

In Re []

MEMORANDUM AND ORDER

[REDACTED], Petitioner, seeks review of the decision of the Director of the Office of Enrollment and Discipline (OED) disapproving Petitioner's petition for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases. The OED Director disapproved Petitioner's petition to be registered as a patent attorney under 37 CFR §11.7(a)(2)(i) because he failed to demonstrate he has the good moral character and reputation required. For the reasons stated below, the OED Director's decision is **AFFIRMED**.

On September 29, 2005, Respondent submitted an *Application for Registration to Practice Before the United State Patent and Trademark Office*, and passed the registration exam on January 14, 2006. The Office of Enrollment and Discipline (OED) received information concerning the Respondent from Mr. [REDACTED], President of the [REDACTED],

on January 30, 2006. Specifically, Mr. [] stated to OED that the Respondent was selling a version of a copyrighted lecture that he made from DVDs that were originally furnished by his company with a patent bar review course on eBay®. On February 9, 2006, in a communication from OED, the Respondent was asked to explain whether and how shipping audio files converted from DVDs produced by the [] would comply with United States copyright laws. The Respondent was also asked to explain whether and when he sold or transferred the audio files. The Respondent's reply was received on March 13, 2006.

The Director of OED sent the Respondent a Show Cause Requirement dated March 30, 2006, giving the Respondent an opportunity to show cause why his application for registration should not be denied on the basis that he had not met his burden of establishing to the satisfaction of the OED Director that he possesses good moral character and reputation as required to represent applicants before the Office. On May 1, 2006, OED received the Respondent's response to the Show Cause Requirement. On May 22, 2006, the Director of OED issued a Final Decision and Memorandum Opinion denying the Respondent's application for registration to practice in patent cases. The Respondent filed a Petition for Review of the OED Director decision on July 24, 2006.

II. LEGAL STANDARD

The Director of the United States Patent Office may require agents, attorneys, or other persons before being recognized as representatives of applicants or other persons to show that they are of good moral character and reputation. 35 U.S.C. § 2(b)(2)(D). USPTO regulations provide that an individual will not be registered to practice before the USPTO unless he or she has established to the satisfaction of the Director of the Office of Enrollment and Discipline (OED) that he or his is of good moral character and repute. 37 C.F.R. § 11.7(a)(2)(i).

An individual dissatisfied with the final decision of the OED Director may petition the USPTO Director for review. 37 C.F.R. § 11.2(d). The petition must be accompanied by the appropriate fee (see 37 C.F.R. § 1.21(a)(5)(ii)), and must be filed within sixty days of the mailing date of the final decision of the OED Director. 37 C.F.R. § 11.2(d). Petitions not filed within sixty days will be dismissed as untimely. 37 C.F.R. § 11.2(d).

III. OPINION

The mailing date of the OED Director's final decision was May 22, 2006. While Petitioner asserts sixty days fell on Saturday, July 22, 2006, and therefore his filing on Monday, July 24, 2006 was timely, that is factually incorrect. Sixty days from that May 22, 2006 was Friday, July 21, 2006. "Any petition not filed within sixty days from the mailing date of the final decision of the OED Director will be dismissed as untimely." 37 C.F.R. § 11.2(d). Petitioner filed his request for review on the sixty-third day from the date of mailing of the OED Director's final decision.

IV. CONCLUSION

Petitioner's request for review was not filed within the sixty-day deadline and should be dismissed as untimely.

ORDER

Upon consideration of the Petition to the USPTO Director for registration to practice before the USPTO in patent cases under 37 CFR § 10.6(a), it is ORDERED that the petition is denied.

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

3/1/07
Date

/s/
James Toupin
General Counsel
United States Patent and Trademark Office

cc:

Director
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