

BEFORE THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

HARRY I. MOATZ,)	
Director, Office of)	
Enrollment and Discipline,)	
)	
v.)	Proceeding No. D03-14
)	
SOL SHEINBEIN,)	
Respondent.)	
)	

DECISION ON RECONSIDERATION

Sol Sheinbein (“Respondent”) requests reconsideration under 37 CFR § 10.156(c) of the Final Decision in this matter dated May 5, 2005.

Respondent argues that the reported involvement of the Solicitor of the U.S. Patent and Trademark Office (USPTO) in reviewing submissions on behalf of the Director of the Office of Enrollment and Discipline (OED) violated 37 CFR § 10.140(b). Assuming, without deciding, that the Solicitor reviewed the OED Director’s submissions, Respondent’s argument fails on both procedural and substantive grounds.

First, Respondent states that his records show that he was told in July 2004 that the Solicitor reviewed such submissions. His appeal herein was filed on January 6, 2005. Under 37 CFR § 10.155(c), an appeal may result in a reopening of a disciplinary proceeding in accordance with the principles that govern the granting of new trials. Respondent, however, in his appeal, sought no such reopening or any other relief based upon allegations of Solicitor impropriety. Moreover, despite the information on Solicitor

participation he alleges to have received before filing this appeal, Respondent did not seek to prevent the Solicitor's participation during the appeal.

Second, Respondent's argument is substantively misplaced. By a notice in the Federal Register on August 24, 2001, the United States Patent and Trademark Office implemented an interpretation of § 10.140(b) reflecting the creation of the position of General Counsel responsible for certain functions previously performed by the Solicitor, and the redesignation of the Solicitor as Deputy General for Intellectual Property Law and Solicitor. In particular, the third sentence of § 10.140(b) was construed as providing that the "General Counsel and the Deputy General Counsel for General Law shall remain insulated from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the USPTO Director in deciding disciplinary proceedings." 66 Fed Reg 44526, 44527 (August 24, 2001). However, the Deputy General Counsel for Intellectual Property Law and Solicitor would not be insulated from the investigation and prosecution of disciplinary proceedings. Id.

As § 10.140(b) was construed to provide that the Deputy General Counsel for Intellectual Property Law and Solicitor would not be insulated from investigating and prosecuting disciplinary proceedings and, therefore, may represent the OED Director in such proceedings, Respondent's argument that the Solicitor's involvement violated § 10.140(b) lacks merit and must be rejected. Accordingly, Respondent's request for reconsideration of the decision dated May 5, 2005, under 37 CFR § 10.156(c) is DENIED. This is a final agency action.

ORDER

Pursuant to 37 C.F.R. § 10.130(a), it is ORDERED that the exclusion ordered in the Final Decision of May 5, 2005, take effect thirty (30) days from the date of entry of this order;

FURTHER ORDERED that the Director of OED publish a copy of the Final Decision of May 5, 2005, this decision and order, and the Initial Decision of the ALJ, in the Official Gazette.

APPEAL RIGHTS

Respondent may seek judicial review on the record in the U.S. District Court for the District of Columbia under 35 U.S.C. § 32 and LCvR 83.7 of the U.S. District Court for the District of Columbia within thirty (30) days of the date of entry of this memorandum opinion and order on reconsideration.

On behalf of the Under Secretary of
Commerce for Intellectual Property and
Director of the United States Patent and
Trademark Office

June 23, 2005
DATE

/s/
James A. Toupin
General Counsel
United States Patent and Trademark Office