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D E C I S I O N
of 17 May 1995

Case Number: D 0001/94

Application Number: -

Publication Number: -

IPC: -

Language of the proceedings: EN

Title of invention:

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Applicant/Patentee:

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Opponent:

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Headword:

Power to examine of the Disciplinary Board of Appeal

Relevant legal provisions:

Art. 11(3) of the Regulation on the European Qualifying Examination for professional representatives before the European Patent Organisation (REE)

Keyword:

"Power of the Disciplinary Board of Appeal"
"Translation errors"

Decisions cited:

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Headnote:

I. In examination matters the competence of the Disciplinary Board of Appeal is restricted to reviewing decisions of the Examination Board only with respect to the correct application of the REE, its Implementing Regulations or higher-ranking law. Only alleged serious and obvious mistakes concerning the examination can be considered. These mistakes must be relevant to the decision under appeal, in the sense that the decision would have been different had the mistake not been made (confirming previous case law, D 1/92, OJ EPO 1993, 357, D 6/92, OJ 1993, 361).

II. A translation error may be considered to be such a mistake and may constitute a violation of Article 11(3), REE since this provision assumes that the translation from the language selected by the candidate into one of the official languages of the EPO is totally correct. The Examination Board, therefore, in its decision has to give reasons why the translation errors were not found to be serious in the sense explained above.



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Boards of Appeal

Chambres de recours

Case Number: D 0001/94

I N T E R L O C U T O R Y D E C I S I O N
of the Disciplinary Board of Appeal
of 17 May 1995

Appellant:

N. N.

Decision under appeal:

**Decision of the Examination Board for the European
Qualifying Examination dated 7 October 1993.**

Composition of the Board:

Chairman: J.-C. Saisset

Members: M. Lewenton

L. C. Mancini

J. Neukom

L. de Bruijn

Summary of Facts and Submissions

- I. The Appellant sat the European Qualifying Examination for professional Representatives held before the European Patent Office from 31 March to 2 April 1993.
- II. By registered letter of 7 October 1993 the Chairman of the Examination Board for the European Qualifying Examination, hereinafter referred to as the Examination Board, notified the Appellant of performance in the four papers; the grades obtained by the Appellant were the following:

Paper A: 4 (pass)
Paper B: 4 (pass)
Paper C: 5 (inadequate)
Paper D: 5 (inadequate).

The Appellant was informed of his not having been successful in the European Qualifying Examination as well as of the possibility to apply for enrolment for a future European Qualifying Examination.

- III. On 6 December 1993, the Appellant filed an appeal requesting that the above-mentioned decision be set aside and that a decision that he had passed the examination be entered. Auxiliarily, the Appellant requested to be granted oral proceedings.

In his Statements of Grounds dated 17 January 1994, 7 October 1994 and 11 January 1995, the Appellant essentially contended that the marking of papers C and D were not adequate. According to the Appellant, the apparent translation errors from Italian to English have influenced the examiners negatively. Therefore, Articles 11 and 12 REE as well as the respective

Implementing Regulations were not applied correctly. In case of an adequate translation, a careful evaluation of the said papers should have led to the Appellant being awarded better grades, thus making him successful in his examination.

IV. On 25 March 1994, the Examination Board decided not to rectify its decision, and forwarded the case to the Disciplinary Board of Appeal.

V. The President of the Council of the Institute of Professional Representatives before the EPO and the President of the EPO were consulted under Article 12 of the Regulation on Discipline for Professional Representatives in conjunction with Article 23(4) REE and did not present any comment on said appeal.

VI. On 17 May 1995, oral proceedings took place. On behalf of the President of the EPO, Mrs A. Decroix was present.

The Appellant requested that the decision of the Examination Board be set aside, that Papers C and D both be awarded the grade 4 and that the whole examination be deemed to have been passed (main request).

Auxiliarily, the Appellant requested

- that Article 12(3) REE in conjunction with IX (a) of the Implementing Regulations be applied;
- that the contested decision be set aside as unsubstantiated and the matter referred back to the Examination Board for further consideration;

or

- that the following question be referred to the Enlarged Board of Appeal:

"Is it right that the Examination Board does not give the reasons of its confirmation of the first decision especially in the case where the first decision can be influenced by a wrong translation of the papers of the candidate?"

Reasons for the Decision

1. The appeal complies with the provisions of Article 23(2) REE and is admissible.
2. In its communication to the Appellant of 1 August 1994 the Board has stated that in cases concerning the European Qualifying Examination for professional Representatives before the EPO its competence is restricted to examining decisions of the Examination Board only with respect to the correct application of the REE, its Implementing Regulations or higher-ranking law. According to the case law of the Disciplinary Board of Appeal, it is not its task to reconsider the entire examination procedure on its merits, only alleged serious and obvious mistakes of the examination can be considered. These mistakes must be "relevant" to the appealed decision, in the sense that the decision would have been different had the mistake not been made.
3. In the case at issue, translation errors may constitute a violation of Article 11(3) REE since this provision presupposes a totally correct translation from the language selected by the candidate into English. At present, however, the Board is not able to judge whether

the respective translation errors are "serious" and "relevant" (in the sense of the above-mentioned jurisprudence) as alleged by the Appellant.

4. The decision of the Examination Board of 25 March 1994 states only that the Examination Board "has investigated the alleged translation errors and has come to the conclusion that the marking was correct". In the Board's view, this statement is not a sufficient reasoning. In the case of a clear violation of Article 11(3) REE the Board should be given a reasoned evaluation of whether the translation errors were serious and whether a correct translation would have led to a decision of the Examination Board in favour of the Appellant.
5. Thus, the case at issue is clearly different from the general allegation that the Examination Board has infringed the relevant provisions by awarding an insufficient number of marks to the candidate's papers. Such allegation normally concerns "value" judgements expressed by the Examination Board which, in principle, cannot be subject to judicial review. In the present case, however, an infringement of the law is demonstrable and according to a fundamental legal principle as e.g. expressed in Article 113(1) EPO, the Appellant should know the detailed reasons for the allegedly "wrong" decision, also why in spite of said infringement the decision based on it was "correct".
6. Since without substantiation of the Examination Board's decision of 25 March 1993 no decision can be taken on the different requests of the Appellant, the case has to be remitted to the first instance. In so remitting it, the Board wishes to underline the importance that all reasonable steps should be taken, and be applied with utmost diligence, by the Examination Board to avoid translation errors.

Order

For these reasons it is decided that:

The case is remitted to the Examination Board with the order to substantiate the decision of 25 March 1993.

The Registrar:

The Chairman:

M. Beer

J.-C. Saisset

\$ 2194



Case Number: D 0002/94

D E C I S I O N
of the Disciplinary Board of Appeal
of 3 March 1995

Appellant: N.N.

Decision under appeal: Decision of the Examination Board for the
European Qualifying Examination dated 7 October
1993.

Composition of the Board:

Chairman: P. Gori
Members: W. Moser
J.-C. Saisset
C. Onn
A. Armengaud

Summary of Facts and Submissions

- I. The Appellant sat for the European Qualifying Examination held from 31 March to 2 April 1993 and received the following marks for his four papers:

Paper A: 3 (good)
Paper B: 3 (good)
Paper C: 4 (pass)
Paper D: 6 (very inadequate)
- II. On 7 December 1993, the Appellant filed an appeal against the decision dated 7 October 1993 of the European Patent Office's Examination Board for the European Qualifying Examination that he had failed the examination. The appeal fee was paid on the same day. However, no Statement setting out the grounds of appeal (Article 27[2] REE) has been filed by the Appellant.
- III. In a communication dated 29 July 1994, the Board informed the Appellant that the appeal would have to be rejected as inadmissible, unless an application for re-establishment of rights in accordance with the prescriptions of Article 24(2) of the Regulation on discipline for professional representatives (RDR) in conjunction with Article 27(4) REE was filed by the Appellant.
- IV. The Appellant did not answer the communication.

Reasons for the Decision

As no written statement setting out the grounds of appeal has been filed within the time limit under Article 27(2) REE, the appeal has to be rejected as inadmissible (Article 22[2] RDR in conjunction with Article 27[4] REE).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

M. Beer

P. Gori