

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

In re)
) Decision on Request for Reconsideration
) 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 (Director). The Director's decision denied Petitioner's request to be admitted to the Examination for Registration to practice before the Patent and Trademark Office in patent cases to be held on November 3, 1999, because he failed to meet the application filing deadline of July 23, 1999. The petition is denied.

MEMORANDUM

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). Petitioner wishes to take the exam being administered on November 3, 1999.

Petitioner mailed his exam application on July 26, 1999. The filing deadline for the November 3rd exam was July 23, 1999.¹ Petitioner requested permission to sit for the exam notwithstanding his late-filed application. The Director treated Petitioner's request as a petition

¹ Although the filing deadlines for the registration exams are set well in advance of the examination dates, those deadlines are not set arbitrarily but are selected to allow sufficient time for individual evaluation of each application and for arrangement of appropriate examination facilities in each test site across the country. Applicants for the November 3, 1999, examination were required to file their completed applications by July 23, 1999, so that their applications could be processed and arrangements made for them to take the exam on November 3, 1999.

under 37 C.F.R. § 10.170 and denied the request in a decision dated September 7, 1999. The Director noted in his decision that Petitioner did not show when he first tried to obtain an application nor how he was prevented from obtaining one prior to the deadline.

On September 28, 1999, Petitioner filed a petition pursuant to 37 C.F.R. § 10.2(c) for review of the Director's decision. In that petition, Petitioner requested reversal of the Director's decision and a waiver of the application deadline, thereby accepting his late-filed application. In support of his petition stating that he tried to timely obtain application materials, Petitioner attached three letters dated April 19, July 6, and July 15, 1999, purportedly sent to the PTO, each requesting application materials. The PTO has no record of ever receiving these letters. In any event, this evidence was not before the Director and therefore will not be considered here for the first time. 37 C.F.R. § 10.2(c) ("The petition will be decided on the basis of the record made before the Director and no new evidence will be considered by the Commissioner in deciding the petition.")

Furthermore, it must be noted that on April 22, 1999, the PTO sent Petitioner an application for the November 1999 exam. This application accompanied the PTO's Notice Regarding Request for Refund or Deferral of Fees, which OED sent to Petitioner in response to his request to defer taking the April 1999 exam. Petitioner has submitted no evidence showing that he did not receive the application for the exam at that time, well in advance of the July 23 deadline. Additionally, an application for the November 1999 exam could have been downloaded from the PTO's website prior to the deadline.

Under the terms of 37 C.F.R. § 10.170, "[i]n an extraordinary situation, when justice requires, any requirement of the regulations of this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee ... on petition

by any party.” Petitioner argues that this case is appropriate for waiver of the filing deadline because (1) he would suffer financial hardship if he had to wait for the next examination because he is years old and would be prevented from having a chance to become a patent agent sooner rather than later, and (2) he mailed his application the next work day after the deadline.

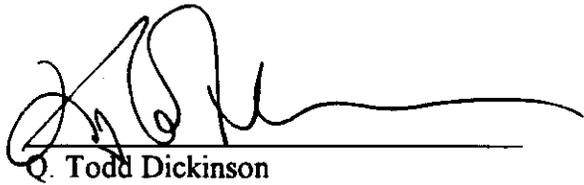
An “extraordinary situation” that merits relief under 37 C.F.R. § 10.170 is one that is not an “oversight that could have been prevented by the exercise of ordinary care or diligence,” Nitto Chemical Ind. Co. v. Comer, 39 USPQ2d 1778, 1780 (D.D.C. 1994), or one in which “no meaningful alternatives are available,” Margolis v. Banner, 599 F.2d 435, 443 (CCPA 1979). Here, Petitioner has provided no explanation for his failure to meet the original filing deadline and thus has not shown that he could not have met the deadline through the exercise of ordinary care and diligence. Although Petitioner states that he may suffer economic loss from waiting an extra five months to take the exam, that loss appears to be due to his own failure to submit the exam application in a timely fashion. Nor is this a situation in which no meaningful alternatives are available, in that the exam will be administered again on April 12, 2000. (The deadline for applying to take the April 2000 exam is December 31, 1999; a copy of the exam application bulletin is enclosed.) Thus, Petitioner has not shown that waiver of the filing deadline for the November 1999 exam is merited in this case.

ORDER

For the reasons given above, the requested waiver of the filing deadline for the
November 3, 1999, exam is denied.

This is a final agency action.

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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

Enclosure