



**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 0001/08

D E C I S I O N
of the Disciplinary Board of Appeal
of 14 May 2008

Appellant: n.n.

Decision under appeal: Decision of the Examination Secretariat dated
28 November 2007

Composition of the Board:

Chairman: J.-P. Seitz
Members: B. Günzel
T. L. Johnson

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examination Secretariat for the European Qualifying Examination (EQE) of 28 November 2007 refusing the appellant's application for enrolment for the EQE 2008.
- II. The decision is based on the ground that the application was received only on 21 November 2007 and thus after the closing date for enrolment for the European Qualifying Examination (EQE) 2008 which was 21 September 2007.
- III. On 11 December 2007 the appellant appealed the decision. The appeal fee was paid on the same date. The statement setting out the grounds of appeal was filed on 18 December 2007.
- IV. On 27 December 2007 the Examination Secretariat decided not to rectify its decision and forwarded the appeal to the Disciplinary Board of Appeal.
- V. By letters dated 3 January 2008 both the President of the European Patent Office and the President of the Council of the Institute of Professional Representatives (epi) were invited to file observations within a period of one month if they wished to do so.

The President of the European Patent Office did not file any comments. The President of the epi commented that the files showed that the notification of the result of the EQE 2007 was received by the appellant's employers by 20 August 2007. There was no evidence from the appellant that he did not go to his office between

20 August 2007 and the deadline for enrolment. Even if the appellant did not go into the office in the relevant time period there was no evidence that he made arrangements for his results to be passed on to him during his absence. The appellant should have known approximately when the results were due and should have made arrangements to ensure that he received the results as soon as they were received at his work.

VI. By a communication dated 8 February 2008 the Board drew the appellant's attention to the fact that according to the examination file the letter of the Examination Board dated 13 August 2007 informing him that he had not been successful in the EQE 2007 and also containing the indication highlighted in bold that enrolment for next year must be received by the EPO on 21 September 2007 at the latest was notified to him by registered letter with advice of delivery under the address of his employer X1. Also, no legal reasons had been given by the appellant as to why the Examination Secretariat would be entitled or even obliged to accept the application filed and received two months after the closing date.

VII. The submissions of the appellant, as filed in the statement setting out the grounds of appeal, in a reply to the comments of the President of the epi addressed by the appellant to the President of the epi and in a reply to the Board's communication of 8 February 2008, can be summarised as follows:

- (a) In the statement setting out the grounds of appeal the appellant submitted that he had missed the deadline for enrolment because the communication notifying him of the exam success (sic) of the

March 2007 EQE and also notifying him of the deadline for applying for the March 2008 examinations had been sent to his old address in X2. He and his family had however moved into a new address on 1 August 2007. In the second half of November he and his family returned for the first time to their home address in X2. The reason for that return was that he could prepare to attend the CEIPI Paper A revision course in Strasbourg and for his wife to go back to work after her maternity leave.

As means of evidence for the fact that on 1 August 2007 he had moved to X3 the appellant submitted a copy of the rental agreement and a letter by the head of the European Patent Department of X1 confirming that the appellant had moved from X2 to X3 on 1 August 2007 and possibly may not have received the letter of the Examination Secretariat until after the deadline for applying had expired.

- (b) In reply to the communication of the Board and the comments of the President of the epi the appellant submitted that the signature on the receipt stamp for the notification of the Examination Secretariat was not his. X1's Postal Services had automatically forwarded the letter to his home address in X2.

VIII. The appellant requested:

- (a) permission to sit Paper A of the European Qualifying Examination in March 2008,

- (b) that the Board notifies the Examination Board to refund the exam application fee.

Reasons for the Decision

1. The appellant's initial submission was that the notification by the Examination Secretariat of the Examinations Board's decision that he had not been successful in the EQE 2007 had been sent by the Examination Secretariat to his home address. After having been confronted with the evidence on file that the said notification was directed to the appellant's business address at X1's and with the comments of the President of epi the appellant changed his submission to that X1's Postal Services had not passed the letter on to him at his office but had directly forwarded the letter to his home address.

However, no evidence at all has been offered for this new submission. Certainly, it cannot be ruled out entirely that such a thing might have happened, but *a priori* it is rather unlikely that postal services in a firm do not bring a letter addressed to an employee of the firm to his attention but forward it directly to the private address of the employee concerned. This applies all the more if it is a letter which, like the one concerned here, can easily be identified as an official and a possibly important and urgent one by the form of its notification.

On the other hand, on the basis of the appellant's submission, after having noticed that he had already missed the time limit by two months when returning home

to X2 in the second half of November, it must have been clear to the appellant that if he wanted to rely on an erroneous forwarding of the letter to his home address by X1's postal service, some kind of proof to establish at least a minimum of plausibility of this new submission would be required, such as would e.g. be derivable from any corresponding indications contained on the envelope.

Moreover, the appellant has submitted that when he returned home that was in order to prepare for a CEIPI Paper A revision course in Strasbourg. This means that when returning home he knew already that he had been unsuccessful in Paper A and had to resit it.

As the submissions of the appellant concerning why he missed the deadline for enrolment are implausible and have not been corroborated by any evidence the Board fails to see how the appellant's application for enrolment could have been accepted by the Examination Secretariat. Furthermore, the appellant has also not given any explanation on what legal basis or for which legal grounds the Examination Secretariat would be entitled to accept an application for enrolment having been late filed to such an extent.

2. Article 20 REE provides for the publication of a notice of the examination specifying *inter alia* the date by which the applications for enrolment must be filed. This appears to express the legislators intent to afford a stringent nature to the deadline for enrolment. Setting a closing date for enrolment which is binding for the candidate is both justified and necessary in view of the legitimate purpose and overwhelming

importance of ensuring timely and orderly preparation of the EQE in the interest of all the many yearly candidates. Moreover, it is the Examination Secretariat's duty to handle applications for enrolment of all candidates in a uniform manner. Both principles would be completely undermined if applications late filed by two months with no valid excuse at all were to be accepted.

3. The appellant has requested that the Disciplinary Board of Appeal notifies the Examination Board of the need to refund the examination fee. The Board however holds such a decision by the present Board to be unnecessary, because once these appeal proceedings are terminated, the examination fee will be refunded automatically (see the decision under appeal).
4. The appeal being dismissed there is no legal basis for refunding the appeal fee (Article 27(4) REE), which refund has also not been requested by the appellant.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

J.-P. Seitz