



**Europäisches
Patentamt**

Beschwerdekommer
in Disziplinarangelegenheiten

**European
Patent Office**

Disciplinary
Board of Appeal

**Office européen
des brevets**

Chambre de recours statuant
en matière disciplinaire

Case Number: D 0012/06

**D E C I S I O N
of the Disciplinary Board of Appeal
of 13 February 2007**

Appellant: N.N.

Decision under appeal: **Decision of the Examination Secretariat dated
16 August 2006**

Composition of the Board:

Chairman: P. Messerli
Members: B. Schachenmann
W. Kovac

Summary of Facts and Submissions

I. On 20 June 2006 the appellant requested enrolment for the 2007 European qualifying examination ('EQE'). In his application for enrolment the appellant indicated to have worked full time for a period of 5 years as an assistant to and under direct supervision of persons as defined in Article 10(2)(a)(ii) REE, i.e. persons who have represented their employer before the EPO pursuant to Article 133(3) EPC. According to the filed Certificates these persons were:

Ms A. and Ms B., employees of the company X. S.A., from 14 May 2001 to 1 June 2005, and
Mr C., employee of the company Y. S.L., from 27 June 2005 until today.

II. The Examination Secretariat refused the appellant's request for enrolment by a decision dated 16 August 2006 on the ground that neither Ms A. nor Ms B. nor Mr C. had a General Authorisation in accordance with Article 133(3) EPC to represent their employers in proceedings before the EPO during the relevant periods.

III. The appellant lodged an appeal against this decision. The notice of appeal and a statement of grounds of appeal were received on 14 September 2006 and the appeal fee was paid on the same date. The appellant requested that the decision under appeal be set aside and that his application for enrolment for the EQE 2007 be re-examined. In the statement of grounds of appeal the appellant referred to an annexed letter signed by Mr D., a professional representative, who confirmed that the company X. S.A. was a client of his, that he liaised with the appellant regarding all patent matters

associated with this company and that through their work together the appellant was exposed to the drafting of a number of European patent applications as well as the subsequent prosecution and grant thereof. According to the appellant's submission the required three years' period of training under the supervision of a professional representative was therefore fulfilled.

IV. The Presidents of the European Patent Office and of the Institute of Professional Representatives were invited, pursuant to Article 12 of the Regulations on discipline for professional representatives, to file observations on the matter. In a letter dated 29 December 2006 the President of the European Patent Office pointed out that the appellant's company used the service of external professional representatives for its activities pertaining to European patent applications. The appellant might have collaborated with the professional representatives in question but only within the framework of a client relationship which does not satisfy the conditions required by Article 10(2)(a)(i) REE.

V. In a communication dated 20 December 2006 the Board informed the appellant that it appeared from the facts of the case that he did not comply with any of the recognized types of professional training as specified by Article 10(2)(a) REE. In particular, his training did not meet the requirements of Article 10(2)(a)(i) REE as his professional relation to Mr D. was not that of an assistant acting full time under the supervision of a person entered on the list of professional representatives but rather that of a client occasionally cooperating with an external patent

attorney on a case-by-case basis. Moreover, it followed from the facts mentioned in point I above, that the appellant's professional training neither complied with the requirements of Article 10(2)(a)(ii) and (iii) REE since none of the persons indicated as trainers had represented their employer in proceedings before the EPO in accordance with Article 133(3) EPC.

VI. The appellant did not reply to this communication within the set time limit.

Reasons for the Decision

1. The appeal complies with the provisions of Article 27(1) and (2) REE and is therefore admissible.
2. In the statement of grounds of appeal the appellant did not contest the reasons for the decision under appeal. Instead, he requested re-examination of his application for enrolment based on new facts, i.e. his cooperation with a professional representative as confirmed by Mr D. (cf. point III, *supra*).
3. As the Board already observed in its communication a mere cooperation with an external patent attorney does not meet the requirements of Article 10(2)(a)(i) REE since it cannot be equated with a full-time training under the supervision and as an assistant of a professional representative. It should be considered in this connection that the legislator, by adopting Article 10(2)(a) REE, has decided that practical experience required for enrolment purposes has to be evaluated by type, there being no possibility in an

enrolment procedure of ascertaining the quality of training in individual cases (see decisions D 14/93, OJ EPO 1997, 561 and D 25/96, OJ EPO 1998 45). Thus, the fact that the appellant, through his work together with an external patent attorney, "was exposed to the drafting a number of European patent applications as well as the subsequent prosecution and grant thereof" is not relevant for the purposes of Article 10(2)(a) REE.

4. The appellant did not therefore satisfy the Board that he has completed a three years' training period of a type required by Article 10(2)(a) REE.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

P. Martorana

The President:

P. Messerli