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Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: D 0001/98

D E C I S I O N
of the Disciplinary Board of Appeal
of 21 July 1998

Appellant: N.N.

Decision under appeal: Decision of the Disciplinary Committee of the
Institute of Professional Representatives dated
1 December 1997.

Composition of the Board:

Chairman: W. Moser
Members: R. Teschemacher
C. Holtz
L. C. de Bruijn
E. Klausner

Summary of Facts and Submissions

- I. In a letter dated 24 March 1997, the Appellant notified the Disciplinary Committee of the Institute of Professional Representatives before the European Patent Office (epi), that Mr. X., a professional representative, had infringed the Code of Professional Conduct. He alleged *inter alia* that Mr. X. had charged his clients the fees of the European Patent Office (EPO) in an amount which was 20% higher than the official fees, without informing them of this extra charge.

- II. In a decision posted on 10 December 1997, the Disciplinary Committee dismissed the matter of the complaint on the grounds that it was not possible to give a further decision in this matter on which the respective national body (Raad van Toezicht voor de Octrooigemachtigden) had already given a decision. Furthermore, the Disciplinary Committee was not competent to interfere in civil- or contract-law matters, such as civil damage suits or non competition obligations in cooperation agreements.

- III. In a letter received on 5 January 1998, the Appellant filed a notice of appeal against this decision together with a statement setting out the grounds of appeal. He contested the position taken by the Disciplinary Committee, arguing that under general principles of law it is possible to start criminal and civil proceedings in parallel. In addition, the decision under appeal would mean that a patent practitioner excluded from exercising his profession under national law or punished with criminal sanctions could still act as a professional representative before the EPO although he had infringed the Rules of Professional Conduct.

- IV. In a communication from the Board, the Appellant was made aware of the fact that the right of appeal in disciplinary proceedings is restricted pursuant to Article 8(2) of the Regulation on discipline for professional representatives (RDR). His attention was drawn to decision D 15/95 (OJ EPO 1998, 297), dealing with the question at issue.
- V. In his reply, the Appellant argued that, on the proper interpretation of Article 8(2) RDR, also the complainant may be considered as the "representative concerned" if he is affected by the alleged infringements of the Rules of Professional Conduct. This had to be accepted in the Appellant's case because the respective acts had a negative effect on him acting as patent attorney. He requested that the decision under appeal be set aside.
- VI. The Presidents of the EPO and epi were given the opportunity to comment. They did not make use of this opportunity.

Reasons for the Decision

1. The appeal is inadmissible.
2. As has been explained in the Board's communication, Article 8(2) RDR restricts the right to appeal to the President of the epi, the President of the EPO and the professional representative concerned. The Board cannot share the Appellant's opinion that also the person having given rise to the disciplinary proceedings by informing the disciplinary bodies of alleged breaches of the Rules of Professional Conduct may be considered as "the professional representative concerned" within the meaning of Article 8(2) RDR.

- 2.1 Throughout the relevant provisions this term is always used in the singular for the representative against whom the complaint is made. In contrast, the person having alleged the breach of the Rules of Professional Conduct is indicated as the complainant (see eg Article 21(1), third sentence, RDR). Therefore, the plain wording of Article 8(2) RDR excludes the complainant from those who may appeal.
- 2.2 This is in full agreement with the purpose of the disciplinary proceedings as outlined in D 15/95 (above). The Rules of Professional Conduct and the disciplinary regulations aiming at the observance of those Rules serve the public interest of a proper functioning of professional representation before the EPO. Disciplinary regulations do not serve private interests and are not intended to solve conflicts between individuals, eg among representatives or between clients and representatives. Whereas the breach of the Rules of Professional Conduct may amount to unlawful behaviour and affect individual interests, any claim derived by an individual from such behaviour has to be assessed under the relevant law governing the relations between individuals, eg civil law or law on unfair competition. This is a matter to be dealt with by the national courts and not by the disciplinary bodies established under the EPC.
- 2.3 This is the reason why the complainant has not been given the status of a party to the proceedings by the legislator. His notice starts the proceedings as foreseen in Article 6(1) RDR, and he is informed of the results of these proceedings (Article 21(1), third sentence, RDR). For the rest, he is excluded from the proceedings as everybody else is to whom the provisions do not give a procedural status (see the principle of confidentiality in Article 20 RDR). There is nothing in the provisions governing disciplinary proceedings from

which it might be concluded that a professional representative, when acting as a complainant, should be treated differently from other complainants.

3. Hence, the Board can only confirm the conclusion drawn in D 15/95 (above) that the complainant has no right of appeal even if he is a professional representative. Since this makes the appeal inadmissible, the Board is prevented from examining whether the reasons given by the Disciplinary Committee for dismissing the matter were legally correct.

Order

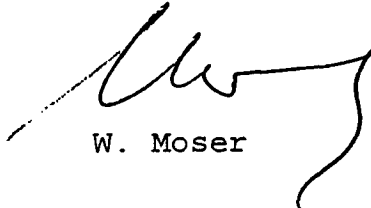
For these reasons it is decided that:

The appeal is dismissed.

The Registrar:


M. Beer

The Chairman:


W. Moser