

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-1061

PETER RONALD KRAMER,

Plaintiff-Appellant,

v.

Jon W. Dudas, DIRECTOR, PATENT AND TRADEMARK OFFICE,

Defendant-Appellee.

Peter Ronald Kramer, of Manchester, Connecticut, pro se

Stephen Walsh, Associate Solicitor, United States Patent and Trademark Office, of Arlington, Virginia, for defendant-appellee. With him on the brief was Joseph G. Piccolo, Associate Solicitor.

Appealed from: United States District Court for the District of Columbia

Judge Henry H. Kennedy, Jr.

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Jon W. Dudas, DIRECTOR, PATENT AND TRADEMARK OFFICE,

Defendant-Appellee.

DECIDED: July 11, 2007

Before MAYER, RADER and MOORE, Circuit Judges.

PER CURIAM.

Peter R. Kramer appeals the final judgment of the United States District Court for the District of Columbia, dismissing his complaint for failure to timely file. Kramer v. Dudas, 05-CV-01455 (D.D.C. Aug. 9, 2006). We affirm.

Because Kramer was entitled to challenge the United States Patent and Trademark Office's ("PTO") final decision under 35 U.S.C. § 32, the trial court properly construed his complaint as seeking relief under that section, and not as a petition for a writ of mandamus. With respect to the timeliness issue, the PTO's order reviewing its regrade of Kramer's patent bar registration exam issued on February 17, 2005.

However, because Kramer did not file his complaint in the district court within 30 days of the challenged PTO action, as required by D.D.C. Civ. R. 83.7, his petition was untimely. Moreover, Kramer did not exercise due diligence in pursuing his rights under section 32, and the PTO did not mislead or misinform him about the deadlines for seeking judicial review. Accordingly, the trial court correctly found that equitable tolling was unwarranted. Finally, because Kramer's complaint was untimely, his due process arguments are not properly before us.