

On October 7, 1998, the PTO received a petition to the Commissioner under 37 CFR § 10.2(c) for review of the Director's regrade decision. Petitioner was subsequently notified that he passed the August 1998 examination. On April 9, 1999, the Commissioner dismissed as moot Petitioner's petition for review of the Director's regrade decision.

On April 24, 1999, the PTO received the present request for the Commissioner to reconsider his decision dismissing as moot the Petitioner's petition--requesting completion of the petition review and, if successful, refund of the petition and examination fees.

DISCUSSION

Title 35 U.S.C. § 42(d) permits the Commissioner to refund "any fee paid by mistake or any amount paid in excess of that required." *See also* 37 CFR § 1.26 ("a mere change of purpose after the payment of money, as when a party desires to withdraw an application [or] an appeal . . . will not entitle a party to demand such a return.").

Petitioner argues that the petition is not moot. This argument is without merit. A petition for regrade seeks a determination that the Petitioner possesses one of the "necessary qualifications" needed to render patent applicants valuable assistance. 35 U.S.C. § 31; *see also* 37 CFR § 10.7(b). In this case, such a determination was made when Petitioner successfully sat for the August 1998 examination. Petitioner's intervening act of taking and passing this subsequent exam instead of waiting for the Commissioner's decision on the petition, rendered the petition moot since the relief sought by the petition was granted by passing the exam. *See Brownlow v. Schwartz*, 261 U.S. 216, 217 (1923) (ordering dismissal of a petition because relief sought by Petitioner had already been granted, thereby, rendering the issue moot); *Mills v.*

Green, 159 U.S. 651, 654 (1895) (holding that when “intervening event is owing either to the plaintiff’s own act or to a power beyond the control of either party, the court will stay its hand”). Thus, dismissal of the petition as moot was appropriate and the fees were properly paid.

Petitioner further argues that it is his understanding that if a petitioner is successful on the regrade of the 1997 examination results, he or she is entitled to a refund of the petition fee and the August 1998 examination fee. This argument is also without merit. Petitioner paid for a regrade and received a regrade decision. The Director’s decision was that Petitioner did not pass the afternoon section of the August 1997 examination. Petitioner subsequently petitioned the Commissioner to obtain review of the Director’s regrade decision. Even had the petition to the Commissioner resulted in a passing grade, there is no basis for a refund of the petition fee or the examination fee for the subsequent exam.

While awaiting the Director’s decision on the petition for regrade, Petitioner filed an application for the August 1998 examination and sat for that examination. While awaiting the score on the August 1998 examination and to preserve Petitioner’s legal rights, Petitioner filed a petition to the Commissioner for review of the Director’s regrade decision for the August 1997 exam. *See* 37 CFR § 10.2(c) (petition for review of Director’s decision must be filed within 30 days of the decision). Ultimately, Petitioner passed the August 1998 examination. Thus, Petitioner has received what was sought—admission to practice before the PTO in patent matters.

Petitioner’s petition fee and 1998 examination fee were not fees paid by mistake or in excess of what was required. *See Miessner v. United States*, 228 F.2d 643, 644, 108 USPQ 6,

