



**Beschwerdekammer in Disziplinarangelegenheiten**

**Disciplinary Board of Appeal**

**Chambre de recours statuant en matière disciplinaire**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0

Case Number: D 0001/23

**D E C I S I O N**  
**of the Disciplinary Board of Appeal**  
**of 1 August 2025**

**Appellant:** The President of the Institute of Professional Representatives before the European Patent Office

**Decision under appeal:** Decision in case No. CD 04/2022 of the Disciplinary Committee of the Institute of Professional Representatives before the European Patent Office dated 18 April 2023.

**Composition of the Board:**

**Chairman:** I. Beckedorf  
**Members:** T. Bokor  
P. Guntz  
P. H. Gendraud  
J. P. Frederiksen

## **Summary of Facts and Submissions**

I. The appeal is against the decision of the Disciplinary Committee of the Institute of Professional Representatives before the European Patent Office ("Disciplinary Committee"), on case CD 04/2022, issued in writing by the appointed Chamber on 18 April 2023 and deciding on the basis of a complaint raised against two professional representatives, Mr. N.N. and the late Mr. M.M.. Mr. N.N. is now the only remaining respondent in this appeal. The appellant is the President of the Institute of Professional Representatives before the European Patent Office ("epi President").

### *Applicable law*

II. The present decision refers to various legal provisions using the following abbreviations:

- RDR: Regulation on discipline for professional representatives
- CC: Code of Conduct of the Institute of Professional Representatives before the EPO (the latter also as "epi")
- RPDC: Additional Rules of Procedure of the Disciplinary Committee of the epi,
- RPDBA: as above in point 1,
- RPBA: Rules of procedure of the Boards of Appeal (2020)

published most recently in the Supplementary publication 1, OJ EPO 2024, pages 145, 139, 156, 70 and 45, respectively.

III. In the following, the Disciplinary Board of Appeal in its five-member composition dealing with the present

appeal as composed under Article 10(1) RDR and Article 2(1) of the Business Distribution Scheme of the Disciplinary Board of Appeal 2025 (<https://www.epo.org/en/legal/official-journal/2025/01/a15.html>) will be referred to as "the Board". The Chamber of the Disciplinary Committee will be referred to as "the Chamber".

**The proceedings leading to the present appeal:**

- IV. An anonymous complaint was submitted to the epi Secretariat on 17 November 2022 by e-mail. The complaint was made in respect of the professional representatives mentioned in point I. above, both registered at that time as professional representatives with an official address in Greece. The address, telephone number and e-mail in the EPO register can be unambiguously identified as belonging to the Law Office L.L. in Athens, Greece.
- V. The complaint pointed out that the representatives had an e-mail that did not appear to be their own personal e-mail but rather a personal email of a third person, who was not a professional representative before the EPO. The professional representatives did also not appear on the website that could be linked to the e-mail. The complaint also stated that the representatives themselves were not at all active, or possibly already dead. Their names might have been used by other persons in order to give to the public the appearance of activity and in this manner to attract business, e.g. from abroad, through the use of the email in question. The complaint further stated that more relevant information was not included "for reasons of discretion and in order to avoid personal attacks,

which could have severe implications for our professional life”.

- VI. The case was dealt with by the Chamber. The Rapporteur of the Chamber contacted the person submitting the complaint through the epi Secretariat by email dated 10 January 2023 and invited this person to provide more facts in support of the complaint, as the Committee did not see itself in the position to investigate the matter of its own motion. The complainant was given a time limit of one month.
  
- VII. The complainant did not respond to the invitation of the Chamber, in spite of a further reminder.
  
- VIII. In its decision dated 18 April 2023, the Chamber summarily dismissed the complaint with the following considerations:
  
- IX. The complaint is not admissible because it lacks name, address and signature, contrary to Article 7(2) RPDC. Assuming that the representatives were dead, the Chamber cannot decide against them for lack of at least a passive legitimation. The Chamber derived it from the generally recognised principles of procedural law (Article 125 EPC) that a complaint for the purposes of the RDR must be unconditional in respect of the active and passive legitimation of the parties involved, and this latter condition was not met, given the anonymous complaint and the assumption that the professional representatives concerned might be dead. The decision also mentioned that the Chamber was to examine the facts of its own motion, and should not be restricted to the facts and evidence in the complaint.

- X. The professional representatives had not been informed about the complaint at the start of the proceedings. The decision only stated that the EPO and epi Presidents had been invited to comment, and neither had done so.
- XI. It appears that there had not been any further correspondence during the proceedings between the Chamber and other parties of the procedure, such as the EPO President and the epi President. The decision only stated that the presidents and the representatives concerned would receive a copy of the decision.
- XII. The epi President filed the grounds of appeal against the decision on 29 June 2023, and requested that the decision be set aside, based on three grounds.
- XIII. The first ground is that the complaint should have been admissible even when filed anonymously. The interest of the Institute may justify the examination of anonymous complaints, and the complaint provided sufficient indications that the interests of the Institute may have been harmed. The complainant is not a party to the proceedings, and the Chamber could conduct investigations ex officio. The RPDC is merely an implementing provision to the RDR, and as such cannot limit the powers of the Chamber, not even by adding conditions to the Chamber's fundamental task defined in Article 6(1) RDR through the application of Article 25(2) RDR.
- XIV. The second ground is based on the Chamber's error of not using its own powers to investigate. Relying only on the information provided by the complainant and dismissing the complaint with the reasons that the complainant failed to provide more information was

wrong. The Chamber's reasoning concerning the lack of legitimation was also wrong, and the Chamber had the powers to examine the conditions of registration, in a given case whether the representative concerned were still alive, if there was any suspicion to the contrary.

- XV. The third ground is based on the Chamber's error of summarily dismissing the complaint. The alleged facts, if proven true, could very well have constituted a breach of the Rules of Professional Conduct. The epi President does not set out in his appeal which specific provisions of the Rules of Professional Conduct may have been violated by the professional representatives concerned.
- XVI. The epi President requested in his appeal that the Board should remit the case to the Disciplinary Committee under Article 12 RPDBA due to fundamental deficiencies in the proceedings, and the case should be re-examined. In view of the circumstances, the appellant epi President could not be expected to specify the desired substantive outcome that should replace the outcome of the decision (D 55/21).
- XVII. The respondents had been informed about the appeal, but neither replied nor reacted to communications from the Board's Registry in any way.
- XVIII. The Board summoned to oral proceedings and issued a communication under Article 14 RPDBA on 7 May 2025, setting out its preliminary view on the various issues raised in the appeal. The Board set out reasons why the epi President's appeal seemed allowable, and indicated that a remittal of the case was to be expected if the hearing of the respondent on the issues raised in the

appeal would be unsuccessful. A time limit was given for responding to the Board's observations.

XIX. The respondent did not react to the Board's communication. In a further communication the Registry of the Board invited the respondent to inform the Board until 18 July 2025 whether he will participate in the oral proceedings. As no response came from the respondent, the Registry made phone calls to the telephone number given in the EPO register, also belonging to the Law Office L.L. The law firm's employee answering the phone confirmed to the Registry that the respondent was aware of the communications issued by the Board and the Registry. The respondent himself was not available on the phone.

XX. The EPO President did not provide comments to the appeal and also informed the Board that he would not be represented at the oral proceedings.

XXI. The oral proceedings were held by videoconference on 1 August 2025, with the participation of the epi President. The respondent neither participated nor informed the Board that he would not be present or represented.

XXII. The President of the epi requested in the oral proceedings, as main request, that the Board should remit the case to the Disciplinary Board of the EPO under Article 12 RPDBA due to fundamental deficiencies in the proceedings, and the case should be re-examined.

***Further relevant events during the appeal proceedings***

XXIII. The Rapporteur of the Board requested information from the EPO concerning the personal details of the two

representatives concerned. They were both registered on the list of professional representatives in November 1986, in their capacity as lawyers registered in Greece and as such entitled to represent under Greek law. They appeared in the letterhead of the Law Office L.L. in Athens in a letter sent to the EPO in 1997, clearly indicating their affiliation with the law firm at that time.

XXIV. The EPO database still lists the respondent with the address of the Law Office L.L. The registered e-mail is xxxx@yyy.gr.

XXV. Mr. M.M. deceased on 19 April 2024. A formal request for the deletion from the list of representatives and his death certificate had been submitted to the EPO. Mr. M.M. was thereafter deleted from the list.

## **Reasons for the Decision**

### *Admissibility*

1. The appeal was filed in time and it is reasoned. It is thus admissible as regards time limit and form as prescribed by Article 22(1) RDR.
2. The epi President did not expressly specify what other substantive outcome he expects as the result of the appeal. The appeal is not inadmissible for this reason alone. As confirmed in D 55/21, Reasons 9, it is sufficient for an admissible appeal of the epi President to indicate why the appealed decision is wrong in substance. Depending on the circumstances, it may not be necessary that the epi President specifically requests what the expected substantive outcome should be; a request for remittal on the merits

may suffice (see also D 0002/20, Reasons 24). Pursuant to Article 8(2) RDR, the professional representative concerned and the epi and EPO Presidents are entitled to appeal. The epi President correctly submits that a wrong substantive decision of a disciplinary body harms the reputation and thus the interests of the whole profession and the epi. As the representative of the epi (Article 10(1) of the Regulation on the establishment of an Institute of Professional Representatives before the European Patent Office), the epi President has an inherent duty to protect epi's interests. The epi President also provides plausible grounds why the decision of the Chamber may be wrong on the merits, so that a different outcome may be reasonably expected after a re-examination of the case.

3. In summary, the appeal is admissible.

***Allowability of the appeal***

***Summary dismissal under Article 18 RPDC, formal grounds required***

4. The Board concludes that the Chamber summarily dismissed the appeal under Article 18 RPDC. Although the Chamber did not explicitly state in its reasoning or in the order itself that the complaint was summarily dismissed under this provision, the decision as a whole does not permit any other conclusion. The decision refers to Article 18 RPDC twice and it appears that the proceedings were conducted in accordance with this article, given that the representatives concerned were not called upon to defend themselves. This seems to be an application of Articles 8(1), first phrase, RPDC in conjunction with Article 18 RPDC, as set out further below. Therefore the Board will first examine the

question whether the Chamber correctly applied this article.

5. The RDR itself does not define the summary dismissal of a complaint as an independent legal effect different from the dismissal as provided for in Article 6(2)(a) RDR. Thus, the notion of the summary dismissal is to be found in the RPDC. There, Article 18 RPDC (Procedure following summary dismissal of a complaint) provides the following: "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: [details of the procedure to be followed]" (Board's emphasis).
  
6. Thus based on its title, formally Article 18 RPDC may appear to be a procedural provision, but in fact it also defines those substantive findings of the Chamber that are required for the application of the simplified procedure foreseen under this article, namely the dispensing with the requirements of Article 8(1) RPDC (and implicitly those of Article 8(2) and (3) RPDC). Article 8 RPDC addresses the necessity to provide the representative concerned with the opportunity to comment, i.e. to respect its right to be heard. However, Article 18 RPDC is not applicable for all those situations where a complaint appears manifestly unfounded (cf. the German version of Article 18 RPDC: "offensichtlich unbegründet"), but only to some of these cases. Before a complaint can be summarily dismissed, the Chamber must establish that the complaint **clearly does not disclose any fact** that would only raise the suspicion that a breach of the Rules

occurred. The same transpires from the German and French versions of the provision: "weil keine Tatsachen angeführt worden sind, auf die der Vorwurf einer Verletzung der beruflichen Regeln gegen den betroffenen zugelassenen Vertreter gegründet werden könnte", "parce qu'il est clair qu'elle ne révèle pas de faits susceptibles de fonder une allégation de manquement aux règles de conduite professionnelle à l'encontre du mandataire agréé en cause". Thus, the primary requirement for the application of Article 18 RPDC is directed at the facts only, and not at their final legal assessment, i.e. whether the alleged facts may or may not result in a disciplinary measure. If the overall legal assessment were also expected to be considered already in the application of Article 18 RPDC, it would have been sufficient to set the condition of the manifestly unfounded complaint, without the need to specify further conditions.

7. Hence, in the Board's view, a complaint that passes the hurdle of Article 18 RPDC, in the sense that it should proceed to a more detailed examination and the involvement of the professional representative concerned, need not set out a complete and convincing case: it is sufficient if the facts presented make an allegation of a possible breach not wholly implausible, so that the facts presented may well be a result of a breach, even if further investigations may be necessary to establish whether a breach indeed occurred.
8. The Board does not see that the Chamber examined this condition of Article 18 RPDC. The decision does not contain any explicit statement in this regard. In the second paragraph under "Considerations" on page 3 it is mentioned that the complaint does not refer to any provision of the RDR or the CC, but the Chamber was

apparently aware of its obligation to examine the facts of its own motion.

9. However, no recognisable analysis is made in the decision whether the facts of the complaint, if proven, may have represented a breach of the Rules of Professional Conduct or any provision of the Code of Conduct. The decision only states that the complaint itself did not identify any breach by specific reference to the Rules or the CC. That is also not a requirement to be fulfilled by a complaint: indeed it cannot be expected that all those third parties who were likely to file a complaint, would be familiar with the formal legal background of the RDR and the CC. A professional representative is of course expected to know it, but not the clients of professional representatives, and as experience shows, such parties also regularly file complaints. Thus the Chamber must examine the facts of its own motion and also must be convinced to its own satisfaction that no potential breach has been identified, even where a complaint contains no express reference to either the RDR or to the CC.
  
10. Instead of such an expected analysis of the facts in the complaint and their potential to constitute a breach of conduct, the decision mainly deals with legal issues that have no bearing on the application of Article 18 RPDC. At most the Chamber's remark that the complainant failed to provide **additional** information can be understood as a support for a summary dismissal of the complaint (page 4, second paragraph, Board's emphasis). But even if so meant, this finding alone is also not sufficient in the present case, given that no statement has been made by the Chamber that those facts that have been provided in the complaint would fulfil

the criteria for a summary dismissal under Article 18 RPDC, as explained above in point 6.

11. On this basis, it can be established that the decision fundamentally misunderstood the formal conditions for the application of Article 18 RPDC, which effectively results in a direct procedural error. The immediately apparent procedural error is the omission of the usual procedures, such as notifying the representatives concerned under Article 8 RPDC, giving them the possibility to comment on the complaint. The Chamber's failure to establish the relevant facts ex officio, where deemed necessary, is an even more serious error, as set out further below. Thus, the epi President's argument that the proceedings were tainted with fundamental deficiencies is correct.
  
12. Even under the assumption that the Chamber implicitly examined the required conditions of Article 18 RPDC, the Board finds that none of the two apparent main reasons given in the decision can justify a summary dismissal: Formal deficiencies of the complaint, such as the lacking signature, are obviously wholly unrelated to the alleged facts, so by itself cannot demonstrate that a breach did not occur. The same applies to the argued lacking active legitimation (decision page 4, top paragraph - the Board understands this as a consequence of the lacking name and signature). Notwithstanding its irrelevance for the purposes of Article 18 RPDC, the error of the expected unconditional active legitimation of the complainant is further treated below. The legal argument of the lacking passive legitimation because of the possibly deceased representative is again not directly applicable for the purposes of Article 18 RPDC - a breach of the Rules may have occurred even if the

representative concerned has later deceased, at most the Chamber may have no longer the competence to decide on a disciplinary measure under Article 6 RDR. Furthermore, that the representatives might have already passed away was not an established fact but only speculation. In retrospect, this speculation was also unfounded in view of the facts known to the Board.

13. It is not disputed that a complaint under the RDR cannot be based on acts of others who may illegally exploit the name of a deceased representative (as long as the others are not epi members). To that extent, the complaint indeed covered hypothetical factual situations that, in themselves might have been seen as fulfilling the conditions set out in Article 18 RPDC, This is because such facts would not suggest suspicion of a potential breach of the Rules by the professional representatives concerned, but rather imply wrongdoing by others. However, the formulations of the complaint left open the possibility that the representatives were still alive, and knowingly permitted the use of their names, merely acting as a strawman for third persons themselves not being authorised to act as professional representatives before the EPO.
  
14. In summary, the reasons of the Chamber cannot support the summary dismissal, because they do not address those issues that are relevant for the application of Article 18 RPDC. Even under the assumption that the Chamber's legal arguments are to be interpreted as an assessment of the facts of the complaint for the purposes of Article 18 RPDC, the Chamber's arguments cannot convince.

***Admissibility of the anonymous complaint, power and obligation of the Disciplinary Committee to conduct inquiries ex officio***

15. The epi President's position is correct also on this point. The Chamber appears to have overstated the consequences of the unsigned complaint, even when observing that this reason is not presented as the single reason for the dismissal of the complaint. This question is closely related to the Chamber's obligations to examine the facts of the complaints of its own motion.
  
16. Firstly, the Board observes that there is no formal legal basis for the Chamber's finding of the inadmissibility of the complaint for such reasons that the Chamber relied on. Article 7(2) RPDC states the formal requirement of the name, address and signature, but without stating any legal consequence if these requirements are not fulfilled. It is only in Article 7(3) RPDC where a formal legal effect is stipulated as a consequence of not meeting a formal requirement, but that is only limited to the language used, an issue not relevant here. E contrario, it follows from Article 7(3) RPDC that any complaint received by the Registrar in writing in one of the official languages must be deemed to have been "brought to the notice of the Disciplinary Committee" within the meaning of Article 6(1) RDR and triggers its legal consequences, namely the Committee's obligation to examine the alleged breach: "The ... Committee **shall** consider ... " (Board's emphasis). This is certainly the case in the absence of any explicit provision stipulating that an unsigned complaint is inadmissible. This is in contrast to those provisions of the disciplinary legal framework that expressly foresee the

inadmissibility of a procedural step, cf.  
Article 22(2) RDR on inadmissible appeals.

17. The Board concurs with the Chamber that anonymous complaints should not be encouraged. An anonymous complaint by an epi member, if later discovered, might in itself result in disciplinary measures against the member, as a direct violation of Point 5(a) CC. That said, an examination of an anonymous complaint is still required in view of the overall purpose and legal structure of the disciplinary proceedings under the RDR.
18. Contrary to the apparent assumption of the Chamber, disciplinary proceedings are not contentious proceedings between the complainant and the representative concerned, who are more or less equal parties before an impartial body to decide their dispute. The Chamber's argument on the active and passive legitimation appears to suggest this approach.
19. The object of the disciplinary proceedings under the RDR is the individual members' obligation to observe the Rules of Professional Conduct (i.e. the provisions of Articles 1 to 3 RDR), Article 4 RDR. The primary legal interest is that of the profession, represented by the epi. Against this stands the private interest of the individual representative, not to be subjected to unnecessary constraints or to unjustified disciplinary measures and to have its personal and procedural rights respected in the proceedings. However, the positions are not equal, because epi membership is not a question of choice, in the sense of a voluntary contractual obligation or similar relationship under civil law. Membership in the epi is obligatory for professional representatives (Article 134a(2) EPC), and this

obligatory membership serves, among others, exactly the exercise of disciplinary powers over professional representatives (cf. Article 134a(1)(c) EPC, specifying the legislative powers of the Administrative Council in this respect).

20. The Board also concurs with the Chamber that generally recognised procedural principles are applicable in the disciplinary proceedings (Article 125 EPC in conjunction with Article 25(1) RDR). However, given that disciplinary proceedings are more similar to criminal or penal proceedings than civil proceedings (cf. D 19/99, Reasons 5.1, also cited in the CLBA V.C. 3.1, last paragraph), it follows from the generally recognised principles that also anonymous complaints are to be investigated, this being regularly the case with anonymous reports of crime to state authorities, typically public prosecutors. Thus, the argument of the unconditional active legitimation of the complainant cannot hold.
21. The power of the disciplinary bodies to investigate matters in relation to professional representatives is also reflected in the legal framework. The powers of the disciplinary bodies to carry out inquiries (Ermittlungen, mesures d'instruction) - i.e. to collect information also beyond those fact that are brought to its attention in a complaint - is explicitly mentioned in the RDR and in the respective rules of procedure. Article 25(1) RDR also refers generally to Article 131 EPC, making it clear that the disciplinary bodies are entitled to request information from the EPO also from non-public files (Article 131(1), last sentence, EPC in conjunction with Article 128 EPC). In the opinion of the Board, for the purposes of Article 131 EPC the role of a first instance

disciplinary body (the Disciplinary Committee of the EPO and the Disciplinary Board of the EPO) is comparable to that of a public prosecutor. The role of the Disciplinary Board of Appeal is comparable to that of a court. The Board also successfully invoked its powers under Articles 25(1) RDR and 131 EPC to obtain non-public information from the EPO regarding the representatives mentioned in the complaint, see point XXIII. above.

22. The significant powers of the disciplinary bodies to investigate matters *ex officio* is also supported by the available preparatory materials of the RDR. Articles 6, 15, and 25 RDR are essentially unchanged since the original version of the RDR, which was adopted on 21 October 1977 by the Administrative Council of the European Patent Organisation (OJ EPO 1978, 91). Specifically as regards the powers of a Chamber of the Disciplinary Committee, Article 6(2) RDR provides that it may take a decision 'after any preparatory inquiries **which it may wish to carry out**' (emphasis added by the Board), which indicates that the Chamber is given considerable autonomy in this respect. The Board has access to the relevant non-public preparatory materials, such as the explanatory notes prepared for the Administrative Council. These explanatory notes ("Commentary on the draft regulation on discipline", Annex IIIb) provide some insight, and support the position of the appellant President. With respect to Article 6 RDR, the Commentary states the following: "*The Disciplinary Committee of the Institute will have the power and responsibility of carrying out **investigations** in all cases ...*" (Board's emphasis). Also in other parts of this documents the inquiries by the disciplinary bodies are referred to as "investigations".

23. The dominant role of a disciplinary body in such investigations is also reflected in the provisions of Article 19(2) RDR, which provides that the Chairman of the disciplinary body may effectively restrict the access to the files by the representative concerned if such access would seriously risk the preparatory inquiries of the body. In the Board's view, this again demonstrates that the primary legal interest of the profession, which is the main object of the disciplinary proceedings, takes precedence over the legal interests of the professional representative (here his procedural rights in proceedings before a disciplinary body).
24. The epi President's argument in his appeal on the Chamber's obligation to examine the complaint ex officio is thus correct. Even when looking apart from the lacking legal consequence as set out above in point 16, Article 7(2) RPDC cannot override the general powers of the Disciplinary Committee derivable from Article 6(1) RDR to examine alleged breaches brought to its notice. The obligation to use this power follows from the primary legal interest to be protected, as set out above in point 19.
25. The Chamber's additional reasons for refraining from a follow-up investigation of the facts of the anonymous complaint are also not convincing. The Board concurs with the Chamber that a fellow member's reputation should not be damaged by anonymous complaints, but the protection of the members' reputation (and generally the protection of their personal rights, including their right to dignity) is already ensured by the confidential character of the disciplinary proceedings, Article 20 RDR.

***Erroneous application of Article 18 RPDC***

26. The Board also concurs with the epi President that the facts submitted in the complaint could not be subsumed under the discussed conditions of Article 18 RPDC, because they explicitly refer to such acts that may well be considered as a breach of the Rules of Professional Conduct by the representatives concerned.
27. As mentioned above in point 13., the complaint hinted at the possibility that the representatives concerned only acted as straw man. In the Board's view, this would clearly be a breach of Article 1(1) RDR. Posing as straw man is in fact equivalent to the making of misleading statement, in that clients are given the impression that their case is handled by a registered professional representative entitled to represent clients before the EPO under Article 134(1) EPC. Such conduct would also immediately go against the provisions of point 3(b) and (d) CC.
28. The Board sees no reason to doubt the epi President's assertion during the oral proceedings that such cases are on the rise and pose not just a theoretical but a very real threat to the vested interests of the profession. The epi President argued that for this reason alone, allegations that a professional representative may act as a 'straw man', thereby permitting unqualified persons to undertake representation before the EPO, must be taken seriously and must be investigated when put forward in a complaint.
29. It may be added that also the Enlarged Board of Appeal found that allowing a person who was not entitled to

act as a professional representative to carry out the functions reserved for professional representatives with the help of a straw man would be a circumvention of the law (G 4/97, Reasons 4.2.1) and as such cannot be tolerated. In this case, a circumvention of the law in this manner is not immediately apparent, since legal practitioners who are qualified to practise in a Contracting State are usually also entitled to represent clients before the EPO in the same way as undertaken by a professional representative (Article 134(8) EPC). There is no reason to assume that the lawyers of the Law Office L.L. would not be entitled to represent clients before EPO. However, given the lack of information regarding the respondent's professional relationship with the law firm, and more broadly the firm's activities in the field of European patents, in particular the professional qualifications of its employees entrusted with patent work, it cannot be definitively ruled out that the law has been circumvented or that this was intended.

***Other procedural issues***

30. The Chamber invited the complainant to provide more information. In the invitation the Chamber stated that the facts raised in the complaint cannot be investigated by the Institute and in the absence of clear facts and evidence the Chamber will decide on the file as it stands. Apart from the fact that the statement regarding the Chamber's lack of power to investigate the alleged facts was incorrect, no mention was made of the lack of a name and signature and its possible consequences. Even if the complainant is not a party to the proceedings, it is questionable whether the Chamber's procedure was carried out in good faith

towards the complainant. Even if the Chamber did not wish to launch an excessive investigation in the absence of a plausible breach of the Rules, it would at least have seemed logical and reasonable to point out the perceived formal deficiencies also towards the complainant, if these were considered by the Chamber to be decisive in dismissing the complaint without further investigation. The principle that the Disciplinary Committee should assist complainants with the formalities of a complaint when necessary is also expressed in Article 7(1) RPDC.

***Request for remittal***

31. As set out above, the summary dismissal of the appeal under Article 18 RPDC could be seen as a fundamental deficiency within the meaning of Article 12 RPDBA and would dictate a remission for this reason alone. However, this question need not be decided. The Board sees no possibility of deciding the matter differently, even without formally establishing such a fundamental deficiency. Instead of remitting the case, the Board could only make a substantive decision on the merits if it were in the position to establish that the facts before it proved a breach of the Rules of Professional Conduct, or alternatively, that no such breach had occurred and therefore the appeal could be dismissed.
  
32. The Board's own inquiries under Article 15 RDR and Article 5(2) RPDBA did not bring up any additional facts that could have convincingly proven to the Board's satisfaction that the merely hypothetical allegations of misconduct by the respondent professional representative were wholly unfounded. On the contrary, the failure of the professional representative to appear before the Board and in

particular his failure to respond to clear instructions from a disciplinary body under the RDR, in the present case the invitation to inform the Disciplinary Board of Appeal of his presence or absence in the oral proceedings (see point XIX. above), rather cast doubt as to whether the respondent has any real intention to personally act as a professional representative.

33. However, as already set out in the preliminary opinion, on the basis of the facts presently before the Board, a breach of the Rules of Professional conduct has not been convincingly proven either. The failure of the respondent to present the relevant facts to the Board is in itself no convincing proof of any breach of the Rules, in particular no proof that the representative is indeed acting as a straw man. In short, the Board has no basis for deciding on a disciplinary measure under Article 4 RDR.
  
34. In the Board's view, the facts of the case demonstrate that more detailed investigations are required before the complaint can be dismissed, or possibly a disciplinary measure against the respondent may be decided. The Board considers that such further investigations must be conducted by a first-instance body, in the present case the Disciplinary Board of the European Patent Office instead of the Disciplinary Committee. As already set out in the preliminary opinion, a remittal to the Disciplinary Committee does not seem possible, in view of the expiration of the 9 months period under Article 6(3) RDR (D 1/18, Reasons 16 to 23., D 55/21, Reasons 33 and 34.). This was also agreed to by the epi President in the oral proceedings.

## Order

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the Disciplinary Board of the EPO for decision.

The Registrar:

The Chairman:



N. Michaleczek

I. Beckedorf

Decision electronically authenticated