



fee. On July 15, 1997, the Commissioner dismissed the petition because it had been rendered moot when, in the interim, Petitioner applied to take, and successfully sat for, the afternoon section of the August 28, 1996, registration examination. 37 C.F.R. 10.7(b). His application for registration was accompanied by the required \$300 admission fee.

Petitioner requests recognition of a passing score on the May 3, 1995, examination, as well as reimbursement of the \$130 fee that accompanied his November 7, 1995, petition for regrade, the \$130 fee that accompanied his August 27, 1996, petition to the Commissioner, and his \$300 admission fee to the August 28, 1996, examination.

#### DISCUSSION

Petitioner argues that his petition for review is not moot because he should have the benefit of recognition of a passing score on the May 3, 1995, examination. While such recognition may be beneficial to Petitioner, it is not the type of relief contemplated in a petition for regrade. A petition for regrade seeks a determination that the petitioner possesses one of the "necessary qualifications" needed to render patent applicants valuable assistance. 35 U.S.C. § 31. See also 37 C.F.R. § 10.7(b). In the instant case, such a determination was made when Petitioner successfully sat for the morning section of the May 3, 1995, examination and the afternoon section of the August 28, 1996, examination. See Brownlow v. Schwartz, 261 U.S. 216, 217 (1923) (ordering dismissal of a petition because relief sought by petitioner had already been granted, thereby, rendering the issue moot). See also Mills v. Green, 159 U.S. 651, 653-654 (1895) (holding that when "intervening event is owing either to the plaintiff's own act or to a power beyond the control of either party, the court will stay its hand").

Petitioner also requests reimbursement of the fees that were paid in connection with the

retaking of the registration examination, request for regrade, and petition for review. Title 35 U.S.C. § 42(d) permits the Commissioner to refund "any fee paid by mistake or any amount paid in excess of that required." Petitioner did not pay (nor does he contend) that he paid fees in excess of that required at the time the fees were paid. Rather, Petitioner's argument for reimbursement seems to rest on the premise that because he successfully sat for the August 28, 1996, examination, then he is entitled to have his fees refunded for all petitions related to the May 3, 1995, examination, as well as the admission fee for the August 28, 1996, examination. In other words, the only fee he properly paid the PTO was the admission fee for the May 3, 1995, examination. The remaining fees should be refunded.

Petitioner's argument is without merit. Petitioner was confronted with a failing score on the afternoon section of the May 3, 1995, examination--a score which he believed in error. Petitioner had two choices--petition the Director, and then, if necessary, the Commissioner on the perceived errors or sit for the next examination. Petitioner choose to do both, and in so doing, incurred the respective fees.

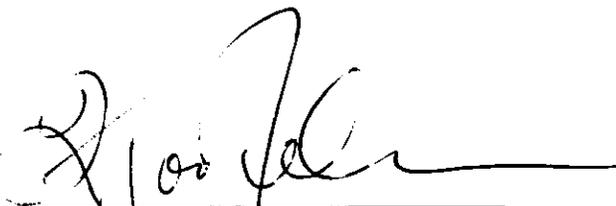
For example, while awaiting the Director's decision on his petition for regrade, he filed his application for the afternoon section of the August 28, 1996, examination. Upon learning that he was unsuccessful in his petition for regrade, Petitioner sat for the afternoon section of the August 28, 1996, examination. While awaiting his score on the afternoon section of the examination, and to preserve his legal rights, Petitioner filed his petition to the Commissioner for review of the Director's decision on his petition for regrade. See 37 C.F.R. § 10.2(c) (petition for review of Director's decision must be filed within 30 days of the decision). Ultimately, he was successful on his retake of the afternoon section of the examination. Thus, Petitioner has received what he

sought--admission to practice before the PTO in patent matters. Accordingly, Petitioner's \$130 fee for regrade, \$300 fee for the August 28, 1996, examination, and \$130 fee for review of the Director's decision on regrade were not fees paid by mistake or in excess of what was required. See Miessner v. United States, 108 USPQ 6, 7 (D.D.C. 1955) (refund of appeal fee paid after examiner's final rejection but prior to examiner's withdrawal of final rejection was not fee paid by mistake).

#### CONCLUSION

Petitioner has failed to show that the dismissal of his August 27, 1996, petition as moot was in error and that he paid the relevant fees by mistake. Accordingly, it is ORDERED that the petition is denied.

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