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Boards of Appeal

Chambres de recours

Case Number: D 0009/00

D E C I S I O N
of the Disciplinary Board of Appeal
of 12 December 2000

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: C. Rennie-Smith
M. Günzel
A. Armengaud
Ch. Bertschinger

Summary of Facts and Submissions

- I. The Appellant appealed, by a notice of appeal received by fax on 25 November 1999, against the decision, posted by registered letter on 29 September 1999, of the Examination Board that she had not been successful in paper C of the European qualifying examination ("EQE") held in March 1999. The written statement of the grounds of appeal was incorporated in the notice of appeal.

- II. By letters from the Board of 25 April 2000, the President of the European Patent Office and the President of the Institute of Professional Representatives were invited, pursuant to Articles 27(4) REE and 12 RDR, to comment on the case. By a letter dated 23 June 2000, the President of the EPO informed the Board he did not intend to comment. The President of the Institute did not reply.

- III. The appellant's arguments can be summarised as follows:
 - (a) The marking of her answers in two of the categories of Paper C was not performed in a uniform manner. In those categories ("Use of Information" and "Argumentation" respectively) one marker awarded her 14 marks out of 40 and 14 out of 43, the other 10 out of 40 and 16 out of 43. The combined marks of the two markers for those categories were thus 28 and 26. The appellant suggests that, the numerical divergence between the two markers being a total of 6 marks which is approximately 20% of the total marks awarded for all three categories (30 by one marker and 32 by the other), the marking cannot have been uniform.

(b) The mark of 4 (out of 17) awarded by both markers for the third category ("Legal aspects") could, as written on the marking schedule, be read as 11 in both cases.

IV. By a communication dated 7 September 2000, the Board notified the Appellant of its provisional opinion that the appeal would apparently have to be dismissed, drawing her attention to the well-established jurisprudence of the Disciplinary Board 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 and cannot reconsider the examination procedure on its merits nor entertain claims that papers have been marked incorrectly, save to the extent of mistakes which are serious and so obvious that they can be established without re-opening the entire marking procedure. In the Board's provisional view, the appellant's arguments (see III above) did not reveal mistakes of that order. The appellant's reply to this communication essentially repeated her original arguments.

V. The appellant requests that the decision of the Examination Board of 22 September 1999 and the notification of 29 September 1999 are set aside and that Paper C is remitted to the Examination Board for review. There was no request for oral proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. It is well established by the jurisprudence of the Disciplinary Board 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 or a higher-ranking law. This follows inexorably from Article 27(1) REE which is the basis of the Board's jurisdiction in EQE matters and 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 may only review Examination Board decisions for the purposes of establishing that they do not infringe the laws mentioned above. It is not the task of the Disciplinary Board to reconsider the examination procedure on its merits nor can it entertain claims that papers have been incorrectly marked, unless it finds mistakes which are serious and so obvious that they can be established without re-opening the entire marking procedure (See, for example, D1/92 (OJ 1993, 357), Reasons points 3 to 5 and D6/92 (OJ 1993, 361), Reasons, points 5 to 6.). The appellant's submissions in her grounds of appeal must be seen in the light of this principle.

3. As to the appellant's argument that her paper was not marked uniformly, not only would this require the Board to re-open the marking procedure which it may not do (see above, paragraph 2), but it also appears inherently unsound. To compare, on the one hand, the

aggregate divergence between the two markers in two categories and, on the other hand, the aggregate marks awarded by each marker for all three categories, is not to compare like with like. The divergences between markers can only be viewed as they appear on the marking schedule, that is, category by category in the light of the total marks available in each category. Differences between the markers of, in the present case, 4 marks out of 40 or 2 marks out of 43 are just as might be expected in the assessment of a candidate's performance by two different examiners. In the absence of any reasons from the appellant why these differences should be indicative of non-uniform marking, the Board can only conclude that there is no indication of less than uniform marking let alone an error which is obvious.

4. As to the appellant's second argument, that the mark of 4 (out of 17) awarded by both markers for the third category ("Legal aspects") could, as written on the marking schedule, be read as 11 in both cases, the only support offered for this is that the digit 4, when used elsewhere on that schedule (in the marks of 14 awarded by one marker in both the other categories), has been written differently. In fact, in all four cases where the digit 4 has been used, it has been written slightly differently but, in the view of the Board, in all four cases the number used appears beyond reasonable doubt to be 4 and there is no other indication that the schedule of marks has been completed incorrectly. Indeed it is clear that both markers gave the appellant the same low mark of 4 for the "Legal aspects" category because that reflected their opinions of her performance. Again, there is no sign of an obvious error.

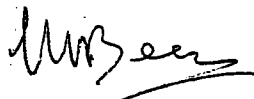
5. Accordingly, since the appellant has produced no argument or evidence of an obvious error, the Disciplinary Board has no alternative but to dismiss the appeal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:



M. Beer

The Chairman:



B. Schachenmann