Europäisches Patentamt
European Patent Office
Office européen des brevets

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 0016/25

D E C I S I O N
of the Disciplinary Board of Appeal
of 4 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: Y. Podbielski
S. Colombo

Summary of Facts and Submissions

I. The admissibly filed appeal is directed against the decision of the Examination Board that the appellant had not passed the European qualifying examination (EQE) 2025.

II. The appellant sat the EQE 2025. For the answers to papers A, B, C and D, they were awarded 58 (PASS), 39 (FAIL), 80 (PASS) and 80 points (PASS) respectively. By letter dated 8 July 2025, the appellant was informed of the Examination Board's decision that the requirements of Article 14(1) of the Regulation on the European qualifying examination for professional representatives (REE) had not been fulfilled and that the Examination Board could not declare that the appellant had passed the EQE.

III. The distribution of marks for paper B was as follows:

Examination Committee: Paper B - Marking Details - Candidate No C8002376

Category	Max possible	Marks marker 1	Marks marker 2
Claims - Independent	21	0	0
Claims - Dependent	9	9	9
Arguments - Amendments	16	11	11
Arguments - Clarity	6	6	6
Arguments - Novelty	10	0	0
Arguments - Inventive Step	30	12	13
Arguments - Unity	8	1	0
Total		**39**	**39**

Examination Committee agrees on 39 points and recommends the grade Fail

IV. With letter dated 10 September 2025 the appellant was informed that the Examination Board had not allowed the appeal against the result for paper B. The appeal was thus forwarded to the Disciplinary Board of Appeal (the Board).

V. In accordance with Article 24(4), first sentence, REE in conjunction with Article 12, second sentence, of the Regulation on discipline for professional representatives (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). No comments were received.

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

The decision of the Examination Board was based on serious mistakes which were so obvious that they could be established without re-opening the marking procedure, since the evaluation was based on legally incorrect premises and/or obvious mistakes, which could be identified without a re-evaluation of the whole examination paper.

The appellant had received 0 marks for their independent claims, 0 marks for their arguments on novelty and only 1 mark for their arguments on unity. The Examiners had therefore evidently concluded that the appellant's independent claims lacked novelty. This interpretation was legally incorrect and these independent claims were novel. Therefore, marks should be awarded for the novelty section of the marks scheme. As a consequence, a reconsideration of the independent

claims section and of the unity section of the marks scheme should also be undertaken.

The conclusion of the Examiners' report that the separation of features in original claims 6 and 11 constituted an intermediate generalisation was incorrect.

The Examiners' report also clearly contained provisions for double penalisation which was not permitted.

VII. Oral proceedings before the Board took place on 4 February 2025 at which the appellant finally requested that the decision under appeal be set aside and that the case be remitted to the Examination Board for a new decision on the appellant’s answers to paper B. They also requested reimbursement of the appeal fee. At the end of the oral proceedings the Chairman announced the decision of the Board. For further details of the oral proceedings, reference is made to the minutes.

Reasons for the Decision

Scope of review

1. In accordance with Article 24(1) REE and the consistent case law of the Disciplinary Board of Appeal (see D 1/92 (OJ EPO 1993, 357; Case law of the Boards of Appeal of the European Patent Office, 11th edition (CLB), V.C.2.6.3), decisions of the Examination Board may in principle only be reviewed for the purposes of establishing that they do not infringe the REE, the provisions relating to its application, or higher

ranking law. It is not the function of the Board to reconsider the entire examination procedure on the merits. The reason for this is that Examination Committees and the Examination Board have some latitude in their evaluation which is subject to only limited judicial review by the Board.

1.1 According to the established case law of the Disciplinary Board of Appeal, the value judgment of the competent Examination Committee or of the Examination Board about the number of marks that an answer deserves is thus not subject to review by the Board, nor are the criteria for the weighing of the expected answers to the examination questions (see D 13/02, Reasons 5, D 7/05, Reasons 20).

1.2 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 reopening the entire marking procedure (see D 1/92, Reasons 3 and 4). This is for instance the case where the wording of an examination question is inconsistently or incomprehensively formulated (D 13/02), or 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).

1.3 Should the Board conclude that the contested decision is based on serious and obvious mistakes, it will set aside the decision and remit the case to the Examination Board for re-evaluation of the marking (Article 24(4), 2nd sentence, REE). Only in very exceptional circumstances will the Disciplinary Board of Appeal declare that a candidate passed the EQE (see

D 1/86, Reasons 2, D 14/17, Reasons 3, Article 12 RPDBA).

Independent claims and novelty

2. Paper B contained an application document with 11 claims of which claims 1 and 7 were independent. It was the candidates' task to present a new set of claims which took the communication from the examining division as well as the client's instructions and draft claims into account. In the communication from the examining division the central issue was lack of novelty of the independent claims in view of D1, D2 and D3. In addition, objections for lack of clarity and non-unity were made.

3. Independent claim 1 of the application document read as follows:

> "A locking system (50) comprising:
> an elongated key (10) extending along a key axis and having a plurality of permanent magnets (15) spaced axially apart in a predetermined magnet arrangement;
> a housing (30) defining a passage (34) complementary to said key and extending along an insertion axis of said key;
> one or a plurality of magnetic field detectors (37, 37') spaced axially apart in said housing relative to said insertion axis in a detector arrangement positioned in relation to said magnet arrangement, each of said one or plurality of detectors being configured to change state on juxtaposition with a magnet and to generate one or several electrical signals in accordance therewith;
> an actuatable latch; and

electronic circuit means connected to said latch and said one or plurality of detectors for actuating said latch based on the one or several electronic signals generated by the one or plurality of magnetic field detectors."

4. The client had provided a draft claim 1 in which they had incorporated the features of dependent claims 5 and 6. However, the client considered the draft claims too limited and identified that the focus of the application should lie in the serial function of the locking and access system.

5. According to the Examiners' report it was expected of candidates to delete the features of claim 5 from the client's draft claim 1, keep the features of claim 6 and use the two-part form. The features added from dependent claim 6 read as follows:

"wherein there are fewer magnetic field detectors than magnets and
characterised in that
the electronic circuit means are configured to implement a serial reading of said detectors' electric signals as the key is being inserted into the housing and a plurality of magnets pass in proximity to one of the magnetic field detectors."

6. What the appellant did in their answer was to delete the features of claim 5, use the two-part form, but instead of keeping the features of claim 6 they introduced part of paragraph [018] of the description. Paragraph 18 explains the principle of a serial reading function of the sequence of magnets. The added claim feature read as follows:

"characterised in that at least one specific magnetic field detector is configured to detect the

sequence of magnets (15) on a row along the axis of the key (10) that passes in proximity of this detector as it is being inserted into the passage (34) until fully inserted."

7. The second independent claim to be drafted was independent claim 6, which was directed to an access system with a portable keycard. A corresponding amendment, namely the incorporation of the serial reading function, was to be made when drafting the independent claim 6 (a combination of claims 7 and 11 of the application) and the appellant used an adapted version of paragraph 18 of the description, instead of dependent claim 11, in their answer.

8. The appellant argues that their proposed independent claim 1 was equivalent to that which had been expected according to the Examiners' report ("the model solution") and was thus also novel, and that the same reasoning applied to the further independent claim. According to the Examiners' report, an amended claim having the same scope as the proposed solution would not lose marks. A re-marking of their paper was thus justified.

9. The Board notes that, according to section 4 of the Examiners' report, deficiencies in the claims such as lack of clarity or added subject-matter were penalised with a deduction of some, but not all marks. However, 0 marks (of a maximum of 21) in the appellant's marking sheet for the drafting of the independent claims, and 0 marks (of a maximum of 10) for the novelty section of the letter of reply is a clear indication that the independent claims drafted by the appellant were considered not to be novel (see also sections 1.8 and

4.2 of the Examiners' report suggesting that 0 points were awarded for claims that were not novel).

10. In the model solution, the feature of the serial reading established novelty of the independent claims over D1, D2 and D3. The feature that there were fewer magnetic field detectors than magnets was an additional distinguishing feature of claim 1 over D1, and of claim 6 over D2. It was not a distinguishing feature of claim 1 over D3.

11. The distinguishing feature identified by the appellant vis-a-vis the prior art documents D1, D2 and D3 is that none of them disclose a magnetic field detector configured to read a sequence of magnets, for the reasons set out in their paper B - letter of reply (first three paragraphs under the heading "novelty").

12. According to the appellant, the difference between the model solution and that of the appellant is that in the former the serial reading function is a property of the electronic circuit means, whereas in the latter the serial reading function is the function of the magnetic field detector.

13. The Board notes that in the application documents provided for paper B, paragraph [017] refers to the drawback of various described locking systems in that they are complicated to manufacture and require many components. It is then stated that "To improve this, it is also possible to provide what we call a serial reading function of the sequence of magnets". Paragraph [018] then follows:

> "[018] The principle is as follows: At least one specific magnetic field detector is used to detect the sequence of magnets on the row along the axis

> of the key that passes in proximity of this detector as it is being inserted into the cylinder 30 until fully inserted....This produces a series of electrical signals which are analysed by the processing circuit and compared with the expected series corresponding to the lock system."

14. The Board concurs with the appellant's argument that, as it is the inherent function of the processing circuit (equivalent to the electronic circuit means in claim 1) to receive and analyse the electrical signals generated by the detectors, as also explained in paragraph 8 of the description, it is reasonable to assume that the sequence of electrical signals produced by the magnetic field detector will inherently be analysed by the electronic circuit means. Whether, in view of these considerations, this leads to the same scope of claim 1 of the model answer and that presented by the appellant, is a matter that may be debated. Yet whether or not the candidate's answer is in essence identical to the model answer is not the test to be applied when considering whether the evaluation of the appellant's paper B was based on a technically or legally incorrect premise.

15. The Board agrees with the appellant's argument in paper B that the feature "magnetic field detector configured to read a sequence of magnets" does not appear to be disclosed in any of the cited prior art. The Examiners' report acknowledges that no serial reading is disclosed in any of D1, D2 or D3 (see section 5.4, D1 and D3 as regards claim 1 and D2 as regards claim 6). With regard to D3, the Examiners' report notes that paragraph 4, 2nd sentence, did not explain how the embodiment with one transducer and several magnets was implemented, and that the aim of this embodiment was to detect the

position of the push-button. One possibility to do so would be to use magnets of different polarity and/or different strength in order to detect the position of the push button based on which magnet is at proximity of the detector. Whilst the answer in the Examiners' report was drafted against the background of the serial reading being a feature of the electronic circuit means, the same considerations apply with regard to the detection of the sequence of magnets. As noted by the appellant in their answer (paper B, novelty section of the reply) there is no disclosure in any of the prior art documents of magnets being read in sequence.

16. In view of the above, the Board is of the view that the subject-matter of the independent claims as drafted by the appellant as part of paper B is not directly and unambiguously disclosed in any of the cited prior art and is thus novel.

17. The assessment of the appellant's answer, which did not acknowledge novelty for the independent claims, is therefore based on a serious and obvious error.

Intermediate generalisation and double penalisation

18. The appellant challenges part of the Examiners's report which states in section 4.2 under the heading "Examples":

> "In case the feature "wherein there are fewer magnetic field detectors than magnets" was not included in independent claim 1 or claim 6 but left as a dependent claim of claim 1 or 6, **5 marks** were deducted as this separation is considered to introduce an unallowable generalisation... Although paragraph [019] mentions that the number of

magnetic field detectors **can** be reduced, this is to be understood in the context of the whole embodiment starting at paragraph [017] which seeks to improve manufacturing of the locking system by reducing the number of components."

According to the appellant, the word "can" would be used in the sense of "optionally" such that the omission of the feature in question did not lead to an intermediate generalisation.

19. The Board is not convinced. Paragraph [019] of the application mentions the reduced number of magnetic field detectors as an advantage resulting from the serial reading function, and is thus inextricably linked to the improvement sought in the manufacturing process. This suggests that "can" refers to an intended result and cannot be interpreted to mean "optionally". The appellant's reference to paragraph [020] that "all the methods and variants described" above can be used independently or in combination does not change this. The fact that several of the embodiments described may be combined or used independently does not have an effect on the interpretation of the single embodiment of paragraphs [017]-[019].

20. During the oral proceedings the appellant referred to paragraph [025] which suggests that the serial reading function could be implemented with the first main embodiment. As that embodiment concerned a disclosure where there were not fewer magnetic field detectors than magnets, the feature of the serial reading had to be interpreted as a self-standing feature, independent of the feature that there were fewer magnetic field detectors than magnets.

21. The Board does not concur. Paragraph [025] starts with the words "As a final variant", similar to paragraph [024] which reads "As a further variant", and thus refers to a further embodiment of the invention. It cannot be used to interpret the different embodiment disclosed in paragraphs [017]-[019].

22. The appellant also mentioned that, in addition to the example quoted above in relation to the intermediate generalisation, there was a further example with identical meaning in the very same example section. This allegedly showed that there was a double penalisation. The Board is, however, not convinced that the fact that an example has been repeated in the Examiners' report, most likely erroneously, would in fact lead to a double penalisation by those marking the paper. The appellant has given no indication that the marking of their paper did in fact suffer from double penalisation.

Marks awarded and remittal

23. In view of the above, the decision of the Examination Board is to be set aside. With regard to the specific number of marks awarded, the Board refers to point 1 above and its limited scope of review. It is for the Examination Board to determine, on the basis of the Board's finding, the number of marks to be attributed to the appellant's answers in relation to the sections on the independent claims, novelty and unity.

24. A reimbursement of the appeal fee is justified.

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 on the appellant's answers to paper B of the EQE 2025.

3. The appeal fee is reimbursed.

The Registrar: The Chairman:

N. Michaleczek I. Beckedorf

Decision electronically authenticated