

In re)
) Decision on
) Petition for Review
) Under 37 C.F.R. § 10.2(c)
)

(hereafter "petitioner") seeks review of the decision of the Director of the Office of Enrollment and Discipline (hereafter "Director") denying him admission to the patent practitioner's examination, held on August 28, 1996, for failing to meet the scientific and technical training requirement found in 37 C.F.R. § 10.7(a)(2)(ii). The petition is denied.

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§ 10.7(a)(2)(ii), the Director must be satisfied that the applicant for admission possesses the scientific and technical training necessary to enable him or her to render applicants for patents valuable service. Bulletin at 1-2.

The bulletin discusses three categories for demonstrating the required scientific and technical training: Category A (a bachelor's degree in one of thirty recognized technical subjects); Category B (a bachelor's degree in another subject and completion of a sufficient number of technical courses); Category C (a passing score on a state Fundamentals of Engineering test). Bulletin at 2-4. Category B includes the following 4 options:

- (1) 24 semester hours in physics;
- (2) 24 semester hours in biological sciences
and 8 semester hours in chemistry or physics;
- (3) 30 semester hours in chemistry; and
- (4) 40 semester hours of chemistry, physics, the
biological sciences or engineering including
8 semester hours in chemistry or physics.

Bulletin at 2-3.

On May 10, 1996, petitioner filed an application for admission to the exam and included his transcript from

Since he did not qualify for admission under Category A,¹ the Director reviewed the courses he took and accepted 42 semester hours under Category B, Option 4. However, in view of petitioner's courses, the Director determined that petitioner did not meet the following standard:

"The courses relied upon must include at least 8 semester hours of chemistry (two sequential semesters, each semester including a lab) or 8 semester hours of physics (two sequential semesters, each semester including a lab)."

Bulletin at 3.

¹ Petitioner did not qualify for admission under Category A because, even though he received a bachelor's degree in computer science from _____, the computer science program at that university was not accredited by the Computer Science Accreditation Commission of the Computing Sciences Accreditation Board until _____. See Bulletin attachment on accredited computer science programs. The PTO currently accepts, under Category A, "degrees from Computer Science programs accredited by the Computer Science Accreditation Commission of the Computing Sciences Accreditation Board." PTO Official Gazette, 1179 OG 12 (Oct. 3, 1995). This notice expressly states that "[a]ll other Computer Science degrees [i.e., those from non-accredited programs] will continue to be included under Category B, where courses will be evaluated on a case-by-case basis" Id.

With respect to his chemistry and physics course work, petitioner's college transcript shows the following:

<u>Course</u>	<u>Credits</u>	<u>Grade</u>	<u>Taken</u>
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The Director denied petitioner's application for admission to the exam on the basis that he has not taken 8 semester hours of chemistry or 8 semester hours of physics, excluding pass/fail courses in which a passing grade has not been shown to be a C- or better. The Director rejected petitioner's additional arguments for admission. Petitioner now seeks review of the Director's decision.

² Since petitioner's transcript shows credits for trimester courses, the trimester credits must be multiplied by 2/3 in order to convert trimester hours into semester hours which are the types of hours used in the above-identified physics/chemistry standard. Bulletin at 3, column 1.

³ Since this course was taken on a pass/fail basis, the Director did not accept it. Bulletin at 3, column 2.

⁴ Since this course was taken on a pass/fail basis, the Director did not accept it. Bulletin at 3, column 2.

Opinion

Pursuant to 35 U.S.C. § 31, the Commissioner of Patents and Trademarks:

"may require [agents and attorneys], before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office."

35 U.S.C. § 31 (Emphasis added). Under his statutory authority the Commissioner promulgated 37 C.F.R. § 10.7 which reads in pertinent part:

"(a) No individual will be registered to practice before the Office unless he or she shall:

. . . .

(2) Establish to the satisfaction of the Director that he or she is:

. . . .

(ii) Possessed of the legal, scientific, and technical qualifications necessary to enable him or her to render applicants for patents valuable service."

37 C.F.R. §10.7 (Emphasis added).

The PTO issues the bulletin to show applicants the kinds of credentials that typically demonstrate the scientific and technical qualifications required by 37 C.F.R. § 10.7(a)(2)(ii) and then the Director reviews an applicant's qualifications for

compliance with the regulation. Premysler v. Commissioner of Patents and Trademarks, 71 F.3d 387, 390, 37 USPQ2d 1057, 1059-60 (Fed. Cir. 1995). Hence, the Director must be satisfied that an applicant for the exam possesses the necessary scientific and technical qualifications. 37 C.F.R. § 10.7(a)(2)(ii).

As long as the Director imposes: (1) definite, (2) fair and (3) objective standards in addressing the matter, her determination must be upheld. See Gager v. Ladd, 212 F. Supp. 671, 673, 136 USPQ 627, 628 (D.D.C. 1963) ("[T]he Commissioner established a standard of what constitutes sufficient basic training. That standard is definite, fair, and objective") (emphasis added).

In this case, the Director was not satisfied that petitioner possesses the necessary scientific and technical qualifications. In addressing the question, the Director applied a longstanding standard of requiring 8 semester hours of chemistry or 8 semester hours of physics, excluding pass/fail courses in which a passing grade has not been shown to be a C- or better. This standard has historically been applied to applicants who do not have a bachelor's degree in one of the recognized technical subjects or a passing score on a recognized state engineering test. See PTO's Examination General Requirements Bulletins for 1990-97.

This standard is definite, fair, objective, and the Director did not err when she relied upon it. Gager, 212 F. Supp. at 673, 136 USPQ at 628. Accord Saxbe v. Bustos, 419 U.S. 65, 74 (1974) ("[a] longstanding administrative construction is entitled to great weight"). The standard concretely defines beforehand a requirement concerning physics or chemistry that must be met by applicants who do not have a recognized bachelor's degree or a passing state engineering test score. Analyzing whether the standard has been met is clearly an objective task since a basic minimum number of required credit hours is considered. The standard is fair because: (1) it is typically required to obtain a bachelor's degree from an accredited U.S. college or university in any one of the thirty recognized technical subjects listed in category A; and (2) a basic understanding in either physics or chemistry with a threshold minimum number of credits received ensures that those without a recognized bachelor's degree or a passing state engineering test score will be able to render applicants for patents valuable service, 37 C.F.R. § 10.7(a)(2)(ii).

Petitioner does not argue that this standard is indefinite or something other than objective. Petition at 1-2.⁵ Rather, he questions the fairness of the standard. Petition at 1-2. However, as aptly noted by the Director:

"Inasmuch as a vast majority of patent applications relate to chemistry, physics, and engineering, it is reasonable to require patent practitioners having degrees in other subjects [i.e., one that is not a recognized technical field] to meet a basic chemistry with a lab or physics with a lab requirement to demonstrate their possession of training in basic science and technology. Eight semester hours of general chemistry with a lab or general physics with a lab are conventionally required for bachelor's degrees in recognized science and engineering programs from U.S. universities and colleges accredited in science or engineering.

. . . Moreover, the PTO does not limit the practice of registered attorneys and agents to specific fields of recognized competence, e.g., computer science or computer engineering. Therefore it is reasonable to require demonstration of general scientific and technical training by adhering to the physics or chemistry with a lab provision of option 4."

Director's decision at 3. The Director is correct that a vast

⁵ Petitioner admits that he took his third physics course on a pass/fail basis and that there currently is no documentation to show that his passing grade for that course was the equivalent of a C- or better. Petition at 1. He speculates that if he took that course for a letter grade, he would have received a C or better. However, such speculation is merely that and fails to show any lack of objectivity on the part of the Director.

majority of patent applications involve chemistry, physics and engineering and, therefore, a minimum threshold standard in those areas is fair and reasonable. It is noted that semester hours in both chemistry and physics are not required. It is an either/or standard which is well within the realm of what should be expected from a registered patent practitioner.

Additionally, members of the public not having a recognized bachelor's degree or a passing state engineering test score have long been on notice that certain technical courses would be required before being admitted to the exam. Saxbe, 419 U.S. at 74 (a longstanding agency practice "is entitled to great weight").

Petitioner argues that the PTO has arbitrarily imposed a higher standard than _____ for a bachelor's degree in computer science. Petition at 1. However, the Commissioner, not _____, is charged by law with the responsibility for protecting the public from unqualified practitioners. 35 U.S.C. § 31; Gager, 212 F. Supp. at 673, 136 USPQ at 628 ("the primary responsibility for protection of the public from unqualified practitioners before the Patent [and Trademark] Office rests in the Commissioner of Patents [and Trademarks]") (quoting with approval Cupples v. Marzall,

101 F. Supp. 579, 583, 92 USPQ 169, 172 (D.D.C. 1952), aff'd, 204 F.2d 58, 97 USPQ 1 (D.C. Cir. 1953)). Representing patent applicants before the PTO is "a highly specialized and technical position designed to protect and assist the public." Leeds v. Mosbacher, 732 F. Supp. 198, 203, 14 USPQ2d 1455, 1458 (D.D.C.) (emphasis in original), aff'd mem., 918 F.2d 185 (Fed. Cir.), cert. denied, 498 U.S. 983 (1990). Accordingly, the Director is not required to defer to _____ in deciding what qualifications are needed to protect the public.

Petitioner also argues that his computer science degree satisfies the regulation. Petition at 1-2. Contrary to his argument, however, petitioner has not shown that his computer science degree is equivalent to the current accredited computer science degree from _____.⁶ The computer science program at _____ was not accredited until _____. See Bulletin attachment on accrediting computer science programs. Since petitioner received his bachelor's degree in computer science from _____ i.e., prior to _____, petitioner must show that his _____ courses are

⁶ The PTO accepts computer science degrees from accredited programs as Category A degrees. Bulletin at 2, column 2.

the same as those required under that school's currently-accredited computer science program. See Director's decision at 5.

Finally, petitioner argues that his experience as
meets the standard imposed by the Director.
Petition at 2 (noting that he began such employment sometime

However, since petitioner failed to bring this fact to the attention of the Director, it may not now be considered.
37 C.F.R. § 10.2(c) ("[t]he petition will be decided on the basis of the record made before the Director and no new evidence will be considered by the Commissioner in deciding the petition").
Moreover, petitioner's employment as cannot meet the technical background standard that the Director has imposed because even though the Director grants credit for a proper showing of a long apprenticeship with a registered patent attorney or patent agent, the Director expressly precludes substituting an apprenticeship for the physics or chemistry requirement. Bulletin at 3, column 2 ("Apprenticeship experience cannot be used to satisfy the semester hour requirement for physics or chemistry set forth above").

Conclusion

Petitioner has not shown that the Director erred in imposing the above-discussed longstanding technical qualifications standard or in determining that petitioner's qualifications fail to meet this standard. Should petitioner take the requisite physics or chemistry course, the Director would consider a new application for admission to the exam. Similarly, should petitioner objectively demonstrate that the "P" received in the physics class he took on a pass/fail basis was the equivalent of a "C-" or better, the Director would consider a new application for admission to the exam. Finally, should petitioner objectively demonstrate that his courses are the same as those required under that school's currently-accredited computer science program, the Director would consider a new application for admission to the exam.

ORDER

Upon consideration of the petition to the Commissioner for admission to the examination for registration to practice before the PTO in patent cases, it is

ORDERED that the petition is denied.

11/12/97

Date



LAWRENCE J. GOFFNEY, JR.

Acting Deputy Assistant Secretary of
Commerce and Deputy Commissioner
of Patents and Trademarks

cc: