



Case Number: D 0016/16

D E C I S I O N
of the Disciplinary Board of Appeal
of 28 February 2017

Appellant: N.N.

Decision under appeal: Decision of the Examination Secretariat dated 14 July 2016 refusing the application for enrolment for the pre-examination of the EQE 2017.

Composition of the Board:

Chairman: E. Dufrasne
Members: I. Beckedorf
H. G. Hallybone

Summary of Facts and Submissions

- I. With the decision dated 14 July 2016 the Examination Secretariat (Secretariat) refused the appellant's application for enrolment for the pre-examination of the European qualifying examination (pre-EQE) 2017.
- II. In her application the appellant had filed *inter alia*
- a certified copy of her graduation certificate of a "Bachelor of Science in Chemical and Biological Engineering" degree issued by the Seoul National University, Republic of Korea,
 - a list of the courses followed and the corresponding credit points and an explanation of the curriculum,
 - a certificate on the evaluation of the appellant's qualifications issued by the Secretariat of the Standing Conference of the Ministers of Education and Cultural Affairs of the "Länder" in the Federal Republic of Germany ("KMK"),
 - two certificates of training or employment,
 - a certified copy of her "Certificate of Patent Attorney" issued by the Korean Intellectual Property Office.
- III. In the decision under appeal the Secretariat held that the appellant did not fulfil the required qualification according to Article 11(1)(a) Regulation on the EQE (REE, Supplementary publication 2 OJ EPO 2014, 2) and Rule 11(2) Implementing provisions to the REE (IPREE, Supplementary publication 2 OJ EPO 2014, 18) because the technical/scientific proportion of subjects of the appellant's degree amounting to only 65.4% did not meet the requirements of Rule 11(2) IPREE. The appellant could

not be considered to possess an equivalent level of scientific and/or technical knowledge pursuant to Rule 14 IPREE in conjunction with Article 11(2)(a) and (7) REE because her work experience in Korea could not be taken into account and her work experience in Germany of less than three years was insufficient.

- IV. The appellant lodged an appeal against that decision in the prescribed form and within the prescribed time limit.
- V. In the statement setting out the grounds of appeal the appellant essentially submitted that the Secretariat had failed to take into account two additional subjects of her studies, thus raising the total credits to 91 related to scientific and/or technical subjects. Moreover, she submitted two declarations concerning her work experience in Germany. Even though these subjects and credits corresponded to a technical/scientific proportion of only 70% of her degree (91 of 130), the appellant argued that she had an equivalent level of scientific and technical knowledge to that defined in Rule 11(2) IPREE because of her work experience in Korea (five years) and in Germany (since March 2014).
- VI. The Secretariat did not allow the appeal and remitted it to the Board.
- VII. By communication dated 14 December 2016, the Board expressed its rather negative preliminary opinion in respect of the appeal.
- VIII. In the reply to this communication, the appellant submitted that due to a discrepancy between the calculations based on course hours and the calculation

based on credits her relevant total credit points amounted to 101 instead 91 corresponding to a technical/scientific proportion of 78% of her degree (101 of 130). Since 78% were almost 80% as required by Rule 11(2) IPREE, her degree was to be considered as being equivalent to the required qualification.

- IX. The appellant essentially requested that the decision under appeal be set aside and that her application for enrolment for the pre-EQE 2017 be allowed.
- X. By letters from the Board of 5 October 2016, the President of the EPO and the President of the Institute of Professional Representatives (epi) were invited, pursuant to Article 24(4) REE and Article 12 of the Regulation on discipline for professional representatives (RDR, OJ EPO 1978, 91; OJ EPO 2008, 14; Supplementary publication 1 OJ EPO 2017, 127), to comment on the case. Neither President replied.

Reasons for the decision

The appeal is admissible according to Article 24 REE but not allowable.

Procedural Aspects

1. The decision is taken in the written proceedings because, in the absence of a request by the appellant for oral proceedings, the Board does not consider oral proceedings to be expedient. The appellant's letters contain a detailed and comprehensive substantiation of her case and

the appellant was made aware of the Board's preliminary opinion.

Allowability of the appeal

2. Decisions in EQE matters are subject only to limited judicial review.

In accordance with the consistent case law of the Disciplinary Board of Appeal (DBA), in particular D 1/92, (OJ EPO 1993, 357) and D 6/92 (OJ EPO 1993, 361), such decisions of the Examination Board and the Examination Secretariat may in principle only be reviewed for the purposes of establishing that they do not infringe the REE, the provisions relating to its application or higher-ranking law. The DBA may only consider reviewing such a decision if an appellant candidate can show that the contested decision was based on a serious and obvious mistake.

Thus, the decisive issue to be examined in the case at hand is therefore whether the decision under appeal infringed the REE, any provision relating to its application or higher ranking law.

3. To qualify for registration and enrolment, a candidate must normally possess a university level scientific or technical qualification, *i.e.* a bachelor's degree or equivalent academic degree awarded at the end of a full-time course of a minimum of three years, with at least 80% of the course hours taken to obtain this degree having been devoted to scientific and/or technical subjects (Article 11(1)(a) REE, Rules 11 and 12 IPREE). The qualifying subjects include biology, biochemistry,

construction technology, electricity, electronics, information technology, mathematics, mechanics, medicine, pharmacology and physics (Rule 13 IPREE).

4. In this respect the Board observes that the appellant's entire case is essentially built upon the argument that the requirements of Rules 11(2) and 12 IPREE are to be considered as having been fulfilled although she did not achieve the required proportion of scientific and/or technical subjects. The appellant explicitly admitted that according to her calculations her scientific and technical education did not fulfil Rule 11(2) IPREE concerning the required 80% scientific and technical content, but "at least 78% ..., almost 80%".
5. However, the requirements set out in Rules 11 to 13 IPREE are to be applied strictly when establishing if a candidate's degree can be considered as having been devoted mostly to science and/or technical (cf. D 13/14 of 1 December 2015, not published in OJ EPO). As held in D 9/14 (30 January 2015, Reasons point 6, not published in OJ EPO) and in D 9/13 (21 May 2014, Reasons point 9) the Board sees no possibility to ignore or deviate from those requirements, other than the exception pursuant to Rule 14 IPREE.
6. Thus, there is no room to qualify even in the potentially most favourable approach a proportion of "at least 78%" of scientific and/or technical subjects as equivalent to "at least 80%" as required by Rule 11(2) IPREE. Since it is not established that the proportion of scientific and/or technical subjects of the appellant's degree amounts to at least 80%, her scientific and technical education clearly does not fulfil Rule 11(2) IPREE, so

that her degree cannot be recognised as a university-level scientific or technical qualification for the purposes of Article 11(1)(a), first sentence, REE.

7. Concerning the exception pursuant to Rule 14 IPREE in conjunction with Rule 15 IPREE, the Board stated in its preliminary opinion:

"Notwithstanding the potential value of the appellant's scientific and technical experience in general and the fact that it is factually impossible for the Secretariat and the Board to examine the appellant's claimed activities and general knowledge, it is evident that the appellant falls well short of meeting the requirement of at least nine years' experience in the activities defined in Rule 14 IPREE in conjunction with Article 11(2)(a) and (7) REE. In particular, the experience acquired in Korea does not comply with the requirements of Rule 14 IPREE together with Rule 15 IPREE and cannot be taken into consideration (cf. D 9/14 of 30 January 2015, point 22 of the Reasons)."

8. The Board observes that the appellant in her reply to the Board's communication did not object to aforementioned considerations.
9. The Board, having carefully re-examined the appellant's submissions and the totality of the facts of the appellant's case, maintains its preliminary opinion and finds that the appellant did not establish that her experience with European patent applications and patents would be comparable to the experience of an assistant or employee in the sense of Article 11(2)(a) and 7 REE over a period of at least nine years. For this reason, her

professional experience achieved in Korea cannot be recognised under Rules 14 and 15 IPREE.

10. It follows from this that the appellant cannot be considered to possess an equivalent level of scientific or technical knowledge pursuant to Article 11(1)(a) REE.
11. As a consequence of the aforementioned considerations, the Board finds that the Secretariat in its decision under appeal did not infringe the applicable provisions of REE or IPREE, or of any higher ranking law. Therefore, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

E. Dufrasne