

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 CFR §11.2(d)
)
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)
)

MEMORANDUM AND ORDER

(Petitioner) appeals the decision of the Director of the Office of Enrollment and Discipline (OED Director) denying his application for registration to practice in patent cases before the United States Patent and Trademark Office (USPTO or Office). For the reasons stated below, the decision of the OED Director is **AFFIRMED**.

I. BACKGROUND

On November 14, 2005, Petitioner submitted an *Application for Registration to Practice Before the United States Patent and Trademark Office*. In his application, Petitioner asserted he earned a Bachelor of Arts degree in Writing from the University of _____ on March 27, 1996. Petitioner submitted an original official transcript confirming the award of his Writing degree from the University of _____. Petitioner also submitted a copy of his official original transcript from the College of _____

In a letter dated January 11, 2006, OED informed Petitioner that his application was insufficient. The letter went on to detail that Petitioner: 1) did not have a Bachelor's

degree in any of the required subjects of Category A, 2) did not have sufficient credit in any of the four sub-categories of Category B, and 3) had not taken the Fundamentals of Engineering test required by Category C.

Although on April 18, 2006, OED received a letter from Mr. [redacted] regarding Petitioner's application, no further information was received from Petitioner in response to OED's January 11, 2006, letter.¹

In a letter dated May 15, 2006, OED informed Petitioner that his application was insufficient for his failure to timely respond to OED's January 11, 2006, letter.

By letter dated May 11, 2006, and received by OED on May 19, 2006, Petitioner submitted a second *Application for Registration to Practice Before the United States Patent and Trademark Office*. On May 30, 2006, OED sent Petitioner a letter informing him that he had not remitted sufficient fees for his application, which the Petitioner subsequently rectified.

On June 27, 2006, OED informed Petitioner that his application was insufficient because he did not have a Bachelor's degree in one of the subjects listed in Category A and because he did not include official course descriptions concurrent with the year in which he took the courses at the College of [redacted]. The letter also questioned whether the courses taken at the College of [redacted] were scientific courses or engineering courses as required to show equivalency of a bachelor's degree in a Category A subject. Finally, the letter indicated Mr. [redacted]'s letter was not persuasive to show

¹ Mr. [redacted] (Dean of the [redacted] with the British Columbia [redacted] in Vancouver, Canada) states in his letter that it is his professional opinion that Petitioner possesses the equivalent of 40 United States semester hours of credit with 8 semester hours of physics and 32 hours of engineering.

that Petitioner had the requisite scientific and technical qualifications to allow him to sit for the registration examination.

On July 5, 2006, Petitioner submitted a response to the June 27, 2006, OED letter. In his response, Petitioner included a copy of the 1988-1989 course catalog from the College of . In addition, Petitioner asserted the courses he took at the College of "are scientific and engineering courses." In support of this claim, Petitioner relied on passages from the College of course catalog which stated that technicians apply their knowledge of scientific theory to solve practical problems, and that the classes offered by the College bridge the gap between professionals and tradesmen. Petitioner further claimed that the courses at the College of should be accepted by OED since, prior to 1994 there was no University-level post-secondary educational institution in , British Columbia and that some of the courses at the College of were considered when individuals transferred to science and engineering majors at other educational institutions. Finally, Petitioner argued that the opinion of Mr. as to Petitioner having the requisite scientific and technical qualifications to allow him to sit for the registration examination is supported by the course descriptions from the College of .

In a July 12, 2006, letter, OED informed Petitioner that his Application was incomplete because Petitioner had not shown he was qualified for admission to the registration examination under Category A, B, or C. Specifically, the OED letter advised Petitioner his twenty (20) hours of trimester courses at the College of

were credited as 13.33 semester hours toward satisfying the requirements of Category B.² In addition, the letter stated that Petitioner's argument that the courses at the College of _____ bridge the gap between professionals and tradesmen does not show that the courses Petitioner took at the College of _____ are scientific and/or engineering courses. The OED staff stated that the courses Petitioner had taken at the College of _____ approached, but did not rise to the level of scientific and/or engineering study required to satisfy Category B.

On October 5, 2006, Petitioner submitted a petition, requesting the OED Director reconsider the decision by the OED staff. Petitioner argued: 1) the courses he had taken at the College of _____ were science and engineering courses, 2) that several courses denied by the OED staff should be credited towards satisfying Category B, 3) that the courses were semester hour courses, 4) that Mr. _____'s letter supports Petitioner's claim that he is qualified to sit for the registration examination, and 5) that his visa status should not preclude him from sitting for the registration examination.³

After consideration of the petition, the OED Director found that Mr. _____'s statements contradicted the objective evidence contained in the Petitioner's official transcript and in the official course descriptions. The OED Director further noted the Petitioner is seeking to obtain semester hour credit for trimester hours. According to Petitioner's official transcript, Petitioner completed nineteen courses totaling fifty-six credits from the College of _____ from September 6, 1988 until May 26, 1989, a period of less than nine months. The time period that Petitioner attended these classes

² Trimester hours are credited at 2/3 of a semester hour. *General Requirements for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office* (hereafter "General Requirements"), paragraph B.viii.

³ In view of the Petitioner's grant of permanent resident status, the OED Director found that this basis for denying Petitioner admission to sit for the registration examination is now moot.

and the number of credits is consistent with trimester credit hours and with the official course catalog of the College of

The OED Director went on to point out that even assuming *arguendo*, Petitioner was indeed granted semester hour credit for the courses he took during his three trimesters at the College of , Petitioner still would not satisfy any of Options 1 through 4 of Category B.

Based on this, the OED Director concluded the Petitioner had not proven he possessed the requisite technical and scientific training to sit for the registration examination.

The Petitioner then filed an appeal pursuant to 37 C.F.R. § 10.2(c) to the Director of the United States Patent and Trademark Office requesting a review of the decision of the OED Director.⁴

II. LEGAL STANDARDS

35 U.S.C. § 2(b)(2)(D) states in pertinent part that the USPTO:

“may require [agents, attorneys, or other persons representing applicants or other parties before the USPTO], before being recognized as representatives of applicants or other persons, to show that they ... possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office”

⁴ The Petitioner cited 37 C.F.R. § 10.2 (c) as the basis of a petition for review, the correct authority is 37 C.F.R. § 11.2(d).

Pursuant to the statute, an applicant for registration to practice in patent cases before the USPTO bears the burden of showing that he possesses the necessary technical and scientific qualifications necessary to render patent applicants valuable service.⁵ These requirements are detailed in the *General Requirements for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office* (hereafter “General Requirements”). Applications are initially evaluated by OED staff. At the applicant’s request, these decisions may be reviewed by the OED Director.⁶ An individual dissatisfied with the final decision of the OED Director may petition the USPTO Director for review.⁷ The USPTO Director will consider no new evidence in deciding a petition for review.⁸

III. DISCUSSION

Petitioner’s arguments warrant little discussion. Petition bears the burden of proving his qualifications, and he has not done so. He has not established that he qualifies under Category A, B, or C.

In order to qualify under Category A, an applicant must possess one of the enumerated technical degrees.⁹ Petitioner has a Bachelor of Arts degree in Writing; he does not have the technical degree required, nor does he argue that he does.

⁵ “No individual will be registered to practice before the Office unless he or she has:....(2) Established to the satisfaction of the OED Director that he or she:...(ii) Possesses the ... scientific, and technical qualifications necessary for him to render applicants valuable service ...” 37 C.F.R. § 11.7(a)(2)(ii). See also General Requirements at 4.

⁶ 37 C.F.R. § 11.2(c).

⁷ 37 C.F.R. § 11.2(d).

⁸ *Id.*

⁹ General Requirements, paragraph A.

In order to qualify under Category B, an applicant must have the requisite hours of technical training.¹⁰ Even crediting Petitioner's academic hours as semester hours, he has less than required by any of the four options under Category B.

Finally, Petitioner does not even assert he qualifies under Category C.

The decision of the OED Director is amply supported by the evidence and should be upheld.

IV. CONCLUSION

The OED Director properly determined that Petitioner has not established that he possesses the requisite technical and scientific qualifications for admission to examination. The OED Director's decision is hereby **AFFIRMED**.

¹⁰ General Requirements, paragraph B.

ORDER

Upon consideration of the petition to the USPTO Director for admission to examination,
it is

ORDERED that the petition is denied.

By delegation from the Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office:

June 27, 2007
Date

James Toupin
James Toupin
General Counsel
United States Patent and Trademark Office