



FEB 19 2002

In re

:  
: DECISION ON  
: PETITION FOR REGRADE  
: UNDER 37 C.F.R. § 10.7(c)  
:

**MEMORANDUM AND ORDER**

petitions for regrading his answers to questions 18, 23, 24, 32, and 42 of the morning section and questions 5, 29 and 38 of the afternoon section of the Registration Examination held on April 18, 2001. The petition is denied to the extent petitioner seeks a passing grade on the Registration Examination.

**BACKGROUND**

An applicant for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases must achieve a passing grade of 70 in both the morning and afternoon sections of the Registration Examination. Petitioner scored 67.

As set forth at 37 CFR 10.7(c), “[A]ny applicant requesting regrading shall particularly point out the errors which the applicant believed occurred in the grading of his or her examination.” Instead of alleging any errors in the grading of his application, Mr. Chan (petitioner) alleges that he incorrectly marked answers to morning questions 18,

23, 24, 32, and 42 and afternoon questions 5, 29 and 38 due to his “disabilities (visual discrimination and process deficits, and other learning disabilities).” On that basis petitioner argues that credit should be awarded for those incorrectly marked answers. In support, petitioner has provided a letter signed by education specialist Lorraine M. Dreiblatt, seemingly corroborating petitioner’s allegations that learning disabilities caused petitioner to: (1) mistake the letter “B” for the letter “E” on petitioner’s answer sheet on morning questions 18, 23, and 24; (2) mistake the letter “A” for “E” on morning question 32 and afternoon question 5; (3) mistake the letter “E” for “A” on morning question 42 and afternoon question 38; (4) mistake “E” for “B” on afternoon question 29.

Petitioner’s arguments have been fully considered, but are not deemed to be persuasive. In addition to collecting signature-bearing answer sheets at the conclusion of each Registration Examination session, the USPTO collects signature-bearing examination booklets containing the examination questions and answer choices. The Registration Examination booklets signed by petitioner contain markings thereon that contradict petitioner’s allegations. Some of these contradictions are described below:

1. Morning question 24

The morning section examination booklet shows that petitioner penciled the word “yes” next to answer choice “B”, and the word “maybe” next to answer choices “A”, “C” and “D”. Petitioner argues that answer choice “E” was intended for morning question 24, however, the examination booklet indicates that petitioner did not really consider the possibility that answer “E” was the correct answer.

2. Morning question 32

At question 32 of the morning examination booklet, petitioner pencilled the word “maybe” next to answer choice “A” and the word “NO” next to answer choice “E”. That plainly contradicts petitioner’s allegation that answer choice “E” was intended and that answer choice “A” was entered by mistake on this question.

3. Morning question 42

Petitioner argues that he intended to mark “A” for this question, but marked “E” by mistake. On the examination booklet, however, petitioner penciled only two letters at morning question 42. Those two letters are “OK” and they appear right next to answer choice “E”.

4. Morning question 18

Petitioner alleges that answer choice “E” was intended here, but choice “B” was marked on the answer sheet by mistake. However, at question 18 of the morning examination booklet, the word “maybe” was penciled next to answer choice “B” and an “X” was penciled next to answer choices “E” and “A”.

It is noted that similar contradictions to petitioner’s allegations appear on petitioner’s examination booklet for the afternoon session.

A copy of petitioner’s morning session examination booklet is provided herewith for petitioner’s review.

**ORDER**

For the reasons given above, no points one point have been added to petitioner's score on the Examination. Therefore, petitioner's score remains 67. This score is insufficient to pass the Examination.

Upon consideration of the request for regrade to the Director of the USPTO, it is ORDERED that the request for a passing grade on the Examination is denied.

This is a final agency action.



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Robert J. Spar  
Director, Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

**Attachment:** copy of petitioner's morning session examination booklet.