



Beschwerdekammer in Disziplinarangelegenheiten

Disciplinary Board of Appeal

Chambre de recours statuant en matière disciplinaire

Boards of Appeal of the
European Patent Office
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Case Number: D 0006/25

D E C I S I O N
of the Disciplinary Board of Appeal
of 27 February 2026

Appellant: N.N.

Decision under appeal: **Decision of the Examination Board dated
8 July 2025 concerning the European Qualifying
Examination 2025.**

Composition of the Board:

Chairman: I. Beckedorf

Members: A. Jimenez

S. Arkan

Summary of Facts and Submissions

- I. The present appeal is against the decision of the Examination Board, notified by letter dated 8 July 2025, that the appellant did not pass the European qualifying examination (EQE) 2025.
- II. The present decision refers to the following legal provisions:
- REE: Regulation on the European qualifying examination for professional representatives, in the version as adopted on 13 December 2018 (see Article 27 REE 2024)
 - IPREE: Implementing provisions to the Regulation on the European qualifying examination for professional representatives, in the version as adopted on 13 December 2018 (see Article 29 IPREE 2024).
 - RDR: Regulation on discipline for professional representatives.
 - RPDBA: Additional Rules of Procedure of the Disciplinary Board of Appeal.
- III. The appellant sat the main examination of the European qualifying examination (hereinafter "EQE") 2025 for paper A. By aforementioned letter, the appellant was informed that his answer paper A had been awarded the marks 48. Based on these marks, the Examination Board had decided that the requirements of Article 14(1) REE had not been fulfilled and that the appellant had not passed the EQE.

IV. The letter contained the following marking details:

Examination Committee: Paper A - Marking Details - Candidate No C8004107

Category	Max possible	Marks marker 1	Marks marker 2
Main claims - Device	40	10	10
Main claims - Method	10	0	0
Main claims - Kit	10	10	10
Dependent claims	25	19	18
Description	15	9	10
Total		48	48

Examination Committee agrees on 48 points and recommends the grade Compensable fail

V. By letter dated 10 September 2025, the Examination Secretariat informed the appellant that the Examination Board had not allowed the appellant's appeal. The following comment was made: "The arguments presented in the appeal have been carefully considered and the answer has been reassessed. The Examination Board concluded that the answer had been marked correctly according to the details presented in the Examiner's Report."

VI. The case was then forwarded to the Disciplinary Board of Appeal (thereafter: the Board).

VII. In accordance with Article 24(4), first sentence, REE in conjunction with Article 12, second sentence, of the RDR, the Board consulted both the President of the EPO and the President of the Council of the Institute of Professional Representatives before the EPO (epi), neither of whom presented any comment in writing on the merits of the appeal.

VIII. Oral proceedings before the Board took place on 27 February 2026 at which the appellant finally requested

that the decision under appeal be set aside and

that his answer paper A be awarded the grade PASS in a direct decision by the Board.

IX. The arguments of the appellant can be summarised as follows:

The decision under appeal was based on serious and obvious mistakes because the examiners failed to recognise that the device claim already conferred upon the patentee the exclusive right to use the device for commercial testing services (G 02/88). Consequently, it was not necessary to include an independent method claim for ex vivo diagnostics, since such a claim would not have extended the scope of protection and would be legally redundant.

The allocation of 10 marks for an unnecessary method claim should therefore be neutralised, either by awarding those 10 marks to the appellant's paper or by lowering the PASS threshold to 45 marks. In either case, the appellant should receive a grade PASS.

Drafting a redundant method claim was not in line with the conduct expected from a professional representative according to the epi Code of Professional Conduct and is in contradiction to the objective of the EQE under Article 1(1) REE, together with Rules 23(1) and (3) IPREE, since a claim of this kind does not serve the client's interests, leading instead to unnecessary drafting and examination efforts, potential additional fees, and further translation costs. Such a claim

contradicted also the clear client's instructions not to pay any additional claims fees.

Adding a redundant method claim also violated the conciseness requirement of Article 84 EPC and the requirement under Rule 43(5) EPC to maintain a reasonable number of claims, particularly in view of the recommendations set out in the EPO Guidelines (F-IV, 5).

It was also incorrect to expect the candidates to include a method claim, as the inventive feature was clearly a device feature, namely, the coloured particle defined as a spherical gold nanoparticle having a diameter of 20 nm to 100 nm. The client's letter contained no indication that the inclusion of a method claim was necessary. In comparable situations, the consistent practice of the Examination Board in earlier Paper A examinations was not to require any redundant method claim (see, for example, Paper A 2004).

The allocation of 10 marks for such a claim was disproportionate to its actual value to the client. Candidates who correctly refrained from drafting a method claim, on the legitimate basis that it would not provide additional protection – were unduly penalised by the loss of those 10 marks.

Reasons for the Decision

1. Extent of power of investigation and decision of the Board
 - 1.1 In accordance with Article 24(4) REE and the consistent case law of the Board, which followed decision D 1/92 and D 6/92, decisions of the Examination Board may, as a rule, 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 Board to reconsider the entire examination procedure on the merits. This is because the Examination Committee and the Examination Board have some latitude of evaluation subject to only limited judicial review by the Board.
 - 1.2 Accordingly, the marking of an examination paper in terms of how many marks an answer deserves is not subject to review by the Board, and nor are the Examination Board's criteria for determining the weighting of the expected answers (see D 20/96, point 9 of the Reasons) to the examination questions (D 13/02, point 5 of the Reasons).
 - 1.3 Only if the appellant can show that the contested decision is based on serious and obvious mistakes can the board take this into account. The alleged mistake must be so obvious that it can be established without re-opening the entire marking procedure (see e.g. D 7/05). This is, for instance, the case if an examiner is found to have based their 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, inconsistent or incomprehensible (D 13/02). All other claims to the effect that the papers have been marked incorrectly are not the responsibility of the Board. Value judgements are not, as a rule, subject to judicial review (see e.g. D 1/92, cited above, points 3 to 5 of the Reasons and D 11/07, point 3 of the Reasons; Case Law of the Boards of Appeal, 11th edition 2025, (Case Law), V.C.2.6.3, with further references).

2. According to the examiners' report, "although the independent device claim was considered the most valuable to the client, and hence attracted the largest share of the marks, an independent method claim was also expected. Such a claim might be relevant to a third party using the lateral flow tests to provide a commercial testing service, for example." The marking scheme allocated 10 marks to a suitable independent method claim and included the following model solution:

"A method of detecting a target molecule (6) in a liquid sample (5), the method comprising applying the liquid sample (5) to the sample pad (1) of a lateral flow test device according to any preceding claim, wherein the presence of the target molecule in the liquid sample is indicated by the development of a coloured line at the test line."

3. In his answer paper, the appellant drafted a total of 15 claims as follows:

One independent device claim (claim 1), 10 dependent device claims (claims 2 to 11), two independent kit claims (claims 12 and 13) and two independent use claims (claims 14 and 15).

His answer contained no method claim.

4. To support his argument that a method claim was unnecessary, the appellant submitted a "legal report" prepared by two patent litigators in Spain, Mr David Pellisé and Mr Juan Carlos Quero. The report concludes that, in the context of Paper A, method or use claims were legally redundant, since any use of the device protected by a product claim would already fall within the scope of that comprehensive product claim. Accordingly, such method or use claims would not confer any additional advantage in terms of the scope of protection or the rights conferred by the patent, nor would they offer any benefit in terms of enforcement.

5. The Board does not consider the allocation of 10 marks for a suitable method claim to be an obvious error within the meaning that would allow the Board to take it into account.

- 5.1 The appellant argues that introducing an independent method claim, as proposed in the examiner's report, would infringe the conciseness requirement of Article 84 EPC. The Board does not agree.

According to established case law, what constitutes a reasonable number of claims must be assessed in light of the specific circumstances of each case. A lack of conciseness has been found, for example, in applications containing ten independent claims of differing scope (T 79/91) and in applications comprising 157 claims (T 246/91).

In the present case, the addition of a single independent method claim alongside an independent

device claim, within a total of 15 claims, does not in itself give rise to a lack of conciseness within the meaning of Article 84 EPC. The appellant has not alleged that the proposed method claim would contravene any other requirement of the EPC, nor does the Board identify any legal deficiency in the introduction of such a claim.

Accordingly, no serious error can be discerned on this ground.

- 5.2 A central argument advanced by the appellant is that the proposed claim would in any event be unnecessary, as it would not afford the applicant any additional protection. According to the appellant, drafting such a claim would incur unnecessary costs, run counter the client's interest, and therefore fall short of the duties expected of a professional representative.

The Board does not share this view. According to Rule 23(1) and (3) IPREE, the purpose of paper A is to assess candidates' ability to draft an independent claim which offers the patent applicant the broadest possible protection in accordance with the EPC, bearing in mind the requirements of the EPC, in particular regarding novelty and inventive step, and the recommendations contained in the Guidelines for Examination in the EPO. This assessment is to be understood in light of the objective of the European qualifying examination as set out in Article 1(1) REE, namely to establish whether a candidate is qualified to act as a professional representative before the European Patent Office.

It is true that, as held by the Enlarged Board of Appeal in decision G 02/88, a patent which claimed a

physical entity per se, conferred absolute protection upon such physical entity, for all uses of such physical entity, whether known or unknown and that Article 64(1) EPC prevents third parties from using a patented product without authorisation. However, this does not render a corresponding method claim superfluous or devoid of practical significance. As correctly observed in the examiners' report, such a claim may be relevant, for example, where a third party performs the lateral flow tests in the context of a commercial testing service. The inclusion of a method claim may also facilitate differentiated licensing strategies for the product and the method.

The Board further observes that the authors of the appellant's "legal report" do not, in fact, contradict this conclusion, as they themselves acknowledge a "general perceived necessity or advisability" to include independent method claims, while contending that, in specific cases such as that presented in EQE 2025, such claims may lack technical and/or legal support. As stated above, the Board does not agree with this latter assertion.

It follows that any additional costs entailed by the drafting of a method claim cannot be regarded as unnecessary or as being contrary to the client's interests. In this regard, the Board observes that the appellant's choice to draft two use claims, the practical relevance of which appears doubtful, would also increase this type of costs. The Board further notes that, in any event, the solution proposed in the examiners' report, which comprises no more than 15 claims including the method claim, complies with the client's instruction not to incur any additional claim fees.

It was therefore legitimate to expect EQE candidates to draft such an independent method claim.

- 5.3 The appellant further suggests that the allocation of 10 marks for an independent method claim was likewise unjustified in view of the facts set out in the client's letter. In his view, the inventive feature was clearly a device feature and the letter contained no indication that an independent method claim was expected.

The Board, however, recalls that the Examination Board has discretion both as to the category of claim expected from candidates and as to the allocation of marks to a particular claim. Such decisions are not subject to judicial review unless they disclose an obvious error, for example where the facts set out in the client's letter clearly militate against the drafting of a particular category of claim. This is not the case here.

In the present case, the Board sees nothing in the wording of the client's letter that would have led candidates to conclude that the inclusion of an independent method claim was inappropriate. Contrary to the appellant's suggestion, the Examination Board was under no obligation to provide an explicit hint in the client's letter for every type of claim expected from candidates. The responsibility for selecting claim categories that best serve the client's needs lies with the patent practitioner; it is not the client's role to specify the precise category of claim required to protect their interests. In this context, the fact that no method claims were expected in EQE Paper A 2004, which was based on different facts, is irrelevant.

- 5.4 The Board further finds that the allocation of 10 marks for a correctly drafted independent method claim is not disproportionate and, therefore, does not contravene the principle of fair marking. Candidates, who chose not to draft a method claim, could still obtain up to 90 marks and thus comfortably achieve a PASS grade for Paper A.

The examiners' report also clarifies that a correctly drafted use claim, submitted in place of a method claim, could also be awarded marks, providing candidates with some flexibility regarding the category of claim to draft. The number of marks assigned to a particular claim in Paper A need not correspond to the specific practical relevance of that claim in the particular invention at issue. The distribution of marks lies within the Examination Board's discretion and, in this case, appears designed to reflect the general importance within patent drafting practice of protecting an invention through different claim categories.

- 5.5 Consequently, the appellant's request for a more favourable assessment of his paper must be rejected. The Board also concurs with the concerns expressed by the representative of the President of epi regarding fairness to the other EQE candidates, particularly those who correctly chose to propose an independent method claim but did not receive full marks, if the appellant's request to neutralise the marks for the method claim in the marking scheme were to be granted.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:



N. Michaleczek

I. Beckedorf

Decision electronically authenticated