

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

In re

400 3 1998

DECISION ON PETITION

, petitioner, requests reconsideration of the June 8, 1998, Commissioner decision denying her request for a policy change on how an investigation of a registration examination is conducted, and denying her request for a stay of time to file a petition for regrade of her score on the afternoon section of the August 27, 1997, registration examination. The petition is denied.

BACKGROUND

Petitioner received a failing score (62) on the afternoon section of the August 27, 1997, registration examination. On March 19, 1998, Petitioner wrote a letter to the Director of the Office of Enrollment and Discipline (Director) requesting that her examination be investigated "because the score [she] received on the afternoon section of the exam, upon information and belief, was the student happiness rating at , backwards." She noted that the student happiness rating was 26. Petitioner also requested that her time to file a petition for regrade of the afternoon section of the examination be stayed until completion of the investigation.

In a decision dated April 3, 1998, the Director denied Petitioner's request, having determined that Petitioner's score of 62 was correct. The Director also denied Petitioner's request for a stay of time because Petitioner had not shown an extraordinary situation which in the interest of justice required a waiver of the regulation. See 37 C.F.R. § 10.170.

On April 8, 1998, Petitioner requested the Commissioner's review of the Director's decision. In particular, she requested a policy change regarding investigations of registration examinations, a stay of time to file her petition for regrade of the afternoon section of the August 27, 1997, examination, and, in the event she receives a passing score on the afternoon section of the August 27, 1997, examination, an investigation of her August 28, 1996, and May 3, 1995, examinations. In her appeal, Petitioner did not argue that any specific answer of hers was incorrectly scored.

On June 10, 1998, the Commissioner denied Petitioner's requests, determining that the Director's investigation of Petitioner's afternoon section of the August 27, 1997, examination was thorough and complete, and that Petitioner had not met her burden of showing extraordinary circumstances which in the interest of justice required a waiver of the time requirements to file a petition for regrade.

## DISCUSSION

Petitioner argues that the June 10, 1998, decision is "nonresponsive" because it "failed to state how [it] concluded that there was no 'foul play' associated with the exam." Petition at 1. In particular, Petitioner takes issue with the statement in the Decision noting that her concern about her answers being changed was "without foundation." Decision at 2. Petitioner wants to know

“exactly what section of 35 U.S.C., 37 C.F.R. or the M.P.E.P. . . . requires one to lay a foundation in a situation like the present.” Id.

Petitioner has misinterpreted the statement. The Decision states:

Petitioner questions the thoroughness of the Director’s investigation of her August 27, 1997, examination. She requests a policy change in the manner in which examination investigations are conducted. Specifically, she appears to be concerned that her score was not correctly calculated and that some of her answers were changed. The Director’s decision clearly addressed Petitioner’s first concern. Her second concern is without foundation. There is no indication that Petitioner was denied credit as a result of correct answers being changed to incorrect answers.

Decision at 2. Thus, the Decision does not state that Petitioner’s concern about her answers being changed was without foundation because Petitioner had failed to lay a foundation. Rather, the Decision states that Petitioner’s concern was without foundation because the record did not indicate that any of Petitioner’s answers were changed.

Petitioner also argues that she “should have the right to stay her right to argue the questions on the merits until a thorough investigation is conducted.” Petition at 1. However, as stated in the Decision,

. . . there is nothing in the record to indicate that, through the exercise of ordinary care or diligence, Petitioner could not have filed a petition for regrade at the same time she filed her request for an investigation. See Nitto Chemical Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (finding that “oversight that could have been prevented by the exercise of ordinary care or diligence” is not extraordinary situation).

#### CONCLUSION

Petitioner’s request for reconsideration having been granted in that the June 10, 1998, decision has been reconsidered in light of Petitioner’s new arguments, Petitioner’s requests for a policy change on how an investigation of a registration examination is conducted, and for a stay

of time to file a petition for regrade of her score on the afternoon section of the August 27, 1997, registration are denied.

A handwritten signature in black ink, appearing to read "Q. Todd Dickinson", written over a horizontal line.

**Q. Todd Dickinson**  
**Acting Assistant Secretary of Commerce and**  
**Acting Commissioner of Patents and Trademarks**