

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

In the Matter of)	
)	
Edwin D. Schindler,)	Proceeding No. D2019-43
)	
Appellant.)	
_____)	

ORDER

On July 10, 2019, the Director of the Office of Enrollment and Discipline (“OED Director”) filed a disciplinary Complaint against Appellant, alleging that he had violated ten Rules of Professional Conduct. After a 2019 hearing before an Administrative Law Judge (“ALJ”), on September 23, 2021, the ALJ issued his initial decision, concluding that Appellant had violated each of the charged rule violations and imposing a sanction of a suspension of not less than two years. That initial decision was transmitted to the parties on June 8, 2023, along with a memorandum from the ALJ which documented the delay in transmitting the initial decision to the parties. After an appeal to the USPTO Director, on December 5, 2023, the USPTO Director issued a Final Order affirming the ALJ’s initial decision.

Thereafter, on December 22, 2023, Appellant filed a pleading entitled “Respondent Edwin D. Schindler’s Combined Motion For Reconsideration, Pursuant To 37 C.F.R. §11.56(C), Or, In The Alternative, For Remand To The Administrative Law Judge And Stay Of Proceedings” (“Request for Reconsideration”). The OED Director replied on January 5, 2024. That same day, Appellant filed a pleading entitled “Respondent Edwin D. Schindler’s Motion For Leave, On Consent, To File A Reply To The OED’s Opposition To Respondent’s Motion For Reconsideration” (“Motion for Leave To File Reply”). However, as there is no provision that

permits the filing of a Reply brief during reconsideration, in an Order dated January 8, 2024, the Motion for Leave to File Reply was denied on the basis that Appellant did not make the requisite showing under 37 C.F.R. § 11.3 (“In an extraordinary situation, when justice requires, any requirement of the regulations of this Part which is not a requirement of statute maybe suspended or waived by the USPTO Director. . . .”) *See also* 37 C.F.R. § 11.56(c).

This Order concerns a January 10, 2024, pleading filed by Appellant. That pleading is entitled “Respondent Edwin D. Schindler’s Renewed Motion for Leave to File Reply in Support of Respondent’s Motion for Reconsideration”) (“Renewed Motion”). Therein, Appellant identifies what he contends is new evidence relevant to his appeal. However, as with his prior Motion for Leave to File Reply, Appellant similarly fails to satisfy § 11.3 here and his Renewed Motion is denied.

Analysis and Order

The provisions of 37 C.F.R. § 11.56(c) govern the framework for making and responding to Requests for Reconsideration. After such a request is filed, “[t]he other party may file a response to the request for reconsideration within 14 days of the filing of the request.” *Id.* There is no allowance in the rule for a Reply brief, or any other filings. As the regulatory provisions of § 11.56(c) do not permit filing of a Reply brief, allowing Appellant’s Renewed Motion and allowing him to file a Reply brief would require a suspension or waiver of that regulatory provision under 37 C.F.R. § 11.3. Appellant’s claims, arguing the discovery of new evidence, falls well short of an “extraordinary situation” under § 11.3.

Appellant’s Renewed Motion simply continues to offer additional arguments that could have been previously raised during the hearing appeal but were not. Thus, Appellant has waived these arguments. *In re Correll*, Proceeding No. D2018-12 at 8 (USPTO Jul. 26, 2021) (Order on

Reconsideration) (internal citation omitted); *see also In re Walpert*, Proceeding No. D2018-07 at 11 (Order on Reconsideration); *Smithkline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319-20 (Fed. Cir. 2006). Further, these arguments are simply not an extraordinary situation under § 11.3. That provision was not meant to act as a mechanism to allow unlimited attempts to raise new arguments that could have previously made.

Additionally, it is noted that Appellant makes no showing as to why any new evidence he identifies could not have been discovered by reasonable diligence and presented during the hearing appeal, especially when Appellant formal notice of the delay in transmitting the initial decision as of June 8, 2023. He also presumptive notice of the delay earlier than that, however, as he was surely aware that he had not received an ALJ initial decision between the 2019 hearing and the June 8, 2023 ALJ memorandum. It was the ALJ that formally disclosed the delay to the parties on June 8, 2023. It was also the ALJ who gave Appellant notice of the Interagency Agreement between USPTO and HUD to carry out disciplinary hearings, no later than June 8, 2023 when he transmitted the initial order. (A.1, n. 1) (initial decision).¹ There is also nothing to indicate, and Appellant does not allege, that he objected to any delay in issuing or receiving the initial decision prior to June 8, 2023. He similarly raised no such arguments during the hearing appeal. That he wishes to raise it now, and couch it as “new evidence” is insufficient to raise a showing of due diligence on his part and is insufficient to satisfy the high standard under § 11.3 to allow additional reconsideration pleadings.

Based on the foregoing, the Renewed Motion is DENIED.

(signature page follows)

¹ References to specific pages in the Administrative Record are designated as “A. ”.

(signature page for Order (Renewed Motion), *In re Schindler*, D2019-43)

IT IS SO ORDERED.

Users, Berdan, Digitally signed by Users,
David Berdan, David
Date: 2024.01.18 16:18:38
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Date

David Berdan
General Counsel
Office of the General Counsel
United States Patent and Trademark Office

on delegated authority by

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order (Reconsideration) and Order (Renewed Motion) were sent to the parties below, in the manner indicated:

Via Email to Respondent:

Mr. Edwin Schindler

[REDACTED]

Respondent

Via E-mail to the OED Director:

Sydney Johnson

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[REDACTED]

Counsel for OED Director

Users, Walker,
Robert (Shawn)

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Date

United States Patent and Trademark Office