

view of his affirmative answer to Question 16 in the background information section of the application.

After substantial delay in submissions by Petitioner, the OED Director sent Petitioner a *Show Cause Requirement* dated May 30, 2007, giving the Respondent an opportunity to show cause why his application for registration should not be denied on the basis that he had not met his burden of establishing to the satisfaction of the OED Director that he possesses good moral character and reputation as required to represent applicants before the Office. On August 31, 2007, OED received the Petitioner's response to the Show Cause Requirement. On October 16, 2007, the OED Director issued and mailed a Final Decision and Memorandum Opinion denying the Petitioner's application for registration to practice in patent cases.

On December 17 and 18, 2007, the Petitioner sent three facsimiles containing his appeal to the OED Director's Final Decision. The first and second were sent on December 17, 2007, at 11:53 p.m. Pacific Standard Time (PST) and 11:56 p.m. PST, respectively. The third was sent at 12:01 a.m. PST on December 18, 2007. The USPTO is located in the Eastern Standard Time (EST) zone.

The mailed copy of the petition and the payment of the required fee were received at the USPTO on December 21, 2007.

On February 14, 2008, Petition submitted a letter requesting that certain rules be suspended because the OED Director had accepted facsimile transmissions in the past, and because the Director raised new allegations to which the Petitioner no opportunity to respond.

II. LEGAL STANDARD

The Director of the USPTO requires agents, attorneys, or other persons being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation prior to registration. 35 U.S.C. § 2(b)(2)(D), 37 C.F.R. § 11.7(a)(2)(i).

The OED Director receives and acts on applications for registration, to include investigations into moral character and reputation. 37 C.F.R. § 11.2(b)(2)-(b)(3). An individual dissatisfied with the final decision of the OED Director may petition the USPTO Director for review. 37 C.F.R. § 11.2(d). The petition must be accompanied by the appropriate fee (37 C.F.R. § 1.21(a)(5)(ii)), and must be filed with the OED Director within sixty days of the mailing date of the final decision of the OED Director. 37 C.F.R. § 11.2(d). Petitions not filed within sixty days will be dismissed as untimely. 37 C.F.R. § 11.2(d).

A petitioner may seek suspension of these rules, to include the rule on timeliness, “[i]n an extraordinary situation.” 37 C.F.R. § 11.3.

III. OPINION

A. Petitioner did not make a timely appeal by mail.

The mailing date of the OED Director’s final decision was October 16, 2007. The sixtieth day from the mailing date fell on a weekend, pushing the last day for receipt of a timely appeal to December 17, 2007. 37 C.F.R. § 11.2(d).

The Director did not receive the petition and the accompanying fee until December 21, 2007, after the December 17, 2007, cut-off date.

B. Petitioner did not make a timely appeal by facsimile.

First, a facsimile transmission of an item requiring an original handwritten signature in dark ink or equivalent, such as Petitioner's submission regarding his registration, is not accorded a date of receipt. 37 C.F.R. §§ 1.4(e) and 1.6(d). Second, if a facsimile submittal were permitted, the date of receipt would be "the date on which the complete transmission is received in the United State Patent and Trademark Office." 37 C.F.R. § 1.6(d). The earliest of the three facsimile transmissions was sent at 11:53 p.m. PST on December 17, 2007. The date the complete transmission was received was December 18, 2007 (at 2:53 a.m. EST). Therefore, even if Petitioner's submittal had qualified for a date of receipt, that date would be December 18, 2007, after the December 17, 2007, cut-off date.¹

C. Even if timely, Petitioner's facsimile submissions are otherwise improper.

First, a petitioner may not transmit by facsimile documents relating to OED proceedings. 37 C.F.R. §§ 1.4(e), and 1.6(d). Second, the submittal must have an original handwritten signature, and a facsimile does not. 37 C.F.R. § 1.4(e). Finally, a petitioner must pay the required fee before the deadline. 37 C.F.R. §§ 11.2 and 1.21(a)(5)(ii). There was no fee accompanying the facsimiles.

D. Prior acceptance of facsimiles is irrelevant.

Petitioner asserts, without support, that the USPTO has accepted facsimiles in the past. Even assuming, arguendo, that the USPTO has accepted OED petitions by facsimile in the past, Petitioner's argument is unconvincing and irrelevant because his facsimile submissions were not timely.

¹ Further, Petitioner's attempt to appeal by facsimile could not gain the benefit of a certificate of transmission under 37 C.F.R. § 1.8 because it did not comply with 37 C.F.R. § 1.6(d) as required by 37 C.F.R. § 1.8(a)(1)(i)(B).

E. Waiver of Rules Unwarranted.

Petitioner has not presented a compelling case for an “extraordinary situation” warranting a waiver of the timeliness rule as authorized by 37 C.F.R. § 11.3. Petitioner argues that OED has accepted facsimiles in the past and that his submission was timely. His submission was not timely. Further, even if the USPTO previously accepted facsimiles, that falls far short of an extraordinary situation warranting waiver of our rules.

F. Merits not considered.

Petitioner argues that the OED Director raised new allegations in his final decision, and Petitioner had no opportunity to respond. We decline to consider this argument because there has been no timely appeal.

G. Reconsideration.

The Petitioner may file for a request for reconsideration of this decision under 37 C.F.R. § 11.2(d) within thirty days after the mailing of this decision.

IV. CONCLUSION

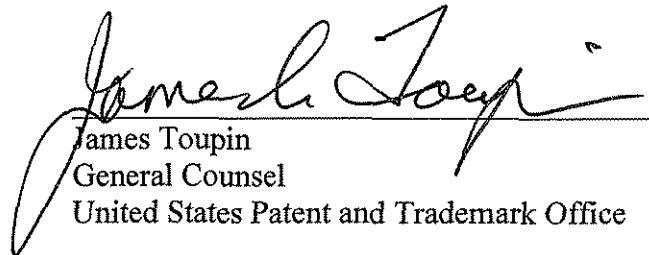
Petitioner’s request for review should be dismissed as untimely.

ORDER

Upon consideration of the Petitioner's Request For Review of the OED Director's Decision under 37 CFR § 11.2(d), it is **ORDERED** that the Petitioner's Request is **DENIED.**

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

April 1, 2008
Date


James Toupin
General Counsel
United States Patent and Trademark Office

cc:

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