

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

**In re John P. Halvonik**                    )  
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Decision on Appeal from Initial  
Decision of Administrative Law  
Judge Under 37 C.F.R. § 10.156

**MEMORANDUM AND ORDER**

John P. Halvonik (Respondent) seeks review on appeal under 37 C.F.R. § 10.155 from the July 31, 2008, initial decision of the Administrative Law Judge (ALJ) excluding Respondent from practice before the United States Patent and Trademark Office (USPTO) for a period of five years after finding clear and convincing evidence that Respondent again violated the ethical regulations governing the conduct of attorneys practicing before the USPTO. For the reasons stated below, the initial decision of the ALJ is **AFFIRMED**.

**I. Background**

In a July 31, 2008, initial decision, the ALJ determined that Respondent violated several USPTO disciplinary rules, excluding him from practice before the USPTO after finding clear and convincing evidence that Respondent was again in violation of the ethical regulations governing the conduct of attorneys practicing before the USPTO. 37 C.F.R. § 10.154.

On September 2, 2008, Respondent timely filed with the Office of Enrollment and Discipline (“OED”) Director an appeal from the ALJ’s initial decision. 37 C.F.R. § 10.155(a). Respondent’s appeal consisted of a single sentence.<sup>1</sup>

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<sup>1</sup> Respondent’s appeal consisted of the following: “Respondent hereby appeals the final decision of the ALJ in the above referenced case.” Respondent’s Notice of Appeal dated September 2, 2008.

On October 1, 2008, the OED Director filed a reply brief requesting that the USPTO Director affirm the initial decision of the ALJ. The OED Director served the reply brief upon the Respondent on the same day. 37 C.F.R. § 10.155(a).

On November 10, 2008, Respondent filed a document titled "Appellant's Reply to the Director's Reply" (Respondent's Reply). The accompanying certificate of service indicates that Respondent mailed it on November 5, 2008.

## II. LEGAL STANDARD

37 C.F.R. § 10.155 is titled "Appeal to the Commissioner" and states, in part:

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge . . . , either party may appeal to the Commissioner . . . . An appeal . . . by the respondent will . . . include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions . . . . The other party to an appeal . . . may file a reply brief . . . . The time for filing any reply brief expires thirty (30) days after the date of service . . . of an appeal. . . . Upon the filing of an appeal, cross-appeal, if any and reply briefs, if any the Director shall transmit the entire record to the Commissioner.

\* \* \* \* \*

(d) In the absence of an appeal by the Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administrative or judicial review.

There is no provision under 37 C.F.R. § 10.155(a) for reply to a reply brief.

## III. ANALYSIS

Although Respondent's September 2, 2008, appeal was timely, it failed to satisfy the regulatory requirements for appeal. 37 C.F.R. § 10.155(a). Specifically, Respondent's

appeal failed to “include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions”. The requirement that an appeal include the exceptions on which the appellant relies reflects the public interest in the prompt resolution of disciplinary matters.

Respondent’s Reply filed November 10, 2008, is improper as the rules make no provision for Respondent to reply to the October 1, 2008, reply brief of the OED Director. 37 C.F.R. § 10.155(a). Rather, under that rule, the record was deemed complete as of the filing of the OED Director’s reply. To the extent that Respondent’s Reply is intended to supplement his “Notice of Appeal” of September 2, 2008, it is untimely as the thirty (30) day time limit for filing an appeal expired at midnight on September 2, 2008. 37 C.F.R. § 10.155(a). Accordingly, Respondent’s Reply is not further considered.

Respondent’s failure to appeal under the provisions of 37 C.F.R. § 10.155 is deemed to be both acceptance by Respondent of the ALJ’s initial decision and waiver by Respondent of the right to further administrative or judicial review. 37 C.F.R. § 10.155(d).

#### **IV. CONCLUSION**

Since Respondent’s appeal failed to timely provide exceptions to the decisions of the ALJ with reasons in support thereof, his appeal is deficient. 37 C.F.R. §§ 10.155(a) and 10.155(d). Accordingly, Respondent is deemed to both accept the initial decision of the ALJ and waive his right to further administrative or judicial review. 37 C.F.R. § 10.155(d).

**ORDER**

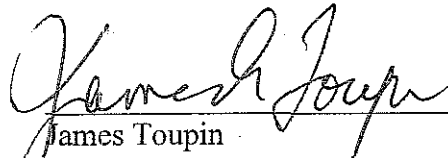
Upon consideration of Respondent's appeal under 37 C.F.R. § 10.155 to the Commissioner from the July 31, 2008, initial decision of the ALJ excluding Respondent from practice before the USPTO, it is **ORDERED** that the initial decision of the ALJ is **AFFIRMED**.

This order will become a final agency action twenty (20) days after entry, subject to 37 C.F.R. § 10.156(c).

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

JAN 21 2009

Date



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James Toupin  
General Counsel  
United States Patent and Trademark Office

cc:

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John P. Halvonik