



**Europäisches
Patentamt**

Beschwerdekammer
in Disziplinarangelegenheiten

**European
Patent Office**

Disciplinary
Board of Appeal

**Office européen
des brevets**

Chambre de recours statuant
en matière disciplinaire

Case Number: D 0019/05

D E C I S I O N
of the Disciplinary Board of Appeal
of 6 February 2007

Appellant: N.N.

Decision under appeal: Decision of the Examination Board for the
European Qualifying Examination dated
29 September 2004

Composition of the Board:

Chairman: B. Schachenmann
Members: J.-P. Seitz
C. Onn

Summary of Facts and Submissions

- I. The appellant sat the European qualifying examination for professional representatives held from 24 to 26 March 2004.
- II. By letter dated 8 October 2004 he was notified of the decision of the Examination Board that he had not been successful in the examination as his performance in the various papers had been marked as follows:

C: 40 - fail

D: 51,5 - pass

- III. Notice of appeal against this decision was filed on 17 November 2004; the appeal fee was paid on the same day.

The statement setting out the grounds for appeal was filed on 16 December 2004.

- IV. The appellant's submissions can be summarised as follows:

The EQE is governed by regulations (REE) which give candidates very little information of the kind of answers expected from them.

The only reliable sources of information in this respect are the former published "Compendiums", which include reports on each paper together with a possible model solution for each question.

Generally speaking six hours duration for examination in paper C is a very demanding time schedule, all the more so for candidates not having an official language of the EPO as a mother tongue.

The answers are examined claim by claim, whereby a candidate's answers are compared to the exhaustive model answers, including all features and arguments to which a certain amount of points are allocated. Such an approach is a too rigid and academic one. In fact it does not allow the Examiners to evaluate the answer in its entirety, although the purpose of the EQE being to test whether or not a candidate is "fit to practise as a professional representative before the EPO".

In this view, the statement in Compendium 2003 according to which "more than a formally valid opposition is required; candidates must present their best case, fully arguing all reasonable attacks..." is in contradiction with said purpose of the EQE. If a candidate gives this perfect answer he should then be awarded with 100 points; if he gives an adequate answer, i.e. which as whole would serve as a successful opposition, he should then be awarded at least 50 points.

The point behind all these comments could be summed up as follows:

If the examination's purpose is to test whether a candidate is "fit to practise the profession of a European patent attorney" (REE, R. 4), it should not be possible that an answer in paper C with all claims attacked with correct Annexes on their combination

(no wrong attacks) and all addressing the relevant passages, be granted 40 marks out of 100 possible, and graded "fail".

The appellant further went on to dispute each claim, point by point, as well as the corresponding allocation of marks.

In a communication dated 12 October 2006 the appellant was informed that the Board was nevertheless of the opinion that the appeal was to be dismissed.

- V. By letter dated 2 January 2007 the Appellant informed the Board that he did not intend to file any comment in response to the aforesaid communication.

Reasons for the Decision

1. The appeal is admissible.

2. It is in fact well-established jurisprudence of the Disciplinary Board that it only has jurisdiction in EQE matters to establish whether or not the first instance (i.e. the Examination Board) has infringed the REE or a provision implementing it. The Board cannot reconsider the examination procedure on its merits nor entertain allegations that papers have been marked incorrectly, save to the extent of mistakes which are serious and so obvious that they can be identified immediately without re-opening of the entire marking procedure [see, for example, D 1/92 (OJ 1993, 357), Reasons points 3 to 5 and D 6/92 (OJ 1993, 361), Reasons points 5 to 6 or D 9/00, Reasons point 2].

Neither is in the present case the text of the paper misleading or confusing (see D 13/02, point 4 of the reasons), nor can a mistake be identified in the so called "possible solution" on which the assessment of the appellant's answer was based (see D 6/04 of 30 August 2004, point 1 of the reasons).

Hence no violation of the REE or higher ranking law has been proven by the Appellant whose appeal must therefore be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

B. Schachenmann