



**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 0013/06

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
1 August 2006

Composition of the Board:

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

Summary of Facts and Submissions

- I. On 14 June 2006 the appellant requested enrolment for the 2007 European qualifying examination. In her application for enrolment for the European qualifying examination the appellant indicated to have worked full time for a period of 1 1/2 years under the supervision of a professional representative and for a period of 4 1/2 years in the employment of the company D. A/S and to have represented the employer in proceedings before the EPO under Article 133(3) EPC.
- II. The Examination Secretariat refused the appellant's request for enrolment by a decision dated 1 August 2006 on the ground that the 4 1/2 years in the employment of the D. A/S did not fulfil the conditions of Article 10(2)a) REE since neither the appellant herself nor the person who had signed the certificate of training or employment, Mr B., had represented D. A/S in proceedings before the EPO. Thus, the period of her professional activity as required under Article 10(2) REE was 1 year and 4 months only instead of at least three years.
- III. The appellant lodged an appeal against this decision. The notice of appeal together with the statement setting out the grounds for appeal were filed on 31 August 2006 and the appeal fee was paid on the same day. According to the appellant's submission she had worked with D. A/S Intellectual Property Department between 1 December 2000 and 1 August 2005 under the direct supervision of Mr B. who was entitled to represent D. A/S in patent matters before the EPO as followed from a filed copy of a power of attorney dated

15 August 2001. Prior to this employment she had worked for about 3 years as patent examiner at the national Patent Office. She therefore fulfilled the conditions for enrolment.

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 D. A/S used the service of external professional representatives for its activities pertaining to European patent applications. Supervision by a person who was entitled to represent D. A/S but had entrusted representation before the EPO to external representatives did not fulfil the conditions of Article 10(2)(a) REE.

V. In a communication dated 20 December 2006 the Board observed that according to the Register of European Patents more than hundred European or Euro-PCT patent applications were filed in the name of D. A/S. but that in none of these proceedings D. A/S was represented by one of its employees in accordance with Article 133(3) EPC. Instead, the company was always represented by external professional representatives. Thus, it appeared that the appellant did not comply with any of the recognized types of professional training during the relevant 4 1/2 years. In particular, the appellant's training did not fall under the type specified in Article 10(2)(a)(i) REE because her relation to the external professional representatives was not that of an assistant acting full time under the

supervision of these persons but that of a client cooperating with external patent attorney firms on a case-by-case basis. Moreover, her professional training did not comply with one of the types of training specified in Article 10(2)(a)(ii) and (iii) REE, since neither she nor Mr B. had represented D. A/S in proceedings before the EPO in accordance with Article 133(3) EPC. The fact that Mr B. was entitled to do so was not as such sufficient under Article 10(2)(a)(ii) or (iii) REE.

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. As the Board 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. On the other hand, the requirements of Article 10(2)(a)(ii) or (iii) REE are not met since neither the appellant nor her trainer Mr B. had represented D. A/S in proceedings before the EPO in accordance with Article 133(3) EPC.
3. It should be considered in this connection that the legislator, by adopting Article 10(2)(a) REE, has decided that practical experience is to be recognized

for enrolment purposes only if acquired as part of an activity, undertaken on the candidate's own responsibility, in proceedings before the EPO (see D 25/96, OJ EPO 1998, 45, point 3.3.1). The required experience has to be evaluated by type so that there is no possibility in an enrolment procedure of ascertaining the quality of the training in individual cases. Given this "evaluation by type" approach, it is not possible to examine whether the appellant's activities at D. A/S Intellectual Property Department or at the national Patent Office provided suitable preparation for the examination (see D 25/96, point 3.3.2).

4. The appellant did not therefore satisfy the Board that she 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:

The President:

P. Martorana

P. Messerli