



**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 0007/25

**D E C I S I O N**  
**of the Disciplinary Board of Appeal**  
**of 29 January 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  
C. Rebbereh

## **Summary of Facts and Submissions**

- I. The present appeal is against the decision of the Examination Board 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: as above in point 1.
- III. The appellant sat the main examination of the European qualifying examination (hereinafter "EQE") 2025 for paper D. By letter from the Examination Board of the European Patent Office dated 8 July 2025, the appellant was informed that his answer paper D had been awarded the marks 39 (including 2 marks in compensation for an estimated 15-minute time loss). 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 D - Marking Details - Candidate No C8003516

Category	Max possible	Marks marker 1	Marks marker 2
D1 - Q1	8	0.5	0.5
D1 - Q2	7	1	1
D1 - Q3	9	1.5	1.5
D1 - Q4	10	1	1
D1 - Q5	11	1.5	1.5
D2 - Q1	27	19	19
D2 - Q2	6	5	5
D2 - Q3	17	4.5	4.5
D2 - Q4	5	3	3
<b>Total</b>		<b>37.0</b>	<b>37.0</b>

Examination Committee agrees on 39 points and recommends the grade Fail

*The appeal*

V. The appellant files an appeal against this decision.

*Interlocutory revision*

VI. The Examination Secretariat informed the appellant that the Examination Board had not allowed the appellant's appeal. The following comments were made:

"The arguments on the answers and alleged incorrect marking have been carefully considered. After re-assessing the answer, no additional marks were found. The answers remain superficial, without relevant legal basis and often without addressing the question asked. As regards to the claim of a 20-minute time loss, this cannot be objectively verified. All candidates have already been compensated with 15 minutes, which corresponds to the general disturbance observed. Even if the alleged loss of 20 minutes were accepted, of which 15 minutes have already been compensated, this could only lead to a maximum of one additional mark. As

the result remains well below 40 marks, the additional one mark would not have any effect, the overall grade would remain a FAIL."

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 Regulation on discipline for professional representatives, 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).

The President of the EPO did not present any comment in writing on the merits of the appeal.

By letter dated 20 November 2025, the President of the Council of the Institute of Professional Representatives before the EPO (epi) presented the comments regarding the appellant's arguments on part I, question 1. He supported a re-evaluation of the appellant's paper on account of a serious marking error (the failure to take into account a competently reasoned alternative solution which, in certain respects, was even preferable), either following remittal to the Examination Board or, if appropriate, even without remittal to the Examination Board.

VIII. The appellant requests:

- as the main Request, that the impugned decision be set aside, and Appellant's Paper D be awarded at least the grade COMPENSABLE FAIL in a direct decision by the Board, or

- as an auxiliary request, that the impugned decision be set aside and the appellant's Paper D be remitted to the Examination Board for re-examination and that at least the grade COMPENSABLE FAIL be awarded to Appellant's Paper D.

He also requested reimbursement of the appeal fee as well as reimbursement of the EQE enrolment and examination fees already paid by for Paper D of the EQE 2026.

- IX. The appellant's arguments which are relevant for the present decision, are summarised as follows:

*Part I*

- Question I

Awarding only 0.5 marks for the appellant's answer was a serious error, as he proposed a fully correct alternative approach to delaying entry into the EP phase of the PCT application, which should have been awarded at least 3 marks. With respect to the expected model solution, he notes that the question did not explicitly instruct to "sacrifice priority", which is fundamental to novelty protection. He therefore argues that "relinquishing it without clear client instruction would be professionally irresponsible".

- Question 2

The model solution for question 2 in the Examiners' Report is legally incorrect. Consequently, in the appellant's view, his answer was the only legally correct option and should therefore have been awarded additional marks.

- Questions 3 and 4

The appellant's answers merited more marks than those attributed.

- Question 5

The appellant correctly identified the two standard options set out in the model solution, which should have merited more marks than were awarded. He also presented two valid alternative approaches, which should likewise have been credited.

*Part II*

- Question 1

The appellant's approach to question 1(b) reflects a reasoned and legally justified interpretation of the claim structure and should therefore have been rewarded, even though it departs from the model solution.

- Question 2

The deduction of 1 mark for failure to address the provisional protection conferred on EP-B was legally unfounded.

- Question 3

His answer addressed the key "filing windows" proposed in the model solution, with only minor omissions, and should therefore have been awarded additional marks.

- Question 4

His answer is based on a consistent interpretation of the scope of protection of EP- ABC and should therefore have attracted full marks.

### **Reasons for the Decision**

1. The appeal is admissible.

2. Oral proceedings

The Board was able to decide the case without holding oral proceedings, since the request for oral proceedings was conditional upon the rejection of the appeal, and the Board has decided to grant the appellant's auxiliary request to remit the case to the Examination Board for a new decision in respect of Paper D of the EQE 2025, as explained below.

3. Extent of power of investigation and decision of the Board

3.1 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.

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).

3.2 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).

3.3 Appropriate marks must also be awarded for answers that deviate from the model answer, but nevertheless contain justifiable and competently reasoned alternative solutions (see, inter alia, D 7/05 and D 20/17), Reasons 1.3). However, only considerations that can be attributed to the candidate's statements in the paper at the time of marking may be taken into account when assessing an examination paper. Later explanations,

which are found only in the statement of grounds of appeal, cannot be considered for this purpose (see D 16/02, Reasons 3.2)

4. Part 1 - question 1

4.1 The appellant's answer to question 1 of Part 1 received 0.5 out of the 8 available marks. Candidates were required to explain how joint applicants could delay entry into the regional phase before the EPO of a PCT application for "as long as possible".

4.2 In his answer, the appellant assessed the possibility for the joint applicants to claim priority and indicated the final date for entry into the regional phase before the EPO. He then proposed relying on the possibility of requesting further processing, as follows: *"If the 31-month deadline is missed, the EPO will issue r112(1), in which case, you can request further processing under A 121 R135 EPC, which provides additional 2 months after notification to enter the EP. Further processing fee is required"*.

4.3 According to the Examiners' report, candidates were expected to propose withdrawing the priority claim and withdrawing the priority application before its publication. As explicitly stated in the report *"Candidates only suggesting not to fulfil the acts for entry, combined with further processing, did not receive any marks as the entry is only temporarily delayed until further processing is granted. Once further processing is granted, the legal consequence of the failure to observe the time limit for entry shall be deemed not to have ensued. The question required the delay to be for as long as possible."* It can therefore

be assumed that the appellant did not receive any mark for the part of his answer cited above.

4.4 The Board considers that the decision not to award any marks for this approach constitutes a serious error of assessment. It further finds that the appellant's proposed alternative approach represents a legally permissible solution to the problem posed and should have been duly recognised in the marking.

4.5 According to Rule 26(1) IPREE, the purpose of Paper D is to assess a candidate's ability to answer legal questions and to draft legal assessments, as defined in Article 1(4) REE.

Rule 26(2) IPREE further specifies that: "It [Paper D] shall comprise questions relating to different areas of the candidates' legal knowledge. Answers should be brief and to the point. Candidates shall always cite any article, rule or other legal basis relevant to their answer. " In the Board's view, this corresponds to the content of Part I of Paper D.

The content of Part II of Paper D is addressed in Rule 26(3) IPREE as follows:

"It shall also include an enquiry from a client requiring an answer in the form of a legal opinion. Candidates shall use the opinion they draft to explain the legal consequences of the situation as described. They shall be expected to demonstrate their ability to deal with a complex industrial-property law case involving fundamental issues of patentability, rights of inventors, inventions as property, and third-party rights [...]"

4.6 The two parts of Paper D are therefore clearly distinguished in the IPREE. In Part II, candidates are required to draft a legal opinion in response to a client's request for information, engaging in a context of dialogue with the client. In contrast, Part I requires candidates to provide short and precise answers to legal questions, without those answers forming part of a legal opinion or involving an in-depth discussion with the client about their expectations or strategy.

Therefore, in part I of paper D, candidates, who are expected to demonstrate that they are "fit to practice" as professional representatives before the EPO, must provide solutions that could be implemented immediately by a competent practitioner, based solely on the information provided in the questions, without the opportunity to discuss risks or disadvantages of the proposed approach with a client beforehand. In question 1, this expectation is further evident from the wording of the question, "what steps should be taken and why?", which indicates that a solution should be actionable directly by the professional representative in response to the client's expressed desire for a strategic delay, rather than merely presenting various options along with advice on their respective advantages, disadvantages, and risks.

4.7 Against this background, the solution proposed in the Examiner's Report does not appear to the Board to be one that could be directly implemented by a professional representative. In particular, it involves the abandonment of an applicant's priority right, which cannot be effected without obtaining the applicant's explicit approval. The final relinquishment of such a right constitutes an act demanding the highest duty of

care from the representative. It is not an action that may be undertaken unilaterally by the representative, without prior consultation and thorough clarification of the associated risks with the client.

4.8 The model solution also entails significant risks for both applicants A and B. Withdrawing the priority claim would result in all documents published between the filing dates of EP-B and PCT-AB becoming prior art under Article 54(2) EPC, while all European applications filed within this period but published only after the filing date of PCT-AB would also be considered part of the state of the art under Article 54(3) EPC. Such a step would be highly risky, since the facts given in the question – namely, that the European search report for EP-B cited only A-documents – do not justify the conclusion underlying the model solution that no prior art prevented the grant of PCT-AB. It cannot be excluded that additional relevant documents could have been published, or further relevant European applications filed, after the establishment of the European search report (normally within six months of the filing date, see Guidelines for Examination, Part E, Chapter VIII, 4.1) and before the filing date of PCT-AB. Accordingly, based on the information provided in the question, it could not be assumed with sufficient certainty that PCT-AB would in fact be patentable.

4.9 As pointed out by the President of the epi, the model solution also exposes the professional representative to a potential future conflict of interest, due to the differing ownership of the priority application and the PCT application.

4.10 Against this background, the solution proposed by the appellant cannot be regarded as an inappropriate alternative. It is true that the appellant's solution allowed for a shorter postponement of the EP regional phase entry date than the delay achievable under the model solution. However, it nonetheless constitutes a legally permissible approach to delaying the entry of PCT-AB into the regional phase before the EPO "for as long as possible."

First, the phrase "as long as possible" does not automatically imply that the maximum delay is the required solution. The length of the delay must also be "possible" in light of the facts presented in the question, which requires an evaluation of the risks and advantages associated with each approach. Candidates could appropriately conclude that a solution which maximises this delay, while entailing significant risks for the client, may not be regarded as a "possible" solution in the context of Part I of Paper D, which does not permit an in-depth discussion with the client.

Second, the question does not provide any information regarding the "strategic reasons" for which A and B wish to delay entry of PCT-AB into the regional phase. Candidates could therefore not assume that a temporary delay, such as that provided by the appellant's alternative approach, was excluded.

It follows that this approach - namely, not completing the acts for entry and requesting further processing - constitutes a legally permissible solution to the question posed, without relinquishing priority rights or exposing PCT-AB to previously unknown prior art.

- 4.11 The refusal to award appropriate marks therefore constitutes a serious and obvious error, justifying the setting aside of the contested decision.
- 4.12 The number of marks that are to be awarded for the appellant's answer is at the discretion of the Examination Board. In the present case, it can not be concluded by the Board that the appellant's answer would merit at least 6 additional marks, thereby resulting in the grade "COMPENSABLE FAIL", so that a remittal would appear merely formal. The appellant himself requests only 3 additional marks (see statement of grounds of appeal, page 17). Therefore, the main request cannot be granted, but the case should be remitted to the Examination Board for a new assessment of the appellant's answer to question 1 of Part I of paper D.
- 4.13 In doing so, the Examination Board must take into account that the appellant's answer, where he merely makes a brief reference to the possibility of requesting further processing "if the 31-month deadline is missed", is not fully reasoned and therefore does not adequately address the question as formulated in the paper, namely, "what steps should be taken and why."

Moreover, the arguments put forward by the appellant in the statement of grounds regarding the advantages of his approach and the risks associated with the model solution, particularly the assertion that withdrawing the priority claim would result in the irrevocable abandonment of the priority application fundamental for novelty protection, are entirely absent from his answer. Only considerations explicitly presented by the candidate in the paper at the time of assessment may

form the basis for awarding points. Later explanations appearing solely in the statement of grounds of appeal cannot be taken into account (see D 16/02, Reasons 3.2).

- 4.14 In the present case, the Board considers that, to attract full marks, candidates choosing the alternative approach to delay entry into the EP phase combined with further processing should, at a minimum, indicate in their answer that they were aware of the possibility of withdrawing the priority claim and the priority application before its publication and explain why they chose not to implement this solution.

*Further objections*

5. The appellant's further objections regarding the other questions of paper D are not convincing. The Board could not identify any serious and obvious assessment mistake in the rest of the paper, as explained below.

6. Part I - question 2

- 6.1 In his statement of grounds, the appellant argues that the model solution for question 2(a) in the examiners' report is legally incorrect. While the model solution suggests that the procedure under Rule 56a EPC could be applied, the appellant maintains that this was not possible because the application did not contain missing parts but had been filed in full, albeit with incorrect content. His answer, which referred to G 2/95 and to the impossibility of correcting a patent application by replacing its entire text under Rule 139 EPC, was therefore, in his view, correct and should have been awarded at least 3 marks.

For question 2(b), the appellant submits that the model solution's approach – adding a priority claim from EP1 – was legally unfounded, given that EP1 contained no disclosure of Invention B. His answer was thus, in his view, the only legally correct option and should have been awarded at least 2.5 marks.

6.2 The Board cannot recognise any mistake, let alone a serious one, in the examiners' report. The appellant appears to conflate Rule 56 EPC, which addresses situations in which parts of the description or drawings appear to be missing, with Rule 56a EPC, which governs cases where the description, claims, drawings, or parts thereof appear to have been erroneously filed. His reasoning regarding question 2(b) is likewise flawed, as it overlooks the fact that, pursuant to Rule 56a(4) EPC, the erroneously filed application documents (relating to Invention B) remain in EP-1. Accordingly, the addition of a priority claim for EP-2 from EP-1 was indeed both possible and necessary in order to prevent EP-1 from becoming novelty-destroying prior art for EP-2.

7. Part I - question 3

7.1 The appellant's answer to Part I, question 3 was awarded 1.5 out of the 9 available marks. In his statement of grounds of appeal, the appellant contends that his answer merited at least 3 marks because:

(a) Regarding question 3(a): He correctly identified that filing amendments was not an appropriate response to the communication under Rule 71(3) EPC and explained that this led to the issuance of a loss-of-rights notice under Rule 112 EPC. Although he did not explicitly cite Article 113(2) EPC, he

nevertheless demonstrated a proper understanding of the binding legal effect arising under that article.

- (b) Regarding question 3(b): He correctly identified the possibility of requesting further processing under Article 121 EPC and Rule 135 EPC, acknowledged the availability of re-establishment of rights under Article 122 EPC, and correctly indicated that a patent could still be obtained containing the additional dependent claim, even though he did not explicitly state that this would have to be done by filing a divisional application from EP-D after revival.

7.2 The Board notes that the appellant fails entirely to explain why the contested marking was allegedly based on a serious and obvious mistake, or to identify any provision of the REE, its Implementing Regulations, or any higher-ranking law that was infringed. It is not, for example, alleged that the examiners relied on a legally incorrect premise, that the marking scheme was unfair, or that any comparable defect occurred. The appellant merely asserts his view that his answers should have been awarded a higher number of marks. However, as stated above, the Board is not competent to review the examination procedure on its merits. The question of how many marks a particular answer deserves falls outside the scope of the Board's review.

In addition, the Board notes that, contrary to the appellant's assertion, his answer does not demonstrate a proper understanding of the *res judicata* principle. On the contrary, his suggestion that a patent could be obtained with the complete text as decided by the examining division, supplemented by an additional

dependent claim after requesting either further processing or re-establishment of rights, in fact indicates that he was unaware of the binding effect of that principle.

8. Part I - question 4

8.1 The appellant's answer to Part I, question 4 was awarded 1 out of the 10 available marks. In his statement of grounds, the appellant argues that additional marks should have been awarded, as he allegedly "explained that timely notification prevents undesired debits for additional search fees, distinguished between PCT-phase and EP-phase mandates, and applied the EPO's fee-priority rules." The appellant requests that 5,5 marks be awarded for his answer to Part I, question 4.

8.2 The Board understands the appellant's argument to amount solely to the assertion that his answer merited more marks than those awarded by the examiners. However, as explained above in points 10 and 13.2, any allegation that the examination papers were incorrectly marked does not fall within the Board's competence. As a rule, value judgments are not subject to judicial review and the appellant's request for an additional 4.5 marks must therefore fail on this ground alone.

9. Part I - question 5

9.1 The appellant's answer to Part I, question 5 was awarded 1.5 out of the 11 available marks. In his statement of grounds, the appellant contends that he correctly identified the two standard options suggested in the model solution, which should merit more marks than those awarded. He further argues that he also

presented two valid alternative approaches that should likewise be credited. Accordingly, he requests that a total of 6 marks be awarded for his answer to Question 5 of Part I. Regarding the request to review the marking of the part of his answer relating to the two options identified in the model solution (payment of the additional search fee to the ISA and the SIS alternative), the Board refers to paragraph 14.2 above. The number of marks to be awarded for a candidate's answer lies within the discretionary power of the examiners and is not subject to review by the Disciplinary Board of Appeal.

- 9.2 Concerning the two allegedly valid alternative approaches that were not awarded any marks, the appellant proposed in his answer to "alternatively file a new PCT application with respect to D only and have that searched by the EPO. If this is not done, then upon entry into the European phase, in response to a communication under Rule 161 (1) EPC, the EPO will issue an invitation to pay an additional fee pursuant to Rule 164 (2) (a) EPC. Provided that the additional fee is paid, D can be searched. A divisional application can then be filed directed to D."

The Board wishes to comment as follows:

The filing of a new PCT application directed solely to D is not a valid option, already because PCT-I would clearly constitute a novelty-destroying disclosure. The Board also notes that, contrary to what the appellant appears to suggest in his statement of grounds, his answer contains no reference to a claim to priority from PCT-I.

Rule 164 (2) EPC applies only to Euro-PCT applications

for which the EPO acted as the ISA or as the SISA. This rule therefore does not apply in the situation described in the question and in the appellant's answer, where a non-unity objection had already been raised by the Swedish Intellectual Property Office as ISA, no additional search fee was paid to the ISA, and no SIS request specifying the EPO as SISA was filed (see the appellant's own formulation: "if the above is not done").

9.3 As a consequence, the Board does not identify any situation in which a valid and competently reasoned approach, deviating from the model solution, was improperly disregarded so as to infringe the principle of fair marking. The appellant's request to have 4.5 marks added to his score must therefore be rejected.

10. Part II - question 1

10.1 This question concerned the patent situation relating to different items of subject matter addressed in the client's brief. The appellant's answer was awarded 19 out of the 27 available marks.

In his statement of grounds, the appellant argues that his approach to question 1(b) reflects a reasoned and legally justified interpretation of the claim structure and should therefore have been rewarded, even though it departs from the model solution. In particular, he submits that the model solution adopted a unitary interpretation of the claim, treating the "parenthesis variants" as mere examples. By contrast, he treated each of the parenthetical alternatives A, B, and C as distinct technical alternatives requiring separate priority assessments in accordance with decision G 1/15.

In his view, his "split treatment of gears A/B versus gear C" and his conclusion that "gear C lacked valid priority and was anticipated by IT-A and EP-B" were equally correct and should have been awarded full or at least proportionate credit.

- 10.2 Question 1b) questioned the patent situation as regards a bicycle gear shift system comprising an electric motor for shifting the gears and a switch to be mounted on the handlebar of a bicycle for selecting the gears
- (i) via an electrical wire (A) (thereafter "gears A"),
  - (ii) via a wireless radio connection (B) (thereafter "gears B"), or
  - (iii) as such (C) (thereafter "gears C");

In the client's letter, it was explained in paragraphs [8] and [9] that "gears A", "gears B", and "gears C" constituted the subject-matter of different patent applications filed by the competitor Campagnelli SpA, as follows:

- an Italian patent application, IT-A, filed on 6 June 2018, claiming "gears A" (withdrawn before publication);
- a European patent application, EP-B, filed on 20 September 2018, claiming "gears B";
- a European patent application, EP-ABC, claiming priority from IT-A and EP-B, granted in 2023 with the following claims:
  - independent claim 1 directed to "gears C".
  - dependant claim 2 directed to "gears A"
  - dependent claim 3 directed to "gears B".

According to the examiners's report, candidates were expected to recognize the partial priorities in claim 1

of EP-ABC directed to "gears C", which covers subject-matter "gears A", subject-matter "gears B" and subject-matter with switches other than those according to A and B.

- 10.3 Contrary to the appellant's allegations, which suggest that the model solution failed to apply decision G 1/15 correctly, the Board notes that the analysis of the subject matter covered by "gears C" is, in fact, fully consistent with the Enlarged Board of Appeal's conclusion that claims containing multiple alternatives must be conceptually subdivided into individual embodiments for the purposes of priority assessment.

It is therefore correct that claim 1 of EP-ABC, directed to "gears C" - namely, a bicycle gear shift system comprising an electric motor for shifting the gears and a switch to be mounted on the handlebar of a bicycle for selecting the gears *as such* - encompasses subject matter in which the switch is connected to the motor via an electrical wire ("gears A"), subject matter in which the switch is connected via a wireless radio connection ("gears B"), as well as subject matter involving switches other than those according to A and B.

- 10.4 In his statement of grounds, the appellant appears to argue that "gears C" should have been treated as a separate technical embodiment, not related to the subject-matter of "gears A" and "gears B", rather than as subject matter encompassing the subject matter of "gears A", "gears B", and that involving switches other than those according to A and B. The Board has difficulty understanding this line of reasoning, as it disregards the clear explanations provided in paragraph [9] of the client's letter.

As explained therein, EP-ABC claims, in independent claim 1, a gear-shift system comprising an electric motor for shifting the gears and a switch for selecting the gears in general terms, while dependent claims 2 and 3 are directed to specific embodiments in which the switch is connected to the motor via an electrical wire (claim 2) or via a wireless radio connection (claim 3).

Conversely, the appellant appears to suggest that "gears A" should be interpreted as encompassing subject matter directed to "gears in general" and to "gears C". The Board struggles to see how such an interpretation makes any technical sense. In any event, it clearly runs counter to the explanations provided in paragraph [8] of the client's letter.

10.5 It follows that the conclusion reached in the appellant's answer – namely, that "gears C do not enjoy priority from IT-A or EP-B because they were not disclosed in either application" – is clearly incorrect and does not constitute a legitimate alternative approach that was unjustifiably disregarded or insufficiently rewarded by the Examiners.

The same applies to the unclear conclusion reached in response to Question 1(b)(i), which appears to suggest that the subject matter of "gears A" has two effective dates: the filing date of EP-ABC for the subject matter "in terms of gears C", and the filing date of IT-A for "gears in general".

The appellant's request for an increase in marks on the basis that he presented a fully correct alternative approach must therefore be rejected. The number of marks allocated to the appellant's answer rests within

the discretion of the Examination Committee and the Examination Board.

11. Part II - question 2

11.1 The appellant's answer to question 2 of Part II was awarded 5 out of 6 marks. The appellant contests the one-mark deduction on the sole ground that he did not discuss the provisional protection conferred on EP-B. In his view, this aspect was not central to determining whether a party is free to make and sell a product. According to him, under Article 68 EPC, a patentee may claim reasonable compensation for such use, but injunctive relief is not available until the patent has been granted and is in force. Provisional rights therefore do not create a legal barrier to continued manufacture or sale; they only give rise to a retrospective claim for compensation if the patent is ultimately granted. The question asked whether the prototypes may be "produced and sold", i.e. whether a third party may lawfully operate on the market. It did not ask about potential financial exposure under Article 68 EPC. The deduction of one mark for failure to address this point was therefore legally unfounded.

11.2 The Board does not agree. According to Article 26(1) and (3) IPREE, the purpose of paper D is, to assess candidate's ability to draft legal assessments as defined in Article 1(4) REE. Candidates shall use the opinion they draft to explain the legal consequences of the situation as described. They are expected to demonstrate their ability to deal with a complex industrial-property law case involving fundamental issues of patentability, rights of inventors, inventions as property and third-party rights, as defined in particular, but not solely, in Articles 52

to 89 EPC, the corresponding articles of the PCT, any legislation relating to Community patents, the Paris Convention, and the relevant laws of the contracting states. The assessment of a candidate's answer must also take into account the overall purpose of the EQE: to determine whether candidates are "fit to practise" as professional representatives before the EPO.

In this context, informing the client of the possibility that the production and sale of the second prototype might fall under the provisional protection conferred by the pending application EP-B in some EPC contracting states, in accordance with Article 67(2) EPC (and not Article 68 EPC, as incorrectly asserted by the appellant), as well as explaining the associated financial risks, falls squarely within the normal duties of a competent professional representative.

No manifest error is therefore discernible in the marking of the appellant's answer on this point. The Board also notes that only one mark was deducted for this omission, which appears particularly reasonable and proportionate.

12. Part II - question 3

12.1 The appellant's answer to question 3 of Part II was awarded 4.5 out of the 17 available marks. The appellant has provided a detailed comparison between the model answer and his own answer, and submits that his response should have been awarded a total of 9 marks rather than only 4.5.

12.2 The appellant neither alleges nor demonstrates that the contested decision is based on a serious and manifest

error, one that is so evident that it can be established without re-opening the entire marking procedure. As already stated above, the number of marks awarded to his answer lies within the discretion of the Examination Committee and the Examination Board and is not subject to judicial review.

13. Part II - question 4

13.1 The appellant's answer to question 4 of Part II was awarded 3 out of the 5 available marks. The appellant submits that 2 marks were unduly deducted due to what he describes as a "discrepancy in interpretation." In his view, his interpretation in question 4(a), namely that "EP-ABC now covers only gear C, which lacks valid priority", is consistent throughout his submissions and supports his conclusion that both prototypes are free to be marketed in the EU, US, and TW. He argues as follows: he interpreted "gear C" (i.e. Claim 1 of EP-ABC) as the only remaining protected subject-matter, believing that the broader "switching the gears" scope had been entirely removed due to the lack of valid priority, as he had explained in response to the previous question. This, he submits, demonstrates internal consistency in his answers.

13.2 For the same reasons set out in point 10 above, the Board cannot accept the appellant's interpretation of the subject-matter encompassed by "gear C." As this was the appellant's sole argument, no serious or manifest error is apparent in the marking of his answer, and his request to be awarded full marks cannot succeed. The Board notes, in particular, that the discussion regarding the possible outcome of the opposition against EP-ABC and its impact on the production and sale of the second prototype is entirely missing.

Likewise absent is any statement that systems according to the second prototype would fall within the scope of EP-B and could only be produced and sold if a licence were granted or the rights in EP-B were transferred from Alessio Alessi.

14. Further considerations

With regard to the alleged 20-minute time loss, the Board agrees with the Examination Board's assessment that the appellant, like all candidates, has already been compensated by the award of two marks for an estimated 15-minute time loss, reflecting the general disturbance observed. The claimed 20-minute loss cannot be objectively verified, and the two additional marks therefore constitute an adequate and fair compensation for the technical difficulties encountered by the appellant.

15. Reimbursement of the appeal fee

15.1 With respect to the appellant's request for reimbursement of the appeal fee, reference is made to Article 24(4), third sentence, REE.

15.2 Since the appeal is successful only with regard to the assessment of Question 1 of Part I, and no other serious and obvious mistakes are apparent in the contested decision, the Board considers it equitable to order reimbursement of 50% of the appeal fee.

15.3 The present appeal is directed solely against the decision that the appellant did not pass the European Qualifying Examination 2025. The Board is therefore not competent to decide on any reimbursement of fees relating to the European Qualifying Examination 2026.

Any such request must, if pursued, be addressed to the Examination Secretariat.

## 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 for a new decision related to Paper D of the EQE 2025.
3. The appeal fee is reimbursed at 50%.

The Registrar:

The Chairman:



N. Michaleczek

I. Beckedorf

Decision electronically authenticated