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# D E C I S I O N
# of 3 May 2002

**Case Number:** D 0003/00

**Appellant:** N.N.

**Headword:**
Evaluation of merits of candidate's answer

**Relevant legal provisions:**
EPC Art. 8(b)(c), 27(1)
EPC R. 4(2)

**Keyword:**
"European Qualifying Examination"
"Merits of a candidate's answer"
"Not per se highest number of sub-marks"

**Headnote:**
As regards the evaluation of the merits of a candidate's answer to an examination paper a candidate is not per se entitled to claim for each answer to a sub-question or sub-element of an examination paper the highest mark awarded by one of the examiners whenever the two committee members (examiners) who have marked the answer in accordance with Article 8(b) REE differ in their marking of such a sub-question or sub-element (point 3. of the reasons).

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Beschwerdekammern | Boards of Appeal | Chambres de recours

**Case Number:** D 0003/00

**D E C I S I O N**
**of the Disciplinary Board of Appeal**
**of 3 May 2002**

**Appellant:** N.N.

**Decision under appeal:** **Decision of the Examination Board for the European Qualifying Examination dated 22 September 1999.**

**Composition of the Board:**

**Chairman:** B. Schachenmann
**Members:** M. Günzel
J.-P. Seitz
H. Lichti
E. Lyndon-Stanford

## Summary of Facts and Submissions

I. The appeal concerns the decision of the Examination Board dated 22 September 1999, that the appellant was not successful in the European Qualifying Examination ("EQE") held from 24 to 26 March 1999. In this examination the appellant resat Papers C and D. For his performance in Paper C he was awarded 46 marks and 48,5 marks for Paper D.

II. With his letter received on 26 November 1999, the appellant appealed against the decision of the Examination Board with relation to the awarding of marks for Paper D. The appeal fee was paid on the same day. The grounds of appeal were filed on 23 December 1999.

III. In a communication of 13 December 2001 the Board informed the appellant of its preliminary opinion that the reasons indicated by the appellant as to why his Paper D should have been awarded more marks appeared to be of a nature which was not subject to judicial review by the Board.

IV. The appellant did not reply to this communication. In a telephone call with the Registrar of the Board, it was explained that the appellant had lost interest in the appeal. The Registrar drew attention to the fact that the appeal fee could be refunded if the appeal was withdrawn. Nothing, however, was received from the appellant.

V. The appellant requests that the decision on the awarding of 48,5 marks for Paper D be revised and 50 or a higher number of marks be awarded for said paper

according to Rule 4 (2) of the Implementing Provisions to the REE.

As grounds for this request the appellant refers point by point to the answers given by him to the questions in Paper D, parts I and II, and concludes that for each of these answers he should have been awarded more marks than were actually given and, with respect to most of his answers, at least the highest number of marks awarded by one of the two examiners who had marked his paper.

## Reasons for the Decision

1. It is well established by the jurisprudence of the Disciplinary Board of Appeal that it only has jurisdiction in EQE matters to establish whether or not the Examination Board has infringed the REE or a provision implementing the REE. This follows from Article 27(1) REE which reads: "An appeal shall lie from decisions of the Board and the Secretariat only on grounds of infringement of the Regulation or of any provision relating to its application."

Thus the Disciplinary Board of Appeal may only review Examination Board decisions for the purposes of establishing that they do not infringe the REE, its implementing provisions or a higher-ranking law. It is not within the competence of the Disciplinary Board to reconsider the examination procedure on its merits nor can it entertain claims that papers should have been marked differently, save to the extent of mistakes which are serious and so obvious that they can be established without re-opening the entire marking

procedure (See, for example, D 1/92, OJ 1993, 357, points 3 to 5 of the reasons, and D 6/92, OJ 1993, 361, points 5 to 6 of the reasons) Otherwise, differences of opinion with regard to the number of marks to be awarded for a given answer are a reflection of value judgments which are not, in principle, subject to judicial review (see D 1/92, supra, paragraph 6).

2. The reasons given by the appellant in the present case do not provide any indication that the marking of the appellant's answers to the Paper D questions would have to be regarded as having been influenced by a mistake made by one or both of the examiners. The grounds of appeal merely show that the appellant's opinion and that of the examiners as to the merit of the appellant's answers differ and that the appellant is of the opinion that his answers should have been awarded more marks than were actually given by the examiners.

The marks awarded by the two examiners (committee members) of Examination Committee III to the appellant's answers to each of the sub-questions into which the answers to Paper D are broken down according to the marking scheme established by Examination Committee III differ only in nuances reflecting the fact that the results of value judgements made by two persons, as objective as these persons may be, can hardly be identical in all aspects. The differences in the evaluation of some of the appellant's answers to questions raised in Paper D are therefore not indicative of any error or mistake having been made by one of the examiners. The same applies to the total of marks allocated by the two examiners to the appellant's performance in Paper D, which is 48 and 49 respectively. Both results show that each of the two

examiners was of the opinion that the candidate's performance in Paper D did not justify a number of marks sufficient for a pass, which required a minimum number of 50 marks according to Rule 4(2) of the Implementing Provisions to the REE, as applicable to the 1999 European Qualifying Examination (OJ EPO 1998, 364).

3. As the appellant has not shown nor submitted that the results of the marking by one of examiners were due to a mistake or an error the appellant's contention that he should have been awarded for each sub-answer to Paper D at least always the highest mark actually given by one of the examiners, can not be reviewed by the Board.

Should the appellant have meant with this that a candidate was per se entitled to always claim for each answer to a sub-question or sub-element of an examination paper the highest mark awarded by one of the examiners whenever the two committee members (examiners) who have marked the answer in accordance with Article 8(b) REE differ in their marking of such a sub-question or sub-element, then the Board sees no legal basis for such a view.

As regards the evaluation of the merits of a candidate's answer to an examination paper, according to Article 8(b) REE it is within the responsibility of each of the two examiners (committee members) to mark the paper as a whole, ie to study it, to evaluate its merits and thereupon to indicate the overall amount of marks to be awarded to the candidate's performance, as a basis for the Examination Committee's determination of the marks and of its proposal to the Examination

Board on the grade to be awarded to the candidate's performance in accordance with Article 8(c) REE.

Thus, even if the overall number of marks allocated by an examiner to the candidate's performance in a paper as a whole is the result he has reached by assessing the individual parts of the candidates answer in accordance with the sub-division into sub-answers and the number of maximum marks laid down for each of them in the marking scheme, the task of each examiner is to evaluate and arrive at a conclusion with respect to the candidate's overall performance in the paper. The marking of a paper and the evaluation of the candidate's performance is a unitary process for each of the examiners and it is separate from the marking of the other examiner. Therefore, the evaluation of an examiner on a part of the candidate's answers cannot be isolated from its context which is the value judgment of this examiner on the merits of the candidate's answers as a whole and be combined with markings of other parts of a candidate's answer by the other examiner.

The present case shows this. Both examiners arrived equally and independently from one another with an almost identical number of overall marks and without mistake or error (see above under 2) at the result that the appellant did not merit a number of marks sufficient for a "pass". In the view of the Board this uniform result of both examiners of the merits of the appellant's performance would be distorted if the respective best marks of the marking of every sub-answer were to be taken out of the marking of one of the examiners and combined with the respective best marks of the other examiner to come to a better grade

than was proposed by the Examination Committee and determined by the Examination Board.

4. Therefore, on the grounds of appeal before the Board, the appeal must be dismissed.

## Order

## For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

M. Beer B. Schachenmann

**Case Number:** D 0003/00

**D E C I S I O N**
**of 22 May 2003 correcting errors in the decision**
**of the Disciplinary Board of Appeal**
**of 3 May 2002**

**Appellant:** Borsano, Corrado
Alcatel Italia S.p.A.
Patent Department
Via Trento 30
I-20059 Vimercate (MI) (IT)

**Decision under appeal:** **Decision of the Examination Board for the European Qualifying Examination dated 22 September 1999.**

**Composition of the Board:**

**Chairman:** B. Schachenmann
**Members:** B. Günzel
J.-P. Seitz
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Pursuant to Rule 89 EPC, the Decision given on 3 May 2002 is hereby corrected as follows:

Page 3, line 5: Replace "paragraph 6" by "paragraph 4".

The Registrar: The Chairman:

M. Beer B. J. Schachenmann