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

In Re

Decision on Petition Under 37 C.F.R. § 11.2(d)

## MEMORANDUM AND ORDER

(Petitioner) seeks review of the September 29, 2008, Final Decision and Memorandum Opinion (Final Decision) of the Director of the Office of Enrollment and Discipline (OED Director) denying Petitioner's application for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases. The OED Director denied Petitioner's request to be registered as a patent attorney under 37 C.F.R. §11.7(a)(2)(i) because Petitioner failed to demonstrate he presently has the good moral character and reputation required to represent applicants before the USPTO. For the reasons stated below, Petitioner's request to review the OED Director's September 29, 2008, Final Decision is **DISMISSED**.

### I. BACKGROUND AND PROCEDURAL HISTORY

Petitioner submitted an application dated April 7, 2008, for registration to practice before the USPTO pursuant to 37 C.F.R. § 11.7(d)(2) by seeking waiver of the registration examination. On July 7, 2008, the Office of Enrollment and Discipline (OED) issued a Show Cause Requirement citing two grounds for disapproving the application. First, Petitioner had not shown that the registration examination should be waived; second, Petitioner had not established satisfactorily that he presently possessed good moral character and reputation required to 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 nonexamining 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

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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.

## <u>ORDER</u>

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

James Toupin General Counsel United States Patent and Trademark Office

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Date

CC:

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