

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS

In re	)	)
_____	)	Decision on Request for Reconsideration
	)	Under 37 C.F.R. § 10.170
	)	
	)	

MEMORANDUM AND ORDER

(Petitioner) requests review of a decision by the Acting Commissioner of Patents and Trademarks (Commissioner). The Commissioner’s decision denied Petitioner’s request to be admitted to the Examination for Registration to practice before the Patent and Trademark Office (PTO or Office) in patent cases to be held on November 3, 1999, because he failed to meet the application filing deadline of July 23, 1999. The request for reconsideration is denied.

MEMORANDUM

The events leading up to Petitioner’s Request for Reconsideration are described in the Commissioner’s Memorandum and Order dated October 22, 1999. Briefly, the application filing deadline for the November 3, 1999, exam was July 23, 1999. Petitioner submitted his application on September 10, 1999, and requested permission to sit for the exam despite his late filing. The Acting Director of the Office of Enrollment and Discipline (OED) denied Petitioner’s request. Petitioner requested review of that decision by the Commissioner. The Commissioner affirmed the denial of Petitioner’s request to sit for the exam.

Petitioner now requests reconsideration of the Commissioner’s decision. Petitioner advances the following arguments. First, he argues that the “extraordinary situation” standard of 37 CFR § 10.170 is not appropriate for this case, in that Petitioner is not seeking a waiver of the

exam requirement itself, but only an extension of the filing deadline. Second, Petitioner argues that the cases cited in the previous decision are inappropriate because they do not deal with examination requirements or registration of patent attorneys and agents. Third, Petitioner argues that the facts of his case are such that OED could quickly assess his technical and moral requirements for registration. Fourth, Petitioner argues that the PTO did not act in a timely fashion in deciding his initial petition. Finally, Petitioner argues that, notwithstanding his objection to the “extraordinary situation” standard, his case in fact presents an extraordinary situation, in that [redacted] will fail without the income he could earn as a patent agent. None of these arguments are persuasive.

First, Petitioner argues that the “extraordinary situation” standard of 37 CFR § 10.170 is not appropriate here, but provides neither a legal basis for his position nor an alternative standard that he believes would be appropriate. The PTO customarily treats waiver requests such as Petitioner’s as petitions under 37 CFR § 10.170. Petitioner has provided no legal basis to challenge this practice. Therefore, it is appropriate to treat Petitioner’s request as a petition under 37 CFR § 10.170 and to apply the “extraordinary situation” standard recited therein. The cases cited in the previous decision are therefore appropriate to consider, as they define the “extraordinary situation” standard. As explained in the previous decision, Petitioner has not shown this to be an “extraordinary situation,” especially when he can apply to take the exam in April 2000.

Second, Petitioner argues that the facts of his case would pose no problem for OED because, he states, he clearly meets the technical and moral requirements for registration. Without debating the merits of Petitioner’s qualifications, suffice it to say that the Office does not set different application deadlines for prospective examinees depending on their view of their own

qualifications. The Office sets a single application deadline for each exam, and expects all prospective examinees to meet that deadline. Whether or not Petitioner is better qualified, technically or morally, than other prospective examinees is irrelevant.

Third, Petitioner argues that the Office delayed unduly in considering his petition for review of the Director's initial decision. Thus, Petitioner argues, he has wasted over a month of his time studying for an exam he will not be allowed to take. This argument is also unpersuasive. Petitioner chose to spend his time studying for an exam when (1) he missed the application deadline by six weeks and (2) he had already been denied permission to sit for the exam. In addition, Petitioner's late receipt of the decision on his petition is directly attributable to Petitioner's own tardiness in applying to take the exam. If petitioner had applied earlier, he would have received a decision on his petition earlier.

Finally, Petitioner's situation does not present an "extraordinary situation" that would require waiver of the application filing deadline in this case. Evidently, Petitioner did not find out about the filing deadline for the November exam until after the deadline had passed. This failure, however, is one that was completely under Petitioner's own control. The examination booklets, with the deadline prominently displayed, were available well before the application deadline. In addition, the November application materials were available online at the PTO's Web site ([www.uspto.gov](http://www.uspto.gov)) well before the application deadline. That Petitioner did not anticipate that the deadline would be at the end of July does not make the situation "extraordinary."

The late filing appears to be due to his own failure to investigate the exam requirements in a timely fashion. This is not an "extraordinary situation" that merits a waiver under 37 CFR § 10.170, especially when the next scheduled exam is less than six months away. For Petitioner's

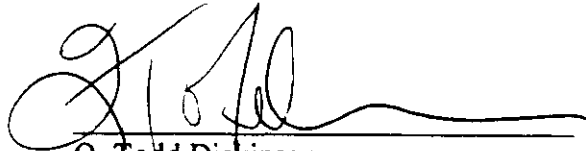
convenience, a copy of the General Requirements Bulletin for the April 2000 exam is enclosed.

The application filing deadline for the April 12, 2000, exam is December 31, 1999.

**ORDER**

For the reasons given above, the request for reconsideration is denied.

This is a final agency action.



Q. Todd Dickinson

Acting Assistant Secretary of Commerce and  
Acting Commissioner of Patents and Trademarks

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