

**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 [REDACTED]	)	
	)	Decision on Petition
	)	
	)	Under 37 C.F.R. § 11.2(d)
	)	

MEMORANDUM AND ORDER

[REDACTED] (Petitioner or [REDACTED]) seeks review of the Decision on Petition (Final Decision) of the Director of the Office of Enrollment and Discipline (OED Director), dated July 1, 2010, dismissing [REDACTED]'s petition pursuant to 37 C.F.R. § 11.2(c) for untimeliness and failure to pay the requisite petition fee. For the reasons stated below, Petitioner's request for review of the OED Director's Final Decision is **DISMISSED**.

I. BACKGROUND AND PROCEDURAL HISTORY

On February 22, 2010, Petitioner submitted an Application for Registration to Practice Before the United States Patent and Trademark Office. Pursuant to the General Requirements Bulletin, there are three ways, labeled Categories A, B, and C, that an applicant can demonstrate that he has the requisite training in scientific and technical matters to be admitted to practice before the United States Patent and Trademark Office (USPTO). General Requirements Bulletin at 4-8. In an attempt to show that he possesses sufficient basic training in scientific and technical matters to render patent

applicants valuable service, Petitioner put forth evidence that he claimed would show that he met Category B¹ from the General Requirements Bulletin.

On March 18, 2010, an OED staff member sent [REDACTED] a Notice of Incompleteness and Denial of Admission. In that correspondence, the OED staff member noted that [REDACTED]'s application was incomplete and denied it for failing to show that he has scientific and technical training equivalent to what he would have received if he had earned a Bachelor's degree in one of the technical subjects listed in Category A. The letter informed [REDACTED] that he had until May 17, 2010, to file additional information to support his application, and that he "may request reconsideration of this decision by filing a petition to the Director of Enrollment and Discipline pursuant to 37 C.F.R. § 11.2(c) within sixty (60) days after the mailing date on this decision." [REDACTED] [REDACTED] never provided OED any additional information to support his application.² Rather, on May 27, 2010, [REDACTED] petitioned the OED Director to review the actions of his staff in a document titled Notice of Appeal of Denial of Request to Register for USPTO Examination (Notice of Appeal).

On July 1, 2010, the Director of OED, in his Final Decision, denied [REDACTED] [REDACTED]'s Notice of Appeal because he failed to file within sixty days of the action or requirement over which he sought review and pay the required \$130 fee. The OED Director treated [REDACTED]'s Notice of Appeal as a petition for review of an action of the OED Staff to the OED Director under 37 C.F.R. § 11.2(c). A petition for review of an action of the OED staff to the OED Director must be *filed* within sixty days of

¹ Under Category B, an applicant needs to demonstrate that he has scientific or technical training equivalent to what he would have received if he had earned a Bachelor's degree in one of the technical subjects listed in Category A. General Requirements Bulletin at 5.

² As a result, on June 11, 2010, \$200 of his \$240 application fee was refunded to him.

notification of the action. 37 C.F.R. § 11.2(c). The filing date is when the petition is received in the USPTO (in this case, May 27, 2010). 37 C.F.R. §§ 1.6 and 1.8. Since the Notice of Appeal was not filed until May 27, 2010 (more than sixty days after the OED employee action over which he sought review), it was untimely. [REDACTED] also failed to meet another independent requirement for filing a petition pursuant to 37 C.F.R. § 11.2(c) (*i.e.*, payment of the \$130 filing fee). Accordingly, the OED Director properly dismissed the Notice of Appeal. The OED Director's Final Decision also informed [REDACTED] that he may seek review of the decision with the Director of the USPTO within thirty days of the Final Decision. 37 C.F.R. § 11.2(d).

On November 12, 2010, [REDACTED] filed the instant petition (Present Petition) with the Director of the USPTO seeking review of the OED Director's Final Decision. The Present Petition has been treated as a petition for review of a final decision of the OED Director pursuant to 37 C.F.R. § 11.2(d). [REDACTED] did not include the required fee with his Present Petition. 37 C.F.R. § 1.21(a)(5)(ii). Furthermore, [REDACTED]'s Present Petition was untimely because it was filed more than thirty days after OED Director's Final Decision. 37 C.F.R. § 11.2(d). For the reasons provided below, [REDACTED]'s Present Petition is dismissed.

II. LEGAL STANDARDS

An individual dissatisfied with the OED Director's final decision may petition the USPTO Director to review that decision. *See* 37 C.F.R. § 11.2(d). The petition *must* be accompanied by payment of the requisite petition fee (\$130) set forth in 37 C.F.R. § 1.21(a)(5)(ii). *Id.*; 37 C.F.R. § 1.22(a). Any petition not filed within thirty days after the final decision of the OED Director may be dismissed as untimely. *Id.*

III. ANALYSIS AND OPINION

██████████'s Present Petition must be dismissed because it is incomplete as he failed to pay the required \$130 petition fee. 37 C.F.R. § 1.21(a)(5)(ii); *see* Moral_20 (March 26, 2010) (OED Reading Room) (dismissing a petition for review of a final decision of the OED Director because the petition was not accompanied by the fee required under 37 C.F.R. § 1.21(a)(5)(ii)).³ The Present Petition is also untimely. 37 C.F.R. § 11.2(d). The OED Director's Final Decision is dated July 1, 2010. Petitioner filed his Present Petition on November 12, 2010. The Present Petition was filed significantly more than thirty days after the OED Director issued his Final Decision (July 1, 2010)—and thus is not timely. 37 C.F.R. § 11.2(d). Because Petitioner failed to pay the requisite petition fee and the Present Petition was not timely filed, dismissal of the Present Petition is appropriate.

IV. CONCLUSION

For the foregoing reasons, the Present Petition is **DISMISSED** for failing to pay the requisite petition fee and as being untimely.

³ Moral_20 can be found at:
http://des.uspto.gov/Foia/RetrievePdf?system=OED&flNm=0595_MOR_2010-03-26.

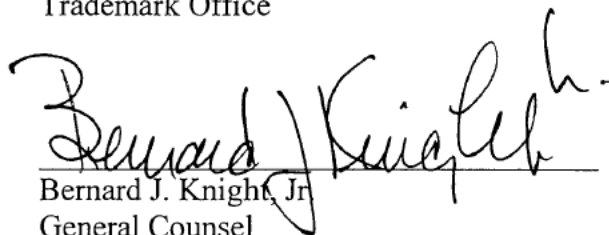
ORDER

Upon consideration of the Petitioner's Present Petition for review of the OED Director's Final Decision pursuant to 37 CFR § 11.2(d), it is **ORDERED** that the Present Petition is **DISMISSED**.

FEB 18 2011

Date

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



Bernard J. Knight, Jr.
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cc:

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