

HARRY I. MOATZ

y.

Petitioner.

Decision on Petition
Under 37 C.F.R. § 11.2(d)

The OED Director evaluated the petition and, by letter dated April 27, 2007, made his Decision on Petition, disapproving Petitioner's request to sit for the registration

examination.¹ The OED Director found that Petitioner had not established his qualifications as required by 37 C.F.R. § 11.7(a)(2)(ii). The OED Director noted that the *USPTO General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office* (issued in June 2004, as updated in November 2005) (*General Requirements Bulletin*) sets forth policies for complying with the provisions of 37 C.F.R. § 11.7(a)(2)(ii). The *General Requirements Bulletin* is published by USPTO to provide information and requirements to, in part, describe criteria that are generally sufficient to establish scientific and technical competence for admission to the examination. See Premysler v. Lehman, 71 F.3d 387, 388 (Fed. Cir. 1995). The *General Requirements Bulletin* provides that a petitioner may demonstrate the required competence by meeting the criteria of either Category A, B or C. *General Requirements Bulletin* at 4-8. The OED Director found that Petitioner had not met the requirements for the following reasons:

Category A requires a Bachelor's Degree in one of 32 recognized scientific or technical subjects. *General Requirements Bulletin* at 4. One of the technical subjects listed is Computer Science, but the *General Requirements Bulletin* provides that "Acceptable Computer Science degrees must be accredited by the Computer Science Accreditation Commission (CSAC) of the Computing Sciences Accreditation Board (CSAB), or by the Computing Accreditation Commission (CAC) of the Accreditation Board of Engineering and Technology (ABET), on or before the date the degree was

¹ By letter dated May 8, 2007, an OED staffer informed Petitioner that the time period for completing his application had expired, that his application for admission to the registration examination remained incomplete, and that he would not be admitted to take the examination. Petitioner had 60 days to seek review of this decision with the OED Director.

awarded.” *Id.* The OED Director found no evidence that Petitioner’s degree in Computer Science was accredited by either the CSAC or the CAC on or before the date that Petitioner’s degree was awarded and, thus, concluded that Petitioner did not sustain his burden that his degree is in a Category A subject.

Category B requires demonstrated scientific and technical training equivalent to that required by Category A by meeting the criteria of one of four Options. Specifically, under Option 1 and Option 3, respectively, a petitioner must demonstrate that he or she had earned 24 semester hours in physics or 30 semester hours in chemistry. *General Requirements Bulletin* at 5. The OED Director found that Petitioner had demonstrated neither. Under Option 2, a petitioner must demonstrate that he or she had earned a total of 32 semester hours consisting of 24 semester hours in biology, botany, microbiology, or molecular biology, and eight semester hours in chemistry (two sequential semesters each semester including a lab) or eight semester hours in physics (two sequential semesters each semester including a lab). *Id.* The OED Director found that Petitioner had not demonstrated the required semester hours. Under Option 4, a petitioner must demonstrate that he or she had earned a total of 40 semester hours consisting of eight semester hours in chemistry or physics (two sequential semesters each semester including a lab) and 32 semester hours of chemistry, physics, biology, botany, microbiology, molecular biology, or engineering. *Id.* Although certain Computer Science courses are accepted, the OED Director noted that the *General Requirements Bulletin* sets forth that the acceptable Computer Science courses may not be substituted for the eight semester hours of chemistry or physics required under Option 4 (*Id.* at 6), and that there was no evidence that Petitioner had taken either of those courses. Accordingly, the OED

Director found that Petitioner had not demonstrated the required semester hours under Options 1, 2, 3, or 4 of Category B.

Category C requires that, to rely on practical engineering or scientific experience, a petitioner must take and pass the Fundamentals of Engineering examination. *General Requirements Bulletin* at 8. The OED Director found that Petitioner had not suggested that he had taken and passed that examination.

The OED Director fully considered Petitioner's qualifications at the institution from which Petitioner received his Computer Science degree but found that Petitioner failed to meet his burden of establishing to the satisfaction of the OED Director by objective evidence that he possesses the necessary scientific and technical qualifications under 37 C.F.R. § 11.7. Accordingly, the Director disapproved Petitioner's application to sit for the registration examination.

Petitioner then filed an appeal pursuant to 37 C.F.R. § 11.2(d) to the Director of the United States Patent and Trademark Office requesting a review of the OED Director's final decision. In his petition, Petitioner does not challenge the OED Director's determinations under Category A, B or C of the *General Requirements Bulletin* but, instead, argues that it was an abuse of discretion to apply the *General Requirements Bulletin* to him.

Legal Standards

Title 35 of the United States Code, section 2(b)(2)(D), states in pertinent part:

[The USPTO] may require [agents, attorneys, or other persons representing applicants or other parties before the USPTO], before being recognized as representatives of applicants or other persons, to show that they 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.

In accordance with the statute, and to provide requirements to demonstrate such qualifications, the USPTO Director promulgated 37 C.F.R. § 11.7(a)(2)(ii), which states in pertinent part:

(a) No individual will be registered to practice before the Office unless

he or she has:

(2) Established to the satisfaction of the OED Director that he or she:

(ii) Possesses the . . . scientific, and technical qualifications necessary for him or her to render applicants valuable service . . .

Petitioners have the burden to prove they have the necessary qualifications. 35 U.S.C. § 2(b)(2)(D); 37 C.F.R. § 11.7(b)(1)(i)(C); *General Requirements Bulletin* at 4 (“*Applicants bear the burden of showing the requisite scientific and technical training.*” (italics in original)). Petitioners must submit a complete application for registration, which includes “[s]atisfactory proof of scientific and technical qualifications.” 37 C.F.R. § 11.7(b)(1)(i)(C). Finally, “[a]n individual failing to file a complete application for registration will not be admitted to the examination and will be notified of the incompleteness.” 37 C.F.R. § 11.7(b)(2).

Applications are initially evaluated by OED staff and, at the applicant’s request, are reviewable by the OED Director. 37 C.F.R. § 11.2(c). 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 USPTO Director will consider no new evidence in deciding a petition for review. *Id.*

In a review of a final agency action on a case, the courts will apply an abuse of discretion standard. An agency abuses its discretion where its decision is based on an erroneous interpretation of law or on factual findings that are not supported by substantial evidence, or the decision represents unreasonable judgment in weighing relevant factors. Lacavera v. Dudas, 441 F.3d 1380, 1383 (Fed. Cir. 2006) (citation omitted).

Decision

Petitioner bears the burden of proving his scientific and technical qualifications, and has not done so. Petitioner has not demonstrated that he qualifies under Category A, B, or C, as specifically provided in the *General Requirements Bulletin*. Under Category A, Petitioner does not dispute the OED Director's finding that Petitioner's degree in Computer Science was not accredited by either the CSAC or the CAC on or before the date that Petitioner's degree was awarded. In these circumstances, the OED Director correctly found that Petitioner does not have the technical degree required under Category A.²

Under Category B, Petitioner does not dispute the OED Director's finding that he has not met the requirements of Options 1, 2, 3, or 4, nor do the records show that he met any of those requirements. Thus, the OED Director correctly found that Petitioner did not meet the requirements of any of the options of Category B.

² Petitioner asserts that his Bachelors of Science in Computer Science is from a United States Department of Education accredited institution. First, the Department of Education does not accredit institutions, rather they list those institutions that are accredited by other organizations. According to the Department's website, the American Sentinel University is accredited by the Distance Education and Training Council. Second, this assertion misses the point, the *General Requirements Bulletin* requires the degree to be accredited, not the institution. Finally, Petitioner does not argue his accreditation is the equivalent of that required in the *General Requirements Bulletin*. Petitioner's degree does not have the required accreditation.

Under Category C, Petitioner neither addresses nor disputes the OED Director's finding that he did not meet the requirements of Category C.

Petitioner does not assert that he meets the qualifications under any category. Rather, Petitioner argues the OED Director abused his discretion by making a "wooden application" of the *General Requirements Bulletin*. Petitioner asserts he is "otherwise qualified" to take the exam because his Bachelors of Science in Computer Science (B.S.C.S.) from the American Sentinel University gave him the qualifications to render applicants valuable service as outlined in 35 U.S.C. § 2(b)(2)(D). Petition at 2.

Petitioner is correct that the OED Director may find an applicant qualified despite not meeting the technical requirements of the *General Requirements Bulletin*. "The *General Requirements Bulletin* themselves clarify that they are not dispositive in determining whether an applicant may sit for the PTO examination. The Commissioner may, at his discretion, determine if any applicant possesses sufficient technical skills to take the examination" Premysler v. Lehman, 71 F.3d 387 (Fed.Cir. 1995). In Premysler, as in this case, an applicant contended he was qualified to take the examination despite not meeting the requirements of the *General Requirements Bulletin*. After consideration of the applicant's submission, the Commissioner (now called the Director of the USPTO) found the applicant did not possess sufficient qualifications. The court upheld the Commissioner's decision.

Petitioner, like the applicant in Premysler, asserts he is "otherwise qualified" regardless of the guidelines in the *General Requirements Bulletin*. Petitioner bears the burden of proof. Petitioner goes on to argue that "the precise issue at the heart of this

matter” is that it is not rational or fair to exclude him from practice in the interest of protecting the public simply because of his lack of coursework in chemistry or physics.

Petitioner is not being excluded solely because of his lack of sufficient physics or chemistry,³ and the decision is both rational and fair. The *General Requirements Bulletin* reflects that technical qualifications should provide a sufficient scope of scientific and engineering background. Such qualifications are reasonable for protecting the public since, once registered, a practitioner may represent clients before the Office in any technical area. Petitioner has not shown any such scope in his own background that could be regarded as equivalent to the *General Requirements*.

The OED Director’s decision was not an abuse of discretion as the Petitioner suggests. The record strongly supports the OED Director’s well-reasoned determination.

Conclusion

The OED Director properly determined that Petitioner did not establish that he possesses the requisite technical and scientific qualifications for admission to the examination.

³ Petitioner asserts that the fact that under Category B, Option 4, his Computer Science degree “did not require eight hours of chemistry or physics is *the only reason* that OED is denying me the right to even take the exam.” Petition at 2 (emphasis in original). This statement is incorrect. Petitioner also was not qualified under Category A, because his degree was not properly accredited, nor was he qualified under Category C.

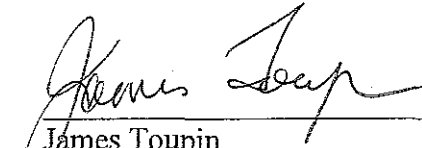
Order

Upon consideration of the petition for review to the Director of the USPTO, it is
ORDERED that the petition is **DENIED**.

By delegation from the Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office:

OCT 1 2007

Date


James Toupin
General Counsel
United States Patent and Trademark Office

cc:

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