



Case Number: D 0002/10

D E C I S I O N
of the Disciplinary Board of Appeal
of 3 November 2011

Appellant: N.N.

Decision under appeal: Decision of the Disciplinary Committee of the
Institute of Professional Representatives
before the European Patent Office dated
30 June 2010

Composition of the Board:

Chairman: P. Messerli
Members: I. Beckedorf
B. Schachenmann
E.J. Christiansen
P.H. Gendraud

Summary of Facts and Submissions

- I. The appeal was filed by the President of the Institute of Professional Representatives before the European Patent Office (epi) (hereinafter: the Appellant) against the decision of the epi Disciplinary Committee (DC) of 30 June 2010.
- II. According to the facts established by the DC, two patent attorneys with the Swedish patent law firm (P C AB) were concerned with the European patent application that led to a complaint under the Regulation on discipline for professional representatives of 21 October 1977 (RDR, OJ EPO 1978, 91; amended on 14 December 2007 OJ EPO 2008, 14). Only one of them (Mr C, hereinafter: the Defendant) was registered in the list of professional representatives maintained by the European Patent Office (EPO), whereas the other one (Mr G) was solely a Swedish patent attorney.

In re European application no. 97 952 162.2 (hereinafter: main application), filed by the predecessor (G AB, hereinafter: the applicant) of the complainant (G C AB), the Defendant officially represented the applicant before the EPO by signing all official documents sent via the patent law firm to the EPO until eventually a corresponding European patent no. 0 964 700 had been granted. However, within that law firm Mr G was internally handling the prosecution of said main application and preparing the official documents sent to the EPO. It was also Mr G alone who communicated directly with the applicant and who received the instructions from the applicant.

While the main application was still pending, Mr G received with letter of 19 May 2003 from the applicant the instruction to file a European divisional patent application (hereinafter: divisional application) to protect certain subject-matter not claimed in the main application. He made a corresponding notice in the internal file of the main application, but failed to register corresponding internal terms in the surveillance system of P C AB. Further, he forgot to get said divisional application filed in due time.

Mr G noticed this mistake first after the publication of the mention of the grant of the European patent no. 0 964 700 on 12 May 2004. At this point in time it was too late to file a divisional application. He informed the applicant about his oversight with letter dated 7 June 2004. A request as to Article 122 EPC 1973 filed on 14 April 2005 to have the right to file a divisional application re-established was eventually refused on 19 March 2006.

III. The complainant filed a complaint to epi dated 24 March 2009 on 2 April 2009. In that complaint it referred to an earlier complaint of 21 February 2008 that "owing to a misunderstanding of the procedure from our [i.e. the complainant's] side the Disciplinary Committee considered ... to be withdrawn."

The complaint (case number CD 3/09) was forwarded to the chairman and the secretary of the DC on the same day by the registrar of the DC.

IV. With letters of 9 September 2009 the Appellant and the President of the EPO were invited to comment on the

complaint, and the members of the DC chamber nominated by its chairman were informed of the complaint.

V. The proceedings before the DC concerned two complaints, first the failure to file a divisional application in due time (part 1) and, second, the subsequent denial of compensation for damages (part 2).

VI. The DC ordered that

1. the complaint, part 1, be dismissed as obviously being inadmissible in relation to P C AB and Mr G,
2. the complaint, part 1, be admissible in relation to the Defendant but be dismissed to this end as obviously not being substantiated,
3. the complaint, part 2, be dismissed as obviously being inadmissible in relation to all concerned,
4. the disciplinary proceedings CD 3/09 be closed.

VII. Said decision was sent *inter alia* to the Appellant with letter of 6 July 2010 who filed a notice of appeal with letter of 12 August 2010 on 13 August 2010.

VIII. The Appellant requested the Disciplinary Board of Appeal

to revoke the decision to its full extent.

Oral proceedings were requested as an auxiliary measure.

IX. In the statement of grounds of appeal, submitted with letter of 15 September 2010 on 16 September 2010, the Appellant agreed that the complaints against P C AB and Mr G must fail for the reasons given by the DC. However,

the failure to file a divisional application would be at least partly attributable to the Defendant who, as a European Patent Attorney, would have been responsible to deal with all matters before the EPO concerning the main application, i.e. including the (instructed, but unfiled) divisional application deriving from that application. He could not escape responsibility by delegating the client contact to a patent attorney not qualified as a European professional representative, i.e. Mr G. Since it was the Defendant handling the main application officially by signing all the correspondence to the EPO concerning that application he was responsible for any person he assigned to prepare papers in this respect. The Defendant should have known about the client's request to file a divisional application and should have acted accordingly, and if he did not then he was in breach of his duty, and potentially negligent, to not know of a client's direct instruction.

X. The Defendant was notified of the appeal and the statement of grounds of appeal by letter of 20 December 2010 from the Appellant (Article 7(2) of the Additional Rules of Procedure of the Disciplinary Board of Appeal of the European Patent Office (RPDBA, OJ EPO 1980, 188, amended on 25 October 2007 OJ EPO 2007, 548)), but has not submitted any reply.

XI. With a communication by the rapporteur of the Disciplinary Board of Appeal dated 16 May 2011 and sent by facsimile and post on that day, the DC was invited to submit copies of the complete files concerning the two complaints filed by the complainant against P C AB with date of 21 February 2008 and 24 March 2009, but

did not react. Copies of said communication were sent to the Appellant and the Defendant on 18 May 2011 by post.

- XII. With a further communication dated 1 September 2011, the Disciplinary Board of Appeal informed both the Appellant and the Defendant that according to its preliminary examination and assessment the appeal appeared to be admissible but not allowable because it seemed that the period of limitation set out in Article 26(1) RDR had lapsed before relevant procedural steps were taken in the first instance proceedings.

Concerning the start of the period of limitation, the Board noted that the (last) date of failure to comply with the client's instruction to file a divisional application was the date of publication and mention of the grant of the main patent application, i.e. 12 May 2004. Nonetheless, one could consider "extending" said date until the applicant had been informed of the fact that its instruction to file a European divisional patent application had not been observed, i.e until 17 June 2004 at the latest.

However, the Board observed that the period of limitation of five years appeared to have ended before any procedural step according to Article 26(2) RDR was taken. The first relevant procedural act against the Defendant was taken only on 9 September 2009 when the complaint was forwarded by external letters to the President of the epi and the President of the EPO.

XIII. In its reply the Appellant agreed with the Board's opinion in respect of the date when the period of limitation started.

However, the Appellant submitted that that period had been interrupted in due time. According to Article 26(2) RDR "any" procedural step taken by the disciplinary body, i.e. the DC itself or the epi Secretariat acting on instructions from the DC, would trigger an interruption of the period of limitation.

Referring to the Board's observation, that the period of limitation could only be interrupted by procedural steps either taken directly in respect of the professional representative concerned or somehow noticeable to third parties, the Appellant put forward that, first, there might be situations in which the representative concerned was not informed about proceedings at all, and, second, that proceedings before the DC were so confidential that third parties should not be aware of it. Since Article 26(2) RDR did not require an additional condition to be satisfied, the action of a complaint being filed and processed by the DC and epi secretariat was sufficient to trigger an interruption. The principle behind Article 26 RDR was that (only) if no one filed a complaint within five years, then, in effect, the error or failure to comply by the representative would be deemed insignificant. Any other more restrictive interpretation of Article 26 RDR would allow delay by one of the parties to result in the period of limitation expiring, e.g. tactically by trying and frustrating the aim of the DC to reach a decision.

Thus, the period of limitation was interrupted by the filing of the complaint on 2 April 2009.

Even if the filing of the complaint of 2 April 2009 did not constitute an interruption, the Appellant stated that the period of limitation was already interrupted by the earlier complaint filed on 21 February 2008 (CD 1/08). It appeared that the Board had a copy of that earlier complaint and of the letter from the epi registrar to both the chairman and the secretaries of the DC. In any event, on 7 March 2008 the registrar of the epi had sent a communication to the chairman and secretary of the DC allocating the complaint to the DC chamber. This was the equivalent letter to the one that was sent on 9 September 2009 in CD 3/09 which appeared to have been considered as sufficient for interrupting the period of limitation by the Board.

XIV. The Defendant has not submitted any remarks to either of the Board's communications.

Reasons

1. Admissibility

The appeal is admissible according to Articles 8, 21(2), 22(1) and 24(1) RDR and Article 6 RPDBA.

2. Substance of the appeal and request

The appeal is only directed against the decision of the DC as far as the dismissal of the matter concerns the Defendant. The DC denied any responsibility of the

Defendant for the professional failure committed by the Swedish patent attorney Mr G in not filing a divisional application to the European patent application no. 97 952 162.2.

The decision of the DC with regard to Mr G, the P C AB, and the later denial of compensation for damages were not contested by the Appellant in its statement of grounds of appeal and, thus, not subject of the appeal proceedings.

The request is further limited to the revocation of the contested decision of the DC without suggesting a specific disciplinary measure. By this, the Appellant leaves it to the discretion of the Disciplinary Board of Appeal to choose the appropriate disciplinary measure (Article 4(1) RDR) once the responsibility of the professional representative concerned has been established.

3. **Legal basis**

3.1 **Regulation on discipline for professional representatives**

Article 1 RDR General professional obligations

(1) A professional representative shall exercise his profession conscientiously and in a manner appropriate to its dignity. In particular, he shall not knowingly make any false or misleading statement.

(2) A professional representative shall conduct himself in such a manner as not to prejudice the necessary confidence in his profession.

Article 26 RDR Period of limitation

(1) Proceedings in respect of a failure to comply with professional obligations shall be barred after a period of five years. The period of limitation shall begin on the date of such failure.

(2) The period of limitation shall be interrupted by any procedural step taken in respect of such failure by a disciplinary body or one of its members against the professional representative concerned.

Each interruption shall cause the period of limitation to begin again.

3.2 Additional Rules of Procedure of the Disciplinary Committee of the Institute of Professional Representatives before the European Patent Office (RPDC, OJ EPO 1980, 177, amended in OJ EPO 2007, 552)

Article 7(4), (5) RPDC Complaints

(4) The Registrar shall:

a) register each complaint together with the date of receipt;

b) immediately send copies of the complaint to the Chairman and the Secretary of the Disciplinary Committee, to the President of the Council of the Institute and the President of the European Patent Office;

c) notify the Chairman of the Disciplinary Board of the European Patent Office of the receipt of a complaint and of the date of receipt.

(5) The Chairman of the Disciplinary Committee shall without delay nominate a Chamber and assign the complaint to that Chamber.

Article 8(1) RPDC *Procedure following receipt
of a Complaint*

Unless a complaint is summarily dismissed on the ground mentioned in Article 18 hereof, the Chamber concerned shall, without delay, send a copy of the complaint, together with a reference to where these Rules of Procedure are published, to the professional representative concerned, who shall be given a period of two months after receipt by him of the copy of the complaint to present a written defence, which shall be addressed to the rapporteur.

Article 18 RPDC *Procedure following summary
dismissal of a Complaint*

If a complaint is summarily dismissed by a Chamber on the ground that it clearly discloses no facts upon which an allegation of breach of the Rules of Professional Conduct could be made against the professional representative concerned so that it is, therefore, not necessary to call upon him to present a defence, then:

- a) the complainant shall be informed accordingly by letter;
- b) the persons mentioned in Article 7, paragraph 4 hereof shall be sent copies of the said letter and of the decision;
- c) the professional representative concerned shall be sent a copy of the said letter, a copy of the complaint and a copy of the decision.

4. **Relevant standard for the imposition of disciplinary measures**

The appeal would be allowable if the professional representative concerned had failed to comply with his professional obligations according to Article 1 RDR and if the proceedings in respect of this failure were not barred due to the period of limitation according to Article 26(1) RDR.

According to decision D 5/86 (OJ 1989, 210) an infringement of the rules of professional conduct must be established to the satisfaction of the disciplinary body before it can impose a disciplinary measure. Absolute certainty is not required, but a degree of probability which in human experience verges on certainty. A disciplinary measure cannot be imposed if there is reasonable doubt as to whether the infringement has occurred (*cf.* Case Law of the Boards of Appeal, 6th edition 2010, p. 942 *et seq.*).

5. **Non-compliance with the standards of professional conduct**

The issue of the current appeal is whether or not the Defendant as a European professional representative and member of epi bears any responsibility for the failure of Mr G to file a divisional patent application as it was requested by the applicant.

According to the facts established by the DC the Defendant acted as the only European professional representative for the applicant, but the handling of the case within the P C AB was assigned to Mr G.

Although it is neither uncommon nor prohibited under the RDR and the epi Code of Conduct (OJ EPO 2003, 523) for a professional representative to engage and even delegate some of his tasks to a person not qualified as a European professional representative or not even qualified as a patent attorney on the national level, this does not mean that a European professional representative could relieve himself of his professional duties *vis-à-vis* his clients and epi.

Since Mr G was not a qualified European professional representative and thus could not act *vis-à-vis* the EPO, the Defendant retained at least part of the mandate entrusted to him by the applicant. In relation to the EPO, i.e. for any official acts, in particular filing applications and procedural requests, the Defendant was the only responsible European patent attorney and Mr G, regardless of his qualification as Swedish Patent Attorney, acted as his assistant. As a result, the Defendant remained ultimately responsible for the case *vis-à-vis* the applicant as the only European professional representative. His continuing responsibility necessitated some degree of supervision over the acting Swedish patent attorney Mr G.

It could be open to discussion whether the Defendant indeed acted in accordance with his supervising duties by restricting his contribution to the (main) patent application to merely signing all official documents prepared solely by Mr G without any further involvement in the internal management of the prosecution of the patent application. However, this issue does not need to be discussed in detail because the Defendant's alleged failure to comply with his professional duties

can no longer be a subject of disciplinary proceedings for formal reasons.

6. **Period of limitation**

6.1 Article 26(1) RDR provides for a period of limitation of five years beginning on the date of the failure to comply with professional obligations. The alleged failure in question, to supervise Mr G in the handling of the main application, was not punctual and isolated but rather of a continuous nature. However, it culminated in the failure to file a European divisional patent application in due time. The filing would have been possible until the grant of the main patent application of which the professional representative concerned was notified by the EPO with letter of 1 April 2004, published in the European Patent Bulletin 04/20 of 12 May 2004. This date marks the (last) date of the alleged failure.

However, one could consider "extending" said failure until the applicant had been informed of the fact that its instruction to file a European divisional patent application had not been observed. This was done by Mr G with letter of 7 June 2004. Since the failure to file a European divisional application in due time was remediless - it was, in particular, not open for a request for re-establishment of rights (the respective request dated 14 April 2005 was finally rejected as inadmissible by the Receiving Section with its decision of 8 March 2006, application no. 05008230.4) -, the failure was "completed" at the latest on the date of receipt of the letter sent by Mr G to the applicant, i.e. a couple of days after 7 June 2004. Assuming that

the delivery of said letter took no longer than ten days, the period of limitation ended on 17 June 2009.

After that date any proceedings are barred in respect of the alleged failure by the Defendant to supervise Mr G who was not a qualified European professional representative but who, nevertheless, was assigned to handle the main application and failed to observe the applicant's instruction to file a divisional application in due time.

6.2 According to Article 26(2) RDR the period of limitation shall be interrupted by any procedural step taken in respect of such failure by a disciplinary body or one of its members against the professional representative concerned. Each interruption shall cause the period of limitation to begin again.

6.2.1 The Appellant is right in that Article 26 RDR as well as any other provision in the RDR does not give an explicit definition of what is meant by the legal term "any procedural step".

However, according to the constant practice of the Disciplinary Board of Appeal, the interpretation of a provision that contains undefined legal terms follows the basic rules of interpretation:

- a) the literal meaning of the provision and its legal terms (semantic interpretation) as a starting point as well as the limit of any interpretation,
- b) the meaning of the provision and its legal terms within its legal context (systematic interpretation),
- c) the objective purpose of the provision and its legal terms (teleological interpretation) taking into

consideration all the interests involved, and, if necessary

d) intentions of the historic legislator (historical interpretation).

6.2.2 Applying this methodical approach the Board finds that already the wording of Article 26(2) RDR gives a first indication as to what kind of procedural step is needed to effect an interruption.

Article 26(2) RDR provides that the period of limitation shall be interrupted by any procedural step taken in respect of such failure by a disciplinary body or one of its members against the professional representative concerned.

It follows from this wording already that not any and every procedural step taken suffices for triggering an interruption but only a (specific) procedural step taken against the professional representative concerned. This means that only a procedural step directed against the professional representative concerned can be qualified as being of an interrupting nature. In other words, mere internal procedural steps to administer disciplinary proceedings are excluded from the wording of Article 26(2) RDR.

6.2.3 In addition, taking into consideration the context of Article 26 RDR one needs to look at other provisions with regard to disciplinary proceedings. In this context, Articles 7(4) and (5), 8(1) and 18 RPDC are of particular significance.

These articles describe the first relevant procedural steps to be taken by the DC after a complaint has been filed. Once the internal administration of a new complaint has been completed by the registrar (Article 7(4) RPDC) and once the members of the DC chamber have been nominated (Article 7(5) RPDC), the DC chamber summarily assesses the case as to whether it discloses facts upon which an allegation of breach of the Rules of Professional Conduct could be made against the professional representative concerned. If the chamber cannot establish sufficient facts in that respect, it dismisses the complaint and informs the professional representative of its decision (Article 18 lit. c) RPDC). If, on the other hand, the chamber can establish sufficient facts, it then informs the professional representative concerned of the complaint and invites him to submit his defence (Article 8(1) RPDC). Article 7(4) lit. b) RPDC clearly provides for copies of any new complaint being forwarded to the President of epi and the President of the EPO. Likewise, according to Article 7(4) lit. c) RPDC the Chairman of the Disciplinary Board of the EPO needs to be notified of the complaint.

It follows from these provisions that, contrary to what the Appellant submitted, the proceedings of the DC are not - and must not be - secret or confidential in a sense that the professional representative concerned might not necessarily be contacted by the DC (cf. Articles 8(1) and 18 lit. c) RPDC) and that third parties to the proceedings (like the President of epi and the President of the EPO) are not made aware of the fact that a complaint has been filed (Articles 7(4) lit. b) and 18 lit. b) RPDC).

As a consequence, the disciplinary proceedings involve both internal procedural arrangements (e.g. registration of each new complaint together with the date of receipt, notifying the chairman of the DC of the receipt of a complaint and of the date of receipt, nomination of the members of the DC chamber) and external procedural steps (e.g. notifying the President of epi and the President of the EPO, informing the professional representative concerned of the complaint), only the latter being either taken directly *vis-à-vis* the professional representative concerned or somehow noticeable to third parties. Mere internal procedural arrangements, e.g. internal letters or preparatory acts of the DC, do not cause an interruption of the period of limitation.

Thus, the legal term "procedural step taken against the professional representative concerned" within the meaning of Article 26(2) RDR is to be interpreted as being distinct from any internal procedural arrangement.

6.2.4 Further, bearing in mind that the nature of disciplinary proceedings and its potential consequences (cf. Article 4(1) RDR) are similar to criminal proceedings the legal term needs to be construed in a restrictive way.

The purpose of a period of limitation is to restrict the possibility of "punishment" for a failure to comply with the rules of professional conduct committed a long time ago. Such an "ancient" infringement of rules

should not give rise to disciplinary proceedings for reasons of legal certainty.

Thus and like in criminal procedural law, the main reason for a period of limitation is to find a balance between the interest of the injured party on the one hand and the interest of the alleged offender on the other hand demanding the former to quickly bring his charges so that the proceedings can commence and allowing the latter to get on with his life and not have legal battles from his past come up unexpectedly.

6.2.5 As a consequence, the period of limitation can only be interrupted by procedural steps that are either taken directly *vis-à-vis* the professional representative concerned or that are somehow noticeable to third parties. Mere internal procedural arrangements, e.g. internal letters or preparatory acts of the DC, do not cause an interruption of the period of limitation.

6.2.6 Furthermore, this interpretation of Article 26 RDR and the Board's opinion concerning what kind of procedural steps is suitable for causing an interruption of the period of limitation is consistent with the respective legal concepts in Contracting States of the EPC, particularly in Germany and France.

§ 78c(1) German Criminal Code ("Strafgesetzbuch") contains a list of procedural measures leading to an interruption of the period of limitation. All these provide for either a direct involvement of the accused or a formal decision taken by a judge or public prosecutor. This (high) standard applies in principle to periods of limitations for regulatory offences

according to § 33(1) German Regulatory Offences Act ("Gesetz über Ordnungswidrigkeiten") and for disciplinary proceedings against lawyers pursuant to § 115(1) German Federal Lawyers' Act ("Bundesrechtsanwaltsordnung").

A similar concept is known in the French law (cf. Article 7 Code de procédure pénale), according to which only an official investigation or prosecution step might trigger an interruption of the period of limitation.

6.3 According to the facts as presented in the file, the complaint was (finally) received by the registrar of the epi DC on 2 April 2009. However, concerning the subsequent proceedings before the DC the facts available to the Disciplinary Board of Appeal show only that the complaint was forwarded to the chairman and the secretary of the DC by *internal letter* on the same day and by *external letter* to the President of the epi and the EPO as well as to the members of the chamber on 9 September 2009.

The letter of 2 April 2009, as a mere internal action and like other internal arrangement (e.g. registration of the notice of complaint in the database, allocation of a case etc.), could not and did not interrupt the period of limitation according to Article 26(2) RDR.

The external letter of 9 September 2009, however, came too late to interrupt the period of limitation that, by then, had already expired.

By communication of 16 May 2011 issued by the rapporteur of the Disciplinary Board of Appeal, the secretariat of the DC was invited to submit a copy of the complete file of the DC in case CD 3/09 with documents and information about what the DC, its chairman, rapporteur, secretary and/or registrar initiated, prepared, inquired or decided between 2 April 2009 and 9 September 2009. However, no reply and no copy of the file were submitted.

The Appellant's remark that there would be no evidence of receipt of this communication at the secretariat and the office of the DC chairman is inexplicable for the Board because the communication had been sent by facsimile with a confirming transmission report and by post, and the rapporteur had called the epi office and was told that no reply to the communication would be sent. Apart from this, the communication was sent by the Board's registrar by e-mail on 20 September 2011 upon a respective request from the Appellant and its receipt was confirmed by the Appellant by e-mail on 22 September 2011, but the Appellant's letter of 6 October 2011 contained nothing pertaining to the Board's request.

With no further information available, the Disciplinary Board of Appeal has to take its decision according to the state of the file as submitted at the beginning of the proceedings before the Board with the additional submissions by the Appellant in these proceedings. This information shows that the DC only took internal procedural arrangements before 9 September 2009 when, for the first time but too late for triggering an

interruption of the period of limitation, letters according to Article 7(4) lit. b) RPDC were sent.

- 6.4 The Appellant referred in its letter of 6 October 2011 to an earlier complaint against the Defendant, filed on 21 February 2008 (case CD 1/08). This complaint was referred to in the (new) complaint dated 2 April 2009. However, there the complainant noted that the earlier complaint would have been considered withdrawn by the DC. No further information as to its content and, in particular, as to the proceedings in respect of that earlier complaint is on file.

Contrary to the assumption by the Appellant, the Disciplinary Board of Appeal has no copy of the earlier complaint nor does it have the letter from the epi registrar to both the chairman and secretaries of the DC. Again, regardless of the rapporteur's communication of 16 May 2011, the secretariat of the DC submitted no additional information in this respect.

In respect of the Appellant's submission that the filing of that earlier complaint on 21 February 2008 led to an interruption of the period of limitation pursuant to Article 26(2) RDR, the Board refers to the preceding paragraphs. The mere receipt of the complaint and its registration according to Article 7(4) lit. a) RPDC could not constitute an interruption.

The same is true with regard to any letter sent by the registrar on 7 March 2008 to the chairman and secretary of the DC allocating the complaint to the DC chamber (Article 7(4) lit. b), 1st part RPDC). Such a letter was also of a purely internal nature and not comparable to

an official notification sent to the President of epi and the President of the EPO according to Article 7(4) lit. b), 2nd part RPDC or to a notification of the Chairman of the Disciplinary Board of the EPO according to Article 7(4) lit. c) RPDC).

- 6.5 The Board has no explanation why the proceedings before the DC were delayed and, in particular, why the registrar did not follow the procedural steps foreseen in Article 7(4) RPDC immediately upon receiving the complaint on 2 April 2009 that would have included procedural steps being taken against the Defendant noticeable to third parties, i.e. the President of the epi and the President of the EPO, and that would have interrupted the period of limitation.

Further, the Board cannot understand why the file of the DC in this case, a copy of which was submitted to the Board, does not contain any information or documents about when and how the procedure pursuant to Articles 8 and 18 RPDC was followed.

- 6.6 Since there is no other cause or reason apparent for an interruption of the period of limitation according to Article 26(2) RDR the fragmentary facts submitted by the Appellant and the DC on file show that the period of limitation clearly ended long before a procedural step according to Article 26(2) RDR was taken that might have led to an interruption of the period of limitation.

7. **Request for oral proceedings**

The Appellant's auxiliary request for oral proceedings is rejected.

As already mentioned in the Board's Communication of 1 September 2011, the Appellant is not mentioned in Article 13(1) RDR among those who may request oral proceedings, and the Board did not, *ex officio*, consider this to be expedient.

8. For the reasons set out above, the appeal is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

P. Messerli