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Bezeichnung der Erfindung: -.-

Title of invention:

Titre de l'invention :

ENTSCHEIDUNG / DECISION

vom / of / du 20 December 1983

Appellant:

Stichwort / Headword / Référence : Art.6 Regulation of the establishment of an institute of professional representatives before the EPO (REI)

Art.4(2) Regulation on discipline for professional representatives (RDR)

EPÜ/EPC/CBE

Subscriptions for EPI- penalties for non-payment

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt
Beschwerdekammer in
Disziplinarangelegenheiten

European Patent
Office
Disciplinary Board
of Appeal

Office européen
des brevets
Chambre de recours statuant
en matière disciplinaire



Case No. D 01/83

DECISION

dated 20 December 1983

Decision under
appeal:

Decision of the Disciplinary Board of
the European Patent Office dated
31 January 1983 (Case No. 18/82)

Composition of the Board:

L. Gotti Porcinari;	Chairman
O. Bossung	Member
P. Ford	Member
E. Bokelmann	Member
H. Brühwiler	Member

SUMMARY OF FACTS AND SUBMISSIONS

- I. The appellant is entered under his private address in the list of professional representatives before the European Patent Office. For a time, correspondence was addressed to him at an office in which he was employed. By letter of 12 January 1979, he requested the EPO to address correspondence to him at his private address. On 29 August 1980, the Treasurer of the Institute of Professional Representatives before the EPO brought it to the notice of the Institute's Disciplinary Committee under Article 6(1) of the "Regulation on discipline for professional representatives" (OJ 2/1978, p. 91 et seq.; hereinafter abbreviated to "RDR") that a number of professional representatives - including the appellant - had failed to meet their obligations under Article 6 of the "Regulation on the establishment of an institute of professional representatives before the European Patent Office" (OJ 2/1978, p. 85 et seq.) to pay subscriptions for the years 1978 and 1979 (in the appellant's case for 1979 only).
- II. On 22 October 1980, the Disciplinary Committee sent a reminder to the appellant and invited his comments. However, this letter was addressed to the appellant at the above-mentioned office, where he no longer worked. By letter of 16 February 1981, the Disciplinary Committee referred the matter under Article 6(2)(c) RDR to the Disciplinary Board of the EPO.
- III. By letter of 5 October 1982, addressed to the appellant at his former office, the Disciplinary Board invited his comments. By decision of 31 January 1983, despatched on 7 February 1983 and this time addressed to the appellant

at his private address, the Disciplinary Board fined him DM 400 under Article 4(1) and (2) RDR for failing to pay his subscription for 1979.

- IV. On 26 February 1983, the appellant filed notice of appeal against this Decision on the following grounds:

He had requested the EPO to address correspondence to him at his private address. He had not received any of the letters sent to him at his former office address, whereas he had complied with the requests to pay his subscriptions for 1980 and 1981, sent to him at his private address.

At the same time as he filed notice of appeal, as a precautionary measure the appellant paid the fine of DM 400 to the EPO and the 1979 annual subscription of DM 200 to the Institute, but requested that the contested Decision be set aside and the fine refunded.

REASONS FOR THE DECISION

1. The notice of appeal meets the requirements of Article 22(1) RDR and Article 6 of the "Additional Rules of Procedure of the Disciplinary Board of Appeal of the EPO" (OJ 7/1980, p. 176 and p. 188 et seq.) and is, therefore, admissible.
2. Article 4(2) RDR provides that disciplinary measures may be taken inter alia in the event of failure to pay subscriptions. The words "The penalties provided for in paragraph 1 may also be incurred" make it clear however that such a disciplinary measure is not the necessary consequence of non-payment. The fact of non-payment of a

subscription - as in this case that for 1979 - is thus in itself not enough to justify application of Article 4(2) RDR. The use of the word "may" in that provision makes it clear that such application depends on the particular circumstances of the case in question, and notably on whether there was an intention not to pay. In applying Article 4(2) RDR, the disciplinary bodies must thus establish the particular circumstances of each case, and on their merits decide whether the matter can be dismissed or what penalty should be incurred.

3. It is therefore premature to initiate disciplinary proceedings solely because a single subscription has not been paid. Only after a reminder has been duly sent, without result, may it be reasonably assumed that unwillingness to pay exists. Non-payers should also be informed that upon request their names may be deleted from the list of professional representatives under Rule 102(1) EPC and re-entered under Rule 102(3) EPC (cf. the Minutes of the Munich Diplomatic Conference, p. 100, 101; Nos. 2437 to 2442). If the reminder is notified in accordance with Rule 78 EPC, further investigation would be called for in the event of non-return of the advice of delivery of a registered letter. In the present case the fact that the subscriptions for 1980 and 1981 were paid might also have suggested that the reminder for 1979 had not reached the appellant. Investigation of the facts of the case would have shown that there was no unwillingness to pay the subscription for 1979, and that there was no reason to suspect an intention not to pay. Accordingly, the initiation of disciplinary proceedings was not justified.

DECISION

For the above reasons,

it is decided that:

1. The decision under appeal is set aside.
2. Reimbursement of the paid fine of DM 400 is ordered.