

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS**

In re _____)
) Decision on Petition
) Under 37 C.F.R. § 10.2(c)
)
)

MEMORANDUM AND ORDER

(Petitioner) petitions for review of a decision by the Director of the Office of Enrollment and Discipline. The Director's decision denied Petitioner's request for relief relating to the Registration Examination held in Los Angeles, California, on August 26, 1998. Petitioner seeks a passing grade or a refund of all fees and costs associated with taking and preparing for the Examination. The petition is denied.

BACKGROUND

An applicant for registration to practice before the Patent and Trademark Office (PTO) in patent cases must take and pass a Registration Examination ("exam") authorized by 35 U.S.C. § 31 and required by 37 C.F.R. § 10.7(b). The exam includes independent Morning and Afternoon Sections, each requiring a score of at least 70 to pass. Petitioner took the exam on August 28, 1998 in Los Angeles, California, scoring 34 in the Morning Section and 50 in the Afternoon Section.

On September 17, 1998, Petitioner wrote a letter to the Commissioner of Patents and Trademarks explaining that the Afternoon Section of the exam was delayed about three hours. Petitioner suggested that because of this irregularity, everyone who took the exam in Los Angeles should receive a passing grade. Petitioner suggested that if passing grades were not given, then

those who failed the exam should be given refunds for the fees they had paid and refunds for the costs of any review courses the examinees had taken.

On November 17, 1998, Petitioner wrote to the Director of the Office of Enrollment and Discipline requesting a refund of the fees he had paid to take the exam. Petitioner restated that “[g]iven the circumstances under which the Los Angeles examination was held, we should not have to pay for the exam.” Petitioner included a copy of his previous letter to the Commissioner for the Director.

The Director responded to both of Petitioner’s letters and denied the requested relief in a decision dated May 7, 1999.

OPINION

The exam allows an individual to establish that he or she is “possessed of the legal, scientific, and technical qualifications necessary to enable him or her to render applicants for patents valuable service.” 37 C.F.R. § 10.7(a)(2)(ii). Petitioner’s failing grades do not establish that he has the necessary qualifications. To replace Petitioner’s failing grades with an overall passing grade would defeat the purpose of the exam. The Commissioner’s authority to require that examinees establish their qualifications is statutory and based on a substantial public interest. 35 U.S.C. § 31 (Commissioner may require a showing that registered agents and attorneys “are possessed of the necessary qualifications to render to applicants [for patents] and other persons valuable service, advice, and assistance in the presentation or prosecution of their applications [for patents] or other business before the Office.”). The goal of confirming a practitioner’s qualifications outweighs the inconvenience of a three hour delay in administering the Afternoon Section of the exam. Even if a passing grade were granted for the Petitioner’s Afternoon Section, the failing grade on the Morning Section would prevent an overall passing grade. Petitioner has

made no argument addressing his failing grade on the Morning Section. The request for a passing grade is denied.

Petitioner paid a total of \$350.00 in fees for the exam. Petitioner sat for the exam on the scheduled day and received a grade on the exam. The exam fees will not be refunded. The Morning Section exam began and ended at about the scheduled times but the Afternoon Section ended about three hours later than expected because of a delay in starting after a lunch break. The delay in administering the Afternoon Section was unfortunate. The Office of Personnel Management (OPM), which administered the exam, is taking steps to ensure the situation is not repeated.

Petitioner requests “compensation for all costs associated with taking and preparing for this examination.” This request is also denied. Petitioner took and failed the exam. There is no provision to reimburse unsuccessful applicants for their costs in preparing for the exam. Petitioner may take the exam when it is given subsequently.

Petitioner states that the delay allowed some examinees to call friends on the east coast in an attempt to get exam information. It is not clear how this supports Petitioner’s request for relief.

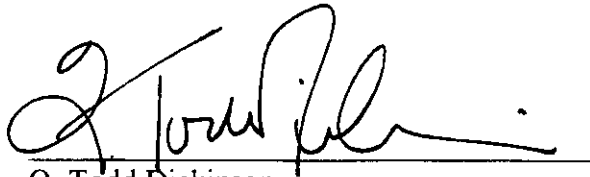
ORDER

For the reasons given above, the requested refund of fees and reimbursement of costs is denied.

Upon consideration of the request for regrade to the Commissioner, it is ORDERED that the request for a passing grade on the Registration Examination is denied.

This is a final agency action.

OCT 14 1999

A handwritten signature in black ink, appearing to read "Q. Todd Dickinson", written over a horizontal line.

Q. Todd Dickinson
Acting Assistant Secretary of Commerce and
Acting Commissioner of Patents and Trademarks