

From: Chad Swantz [cswantz@yahoo.com]  
Sent: Friday, February 26, 2010 4:02 PM  
To: BPAI Rules  
Subject: Written Comments on Potential Modifications to the Final Rule

Dear Director Kappos:

In regards to the proposed Rules of Practice Before the Board of Patent Appeal and Interferences in Ex Parte Appeals, Section 41.56 ("Sanctions"), please consider that this rule is superfluous and is contrary to the United States Patent and Trademark Office ("PTO") ethics rules and the State Bar Ethics Rules (I am active attorney in the State of Nebraska) for an attorney to represent such an Appellant under an appeal to the Board of Patent Appeals and Interferences ("BPAI").

PTO rules for an appeal are instructive in that they place three affirmative duties on patent attorneys relevant to an appeal: Affirmative Duty One: "A practitioner should represent a client zealously within the bounds of the law." (37 C.F.R. § 10.83); Affirmative Duty Two: "Representing a Client Zealously. . . (a) a practitioner shall not intentionally . . . (3) Prejudice or damage a client during the course of a professional relationship, except as required under this [ethics] part." (37 C.F.R. § 10.84); and Affirmative Duty Three: "A practitioner should represent a client competently" (37 C.F.R. § 10.76).

Section 41.56 unnecessarily creates a potential schism between the Appellant and the practitioner in the pursuit of his/her appeal by creating a question of whether the practitioner is zealously advocating the interests of his/her client versus creating a possible sanction for the Appellant based upon the conduct of the practitioner. Consequently, the proposed sanctions for misconduct by an Appellant places the Appellant in a position which may be contrary to the rules already imposed upon a practitioner representing the Appellant, causing an undue burden for the Appellant.

Acting in my own individual capacity:

Chad W. Swantz  
USPTO Reg. No. 46,329  
Nebraska State Bar 21,788  
14301 FNB Parkway  
Suite 220  
Omaha, Nebraska 68154  
Phone 402.496.0300  
Email: cswantz@yahoo.com