

Bulletin at page 4, column 2 (*italics original*). The Bulletin also provides express instructions for reapplying to take the examination:

If you are reapplying to take the examination, you must completely fill out and sign the Application for Registration [Form PTO-158] and Admissions Card [Form PTO-297] and remit the \$310 examination fee . . .

Bulletin at page 5, column 2. The cover of the Bulletin and the form PTO-158 inform the reader that the filing deadline is May 4, 1998, and the Bulletin text states:

THE DEADLINE FOR FILING APPLICATION PAPERS, APPROPRIATE FEES, AND ALL NECESSARY DOCUMENTATION IS MAY 4, 1998. . . . Mail your application papers and any other correspondence by U.S. Postal Service *first class mail* to: Commissioner of Patent and Trademarks, Box OED, Washington, D.C. 20231. A certificate of mailing pursuant to 37 CFR § 1.8 may be used when mailing applications on or before the May 4, 1998 deadline. Applications received by the PTO after the filing deadline of May 4, 1998, without a certificate of mailing will be considered late and treated accordingly.

Bulletin, page 6, column 1 (*capitalization and italics original*). The Bulletin further informs prospective applicants that:

If you are required to make a supplemental showing of qualifications and the showing is not received in the Office of Enrollment and Discipline before June 26, 1998, you will not be admitted to the examination. A certificate of mailing pursuant to 37 CFR § 1.8 may be used when mailing a supplemental showing on or before the June 26, 1998 deadline. Therefore it is strongly recommended that you file your applications papers early, preferably on or before March 1, 1998, in order to afford adequate time for you to present any supplemental showing as may be required to gain admission to the August 1998 examination.

The Bulletin is replete with advice to applicants to file promptly:

[I]t is strongly recommended that you file your applications papers early, preferably on or before March 1, 1998, in order to afford adequate time for you to present any supplemental showing as may be required to gain admission to the August 1998 examination.

In order to be admitted to the examination, your application forms . . . and examination fees. . . must be filed in the U.S. Patent and Trademark Office on or

before May 4, 1998. Facsimiles of applications will not be accepted.¹

Bulletin, page 6, column 2 (italics original).

On May 4, 1998, Petitioner sent a copy of a completed Form PTO-158 (Application for Registration) to the PTO Office of Enrollment and Discipline (hereafter "OED") by facsimile transmission. It is not clear whether a completed copy of Form PTO-297 (Admission Card) was faxed with the completed Form PTO-158. Petitioner contacted OED by telephone on May 4, 1998, and received assurances that the fees could be paid at a later date. Petitioner also contacted OED by telephone "in mid-July and June" regarding the fees, but experienced "phone line problems." It is not clear from the record whether Petitioner spoke with anyone at that time.

Petitioner next contacted OED during the second week of August. As a result of those telephone conversations, on August 20, 1998, Petitioner filed with the Director a petition to sit for the August 26, 1998 Examination "in view of extraordinary circumstances." On August 24, 1998, the Director denied the petition. On August 25, 1998, Petitioner sought review of the

¹ The PTO has promulgated formal regulations that address facsimile transmissions of registration applications:

Facsimile transmissions are not permitted and if submitted will not be accorded a date of receipt, in the following situations:

(1) Correspondence as specified in § 1.4(e), requiring an original signature.

37 CFR § 1.6(d). Section 1.4(e) states in relevant part:

Correspondence requiring a person's signature and relating to registration to practice before the Patent and Trademark Office in patent cases . . . must be submitted with an original signature personally signed in permanent ink by that person.

37 CFR § 1.4(e).

Director's decision. That same day, as a matter of courtesy, Petitioner was informed by telephone that his petition was denied. This document is the written opinion in support of the denial.

DISCUSSION

The Commissioner has the authority to waive any of the PTO regulations pursuant to 37 CFR § 10.170, which provides in pertinent part:

(a) In an extraordinary situation, when justice requires, any requirement of the regulations of this part which is not a requirement of the statutes may be suspended or waived by the Commissioner

An "extraordinary situation" for purposes of the waiver regulation is one which could not have been prevented by the exercise of ordinary care or diligence. See Nitto Chemical Indus. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (finding that "oversight that could have been prevented by the exercise of ordinary care or diligence" is not an extraordinary situation). Petitioner has the burden to show that his circumstances rise to the level of an extraordinary situation which, in the interest of justice, requires a waiver.

In regard to payment of the fees, Petitioner states that, at the direction of his employer, he took an unpaid leave of absence to prepare for the Bar examination and the August 26, 1998 Examination. Petitioner explains that his employment was contingent on his taking both of these examinations. However, unable to afford both examination fees, Petitioner made a choice--he paid for the Bar examination. He also made other choices--he chose to pay for a bar preparation course, as well as a preparation course for the August 26, 1998 Examination. He made each of these choices knowing he had to pay for the August 26, 1998 Examination or, in the alternative, seek a waiver of the fees. On August 20,

1998, less than one week before the August 26, 1998 Examination. Petitioner filed a petition with the Director regarding the August 26, 1998 Examination. It is unclear, however, whether Petitioner sought a waiver of the fees or a waiver of the deadline to pay the fees. The Director treated Petitioner's request as a waiver of the fees.

Petitioner now seeks waiver of the deadline to pay the fees. While Petitioner's August 25, 1998, petition to the Commissioner does not explicitly state that Petitioner would pay the requisite fees, in a telephone conversation prior to receipt of the August 25, 1998, petition, Petitioner stated that if he was admitted to the August 26, 1998 Examination he would pay the requisite fees. Thus, the sole issue is whether Petitioner has shown that his personal circumstances rise to the level of extraordinary circumstances which, in the interest of justice, requires a waiver of the deadline to pay the requisite application and registration fees.

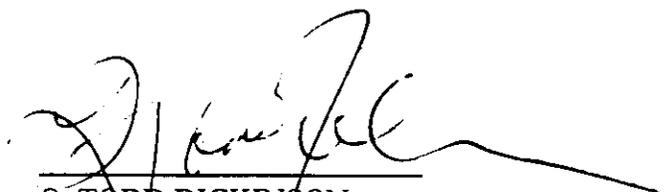
In support of his argument for waiver of the deadline, Petitioner states that "[d]uring the entire month of June and July, I was attending Bar Review classes for the Bar Exam. My schedule was intense and allowed for only 2 ten minutes breaks in between." He further states that "[i]mmediately after taking the Bar on July 29, I started my studies for the 98 Patent Bar Exam" and, as a result, "had an even more limited opportunity to establish a reasonable contact with the PTO." Petitioner admits that it was "erroneous on my part to think . . . I could delay petition to a time that reasonably suited my circumstance." He states, however, that he "had no other reasonable recourse." This argument is unpersuasive. For example, Petitioner does not explain why he committed so much time to studying for an examination he had not yet properly applied for, including payment of the requisite fees. Petitioner also does not explain why, during his unpaid leave of absence from employment in April and early May (when he would not have

been formally studying in a bar preparation course), he could not have sent the requisite application and registration forms for the August 26, 1998 Examination to the PTO, along with a petition to waive the fees or pay the fees late. In taking such action, Petitioner would then have known whether he should expend his limited funds on the August 26, 1998 Examination fees, or the bar review course in preparation for the examination. Accordingly, Petitioner has not shown that his personal circumstances rise to the level of extraordinary circumstances which in the interest of justice requires a waiver of the deadline to pay the requisite application and registration fees.

CONCLUSION

Petitioner has not met his burden of showing that his personal circumstances rise to the level of an extraordinary situation which, in the interest of justice, requires a waiver. Accordingly, Petitioner's request for a waiver of the deadline to pay the requisite application and registration fees for the August 26, 1998 Examination is DENIED.

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Q. TODD DICKINSON
Deputy Assistant Secretary of Commerce and
Deputy Commissioner of Patents and Trademarks