, prevent the issuance of the patent.”); *Digital Equipment Corp. v. Diamond*, 653 F.2d 701, 710 (1st Cir. 1981) (“Rule 56 operates independently of the statutorily prescribed conditions for patentability and issuance of claims. . . . Otherwise the PTO would be obliged to issue claims knowing that they were unenforceable as a matter of law.”); *Mas v. Coca-Cola Co.*, 163 F.2d 505, 510 (4th Cir. 1947) (No one should be granted a patent where their conduct has been such that any grant “will be clouded with forgery and perjury or fraud practiced upon the Patent Office; and where it appears, at any stage of the proceedings, that an applicant has been guilty of conduct of this sort, [they] should be denied all further relief.”); *General Electro Music Corp. v. Samick*, 19 F.3d 1405 (Fed. Cir. 1994) (false statement on petition to make special supported a finding of inequitable conduct); and *Ulead Systems, Inc. v. Lex Computer*, 351 F.3d 1139 (Fed. Cir. 2003) (false statement on small entity status was material for purposes of inequitable conduct).

## II. Background and Conduct in Violation of USPTO Rules

As detailed in the Show Cause Order, incorporated by reference in this final order, the conduct at issue in this application is the improper use of the name and S-signature of Jie Yang (“the practitioner”) in violation of USPTO Rules. On February 2, 2024, the USPTO Director issued a Final Order in the matter of Jie Yang (“OED Final Order”) which is attached hereto as Exhibit B, and which supports the findings made in the Show Cause Order. The following summary of the facts is provided for additional background.

Filing(s) containing the purported S-signature of the practitioner were submitted on applicant’s behalf by Dr. Yu “Mark” Wang (“Mark Wang”) or another individual associated with Mark Wang or his firm, Wayne & King IP (“W&K IP”).<sup>11</sup> Mark Wang is not currently and has never been a registered practitioner, and also is not and has never been licensed to practice law.<sup>12</sup> In October 2022, the practitioner received a request for information (RFI) from OED regarding numerous micro entity certifications which appear to exceed the limits set forth in 37 C.F.R. 1.29(a)(2).<sup>13</sup> The practitioner provided information to OED that she did not sign such documents, nor did she prepare or review them before they were filed with the USPTO, and she did not know about numerous patent documents bearing her purported S-signature having been filed with the USPTO until after she received the RFI.<sup>14</sup> Subsequent to receiving the RFI, the practitioner notified the USPTO of the improper use of her signature in thousands of applications, by sending the letter which was attached as Exhibit A to the Show Cause Order.

The Show Cause Order included a description of the evidence which indicates that the S-signature of the practitioner in the present application was not inserted by the practitioner as required by 37 C.F.R. 1.4(d)(2)(i). In response to the Show Cause Order, the USPTO has received in numerous applications a declaration by Mark Wang which is attached hereto as Exhibit C and which, in relevant respects, corroborates the evidence in the Show Cause Order and is consistent with the OED Final Order. In particular, items 16, 17, and 22 of the declaration of Mark Wang indicate that, between 2020 and 2022, the signature of the practitioner was used in applications without involvement from the practitioner.<sup>15</sup> This is consistent with an indication by Mark Wang that “W&K filed an estimated 4,000 patent documents with the USPTO where someone other than [the practitioner] had signed [the practitioner’s] signature to the document.”<sup>16</sup>

Pursuant to the inquiry that began with the RFI, the practitioner gave information and evidence, including testimony, identifying which patent application(s) bear genuine signatures.<sup>17</sup> In addition, the practitioner avers that “[o]ther than the documents identified as being filed in the aforementioned specific U.S. patent application, [the practitioner] did not personally enter her signature on any other documents filed in the USPTO, including any W&K patent matter documents purportedly bearing her S-signature.”<sup>18</sup>

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<sup>11</sup> Exhibit A, pp. 3-4; Exhibit B at 12

<sup>12</sup> Exhibit B at 12-13.

<sup>13</sup> Exhibit A, pg. 4; Exhibit B at 23-24.

<sup>14</sup> Exhibit A, pg. 4; Exhibit B at 23-24.

<sup>15</sup> Exhibit C, pg. 4-5.

<sup>16</sup> Exhibit B at 29.

<sup>17</sup> Exhibit B at 22(g).

<sup>18</sup> Exhibit B at 22(h).

The USPTO has determined that the signature(s) of the practitioner which appear in this application are in fact false signatures.

### III. Sanctions Ordered: The Application Proceedings are Terminated

In determining appropriate sanctions imposed under 37 C.F.R. 11.18(c), the Office takes into account many considerations, including: any response received to the issued Show Cause Order; whether the improper conduct was willful or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected an entire application, or only one particular paper; whether the person has engaged in similar conduct in other matters; whether the conduct was intended to injure; what effect the conduct had on the administrative process in time and expense; whether the responsible person is trained in law; what is needed to deter that person from repetition in the same case; and what is needed to deter similar conduct by others. *Changes to Representation of Others Before the United States Patent and Trademark Office*, 73 FR 47650 (August 14, 2008).

In view of the considerations enumerated above, the circumstances surrounding the filing of paper(s) with false signature(s) in this application are relevant. As discussed above, evidence obtained from the practitioner and from Mark Wang shows that documents containing false signatures were submitted to the USPTO in thousands of applications.<sup>19</sup> For example, these false signatures were present on certifications of micro-entity status, which appear to be improper because they exceeded the limits set forth in 37 C.F.R. 1.29(a)(2); false micro-entity certifications unjustly diminish the monetary resources of the USPTO.<sup>20</sup> The false signatures were also present on documents such as Application Data Sheets, which address critical issues including domestic benefit/ national stage claims, foreign priority claims, naming the applicant, ownership and inventorship that are relied on during substantive examination of patent applications.<sup>21</sup> The false signatures were also presented on replies to Office actions, which has caused the USPTO to waste resources examining and processing applications which are, in effect, abandoned because a proper reply was not received within the time period set by the Office action. 37 C.F.R. 1.135. This conduct amounts to a willful and flagrant flouting of USPTO Rules which could not remotely be understood as an honest mistake.<sup>22</sup>

Given these circumstances, the affirmative acts of misrepresentation to the USPTO constitute a pattern of activity which is egregious in the magnitude of harm to the administrative process, in regards to both time and expense. One or more persons affiliated with W&K intended to deceive the USPTO into believing the submissions were proper. This has impaired the USPTO's ability to perform its statutorily-mandated duty of issuing patents that comply with U.S. patent law. This pattern of conduct was a deliberate scheme, knowingly executed over a prolonged period of time from at least 2020

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<sup>19</sup> Exhibit B and Exhibit C

<sup>20</sup> 37 C.F.R. 1.29(j), "Any attempt to fraudulently establish status as a micro entity, or pay fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office. Improperly, and with intent to deceive, establishing status as a micro entity, or paying fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office."

<sup>21</sup> *Applied Materials, Inc. v. Multimetrixs, LLC*, 2008 U.S. Dist. LEXIS 55635 (N. Dist. Cal. 2008), affirmed *Applied Materials, Inc. v. Multimetrixs, LLC*, 404 Fed. Appx. 493 (Fed. Cir. 2010) (Inventorship is a critical issue; forged signatures resulted in a finding of inequitable conduct.)

<sup>22</sup> *Rohm & Haas Co. v. Crystal Chem. Co.*, 722 F.2d 1556, 1571 ("It cannot be said that these misrepresentations to the PTO were the result of an honest mistake." An affirmative act of misrepresentation supports a finding of "an intentional scheme to deceive the PTO.")

through 2022, to engage in unauthorized representation before the USPTO and circumvent USPTO Rules.<sup>23</sup>

The non-extendable two (2) month time period for responding to the Show Cause Order has expired. No response to the show cause order has been received. As such, despite being afforded an opportunity to respond as provided for in 37 C.F.R. 11.18, Applicant has not provided evidence or explanation as to why sanctions are not merited.

Protecting the integrity of the U.S. patent system is of utmost concern to the USPTO. The United States Supreme Court has recognized the significant public policy interest in prohibiting the enforcement of patent claims which are infected with fraud, deceit, or inequitable conduct.<sup>24</sup> The rule violations which occurred in this application are incompatible with continuing the proceedings before the Office, as the USPTO cannot rely on the truth or accuracy of information submitted, to include inventorship information, ownership information, the substance of the specification and claims, or the content of replies to Office actions.<sup>25</sup> Such actions involve an intent to deceive the USPTO into believing the application requirements are satisfied and to examine the application when the applicant was not in fact entitled to have the application examined.

For the reasons set forth above, the submission of false signature(s) in this application constitutes a violation of the duty of candor and good faith under 37 C.F.R. 1.56, as well as a violation of 37 C.F.R. 11.18(b)(2)(i) in submitting a paper for an improper purpose. Filing a paper with the falsified signature of a registered practitioner constitutes the submission of a paper for various improper purposes, including, but not limited to:

- (i) Causing the USPTO to rely on a paper which would not have been accepted nor processed if it were apparent that the signature was improper;
- (ii) Concealing the identity of parties who are responsible for the contents of the paper and have the duty of candor and good faith under 37 C.F.R. 1.56 and the duty of reasonable inquiry under 37 C.F.R. 11.18;
- (iii) Making a material misrepresentation to the USPTO;
- (iv) Evading the requirements of the USPTO Representation Rules;
- (v) Causing the USPTO to expend resources in processing applications which are infected with fraud, deceit, and/or inequitable conduct;

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<sup>23</sup> *Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d at 1287 (Summarizing and incorporating early Supreme Court precedent on unclean hands based on deliberate schemes); see also *Norton v. Curtiss*, 57 C.C.P.A. 1384, 1401 (CCPA 1970) (“[A]ny conduct which will prevent the enforcement of a patent after the patent issues should, if discovered earlier, prevent the issuance of the patent.”); and see *United States v. International Minerals & Chemical Corp.*, 402 U.S. 558, 563 (1971) (“The principle that ignorance of the law is no defense applies whether the law be a statute or a duly promulgated and published regulation.”)

<sup>24</sup> *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 816 (S.Ct. 1945) (“The far-reaching social and economic consequences of a patent, therefore, give the public a paramount interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope.”); see also *Kingsland v. Dorsey*, 338 U.S. 318, 319 (1949) (“By reason of the nature of an application for a patent, the relationship of attorneys to the Patent Office requires the highest degree of candor and good faith. In its relation to applicants, the Office . . . must rely upon their integrity and deal with them in a spirit of trust and confidence. . .”). See also *Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276, 1308-1309 (Fed. Cir. 2011) (“the public has a special interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct.”)

<sup>25</sup> *C.f. The Last Best Beef, LLC v. Dudas*, 506 F.3d 333, 341 (4th Cir. 2007) (“It hardly makes sense for the USPTO to conduct administrative proceedings on [the] applications if registration, at the culmination of those proceedings, would run a foul of the statute.”).

- (vi) Effecting a submission by a party who is not authorized to represent others before the USPTO in patent matters; and
- (vii) Circumventing USPTO Rules.

Based on all of the above, the following sanctions are deemed appropriate and hereby imposed:

- (1) Termination of the proceedings in this application, effective as of the date of this letter;
- (2) Precluding the submission of any petition to revive this application or any petition to withdraw a holding of abandonment;
- (3) Precluding the submission of an Application Data Sheet or any other paper which includes a claim of benefit to the filing date of this application; and
- (4) Striking from the record all documents containing the signature of the practitioner Jie Yang. Although a stricken document will not actually be removed from the application file, the application is considered to be deficient to the same extent as if the document had not been filed; this may result in the application being abandoned.

With respect to sanctions, “a scheme involving intentional circumvention of the USPTO Rules and defrauding the USPTO is the epitome of egregious misconduct, warranting termination.”<sup>26</sup> The egregious nature of the conduct at issue warrants termination of the application proceedings. A lesser sanction than termination of proceedings would not remedy the conduct nor deter future misconduct.

As explained in the Show Cause Order, the USPTO will not respond to telephone or email inquiries regarding this matter. The sanctions ordered herein are immediate in effect and are without prejudice to the USPTO taking additional steps to protect the patent system.

So ordered,

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Brian E. Hanlon  
Assistant Commissioner for Patents

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Date

on delegated authority by

Katherine K. Vidal  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark office

Exhibit A – Letter of December 19, 2022  
Exhibit B – Office of Enrollment and Discipline Final Order  
Exhibit C – Declaration of Yu “Mark” Wang

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<sup>26</sup> *In re Zhang*, 2021 TTABLEXIS 465 at \*35 (Dir. USPTO Dec. 10, 2021).

