

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

)	
)	Decision on
In re)	Petition for Oral Hearing
)	
_____)	

MEMORANDUM AND ORDER

, petitioner, seeks oral hearing under 37 C.F.R. Section 1.181(e) (filed August 22, 1996) in order to provide an oral presentation of his arguments that formed the basis for his previous petitions for review and reversal of the decision of the Director of the Office of Enrollment and Discipline (OED) denying petitioner's request for higher scores on the afternoon sections of the Patent Practitioner's Examination held on May 3, 1995. The petitioner's request for reversal of the decision of the Director of OED was denied on August 22, 1996.

Background

Petitioner originally scored 46 out of a possible 100 for the afternoon section of the Patent Practitioner's Examination held on May 3, 1995 ("Exam"). To the original score of 46, 7 points were restored on regrade (decision dated Nov. 16, 1995) and 6 additional points were restored after reconsideration of the regraded exam bringing the total afternoon score to 59 (decision dated May 28, 1996). Petitioner timely requested review of the Decision on Request for Reconsideration of Decision on Regrade of the Examination Held On May 3, 1996, of the Director of OED, under 37 C.F.R. Section

10.2(c). No additional points were added to his score as a result of his petition under 37 C.F.R. Section 10.2(c) by order of the Deputy Commissioner dated on August 22, 1996. No petition for review of the morning section was made.

The administrative record of grading, regrading, reconsideration of the regrading, and review of the reconsideration of regrading is clear and unambiguous. At each level of review, the Petitioner was provided ample opportunity to present the factual and legal reasons for his belief that he deserves sufficient points to pass the Exam. In petitioner's request for oral hearing under 37 C.F.R. 1.181(e), he did not state any reason that differentiates his plight from the other individuals who took the Exam on May 3, 1995, and failed. Indeed, petitioner did not even request an oral hearing until nearly two months after he filed the June 27, 1996, petition under Rule 10.2(c).

Furthermore, the Commissioner notes that applicant's petition should have been made pursuant to 37 C.F.R. Section 10.170, which permits the Commissioner to suspend or waive any requirement or regulation in Part 10 that is not a statutory requirement in extraordinary situations, when justice requires. The Commissioner has reviewed this petition as if it had been filed pursuant to the applicable rule and has determined that no extraordinary circumstances have been pled by petitioner that would justify granting the request for an oral hearing.

While petitioner pleads "equity requires" that he be given an oral hearing, he failed to present any foundation for believing that an oral argument would be anything but another presentation of the arguments and allegations already considered during the

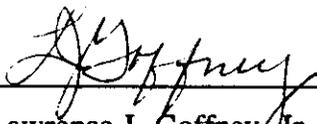
three previous reviews. In fact, petitioner is forbidden to raise any new issues or any new arguments not presented in his initial request for regrade filed on October 16, 1995. In particular, 37 C.F.R. Section 10.2(c), provides, in pertinent part, that “[t]he petition will be decided on the basis of the record made before the Director [of OED] and no new evidence will be considered by the Commissioner in deciding the petition.”

ORDER

Upon consideration of the petition to the Commissioner, the request for an oral hearing is denied.

8/22/96

Date



Lawrence J. Goffney, Jr.
Acting Deputy Asst. Secretary of
Commerce and Deputy Commissioner
of Patents and Trademarks

cc: