



DEC 19 2001

In re

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:
DECISION ON
:
PETITION FOR REGRADE
:
UNDER 37 C.F.R. § 10.7(c)
:
:

MEMORANDUM AND ORDER

(petitioner) petitions for regrading of his answers to the morning and afternoon sessions of the Registration Examination held on April 18, 2001. The petition is denied to the extent petitioner seeks a passing grade on the Registration Examination.

BACKGROUND

An applicant for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases must achieve a passing grade of 70 with the combined scores of the morning and afternoon sessions of the Registration Examination. By letter dated May 30, 2001, petitioner was notified that he had received a failing score of 49 for the entire Examination. The letter informed petitioner that requests for regrade must be filed on or before July 30, 2001. See 37 C.F.R. § 10.7(c) (regrade requests must be filed within two months of notification). Petitioner submitted the petition by U.S. Postal Service Express Mail on July 30, 2001. The petition was received in the USPTO on July 31, 2001, and in the Office of Enrollment and Discipline on August 1, 2001. An applicant failing the Examination may request regrading of the Examination upon payment of the fee set forth in 37 C.F.R. § 1.21(a)(6). See 37 C.F.R. § 10.7(c). Petitioner's petition was not accompanied by the fee required by 37 C.F.R. § 1.21(a)(6)(i) or (ii).

As indicated in the instructions for requesting regrading of the Examination, in order to expedite a petitioner's appeal rights, all regrade requests have been considered in the first instance by the Director of the USPTO.

OPINION

Petitioner presents no substantive argument showing with particularity the errors that he believes occurred in the grading of his examination. Petitioner does not identify any specific questions that he believes were erroneously graded. Instead, petitioner urges that a passing score was not obtained because of a major disruption created by a fire drill during the examination in Detroit, Michigan. Petitioner submits that inasmuch as he is over 40 years old, it took him longer to recover from the disruption. Obviously, such a disruption was unexpected, and regrettable. However, petitioner presents no objective evidence demonstrating that the disruption caused him to receive a failing score. Petitioner's comments are being forwarded to the Office of Personnel Management (OPM) for additional consideration and any appropriate action to prevent a reoccurrence of the same in the future.

The USPTO contracts with OPM to administer the examination. OPM is responsible for obtaining appropriate test sites, hiring the requisite number of proctors, obtaining the necessary testing materials, and other aspects of administering the examination. It is therefore helpful for us to receive this type of feedback for not only consideration in future agreements regarding the examination, but also appropriate action.

Petitioner petitions for regrade of his answers without paying the fee required by § 1.21(a)(6)(i) or (ii). Petitioner states that he is willing to pay any necessary requisite fees, as long as fair and impartial judgment is rendered. All persons requesting regrade in accordance with the provisions of 37 C.F.R. § 10.7(c) receive a fair and impartial decision. However, petitioner's request for regrade did not comply with § 10.7(c). The request was filed on July 30, 2001, the last day for requesting regrade, with neither the fee nor arguments particularly pointing

out the errors he believes occurred in grading his examination. The deadline for paying the fee and pointing out grading errors was July 30th. Because the required fee was not paid, petitioner's request for regrade is moot.

ORDER

For the reasons given above, no points have been added to petitioner's score on the Examination. Therefore, petitioner's score remains at 49. This score is insufficient to pass the Examination.

Upon consideration of the request for regrade to the Director of the USPTO, it is ORDERED that the request for a passing grade on the Examination be denied.

This is a final agency action.



Robert J. Spar
Director, Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy