

represent applicants for patents. On July 14, 2008, Petitioner filed a response to the Show Cause Requirement requesting clarification and a thirty day extension of time. On this date, Petitioner also filed a copy of his Motion to Reopen the Appeal and Reconsideration of the Merit Systems Protection Board's Decision, and argued that "the failure of an examiner to record or claim non-examining time . . . is not a falsification of records." The OED denied Petitioner's request for an extension of time by letter dated July 17, 2008. That letter directed Petitioner to reply to the Show Cause Requirement thirty days from its issuance. Petitioner did not file any further response to the Show Cause Requirement.

On September 29, 2008, the OED Director mailed a Final Decision denying Petitioner's application to practice in patent cases before the OED because Petitioner had not met his burden of establishing that he presently possesses good moral character and reputation as required by 37 C.F.R. § 11.7(a)(2)(i). On December 1, 2008, sixty-three days after the issuance of the OED Director's Final Decision, Petitioner mailed a Petition for Review, Petition for Suspension of Rules, Request to Reopen (Petition). The OED received it on December 4, 2008, sixty-six days from the date the OED Director mailed the Final Decision.

II. LEGAL STANDARDS

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, including 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 payment of the

appropriate fee required under 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 any requirement of these rules “[i]n an extraordinary situation.” 37 C.F.R. § 11.3.

III. OPINION

A. Petition is not timely.

The OED Director mailed the Final Decision on September 29, 2008. Petitioner was required to file the Petition within sixty days of the date when the OED Director mailed the Final Decision, or November 28, 2008. 37 C.F.R. § 11.2(d). However, Petitioner did not mail the Petition until December 1, 2008, the sixty-third day, and the OED Director received the Petition on the sixty-sixth day, or December 4, 2008. Accordingly, the Petition is untimely.

B. Waiver of rules is not warranted.

Petitioner has not presented a compelling case for an “extraordinary situation” under 37 C.F.R. § 11.3, that warrants waiving the requirement for timely filing the Petition. In fact, Petitioner anticipated the timeliness issue by erroneously stating in the Petition that the filing was timely because the OED Director mailed the Final Decision on September 30, 2008. However, the record is uncontroverted that the OED Director mailed the Final Decision on September 29, 2008, and that Petitioner received it on September 30, 2009. In any event, under the regulation, *the determining factor is the day of mailing the Final Decision and not the day of receipt.* 37 C.F.R. § 11.2(d). Petitioner has not presented allegations or facts that would constitute an “extraordinary situation” that would warrant a waiver of rules.

C. Merit of argument is not considered.

We decline to consider the argument on the merits because Petitioner did not file a timely Petition.

IV. CONCLUSION

For the foregoing reasons, the Petition is dismissed as untimely.

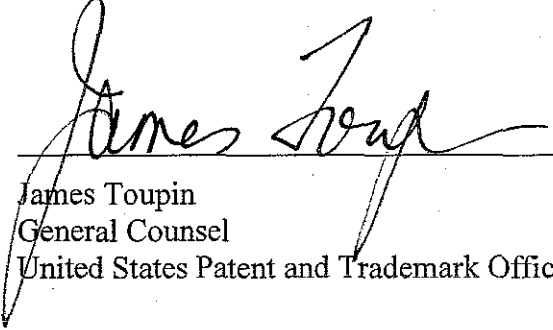
ORDER

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

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

MAR 17 2009

Date


James Toupin
General Counsel
United States Patent and Trademark Office

cc:

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