



Beschwerdekammer in Disziplinarangelegenheiten

Disciplinary Board of Appeal

Chambre de recours statuant en matière disciplinaire

Boards of Appeal of the
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Case Number: D 0019/21

D E C I S I O N
of the Disciplinary Board of Appeal
of 21 February 2022

Appellant: N.N.

Decision under appeal: Decision of the Examination Board dated
21 June 2021 concerning the Paper B part of the
European Qualifying Examination 2021

Composition of the Board:

Chairman: W. Sekretaruk
Members: T. Bokor
P. H. Gendraud

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examination Board posted on 21 June 2021 to award the appellant's answer paper the grade FAIL to her Paper B part of the examination of the European qualifying examination 2021 (hereinafter "Paper B 2021") in accordance with Rule 6(3)(b) of the Implementing provisions to the Regulation on the European qualifying examination (IPREE, OJ EPO 2019, Supplementary publication 2, 18) because her answer paper had been awarded 38 marks.
- II. By letter dated 19 July 2021, received on 20 July 2021 in the EPO, the appellant filed a notice of appeal including a statement setting out the grounds for appeal. The appeal fee was paid on 20 July 2021.
- III. The appellant contested the marking of her paper and the conditions of the examination in general, and raised several complaints in this respect.
- IV. The Examination Secretariat remitted the appeal to the Disciplinary Board of Appeal on 10 August 2021, stating that the Examination Board had decided not to rectify its decision.
- V. The President of the Council of the epi and the President of the European Patent Office (EPO) were given the opportunity to comment pursuant to Article 12 of the Regulation on discipline for professional representatives (RDR, OJ EPO 2022, Supplementary publication 1, 147), in conjunction with Article 24(4) of the Regulation on the European qualifying examination for professional representatives (REE, OJ

EPO 2019, Supplementary publication 2, 2). No comments were received.

VI. In her appeal the appellant argued in essence that the marking of her answer paper was wrong and the examination conditions were unfair for the following reasons.

- (a) The examination paper was erroneous. This constituted an obvious and serious mistake, and also caused unequal treatment. There had been a mark-up error in the examination paper. This error meant that an instruction of the client was easily overlooked, namely the addition of the feature "by spraying water on said refuse". Leaving out this feature was penalised by the marking scheme. Discovering the error was made difficult under the conditions of the online examination. This error was not present in the French version. Thus candidates taking the paper in either German or English were not treated equally.
- (b) The marking was unfair because correct solution elements by the candidate remained unrewarded. She made expected amendments, for which she received no marks, due to the fact that one single wrong amendment, such as the "housefly eggs", caused 0 marks being awarded to claim 5 and the corresponding amendment arguments. This was unfair double penalty. The same applied to her error of not amending "worms" to the expected "earthworms", being penalised twice in her claims corresponding to the expected independent claim 5 and claim 6 of the Examiner's Report.
- (c) Her answers on the third party observation issue were incorrectly marked, given that her answer largely corresponded to the expected model answer.

The marking of the "housefly eggs" amendment was based on technically and legally incorrect premise, and thus a serious and obvious error was made.

- VII. The appellant requested that the decision under appeal be set aside and that her answer paper be awarded a PASS or at least a COMPENSABLE FAIL grade. She also requested oral proceedings and the reimbursement of the appeal fee.
- VIII. The Board informed the appellant in a communication dated 17 February 2022 that the Board was minded to allow the appeal and to remit for re-marking on the basis of the arguments as set out in points VI(a) and VI(b) above, but the other arguments as set out in point VI(c) above were unlikely to succeed. These would appear to require a complete re-examination of the Paper B and as such would appear to be beyond the competence of the Disciplinary Board of Appeal.
- IX. With letter dated 17 February 2022 the appellant stated that she consented to the withdrawal of those arguments that were identified by the Board as apparently not allowable, and requested remittal of the case.
- X. For the details of the examination paper in dispute, reference is made to the published examination paper and the corresponding Examiner's Report, available on the website of the European Patent Office at [https://documents.epo.org/projects/babylon/eponot.nsf/0/3003815DE4A96079C125868E00487577/\\$File/B_2021_en.pdf](https://documents.epo.org/projects/babylon/eponot.nsf/0/3003815DE4A96079C125868E00487577/$File/B_2021_en.pdf) and [https://documents.epo.org/projects/babylon/eponot.nsf/0/7043D0BB750F0825C12586F8002C8336/\\$FILE/Compendium_ExRep_2021_B_EN.pdf](https://documents.epo.org/projects/babylon/eponot.nsf/0/7043D0BB750F0825C12586F8002C8336/$FILE/Compendium_ExRep_2021_B_EN.pdf) at the time of writing.

Reasons for the Decision

1. The appeal is admissible.
2. The decision can be taken in written proceedings. The appellant requested oral proceedings on an auxiliary basis, i.e. in the event that her request for the awarding of a PASS or a COMPENSABLE FAIL grade was not granted. With her letter dated 17 February she consented to the remittal of the case for re-marking also without the holding of oral proceedings. As her request for remittal can be granted for the reasons given below, it was not necessary to hold oral proceedings.
3. The appellant requested that the contested decision be set aside. She alleged unequal treatment and obvious and serious errors in the conduct of the examination, and also in the marking of her answer paper, alleging unfair marking.
4. In accordance with Article 24(1) REE and the consistent case law of the Disciplinary Board of Appeal (hereinafter "the DBA"), which followed decision D 1/92 (OJ EPO 1993, 357), decisions of the Examination Board 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. It is not the function of the DBA to reconsider the entire examination procedure on the merits. This is because the Examination Committees and the Examination Board have some latitude in their evaluation which is subject to only limited judicial review by the DBA. Only if the appellant can show that the contested decision is based on serious and obvious

mistakes can the DBA take this into account. The alleged mistake must be so obvious that it can be established without reopening the entire marking procedure. This is for instance the case if an examiner is found to have based his evaluation on a technically or legally incorrect premise upon which the contested decision rests (D 2/14). Another example of an obvious mistake would be a question whose wording is ambiguous or incomprehensible (D 13/02). All other claims to the effect that the papers have been marked incorrectly are not the responsibility of the DBA. Value judgments are not, in principle, subject to judicial review (see e.g. D 1/92, *supra*, points 3 to 5 of the Reasons).

Erroneous paper and unequal treatment

5. It is settled case law of the DBA that equal treatment of candidates is an issue which may be the subject of appeals under Article 24(1) REE (see the recent decision D 0008/21, point 10.2 of the Reasons and the cases cited). The principle of equal treatment requires that candidates should take part in the examination under equal conditions. Thus it follows from this principle of equal treatment that unequal conditions which may cause unjustified disadvantages for candidates should be compensated, to the extent feasible. It is an undisputed fact that there had been a mark-up error in the examination paper. This is apparent when comparing the English and French versions of the Paper B 2021, page 24 (for the French version see [https://documents.epo.org/projects/babylon/eponot.nsf/0/3003815DE4A96079C125868E00487577/\\$File/B_2021_fr.pdf](https://documents.epo.org/projects/babylon/eponot.nsf/0/3003815DE4A96079C125868E00487577/$File/B_2021_fr.pdf)). The amended claim 5 as suggested by the client contains an amendment as compared with the originally filed claims. The client inserted the feature "by spraying water on said refuse", among other

amendments made. All amendments made by the client were highlighted with bold, except this amendment. The error meant that an instruction of the client was easily overlooked, namely the addition of the feature "by spraying water on said refuse". While it may not be quite clear from the Examiner's Report how the leaving out this feature may have been penalised exactly by the marking scheme, it is clear that the feature was an expected feature (point 3.2 of the Examiner's Report), so it is safe to assume that marks were deducted if the feature was missing.

6. The Board finds the appellant's arguments plausible that this error was difficult to discover under the circumstances of the online examination, and even if discovered, the candidates were faced with a confusing set of facts. They had to speculate if the error to mark the amendment in bold was part of the difficulty of the examination, or rather it was an error in the sense that this was not an amendment wished by the client. Other explanations for the error may also have appeared plausible.

7. On this basis, the Board accepts that this difference between the French and the English version may have had a significant impact on the answer paper of a candidate, and in this manner candidates writing the French and English versions had to write the Paper B 2021 under different conditions. The Board considers that these different conditions amount to an unequal treatment of the candidates. Such unequal treatment deserves some form of compensation, but such is not apparent from the Examiner's Report or the marking of the candidate. In this regard the Board refers to decision D 0008/21, points 10.1 to 10.3 and point 12.1 of the Reasons. The Board explicitly endorses these

reasons of D 0008/21 and agrees with the conclusion stated in point 12.1 that the unequal treatment must be compensated.

Request that the answer paper be re-marked

8. The Board holds that the case must be remitted for new marking by the Examination Board, taking into account the difference that exists between the papers (as held also by D 0008/21, point 10.4 of the Reasons). This was also the last request of the appellant. First of all, marking of papers is in principle beyond the competence of the DBA, as explained above in point 4. Remitting the case back for determining the possible compensation also permits the Examination Board to apply similar principles for similar situations, and it is known to the Board that a number of similar appeal cases address the same issue.
9. The appellant provided extensive arguments why her Paper B should inevitably be awarded more marks, at least sufficient for her paper to be awarded the grade COMPENSABLE FAIL. She also gave detailed arguments how the error influenced her answer paper and how much marks she has lost as a consequence.
10. The Board cannot comment on these arguments individually, already for the reasons given above in point 8 above. These arguments can be taken into account by the Examination Board or the Examination Committee appointed under Article 6(5), second sentence, REE, if it deems fit. However, in the opinion of the Board, the appellant cannot expect to be awarded marks on the basis of her hypothetical solutions, even if her arguments explaining the amount of the potentially lost marks may appear perfectly plausible

in light of her answer paper. It appears practically impossible to establish what her solutions would have been without the error of the paper. It is not realistic to expect that the re-marking should involve the speculation about possible solutions based on an analysis of her answer paper. In itself it may not be unreasonable to expect that the compensation should be tailored to the disadvantage that the candidate suffered, but there are obvious practical limits to the individualisation of the compensation in a case as the present one. Here an individualised compensation may not be realistic at all.

11. Concerning the argument that the erroneous paper represented an obvious and serious error in view of the cited D 0006/13 and the case law, because the Examination Board did not fulfil its implied obligation to prepare correct examination papers, this need not be decided by the Board separately. It can be accepted that the English Paper B was erroneous, and that the French version was considered to be the correct one. The disadvantage caused thereby is not additional to the disadvantage that was recognised in the form of an unequal treatment, as set out in points 5 to 7 above. Compensating the unequal treatment will also compensate the disadvantage caused by the erroneous paper.

Unfair marking

12. In spite of the general lack of competence of the DBA for examining details of the marking, as explained above in point 3, in exceptional cases the DBA recognised that unfair marking may constitute an obvious and serious mistake. Decisions D 0016/17 and D 0013/17 made it clear that double penalisation (Doppelbestrafung), namely where a false response may

have an effect on other parts of the examination paper and thereby may lead to a further loss of marks for the same error, cannot be considered to fulfil the requirements for a fair marking as developed in the case law (point 3.7.1 of the Reasons in both decisions, concerning the marking of Paper A). These principles were further developed by decision D 0011/19, which held that separate deductions for erroneous claim amendments and additionally for the corresponding arguments by a candidate in support of such erroneous amendments do not necessarily mean an unfair double penalty. Under the circumstances such additional deductions may well be justified, given that the expected arguments give the candidate an opportunity to review its own assessment concerning the admissibility of an amendment, for example for the purposes of Article 123(2) EPC (D 0011/19, points 7.2.1 of the Reasons, in the context of Paper B). One of the main arguments of the appellant concerns the lack of marking for her allegedly correct amendment, in that she deleted the "lower compartment", as expected in the Examiner's Report (point 3.1, 2nd paragraph). However, due to the marking scheme, this correct amendment did not attract any marks, neither for the claim, nor for the amendments arguments. This was so because due to other erroneous amendments, such as the "housefly eggs" amendment, claims and amendment arguments attracted no marks, irrespective of other amendments. In the opinion of the appellant, this constituted "double penalty", which was deemed unfair in the case law, e.g. by decision D 0013/17.

Correct solution elements remain unrewarded

13. The appellant submitted that her paper contained an element of the expected amendments that were foreseen

by the Examiner's Report, and which did not attract any marks because of the total loss caused by the "housefly eggs" penalties. The Board considers that such a result is almost an inevitable consequence of a marking scheme where deductions can be made for various reasons. Candidates cannot expect that they will be awarded the full marks for certain partial solutions under any circumstances, even if these are doubtless correct on their own. According to Rule 24 IPREE, in the Paper B part of the EQE candidates are expected to respond to all points raised in the official communication and to provide amended claims that meet the requirements of the EPC, i.e. **all** requirements of the EPC. Thus answering Paper B cannot be reduced to the simple exercise of collecting marks for certain solution elements that are derivable from the Examiner's Report. It is also required that the totality of the claims and the corresponding arguments constitute a complete and in itself consistent solution.

Potential effects of the "housefly eggs" amendment

14. In the Paper B 2021, candidates were expected to prepare a claim set comprising three independent claims, namely a device claim directed at a waste composting container, a method claim directed at a method of producing a fertilizer from composted waste with the help of a composting container, and a further method claim in the form of a computer-implemented calculation method for use in a composting process. The client's letter (Rule 24(2) IPREE) expressed the wish of the client to replace the term worms/earthworms with "earthworms (8) and/or housefly eggs (8a)".
15. According to the Examiner's Report, accepting these suggested amendments of the client - in the following

the "housefly eggs" amendment - was an error. If a candidate kept these amendments, various deductions resulted. The potential deductions caused by the amendment could affect the marks for the claims and the amendment arguments as well (points 3 and 5.2 of the Examiner's report). All claims, except Claim 1 could lose all marks, and all marks for amendment arguments could be also be lost. In this manner Claim 1 could lose 4 marks on the "housefly eggs" amendment while Claim 5 could lose 9 marks.

Double penalty was not excluded by the marking scheme

16. The Examiner's Report does not call the attention of the Examiners to the problem of double penalty (unlike the Examiner's Report for Paper B 2019), and even less is there any explicit instruction to avoid it. The fact that all marks - 9 - are lost for the "housefly eggs" amendment in Claim 5, as opposed to only 4 marks in Claim 1 does not seem to lead to the conclusion that the mentioning of the "housefly eggs" deduction in Claim 5 is in fact a mere reminder of the previous deduction for this feature as specified for Claim 1. On the contrary, it suggests that both of these deductions must be made, independent from the other. The same conclusion seems to hold when comparing the potential deductions for the amendment arguments for claims 1 and 5. Thus the Board recognises that double penalty was not excluded by the marking scheme. At least the same error in Claim 1 and Claim 5 could be penalised, although the error - the inadmissible "housefly eggs" amendment under Article 123(2) EPC - was effectively the same. This error was also made by the appellant both in Claim 1 and Claim 5, so that the double penalty also affected her answer paper. The Board holds that

the paper deserves a re-marking in view of this double penalty.

Double penalty in respect of Claim 6

17. The appellant argued that also Claim 6 was affected by double penalty. There she repeated the earlier error made in Claim 5, namely the omission of replacing worms with earthworms. She claimed that this was derivable from the marks awarded to Claim 5 and Claim 6.
18. The Examiner's Report indeed foresees the deduction of 2 marks for this error in Claim 5 (Point 3.2, 2nd paragraph). On the other hand, there is no explicit instructions for this error in Claim 6, because this claim already was limited to earthworms in the form as suggested by the client. However, it can be presumed that some deduction still had to be made on the basis of the general instructions given in Point 4. of the Report which stated the following: "Where an independent claim differs from that of the expected solution and results in a claim which is regarded to be inappropriate for protecting the client's invention, marks are deducted". On the basis of these instructions, the deduction of 2 marks could be expected for changing the earthworms into worms. The appellant also argued that this did happen, and therefore she was only awarded 3 marks for her claim corresponding to the expected independent claim 6.
19. The Board is not convinced that the deduction of marks for both claim 5 and 6 for the worm/earthworm amendments is a clear-cut case of double penalty. As mentioned, the client did not suggest to amend Claim 6, which in the originally filed form contained only the term "earthworms", but not "worms". On the other hand,

the originally filed independent method claim 4, (corresponding to the expected amended claim 5) mentioned "worms" instead of "earthworms". Thus the (foreseen) error in Claim 5 was the **omission of the** (expected) **amendment** from "worms" to "earthworms", while in Claim 6 the (not foreseen) error was the (not expected) **amendment** from "earthworms" to "worms". The Board finds it questionable if these two errors could be considered to be the same error. For the benefit of the appellant, the Board accepts that the paper left open the possibility that the non-consistent terminology was a consciously designed error of the paper, e.g. an oversight by the client which had to be corrected, using consistent terminology in all claims. In this manner it is possible to regard the two errors to be the same error. If this is so, making deductions for this error both in claim 5 and 6 could be objectionable.

20. According to the submissions of the appellant, a number of deductions had to apply to her claim 5, effectively surpassing the maximum possible 9 marks. However, if the marking had not made double penalties possible, than the second deduction for the "housefly eggs" in claim 5 may not had been effective. This in turn would mean that the deductions for the worms/earthworms amendments in both claims 5 and 6 would effectively play a part in the finally awarded marks for her claims corresponding to the example claims 5 and 6 of the Examiner's Report. Thus the Board considers that the deductions for her claim 6 also deserve a review with the purpose of excluding a possible double penalty.

Double penalty for claim amendments and amendment arguments

21. The appellant also submitted that deductions for claim amendments (point 3 in the Examiner's Report) and corresponding amendment arguments (Point 5.2 in the Examiner's Report) also constituted unfair double penalty. In this respect the Board refers to decision D 0009/11, point 7.2.1 of the Reasons, where it was held that separate deductions for claims and corresponding arguments is not necessarily a double penalty and as such not necessarily unfair. The Board agrees with these conclusions of D 0009/11, and sees no double penalty in the fact that deductions were made both for erroneous claim amendments and the corresponding amendment arguments.

Double penalty and unrewarded solution elements

22. As explained above, the Board cannot exclude that the marking of the appellant's paper contained elements of double penalty. The Board accepts that this fact, in combination with the particularity of the marking scheme that all marks for a claim and corresponding arguments may be lost by a single error may be perceived as unfair. In the Paper B inadmissible amendments violating Article 123(2) EPC, such as the mentioned "housefly eggs" amendment, could lead to the loss of all marks. The Board notes that the loss of all marks for certain errors, such as lacking novelty of a claim, was already a known feature of earlier EQE papers (e.g. this was the case for the Paper B 2019). On the other hand, leaving a claim not novel and adding erroneously subject-matter may not be fully comparable errors. Novelty of a claim can normally be achieved with various features, perhaps not necessarily with those that were foreseen by the Examiner's Report. A feature adding subject-matter often cannot be compensated by other amendments, as in the present

case. In this light, lacking novelty can possibly be considered as a more serious error, given that it can be easier to avoid, depending on the circumstances.

23. The perception of an unfair marking is apparently caused by the possibility of the loss of all marks for a given problem set, such as the amendments and corresponding arguments for a given claim. In the opinion of the Board, the main cause of this perceived unfairness is primarily not due to the loss of the marks themselves, but rather due to the fact that this can lead to situations where candidates performing clearly differently are awarded the same marks for their papers. For example, in the framework of the Paper B 2021 this would be the case where apart from the "housefly eggs" error, one candidate would provide correct added-matter arguments on other, admissible amendments for a claim, while the other candidate would provide no or only erroneous amendments and corresponding arguments. It may be argued that this is the inevitable consequence of another feature of the marking scheme, namely that for certain problem sets the marks could not be negative, irrespective of the total of the potential deductions for the various erroneous solution elements. This also explains why the appellant perceives that she ought have been awarded marks for her correct amendment, the removal of the lower compartment.

24. The Board agrees that some proportionality of the penalties, i.e. the deductions can be expected in the marking scheme. That proportionality of the awarded marks is a recognised principle of the marking scheme is also apparent from the Examiner's Report, point 1.8, 2nd paragraph: *"...the number of available marks corresponds to the difficulties of each challenge or*

the complexity of the expected amendment. In other words, more difficult challenges were awarded more marks than easier challenges.". This would seem to dictate some degree of proportionality also in the determination of the applicable deductions. The Board has doubts that the need for proportionality is properly observed in the present marking scheme, in view of the significant potential loss for the amendments, in particular the "housefly eggs" amendment, combined with the fact that the corresponding deductions could completely offset correct solution elements. On the other hand, the Board observes that even with a more proportional marking scheme the appellant may not necessarily achieve more marks for her claim amendments. As derivable from her tabular summary of the presumed deductions, these surpassed significantly the number of foreseen marks for the expected amendments. Under such circumstances correct amendments will not necessarily result in the awarding of marks. This is perfectly compatible with the expected proportionality of the marking scheme.

25. In view of these details of the marking the Board cannot come to the conclusion that the marking of the appellant's answer paper can be considered as fair in all respects. On the other hand, the Board also cannot immediately establish that the low number of marks awarded to the appellant indeed resulted from the double penalties and the unfair marking, as argued by the appellant. As it is well known and also apparent from point 3 of the Examiner's Report for the Paper B 2021, deductions could be attributed to a number of factors, and not only for lack of support for the purposes of Article 123(2) EPC. The same applies to the argued "worms/earthworms" amendment. Thus retroactively identifying the deductions effected in the appellant's

answer paper and specifically selecting those that could have been affected in an unfair manner does not appear realistic, if possible at all. Apart from the question if any reasonable result can be expected from this exercise, this would require the Board to scrutinize the totality of the Paper B (including the Examiner's Report) and the answer paper of the appellant, and effectively to perform a complete marking of her answer paper. As explained above in point 3, such an exercise is beyond the competence of the DBA.

26. The Board can establish directly from the appealed decision that the appellant obtained 3/3 marks for her independent claims by the respective markers, 2/2 marks for the dependent claims and 4/4 marks for her amendments arguments. A cursory review of her claims confirm that the argued deductions are plausible, and also that the argued correct solution element is also present in her answer paper. In view of these details the Board finds it plausible that the total marks awarded were decisively influenced by the marking of the "housefly eggs" and "worms/earthworms" amendments, without directly accepting the argued amount of the marks possibly lost. Given that a possible unfair marking could not be excluded by Board, the Board finds, giving the appellant the benefit of the doubt, that the appeal is well founded and allowable with respect to the possible double penalty. This means that the contested decision is to be set aside according to Article 24(4), second sentence, REE. The Board holds that a new evaluation of the appellant's answer paper is justified.

Request for re-marking and award of grade

27. As stated in point 8. above, the answer paper deserves re-marking already for the compensation of the unequal treatment. Apart from that, the re-marking in view of the double penalty would also fall on the competent Examination Committee. This follows from the settled case law of the DBA (see e.g. decisions D 0024/17, point 15 of the Reasons, D 0013/17 and D 0016/17, point 4 of the Reasons). An assessment of the appellant's whole answer paper for determining the marks to be awarded would effectively be equivalent to a review of the marking on the merits and thus would require value judgments which, according to the established jurisprudence (following D 1/92, OJ EPO 1993, 357), falls outside the competence of the Board, as already stated above in points 4 and 8. This is not changed by the remaining very short time until the next Paper B examination. Therefore, the Board decides to remit the case to the Examination Board with the order to instruct the competent Examination Committee to undertake a new marking of the appellant's Paper B of the European qualifying examination 2021 under its powers pursuant to Article 6(5), last sentence, REE and to award a grade to the appellant on the basis of the re-marking. However, this does not mean that the re-marking should necessarily achieve any given number of additional marks.

28. The re-evaluation should be based on a marking scheme which is fairly proportional in the sense that it leaves some room for the discretionary awarding of marks where it appears equitable for recognising expected solutions, in particular where such expected solutions cannot be awarded the full marks for some reason. The marking scheme should either avoid multiple deductions for the same error or should only apply it in properly justified circumstances. Multiple deduction of marks

does not appear justified where it cannot be reasonably expected that the candidate recognises the error when repeating it, for example where the same amendment is introduced in the claims, or where the same arguments are provided for the same amendment made in different claims. Alternatively, the marking scheme should provide the explanation why multiple deductions of marks for the same error may be justified in view of the facts of the paper. The Board does not exclude that also the same amendment may be given a different weight, depending on the totality of the paper, in particular such details as the type of the claims amended, the effect of an amendment on other features and the disclosure serving as the possible support for the amendment in question. The Board once more emphasizes that separate deductions for claims and corresponding arguments is not necessarily a double penalty and as such not necessarily unfair. The marking is only unfair to the extent that equal errors are penalised unequally, or repeated errors are penalised repeatedly. Depending on the circumstances of the error, it may possibly result in a further - and possibly different - deduction of marks.

Reimbursement of the appeal fee

29. The appellant requested reimbursement of the appeal fee. If the Board of Appeal allows the appeal, it orders reimbursement in full or in part of the appeal fee if this is equitable in the circumstances of the case (Article 24(4), third sentence, REE). Given that the present appeal is successful, a full reimbursement of the appeal fee is equitable. Therefore, the appeal fee is to be reimbursed in full.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examination Board with the following order:
the Examination Board is instructed
 - a, to determine the applicable compensation for the answer paper of the appellant for the Paper B of the European qualifying examination 2021 in respect of the unequal treatment caused by the erroneous examination paper, and
 - b, to instruct the competent Examination Committee to perform a re-marking of the appellant's answer paper for the Paper B, also taking into account the determined compensation, and
 - c, to award a grade to the answer paper under Rule 6(3) IPREE accordingly.
3. The appeal fee is to be reimbursed in full.

The Registrar:

The Chairman:



N. Michaleczek

W. Sekretaruk

Decision electronically authenticated