



**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 0021/05

**D E C I S I O N**  
**of the Disciplinary Board of Appeal**  
**of 31 January 2006**

**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:** R. Menapace  
N. Lenz

## Summary of Facts and Submissions

- I. By letter dated 8 October 2004 the appellant was informed of the decision of the Examination Board of 29 September 2004, that he was not successful in the European Qualifying Examination "EQE" held in March 2004.
- II. The appellant's performance had been marked as follows:
- |    |    |    |    |
|----|----|----|----|
| A: | -  | B: | -  |
| C: | 46 | D: | 32 |
- III. Against this decision the appellant filed a notice of appeal on 15 November 2004 together with a payment order for the appeal fee.

In the grounds of appeal filed on 14 December 2004 he presented arguments why his answers to individual questions of Paper C should be awarded more marks than actually given by the Examination Committee, at least 50. He submitted also that a comparison between the given marking and the distribution of points as indicated in the Examiners report seems to suggest, that some pages of his answer had not been considered by the Examiners.

He argued that Articles 16 and 17 REE and Rules 3 and 4 of the Implementing Provisions had been infringed and requested that the decision of the Examination Board of 29 September 2004 be set aside and Paper C be entirely reconsidered and given a new marking.

- IV. The Presidents of the European Patent Office and of the Institute of Professional Representatives were invited by letters sent on 10 February 2005 to file observations on the matter within two months. No such observations were received.
- V. After having received the communication dated 29 July 2005 and setting out the Board's preliminary view of the appeal, the appellant informed the Registrar by phone on 12 October that he did not intend to comment on said communication or to withdraw the appeal.

### **Reasons for the Decision**

1. The Board is unable to see any objective hint which would suggest or, even less, prove that some pages of the candidate's answer have been overlooked by the (two) Examiners (which evaluated it independently from each other).
  
2. It is well established jurisprudence of the Disciplinary Board of Appeal that it only has jurisdiction in EQE matters to establish whether or not the Examination Board has infringed the Regulation on the European Qualifying Examination ("REE") or a provision implementing the REE. This follows inexorably from Article 27(1) REE which is the basis of the Board's jurisdiction in EQE matters and which reads:  
*"An appeal shall lie from decisions of the Board and the Secretariat only on grounds of infringement of this Regulation or of any provision relating to its application".*

Thus the Disciplinary Board of Appeal may review Examination Board decisions for the purposes of establishing that they do not infringe the REE, its implementing provisions or a higher-ranking law. It is not the task of the Disciplinary Board to reconsider the examination procedure on its merits nor can it entertain claims that papers have been marked incorrectly, save to the extent of mistakes which are serious and so obvious that they can be established without re-opening the entire marking procedure - see e.g. D 1/92 (OJ 1993, 357) and D 6/92 (OJ 1993, 361).

3. In the light of what has been set out under point 1, *supra*, the appellant's arguments remain based exclusively on his own view of his examination performance and it is evident that this view and the opinion of the two markers as to his answers differ. However, it follows from what has been set out under point 2, *supra*, that such differences of opinion are reflections of value judgements which are not, in principle, subject to judicial review (see D 1/92, *supra*, paragraph 6). As a consequence the requested reconsideration leading, as the appellant concludes from his analysis, to the award of more points for his paper C, is *per se* not open to the Disciplinary Board of Appeal.
4. Accordingly, the Disciplinary Board of Appeal has no alternative than to dismiss the appeal.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

B. Schachenmann