

SUPREME COURT, STATE OF COLORADO

2 E. 14<sup>th</sup> Ave.

Denver, Colorado 80203

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CASE NUMBER: 2017SA214

ORIGINAL PROCEEDING IN UNAUTHORIZED  
PRACTICE OF LAW, 17UPL10

Petitioner:

THE PEOPLE OF THE STATE OF COLORADO

▲ COURT USE  
ONLY ▲

Respondents:

DAK STEIERT, a/k/a DAK STEIRT and  
INTELLIGENT PATENT SERVICES, LLC, a  
Colorado limited liability company

Case Number:

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**PETITION FOR INJUNCTION**

Petitioner, through the undersigned Assistant Regulation Counsel, and upon authorization pursuant to C.R.C.P. 234(a),<sup>1</sup> respectfully requests that the Colorado Supreme Court issue an order pursuant to C.R.C.P. 234 directing Respondents to show cause why they should not be enjoined from the unauthorized practice of law. As grounds, counsel states as follows:

<sup>1</sup> The Unauthorized Practice of Law (“UPL”) Committee authorized the filing of this petition on September 8, 2017.

## **JURISDICTION**

1. Respondent Dak Steiert, a/k/a Dak Steirt, is a Colorado resident, with last known addresses of 295 Main St., Edwards, CO 81632 and 165 Charolais Circle, #A, Edwards, CO 81632.
2. Respondent Steiert's present whereabouts are unknown.
3. Respondent Steiert is not licensed to practice law in Colorado or any other state.
4. Respondent Steiert is not authorized to practice before the United States Patent and Trademark Office ("USPTO").<sup>2</sup>
5. Respondent Steiert is the principal of Respondent Intelligent Patent Services, LLC ("IPS").
6. The last known address of IPS is P.O. Box 508, Edwards, CO 81632.
7. Upon information and belief, IPS does not employ licensed attorneys.
8. Respondents engaged in the unauthorized practice of law, as described below.

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<sup>2</sup> Pursuant to 37 C.F.R. § 11.5(b)(1): "Practice before the Office in patent matters includes, but is not limited to, preparing and prosecuting any patent application, consulting with or giving advice to a client in contemplation of filing a patent application or other document with the Office, ... ."

## GENERAL ALLEGATIONS

### A. Advertising.

9. Respondents advertise on a website as “Patent Attorneys You Can Trust”, <http://www.patent-attorney.tv/Attorney/Utility-Patent-Attorney.html>.

10. Respondents promise to provide clients with “Registered Patent Attorneys all with 5-20 years experience.”

11. The website states: “We’re here to be more than patent attorneys – we’re here to be in your corner, to fight for you, and to make sure your invention gets protected and stays yours!”

12. The website quotes flat rates from \$2,700 to \$5,300.

13. For this fee, Respondents agree to conduct a patent search and craft an application that will lead to the patent being issued.

14. The website claims Respondents can draft a patent in as little as two weeks.

15. Respondents promise their product is of the highest quality: “Our work is the best available because our patents are drafted entirely by patent attorneys with at least 5 years experience. ... If you would like, you can request one of our attorneys who used to work for the USPTO examining patents.”

### B. The “316 Application”.

16. Khoa Tho Le of Aurora, Colorado is the inventor of the Portable

EasyP Urinal.

17. Mr. Le needed help with preparing the patent application for this device.

18. Mr. Le contacted Respondents.

19. Respondent Steiert told Mr. Le that Respondents had an office with many lawyers.

20. Mr. Le hired Respondents to draft the patent application.

21. Mr. Le paid IPS \$3,900 on September 9, 2015 and \$1,800 on October 29, 2015.

22. Respondents sent Mr. Le a blank patent application to complete.

23. Mr. Le wrote the specifications portion of the patent application.

24. Respondent Steiert then wrote the claims portion.

25. Mr. Le filed U.S. Patent Application 14/967,316 with the USPTO on December 13, 2015.

26. Mr. Le learned that portions of the application had been completed incorrectly.

27. Mr. Le asked Respondent Steiert to correct the mistakes, but he declined.

28. Because the mistakes were not corrected timely, Mr. Le lost the priority of his provisional application.

29. Mr. Le later corrected the mistakes himself.

30. Respondents did not refund any of the fee Mr. Le paid them.

**C. The “472 Application”.**

31. Alexander Montoya of Westminster, Colorado is the inventor of a faucet attachment adapter.

32. Mr. Montoya contacted Respondents for assistance with a patent application.

33. Respondent Steiert did not tell Mr. Montoya that he was an attorney.

34. Rather, Respondent Steiert conveyed that he would refer the work of preparing the patent application to an attorney in Florida.

35. U.S. Patent Application 13/888,472 (the “472 application”) for the faucet attachment adapter was filed with the USPTO on May 7, 2013.

36. The 472 application was rejected in January 2016.

37. A subsequent petition to revive the application was granted.

38. As the engagement progressed, Mr. Montoya found that Respondent Steiert’s responsiveness diminished, and there were difficulties in communication.

39. Respondent Steiert took steps without first validating them with Mr. Montorya.

40. Without first consulting Mr. Montoya, Respondent Steiert arranged for the preparation of a request for reconsideration, discussed below.

41. Attorney Michael C. Hamerly is certified to practice before the USPTO, # 48970.

42. At some point in 2016, Respondents engaged Mr. Hamerly to work on the 472 application.

43. Mr. Hamerly did not communicate with the inventor, Mr. Montoya.

44. Rather, Mr. Hamerly was directed by Respondents not to have any direct communication with Mr. Montoya.

45. On January 10, 2017, a Request for Continued Examination (“RCE”) was filed with USPTO.

46. The RCE was accompanied by an “Amendment and Request for Reconsideration” bearing the signature “/Michael C. Hamerly/”.

47. The signature block of the RCE transmittal form bore the signature “/Michael Hamerly/” and was dated “12/18/2016”.

48. The fee for submitting the RCE was paid on January 10, 2017 by credit card.

49. The cardholder’s name was “DAK STEIERT”.

50. Mr. Hamerly did not prepare or sign the RCE that was submitted to USPTO.

51. Mr. Hamerly prepared a draft of the RCE and sent it to Respondents.

52. Respondents then prepared the final RCE and typed in Mr. Hamerly’s

signature, without his knowledge.

53. Similarly, Mr. Hamerly prepared a draft of the Amendment and Request for Reconsideration that was filed along with the RCE on January 10, 2017.

54. Mr. Hamerly did not sign the Amendment and Request for Reconsideration.

55. Respondent Steiert signed Mr. Hamerly's name to the Amendment and Request for Reconsideration and filed it.

**D. The "858 Application".**

56. Henry Franklin Ledford of High Point, North Carolina is the inventor of a twin-hull watercraft.

57. Mr. Ledford wanted help with filing his patent application.

58. Mr. Ledford searched the Internet, and found Respondent's website.

59. Mr. Ledford decided to hire Respondents because, from the website, he got the impression that Respondent Steiert was a lawyer with an engineering degree.

60. Mr. Ledford recalls that he sent Respondents specifications and drawings for the watercraft.

61. Respondents conducted searches for similar products.

62. Respondents then sent back the completed application for Mr.

Ledford's review.

63. On June 17, 2015, Mr. Ledford filed U.S. Patent Application 14/741,858 (the "858 application") for a twin-hull foldout watercraft.<sup>3</sup>

64. USPTO sent Mr. Ledford a "non-final rejection" on August 19, 2016.

65. Mr. Ledford sent the rejection to Respondents.

66. Mr. Ledford expected that Respondents would file an appropriate response with USPTO.

67. However, Respondents took no action.

68. The deadline to respond passed.

69. Mr. Ledford contacted Respondent Steiert.

70. Respondent Steiert told Mr. Ledford that missing the deadline was not a problem; Mr. Ledford could file for an extension of time.

71. Respondent Steiert explained to Mr. Ledford that reconsideration of non-final rejections is a common thing.

72. The inventor needs to respond by explaining why his product is dissimilar to prior art.

73. Respondent Steiert explained the procedure for seeking reconsideration.

74. In the non-final rejection, the USPTO had listed existing patents that

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<sup>3</sup> The Utility Patent Application Transmittal filed with USPTO makes reference to James G. Keys, III, USPTO registration no. 61807.

covered the area of Mr. Ledford's application.

75. Mr. Ledford reviewed these existing patents on line.

76. Mr. Ledford concluded that there were differences between the existing patents and his proposed patent.

77. Mr. Ledford called Respondent Steiert to discuss this issue.

78. Respondent Steiert declined to spend time speaking with Mr. Ledford about the other patents; instead, Respondent Steiert suggested that Mr. Ledford take a course in patent terminology.

79. With regard to responding to the non-final rejection, Respondent Steiert told Mr. Ledford that the response would be handled by a lawyer who did all of Respondents' appeal work.

80. Respondents retained Mr. Hamerly to work on the 858 application.

81. Respondents instructed Mr. Hamerly not to contact the inventor directly.

82. Mr. Hamerly called Mr. Ledford.

83. Mr. Hamerly told Mr. Ledford that Respondents had not paid him.

84. Mr. Hamerly asked Mr. Ledford to pay him directly.

85. Mr. Hamerly also told Mr. Ledford who the patent examiner was.

86. Mr. Hamerly suggested that Mr. Ledford call the patent examiner.

87. Mr. Ledford called the patent examiner.

88. Mr. Ledford asked what he needed to submit.

89. The patent examiner told Mr. Ledford the patent had been abandoned.

90. However, USPTO later allowed Mr. Ledford to proceed with the 858 application.

91. On December 12, 2016, an Amendment and Request for Reconsideration was filed with USPTO, bearing the signature “/Michael C. Hamerly/”.

92. The argument made in support of reconsideration included citations to statute and case law.

93. The remarks compared Mr. Ledford’s application to prior patents, in an effort to explain why the examiner’s rejection was incorrect.

94. Mr. Hamerly had sent a draft of this document to Respondents.

95. Mr. Hamerly did not sign or file the Amendment and Request for Reconsideration; rather, Respondents did so.

#### **E. The “501 Application”.**

96. U.S. Patent Application No. 14/511/501 (the “501 application”) for a threaded hole repair apparatus was filed with the USPTO on October 10, 2014 by Richard Vandrew Glass of Huntington Beach, California.<sup>4</sup>

97. After rejection, Respondents retained Mr. Hamerly to assist with the

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<sup>4</sup> The 501 application made reference to attorney Keys. *See* footnote 3, above.

501 application.

98. Respondents instructed Mr. Hamerly not to speak with the inventor directly.

99. On November 1, 2016, an Amendment and Request for Reconsideration was filed in the 501 application.

100. The Amendment included substantially revised claims, intended to provide clarity lacking in the initial application.

101. The Amendment and Request for Reconsideration bore the typed signature of Mr. Hamerly, in a fashion like those described above, including his USPTO number.

102. Mr. Hamerly did not sign or file the Amendment and Request for Reconsideration.

103. Respondents signed Mr. Hamerly's name without his knowledge and filed the document with USPTO.

**F. Statement as to Harm.**

104. Mr. Le, Mr. Montoya, Mr. Ledford and, upon information and belief, the other inventors were harmed by paying Respondents for patent services that Respondents were not qualified to provide.

105. Mr. Le lost the priority of his provisional application.

106. Respondents allowed Mr. Ledford's time for seeking reconsideration

of the non-final rejection to run.

107. This had the potential to harm Mr. Ledford by requiring him to restart the 858 application (fortunately, USPTO allowed Mr. Ledford to proceed).

### **REQUEST FOR RELIEF**

108. The preparation and prosecution of patent applications for others constitutes the practice of law. *Sperry v. Florida*, 373 U.S. 379, 383, 83 S.Ct. 1322, 1325, 10 L.Ed.2d 428 (1963). In that case, the U.S. Supreme Court stated:

We do not question the determination [by the Florida Supreme Court] that under Florida law the preparation and prosecution of patent applications for others constitutes the practice of law. [citation omitted] Such conduct inevitably requires the practitioner to consider and advise his clients as to the patentability of their inventions under the statutory criteria, 35 U.S.C. §§ 101—103, 161, 171, as well as to consider the advisability of relying upon alternative forms of protection which may be available under statute law. It also involves his participation in the drafting of the specification and claims of the patent application, 35 U.S.C. § 112, which this Court long ago noted ‘constitute(s) one of the most difficult legal instruments to draw with accuracy,’ [citation omitted] And upon rejection of the application, the practitioner may also assist in the preparation of amendments, 37 CFR §§ 1.117—1.126, which frequently requires written argument to establish the patentability of the claimed invention under the applicable rules of law and in light of the prior art. 37 CFR § 1.119.

109. *Drafting of Claims*. Drafting of patent claims for others is the practice of law, because it requires the exercise of legal discretion as to what the proposed patent will cover.

110. 35 U.S.C. § 112 requires that the applicant shall particularly point out and distinctly claim the subject matter which he or she regards as his or her invention.

111. The portion of the application in which he or she does this forms the claim or claims.

112. This is an important part of the application, as it is the definition of that for which protection is granted. *See* USPTO's Manual of Patent Examining Procedure ("MPEP"), § 608.01(k).

113. Respondent Steiert prepared the claims portion of Mr. Le's patent application, described above in Part C, The "316 Application".

114. Respondent Steiert thereby engaged in the unauthorized practice of law.

115. *Advice about Reconsideration Process.* Respondent Steiert gave Mr. Ledford advice about USPTO's reconsideration process.

116. Respondent Steiert thereby engaged in the unauthorized practice of law.

117. *Submission of Amendments.* Drafting of amendments to patent applications is the practice of law, because it requires making argument regarding the patentability of the invention. *See* MPEP § 714.

118. Practitioners must point out “the specific distinctions believed to render the claims patentable over the references in presenting arguments in support of new claims and amendments.” 37 CFR § 1.119.

119. Respondents received drafts of amendments prepared by Mr. Hamerly in the 472 application, the 858 application, and the 501 application.

120. Respondents finalized the amendments, purported to place Mr. Hamerly’s signature on the amendments, and filed the amendments with USPTO.

121. By adopting Mr. Hamerly’s drafts and filing them on behalf of the inventors, Respondents exercised legal discretion on behalf of the inventors.

122. Respondents thereby engaged in the unauthorized practice of law.

123. *Advertising*. The unauthorized practice of law also includes a non-lawyer holding himself out as independently able to perform legal services. *See, e.g., Unauthorized Practice of Law Committee v. Grimes*, 654 P.2d 822, 825 (Colo. 1982) (non-lawyer who *inter alia* advertised in the telephone book under “lawyers” and in the newspaper under the heading “legal counsel” engaged in the unauthorized practice of law); *People ex rel. Attorney General v. Hanna*, 127 Colo. 481, 258 P.2d 492 (1953) (non-lawyer who, *inter alia*, used in her telephone listing the words “Legal Forms – Depositions – Conveyance Papers” engaged in the unauthorized practice of law).

124. Corporations are not permitted to practice law, even if they employ attorneys to provide the legal services the corporation purveys to the public. *Title Guaranty Co. v. Denver Bar Ass'n*, 135 Colo. 423, 430-437, 312 P.2d 1011, 1014-17 (1957), citing *People ex rel. Committee on Grievances of Colo. Bar Ass'n v. Denver Clearing House Banks Performing Trust Functions*, 99 Colo. 50, 53-54, 59 P.2d 468, 469-70 (1936).

125. Respondent Intelligent Patent Services, LLC advertises on its website that for a fee it will make available to inventors experienced patent attorneys who can conduct a patent search and craft an application that will lead to the patent being issued.

126. Respondent IPS thereby engages in the unauthorized practice of law.

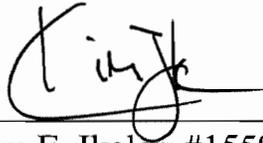
127. Respondents do not fall within any of the case law or statutory exceptions.

WHEREFORE, the Petitioner prays that this Court issue an order directing Respondents to show cause why Respondents should not be enjoined from engaging in any unauthorized practice of law; thereafter that the Court refer this matter to a hearing master for determination of facts and recommendations to the Court on whether Respondents should be enjoined from the unauthorized practice of law. Furthermore, Petitioner requests that the Court order restitution, assess the costs and expenses of these proceedings against Respondents; impose a

fine for each incident of unauthorized practice of law, not less than \$250.00 and not more than \$1,000.00; and any other relief deemed appropriate by this Court.

DATED this 11<sup>th</sup> day of September 2017.

Respectfully submitted,



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Kim E. Ikel, #15590  
Assistant Regulation Counsel  
Attorney for Petitioner