

**UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL  
PROPERTY  
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In Re	)	Decision on Petition
	)	Under 37 C.F.R. § 11.3
File Number E2009-016	)	
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**DECISION**

This decision responds to the petition, dated July 9, 2009, of (Petitioner) directed to the Director of the United States Patent and Trademark Office (USPTO Director) requesting an extension of time to file a request for review of the Final Decision, dated June 16, 2009, of the Director of the Office of Enrollment and Discipline (OED Director) denying Petitioner's application for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases because Petitioner failed to demonstrate he presently has the good moral character and reputation required to represent applicants before the USPTO. The petition is deemed a request for a waiver of the rules under 37 C.F.R. § 11.3.<sup>1</sup> For the reasons stated below, Petitioner's request for a waiver of the rules is **DENIED**.

Under 37 C.F.R. § 11.2(d), any request for review of the Final Decision of the OED Director will be dismissed as untimely unless it is filed within 60 days of the mailing date of the final decision. Accordingly, Petitioner's request for review must be filed no later than August 17, 2009.<sup>2</sup>

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<sup>1</sup> Petitioner requests an extension of time under 37 C.F.R. § 1.136(b). However, 37 C.F.R. § 11.3 is the applicable provision for requesting additional time to file a request for review under 37 C.F.R. § 11.2(d).

<sup>2</sup> 35 U.S.C. § 21(b).

The Final Decision of the OED Director denying Petitioner's application for registration is based, in part, upon Petitioner's conviction, in early 2009, of the misdemeanor of resisting arrest and the fact that he is presently on probation.<sup>3</sup> Petitioner asserts that he has applied for a provisional pardon but does not believe that there will be a determination on his application for pardon until August. Petitioner also asserts that he has submitted a Motion for Sentence Modification requesting that Petitioner's probation be terminated but does not believe that a hearing on the motion can be scheduled in time to file the request for review by August 17, 2009.

Petitioner urges that a pardon could make a substantial difference in whether a request for review by the USPTO Director will be successful. Petitioner points out that a pardon removes the presumption of a lack of good moral character and reputation.<sup>4</sup> In addition, Petitioner asserts that if he were pardoned he would be eligible for a determination of his good moral character absent the conviction. Petitioner also asserts that if his motion requesting termination of his probation is granted, it will remove another impediment to registration.<sup>5</sup> Accordingly, Petitioner requests an additional sixty days to file his request for review of the final decision of the OED Director and thus impliedly requests a waiver of the sixty-day time limit for filing a request for review set out in 37 C.F.R. 11.2(d).

37 C.F.R. § 11.3 states, in part:

In an extraordinary situation, when justice requires, any requirement of the regulations of this part . . . may be suspended or waived by the USPTO Director . . .

37 C.F.R. § 11.7(h)(1)(i) states, in part:

An individual who has been convicted of a . . . misdemeanor . . . shall not be eligible to apply for registration during the time of any sentence . . . and period of probation . . .

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<sup>3</sup> 37 C.F.R. § 11.7(h)(1)(i).

<sup>4</sup> 37 C.F.R. § 11.7(h)(1).

<sup>5</sup> 37 C.F.R. § 11.7(h)(1)(i).

and for a period of two years after completion of the sentence . . . and period of probation . . .

Petitioner is currently on probation and his probation is currently scheduled to end April 24, 2010. Thus Petitioner will not be eligible to apply for registration until April 24, 2012.<sup>6</sup>

Petitioner indicates that he is currently attempting to obtain a pardon and a termination of his probation. However, the fact remains that Petitioner has been convicted of a misdemeanor and is serving a period of probation and thus is not currently eligible to apply for registration or to become registered to practice in patent cases before the USPTO.<sup>7</sup> Petitioner asserts that if he is granted a provisional pardon, he would be eligible for a determination as to his good moral character absent the conviction. However, the instructions for the State of Connecticut Board of Pardons and Paroles Application for a Connecticut Expungement or Provisional Pardon indicate that a provisional pardon does not erase a criminal history. Further, Conn. Gen Stat. § 54-130e(g) indicates that a provisional pardon is considered temporary any time the offender is on probation, and the board can revoke it for a probation violation. Accordingly, even if Petitioner were to obtain a provisional pardon it is not clear that he would be come eligible for registration any sooner than if he did not obtain a pardon. Further, even assuming Petitioner's motion to terminate his probation were to be granted, he would still not be eligible to apply for registration until two years after the end of the period of probation.<sup>8</sup> Thus, the relief that Petitioner seeks could not be obtained, even should the facts arise, through a petition for review of the Final Decision. The relief requested would require waiver of the applicable subsection of 37 C.F.R. § 11.7(h).

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<sup>6</sup> 37 C.F.R. § 11.7(h)(1)(i).

<sup>7</sup> "[I]neligibility to apply for registration precludes registration." 69 FR 35428, 35431 (June 24, 2004).

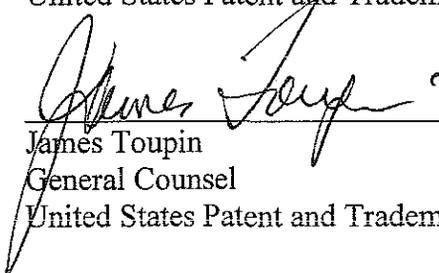
<sup>8</sup> 37 C.F.R. § 11.7(h)(1)(i).

For the reasons stated above, no compelling case has been presented demonstrating an “extraordinary situation” wherein “justice requires” waiver of the sixty-day time limit set out in 37 C.F.R. § 11.2(d) for filing a request for review of the final decision of the OED Director.<sup>9</sup> Accordingly, Petitioner’s request under 37 C.F.R. § 11.3 for a waiver of the sixty-day time limit set out in 37 C.F.R. 11.2(d) is **DENIED**.

On behalf of

John Doll

Acting Under Secretary of Commerce for  
Intellectual Property and Acting Director of the  
United States Patent and Trademark Office

  
James Toupin  
General Counsel  
United States Patent and Trademark Office

JUL 23 2009

Date

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<sup>9</sup> 37 C.F.R. § 11.3.